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ORLEANS TOWN CLERK

**Orleans Conservation Commission**  
**Town Hall, Nauset Room**  
**Hearing Meeting, Tuesday, March 6, 2012**

**PRESENT**:: Judith Bruce, Chairwoman; Steve Phillips, Vice-Chairman; Bob Royce; Adrienne Pfluger; Jamie Balliett; Jim O'Brien (Associate Member); John Jannell, Conservation Administrator.

**ABSENT**; James Trainor

8:30 a.m. Call to Order

**Continuations**

Last Heard 1/3/12 (SP1, JB2)

**Charles Silbert, 40 Gesner Road.** by East Cape Engineering, Inc., Assessor's Map 42, Parcel 91. The proposed removal of an existing dwelling, construction of a single family dwelling, garage, and installation of a new water line and paved driveway. Work will occur within 100' of the Edge of Wetland, Top of a Coastal Bank, Salt Marsh, Land Subject to Coastal Storm Flowage, and the Pleasant Bay A.C.E.C. John Jannell reported that a letter had been received asking the hearing be continued to March 20, 2012.

**MOTION**: A motion to continue the hearing to March 20, 2012, was made by Bob Royce and seconded by Jamie Balliett.

**VOTE**: Unanimous

**Notice of Intent**

**Peter A MacBride, 19 Gosnold Road.** by Ryder & Wilcox, Inc, Assessors Map 45 Parcel 12. The proposed after the fact cutting in a view easement and proposed restoration plantings. Work occurred and will occur within the Pleasant Bay ACEC, on a Coastal Bank, and within 100' of the Top of a Coastal Bank. David Lyttle of Ryder & Wilcox, Inc. and Peter MacBride, the applicant, were present. Steve Phillips asked when the cutting of the view corridor had occurred, and asked if the applicant thought that the view easement allowed the clearing of a view. Peter MacBride said that the cutting had occurred in November of 2010, and he was unaware of the location of the Coastal Bank in relation to the area that had been cleared. Judith Bruce clarified that the applicant did not realize that the cutting area was within jurisdiction, and Peter MacBride apologized that he was unaware of the buffer zone to the resource area. Steve Phillips stated that when the Commission conducted the site visit, evidence of previously cut cedar and pine trees were noted, as well as trimming of the bayberry plants. Steve Phillips asked that the planting plan include canopy species to replace what was cut in addition to the proposed bayberry bushes. Judith Bruce explained that the Commission wanted to see the area restored, and Steve Phillips brought up a photo provided to the Commission by an abutter asking for the area to be fully restored to its original state. Peter MacBride explained that after a walk through with the Conservation Administrator, 12 pitch pines, 4-6 small oaks, 2 small black cherry trees, and 1 cedar stump were counted. David Lyttle asked if the area mowed annually could be incorporated into an Order of Conditions allowing the applicant an annual mow and trimming of the existing field. The Commission suggested that the applicant propose a view corridor within the view easement so that they could have a defined area that the applicant wished to maintain. Peter MacBride asked how a view corridor would impact

the view easement agreement which he had with his neighbor. Adrienne Pfluger asked if the view easement was a legal document, and Peter MacBride said yes. Judith Bruce explained that a view easement did not give permission to cut within the resource area, but that a view corridor associated with an active Order of Conditions allowed the applicant to maintain a specific view to the resource areas, and provide screening from the resource areas to the house. Peter MacBride asked if the view easement and the view corridor could be the same, and David Lyttle showed the applicant a sketch depicting the present view easement versus the area which the Conservation Commission had jurisdiction. Peter MacBride was concerned about planting trees within his view easement and within 25 years these trees blocking his view. Steve Phillips explained that the Commission wanted the area restored, and Judith Bruce explained that planting only one species would not provide diversity. Jamie Balliett suggested that if the applicant replaced trees on site, that the oak trees be planted outside of a proposed view corridor. David Lyttle asked if a planting plan comprised of bayberry, pitch pine, cedars, and another shrub or groundcover would be acceptable to the Commission. Adrienne felt that the suggested plantings would be acceptable, and David Lyttle asked how many trees should be proposed. Jamie Balliett suggested that the applicant plant more cedar trees and pitch pines versus oak trees. Judith Bruce stated that some trees would have to be within the corridor, and David Lyttle asked that the hearing be continued for two weeks to March 20, 2012, to prepare a view corridor plan and planting plan.

