

PROVINCETOWN CONSERVATION COMMISSION
JUDGE WELSH ROOM
June 19, 2018
6:00 P.M.

Members Present: Alfred Famiglietti, Robert Brock, Kiah Coble (arrived at 6:12 P.M.) 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 Public Hearing to order at 6:12 P.M.

1) **Work Session:**

a) **Approval of LAND Grant application – Portion of 264-268 Bradford Street** – Mr. Famulare reviewed the draft application and the parcel of land to be purchased, which is thickly wooded with large American beech and red maple trees and is home to 120 species of birds. He said the purchase would enable the Town to preserve one of the largest remaining privately-owned parcels in Provincetown. The Commission intends to manage the acquisition for conservation, habitat protection and passive recreation. The Commission briefly questioned him about the grant. *Joseph Cooper moved to approve the LAND Grant application, Alfred Famiglietti seconded and it was so voted, 4-0.*

b) **Appointment of B Street Garden Advisory Group members and review of expenses** – Mr. Famiglietti said that there were 3 applicants for positions in the Group; Keith Hunt, Luke Pryjma and Jim McGuire. Two members had recently resigned from the Group. Mr. Famulare explained what the Group does and recommended all 3 applicants for the Advisory Group. *Alfred Famiglietti moved to approve the 3 applicants for the B-Street Garden Advisory Group, Robert Brock seconded and it was so voted, 4-0.* Mr. Famulare said that he coordinates all of the meetings of the Advisory Group and would report back to the Commission about their activities, as the Commission does not have a representative in the Group.

Mr. Famulare reviewed the expenses for the Garden. The Advisory Group would like funds to be appropriated to buy some lumber to repair the handicapped accessible standing beds before the end of the fiscal year. The repairs would be done in the fall.

Alfred Famiglietti moved to approve the budget for the material to repair the raised beds, Robert Brock seconded and it was so voted, 4-0.

Chair Alfred Famiglietti called the Public Hearing to order at 6:31 P.M. He explained the process by which the meeting would be run.

2) **Public Comments:**

None.

3) **Public Hearings:**

a) CON-18-095 **6-R & 14-R Browne Street**

Notice of Intent filed by the **Town of Provincetown** pursuant to Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and Provincetown General By-Laws, Chapter 12, Wetland Protection By-Law for a habitat restoration project at Browne Street Community Garden & Conservation Park, to include the removal of invasive plants, introduction of native plantings, and establishing access pathways. Work to take place within Land Subject to Flooding, NHESP Priority Habitat and a Buffer Zone to a Bordering Vegetated Wetland.

Presentation: Dennis Minsky and Tabitha Kaigle, of Wilkinson Ecological Design, appeared to present the application. Mr. Minsky described the proposal as a multi-year restoration project, which would manage invasive plant species, restore native plantings, improve aesthetics, provide clearly defined pedestrian access and circulation throughout the area, assess the potential for additional agricultural opportunities and provide suggestions for habitat enhancement and educational opportunities. The land has been professionally evaluated and a thorough approach was taken on figuring out how best to manage the land and realize its potential. The area in question is already a filled wetland. The fill has become vegetated over the years and the project seeks to return the area to a more natural state, contribute to the health of Shank Painter Pond and provide education opportunities for the public. Ms. Kaigle briefly reviewed the restoration strategy.

Public Comment: David Hale, an abutter, and president of the abutting condominium association, spoke in support of the application.

Conservation Discussion: The Commission questioned Mr. Minsky and Ms. Kaigle. Mr. Minsky reviewed how the success of the project would be measured, such as how counts of animal and plant species would be monitored. He also proposed reaching out to gardeners for volunteer help with the project. He said that no herbicides will be used in the eradication of invasive plant species at this time. Mr. Famulare mentioned that the area was within NHESP estimated priority habitat and included with the Notice of Intent application was a letter from Mr. Minsky stating that the Town's position was that the project was exempt from review. However the Commission has not yet received confirmation that NHESP concurs with that position. He reviewed his draft conditions. Mr. Minsky requested a continuance to the July 17, 2018 Public Hearing at 6:30 P.M.