**MOTION**: A motion to continue the hearing to March 20, 2012, was made by Jamie Balliett and seconded by Bob Royce.

**VOTE**: unanimous

**Joseph Boughan, 4 Cole Place.** by Schofield Brothers of Cape Cod, Assessor's Map 36, Parcel 21. The proposed construction of a pool. Work will occur within 100' of the Edge of Wetland. Laura Schofield of Schofield Brothers of Cape Cod went over the existing conditions on site, explaining that removal of invasive species would be incorporated into mitigation proposed for the pool. Judith Bruce brought up the presence of a vernal pool within the wetland, and John Jannell explained that there was a certified vernal pool located behind the abutting property on Cole Place, and that the buffer would be considered vernal pool habitat. Judith Bruce said that when the vernal pool was located within the wetland, the buffer for the wetland is used as the vernal pool boundary, and asked if the vernal pool had been delineated on site. Laura Schofield said the vernal pool could be located on site per the Commission's request. Judith Bruce asked about the pool fence, and was concerned that critters from the vernal pool would fall into a chlorinated swimming pool. Laura Schofield explained that the pool fence would allow for critter passage, and a cobblestone lip could be put around the pool resulting in the vernal pool species hitting the wall instead of going into the pool, making them turn away. Steve Phillips asked if the amount of fence could be reduced, and Judith Bruce asked if the pool could be moved closer to the house. Judith Bruce asked if on the plan the silt fence versus the proposed fence be better illustrated, and Adrienne Pfluger suggested that the first two paragraphs of the narrative be eliminated. Laura Schofield asked if the Conservation Department had a delineation on file for the vernal pool, and John Jannell said the Department did not. Laura Schofield explained that the pool could not be shifted too close to the house, as it would result in the loss of a cedar tree. Laura Schofield went over potential changes to the plan, which included the limit of work and pool fence be pulled in tighter, the vernal pool delineated along

with a distance from the vernal pool to the proposed work, and a cobblestone lip installed to prevent critters from falling into the pool. Laura Schofield asked for the hearing to be continued for two weeks to March 20, 2012, to make the necessary changes.

**MOTION:** A motion to continue the hearing to March 20, 2012, was made by Jamie Balliett and seconded by Adrienne Pfluger.

**VOTE:** Unanimous

**Sarah Bartholomew, 6 Harveys Lane.** by JM O'Reilly & Associates, Inc. Assessor's Map 43 Parcel 98. The proposed construction of an addition, patio, screened-in porch, and deck onto an existing dwelling. Work will occur within 100' of the Edge of Wetland. John O'Reilly, of JM O'Reilly & Associates, Inc., went over the proposed plan, stating that the deck would be located within 68' of the Edge of Wetland and the sunken patio within 55' of the Edge of Wetland. Judith Bruce was concerned that the 75' buffer was not shown on the plan, and brought up her concern that the Commission did not advocate construction within the 75' buffer. John O'Reilly explained that the area where work was proposed was existing lawn, and drywells were proposed throughout to thwart any runoff from going into the wetland. Judith Bruce asked if the addition could be moved further back, and Steve Phillips asked if the addition could be altered or tucked to move it outside of the 75' buffer. John O'Reilly brought up that the concerns were the current locations of the existing house and the septic system. Judith Bruce asked if the naturalized buffer could be restored, and Steve Phillips asked if the proposed patio would be dry-laid. John Jannell asked if the proposed timber wall would be a rail road tie wall or cast block. John O'Reilly asked Sarah Bartholomew, the applicant, if either the patio design or the wall design had been decided, and she said no. Jamie Balliett stated that the proposed addition was modest, but asked that the applicant consider a no mow zone or providing plantings to protect the buffer to the resource area. John O'Reilly asked that the hearing be continued for two weeks to March 20, 2012, to discuss the Commissions suggestions with the applicant and prepare a revised plan.

**MOTION:** A motion to continue the hearing to March 20, 2012, was made by Jim O'Brien and seconded by Jamie Balliett.

**VOTE:** Unanimous

**Jim O'Brien left at 9:11am**

**Town of Orleans, Quanset Road.** by GHD Inc.. The proposed repair of an existing culvert. Work will occur within 100' of Meadow Bog Pond, Little Quanset Pond, Land Subject to Coastal Storm Flowage, Edge of Salt Marsh, and the Pleasant Bay A.C.E.C. Mark Budnick, Manager for the Highway Department, went over the existing conditions on site, stating that this repair was necessary due to the pipes deteriorated state and its proximity to a water main. Judith Bruce asked if they would need to stop flow from Meadow Bog Pond in Order to install the pipe, and if there would be a concern about water backing into Sarah's Pond as a result. Mark Budnick felt that the work would be able to be done during a drought period; they would wait until the water table dropped, or they would use sandbags to stop the flow. Judith Bruce felt the proposed usage of plastic as a replacement would be good given the increase in salinity in Meadow Bog Pond. Judith Bruce asked why the culvert would not be replaced entirely, and Mark Budnick explained that at this time the cost made the replacement prohibitive. Judith Bruce brought up the proposed rip rap, and asked if there was a better option to avoid

damaging the salt marsh. Mark Budnick suggested that he could either use larger rip rap or gabion blocks to build up the side. Steve Phillips asked if tidal flow in either direction was a concern, and Mark Budnick did not believe that tidal flow occurred. Judith Bruce asked if the Mark Budnick had looked at grant funding from the Salt Marsh Charitable Foundation. Mark Budnick explained that this repair was to protect the water main for now, and grants or additional funding would be sought the next step for the culvert was determined. Jamie Balliett was concerned that during the repair of the culvert it would be discovered that it would result in more degradation. Mark Budnick asked the Commission if he would be able to remove a portion of the deteriorated pipe to accurately get a view of the damage and see how much pipe would be needed to repair it. Adrienne Pfluger asked if this was considered an emergency repair. Mark Budnick explained the repair came about as a result of the drainage improvements being made; the location of the water main was the biggest concern as it was within feet of the culvert. John Jannell explained that the hearing could not be closed at this time as the Conservation Department was not in receipt of a DEP number. Mark Budnick asked if the plan should be revised if they chose to use gabion blocks instead of rip rap. John Jannell asked a revised plan be provided to demonstrate this change, and Mark Budnick asked to continue the hearing for two weeks to March 20, 2012, to prepare these changes, and provide the Commission with the results of his preliminary look into the pipe to determine the level of degradation. Steve Phillips felt the partial removal of the section of pipe would answer questions the Commission had regarding the overall condition of the pipe.

**MOTION:** A motion to continue the hearing to March 20, 2012, was made by Adrienne Pfluger and seconded by Jamie Balliett.

**VOTE:** unanimous

### **Certificate of Compliance**

**Wharton & Kathi Whitaker (2002), 77,78,&79 Towhee Lane.** The request for a Certificate of Compliance for an Order of Conditions for the demolition and removal of an existing house; construction of a new house with additions; upgrading of an existing septic system serving a single family dwelling and two cottages; construction of a new driveway, grading, alterations to landscaping features, installation of a walkway, changes to the entranceway, and air conditioning units. John Jannell went over the file history of the Order of Conditions for DEP# SE 54-1621, explaining that the property is largely in compliance for the construction of the house and the subsequent planting around the house. John Jannell passed photos around of the site, and Bob Royce felt that the Commission could close the Order of Conditions. David Lyttle explained that the restoration work done to the Coastal Bank was under a separate Order of Conditions. David Lyttle stated that the property was currently under agreement, and once the growing season was in full swing, Wilkinson Ecological Design would file for a Certificate of Compliance for the bank restoration.

**MOTION:** A motion to issue the Certificate of Compliance was made by Jamie Balliett and seconded by Bob Royce.

**VOTE:** Unanimous

### **Enforcement Order**

**Vivian Robinson, 7 Wildflower Lane.** Discussion of the prepared Enforcement Order for violations on 7 Wildflower Lane. Christine Mann of Classic Landscape and Masonry represented the company that had done the work on the property and on the town road.