Joseph Cooper moved to approve the request to continue to the July 17, 2018 Public Hearing at 6:30 P.M., Robert Brock seconded and it was so voted, 4-0.

b) CON-18-094 **Herring Cove Beach, Province Lands Road**

Notice of Intent filed by the **National Park Service** 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 remove the existing asphalt revetment, deteriorated northern parking lot, fee booth, relocated vault toilet, accessible pedestrian paths, new bike racks and benches, and dune stabilization and plantings. Work to take place within Land Subject to Coastal Storm Flowage, a Coastal Beach, a Coastal Dune and a Buffer Zone to a Coastal Dune and a Coastal Beach.

Presentation: Karst Hoogeboom and Clayton Carlisle appeared to present the application. Mr. Hoogeboom explained that the goal of the project was to implement a long-term plan for management of the deteriorating Herring Cove beach north parking lot that will take into consideration the potential for future erosion, sea level rise, coastal flooding and sustainability into the future and that restores natural systems to the greatest extent possible and retains public recreational experiences. The proposed project involves removing the existing parking lot and

relocating it approximately 125' inland, to the east. A portion of Province Lands Road will be relocated to the east to accommodate the new parking lot location. Runoff from the parking lot will discharge via sheet-flow to match existing conditions. The relocated road will include construction of paved waterways to discharge stormwater to adjacent sandy uplands, one catch basin will be removed and the other will remain in use. The new parking lot will be located where the current Province Lands Road is sited. He said the new lot will be of the same type, will have the same number of parking spaces (208), will serve the same function, allowing the ability to see the ocean and the beach. The elevation of the new lot will be above the current FEMA flood elevation. He said that the existing dune in the area is an artificial dune, not contributing or functioning as a real dune, and will be reconstructed. The area will be re-contoured to allow for visual access to the beach and no new material will be brought into or out of the site. Mobi mats will be installed for handicapped access to the beach and a new vault toilet will be constructed. The parking area will be composed of gravel and the driving and bicycle lanes will be bituminous and that the existing chunks of asphalt in the area will be removed. Mr. Famulare pointed out that the proposal qualified as an ecological restoration project, not commonly seen by the Commission, and explained what that meant pursuant to the wetland protection regulations.

Public Comment: Gordon Peabody, of Safe Harbor, spoke regarding the coastal resiliency of the project, emphasizing that native vegetation should be re-planted.

Commission Discussion: The Commission questioned Mr. Hoozeboom and Mr. Carlisle. Mr. Famulare reviewed his draft conditions. He suggested that a condition be added that the applicant is encouraged to transplant native vegetation and added protocols regarding vehicular equipment use and storage in the tidal zone and will be made in consultation with the Conservation Agent. Mr. Hoozeboom was concerned about conditions 9 & 10, as most of the project involves the moving of material, however occasionally a stockpile is necessary and the covering and uncovering would be a burden on the project. A compromise was reached where if the stockpile was to remain for 14 days or more, it would have to be covered. In addition, pursuant to Mr. Hoozeboom's concern, the first sentence from condition #10 was stricken.

Kiah Coble moved to approve the Notice of Intent filed by the National Park Service, CON-18-094, 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 remove the existing asphalt revetment, deteriorated northern parking lot, fee booth, relocated vault toilet, accessible pedestrian paths, new bike racks and benches, and dune stabilization and plantings at Herring Cove Beach on Province Lands Road with the conditions as amended, Robert Brock seconded and it was so voted, 4-0.

c) CON-18-084 **1 High Pole Hill Road** (continued from the meeting of June 5th)
Notice of Intent filed by the **Cape Cod Pilgrim Memorial Association** pursuant to Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and Provincetown General By-Laws, Chapter 12, Wetland Protection By-Law for the construction of a proposed funicular (inclined elevator) and associated site improvements. Work to take place within Land Subject to Coastal Storm Flowage.

Presentation: Attorney Lester J. Murphy, David Weidner, Executive Director of the CCPMA, Jay Norton, of Coastal Engineering, Dave Hawk, a landscape designer, and Gordon Peabody, of Safe Harbor Environmental, appeared to present the application. Attorney Murphy reviewed the location of the proposal. He said that the dune that is located on the property is not a functioning

dune, and hasn't been for many years, many structures are already located on it and numerous improvements been made. The dune also does not meet the definition of isolated land subject to flooding. Even though the project is proposed in a buffer zone and in an area subject to coastal storm flowage, the Commission does have the discretion and flexibility to authorize activity and construction in a buffer zone. The authorization would be based on site-specific basis, taking into account the merits of the proposal and the degree to which the wetland's interests have been protected and preserved on the site. In areas subject to coastal storm flowage, the Commission has determined that it is not necessary to apply the buffer zone distances as stated in the Conservation Regulations and there are no performance standards to apply. Attorney Murphy said that extensive geotechnical research has been performed at the site and alternative options, such as installing a stairway on the hill, have been explored, however that option would cause more damage to the hill than the funicular proposed.

Mr. Norton reviewed the engineering aspects and the various components of the proposal. He reviewed the alternatives considered. Supplemental material has been submitted to the Commission, including the geotechnical information, an existing conditions plan, revised architectural drawings for the pavilion and a plan depicting the stairway alternative option that was explored. He reviewed the site plan. He reviewed the specifics of the funicular track system, the motor and the pulley system, the elevator pit, the pavilion structure and the funicular cab. Helical anchors will be utilized for the foundation of the funicular to lessen the impact on the steep slope on the site. The lower pavilion, which is mostly covered, will be located above the base flood elevation. The upper pavilion will not be covered and is just a platform to provide access to the Monument. Rip-rap measuring 6' in width will be located beneath the tracks to control stormwater runoff and prevent vegetation from growing. He said a low profile drainage system has been designed to accommodate runoff from the hardscape on the site. Roof runoff from the pavilion will be controlled via a perimeter drainage trench that will convey water to a shallow leaching area. He added that French drains will be located in the walkways to collect stormwater, which will be conveyed to an underground storage area. He reviewed performance standards and resource areas and why the dune on the site was not a coastal dune system and the area in question was just land subject to coastal storm flowage, which has no performance standards. A coastal dune, by definition, is a landform that is located landward of a coastal beach and is subject to erosion by wind and wave energy. This does not reflect the existing conditions. He said that the area also did not meet the threshold of review for isolated land subject to flooding for either local or state regulations. He added that the loads the funicular cab will be subject to are static and not oscillating or vibratory, lessening the concern about slope stability and no grading is proposed.

Mr. Hawk reviewed the existing and the proposed landscaping. He said that there were both native and non-native vegetation on the site, including knotweed and English ivy, both invasives. The proposal is to soften the space, guide pedestrians through the site with vegetation and to provide buffering for the neighbors and the Bas Relief. He said that 8 trees of 8 dbh, 5 of which are Norway maples, would be removed. Mr. Peabody reviewed the proposed slope stabilization, stormwater management, erosion control, and other protocols to be utilized. He said that their performance standard was zero discharge. He reiterated that this landform, one of the first dunes

created in Provincetown, is no longer collecting sand or eroding to nourish the ocean beach and is no longer performing as a dune and thus cannot qualify for protection as such.

Public Comment: Lynne Hamlyn, representing an abutter, spoke of her client's concerns about the project, such as erosion control, slope stability and flooding in the area, Paul Teixeira, on behalf of an abutting condominium association, and Kaolin Davis, an abutter, expressed concerns about the project. There were 4 letters in opposition to the project.

Commission Discussion: The Commission questioned Attorney Murphy, Mr. Norton, Mr. Hawk and Mr. Peabody. The Commission would like a long-term erosion control measures plan and a maintenance program for continuing to monitor slope stability. Attorney Murphy said the applicant would agree to that and suggested that the Conservation Agent review such plans before construction began. The Commission also asked for an indication on site plan C1.2.1 which trees would be removed, the extent of the seeding that would be taking place on the site, depict the rip-rap and submit a profile of the hill showing the depth of the rip-rap. In addition, the Commission requested information about how the monitoring of the stability of the slope would take place and what measures would be taken should it begin to fail, more information about the staging of materials and equipment on the site, identification of any machinery that might be used for installing the helicals and other construction methodology material. The applicant requested a continuance to the July 17, 2018 Public Hearing at 6:30 P.M. ***Robert Brock moved to grant the request to continue CON-18-084 to the July 17, 2018 Public Hearing at 6:30 P.M. pending the requested modifications to the plans, Joseph Cooper seconded and it was so voted, 4-0.***

d) CON-18-088 **153 Commercial Street**

Notice of Intent filed by the **153 Commercial-6, 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 for the construction of a vinyl bulkhead to replace an existing timber retaining wall and reconstruction of access stairways and a lower deck. Work to take place within Land Subject to Coastal Storm Flowage, a Coastal Beach and a Buffer Zone to a Coastal Beach. The Commission considered both CON-18-088 and CON-18-089 together. Chair Alfred Famiglietti recused himself because of a conflict of interest. Robert Brock was voted in as interim Chair. Robert Brock, Kiah Coble and Joseph Cooper sat on both cases.

e) CON-18-089 **151A Commercial Street**

Notice of Intent filed by the **Joseph Smith and Scott A. Popkowski**, pursuant to Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and Provincetown General By-Laws, Chapter 12, Wetland Protection By-Law for the construction of a vinyl bulkhead to replace an existing timber retaining wall and the reconstruction of access stairways and a walkway. 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 both applications. He reviewed the project, which involves the installation of a vinyl bulkhead in the same footprint as an existing bulkhead. This area is subject to coastal erosion and flooding and the foundations of the structures on the two properties are being undermined, endangering their stability. In addition, the condition of the property is a safety hazard, leaving the dwelling and the remaining property and structures vulnerable to catastrophic storm damage. The proposal is for a tie-back system and a 12' long vinyl bulkhead along the width of the property to replace damaged timber retaining walls immediately seaward of existing decks and walkways. All proposed work will be above the

observed high water mark. Included in the project will be the installation of a new vinyl sheet pile wall, the reconstruction of access stairways and walkway, the planting of beach grass in areas landward of the bulkhead and the restoration of all affected areas to pre-construction conditions. He asked for concerns, questions, requests or comments from the Commission. Mr. Famulare expressed concern about the length of a bulkhead return that would potentially trap sediment from moving westward, mentioned the condition of the timber retaining wall at 151A that has a lot of space for sand to pass through and a recommendation made by Greg Berman that a softer solution, such as a coir roll, be used on the western edge for a better transition from the property line to the wall.

Commission Discussion: The Commission questioned Mr. Norton. He requested a continuance to the July 17, 2018 Public Hearing for both applications.

Kiah Coble moved to grant the request to continue CON-18-088 and CON-18-089 until the July 17, 2018 Public Hearing at 6:30 P.M., Joseph Cooper seconded and it was so voted, 3-0.

f) CON-18-093 **963 Commercial Street, Unit 15** (to be continued to the meeting of July 17, 2018)

Notice of Intent filed by the **Lynn A. Saucier** 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 second story addition to an existing residential structure. Work to take place within Land Subject to Coastal Storm Flowage and a Buffer Zone to a Coastal Dune. There was a request from the applicant to postpone to the meeting of July 17, 2018. **Robert Brock moved to grant the request to postpone CON-18-093 to the July 17, 2018 Public Hearing at 6:30 P.M., Alfred Famiglietti seconded and it was so voted, 4-0.**

4) **Conservation Agent Update:**

a) **CONLGY-17-003 7 Commercial Street** – beach management – Mr. Famulare reviewed the beach management plan at Delft Haven. The Commission briefly discussed the request to delay moving the dune on the property until June 15th while the condominium association hires a consultant to deal with the flooding that occurred this past winter.

b) **CONLGY-18-060 99 Commercial Street** – A Superseding Order of Conditions has been issued by the Department of Environmental Protection.

5) **Approval of Minutes of June 5, 2018:**

June 5, 2018: ***Alfred Famiglietti moved to approve the minutes as amended, Robert Brock seconded and it was so voted, 4-0.***

6) **Information:**

Administrative Review applications approved by the Agent: Mr. Famulare reviewed the applications.

a) **CON-18-095 56 Harry Kemp Way** – removal and pruning of trees in buffer zone

b) **CON-18-097 13 Creek Round Hill Road** – modification of second floor within existing footprint of building

5) **Any other business that shall properly come before the Commission:**

ADJOURNMENT: *Joseph Cooper moved to adjourn the Public Hearing at 10:15 P.M. and it was so voted unanimously.*

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on _____, 2018
Alfred Famiglietti, Chair