John Jannell reported that the work completed on the driveway and within the wetland was not approved under the previously approved Notice of Intent. John Jannell went over the outlined requirements within the Enforcement Order, which included a statement that a restoration plan be provided and required returning the area to its natural state. Christine Mann inquired if this plan should be done by a landscape architect, and where she would be able to obtain a copy of the plan showing the approved work on site. Judith Bruce said yes, and explained that a landscaping plan outlining how the area would be restored would be required; a copy of the approved plan for the deck was available either in the Orleans Conservation Department or from Felco Engineering who had represented the applicant. The Commission looked over the draft copy of the Enforcement Order, and agreed with the required filing date of March 19, 2012, for the April 3<sup>rd</sup> hearing. Jamie Balliett was concerned that the amount of time given to the applicant was limited, and Steve Phillips was concerned about the lack of representation for the applicant outside of the Landscaping Company. John Jannell explained that he had received e-mail correspondence from the applicant who was aware of the hearing, and that a restoration plan requirement would be discussed. Judith Bruce inquired what part of the driveway was located on town property, and John Jannell explained that it was a portion. Christine Mann asked if a driveway would have been permissible if it was proposed, and Judith Bruce explained that the Conservation Commission could not give permission to construct anything on town property. Bob Royce asked why the landscaping company had taken a bobcat into the wetland across the street, and John Jannell suggested that they were trying to create a swale. Jamie Balliett inquired about assigning fines, and John Jannell stated that failure to comply with the Enforcement Order and the subsequent March 19<sup>th</sup> deadline would allow for fines to be assessed at the Commission's discretion.

**MOTION:** A motion to issue the Enforcement Order was made by Jamie Balliett and seconded by Adrienne Pfluger.

**VOTE:** Unanimous

### **Administrative Reviews**

**Elaine Downs, 58 Tonset Road.** The after the fact construction of a chain link fence. Work occurred within 100' of the Top of a Coastal Bank, Land Subject to Coastal Storm Flowage, and the Pleasant Bay A.C.E.C. John Jannell reported that this fence was discovered during a site visit for 64 Tonset Road, and the application was the result of a letter sent asking Elaine Downs to file an After the Fact Administrative Review for work within the buffer zone to the resource area. John Jannell also stated that the owner of 64 Tonset Road, Phillip Metzidakis, suggested during a hearing that he would replace the chain link fence with split rail fence as mitigation for his unpermitted work. John Jannell reported that he was unaware if Elaine Downs and Philip Metzidakis had spoken about the proposed fence replacement suggested during the February 7, 2012 hearing for 64 Tonset Road. Adrienne Pfluger asked if the proposed mitigation would be to replace the entire chain link fence, and or just to the 50' buffer. John Jannell reported that Philip Metzidakis proposed to replace the chain link fence up to the 50' buffer line. Judith Bruce asked if the chain link fence could be fixed for critter passage by cutting 2' off along the bottom of the fence, and thought that Elaine Downs may not want to remove the fence for privacy concerns. Judith Bruce appreciated that the applicant quickly filed the After the Fact Administrative Review, and asked if John Jannell could hold the application until he spoke with the applicant. Adrienne Pfluger recalled that



someone had offered replacing the fence with shrubs. John Jannell stated that he would speak with Elaine Downs and put the filing on a future agenda.

**Betsy Furtney, 71 Pochet Road.** The proposed removal of one portion of a deck and installation of another portion of deck and stair. Work will occur within 100' of the Edge of Wetland and Uncle Harvey's Pond. Work to be done by Tom Hughes. Tom Hughes, representative for the applicant, was present. John Jannell explained that this application was for the removal of 128 square feet of deck, and construction of 120 square feet of deck and stairway in an area outside of the 50' buffer zone. John Jannell asked if new sonotubes were proposed for the new deck area, and if so, could they be hand dug. Tom Hughes explained that new sonotubes were proposed, and they would be hand dug. Steve Phillips asked if the net change would be smaller than what existed, and Tom Hughes said yes.

**MOTION:** A motion to approve this work was made by Bob Royce and seconded by Jamie Balliett.

**VOTE:** Unanimous

**Betsy Furtney, 71 Pochet Road.** The proposed removal of phragmites, one oak tree, the cutting of privet, and the removal of invasives. Work will occur within 100' of the Edge of Wetland and Uncle Harvey's Pond. Judith Bruce asked if the privet was to be removed, and Steve Phillips asked why the oak tree was proposed to be removed. John Jannell confirmed that the privet would be removed, the oak tree canopy hung over the deck and house, and tupelo was proposed as a replacement. Judith Bruce stated the site was well treed and screened from the resource area.

**MOTION:** A motion to approve this Administrative Review was made by Jamie Balliett and seconded by Adrienne Pfluger.

**VOTE:** Unanimous

### **Chairman's Business**

Approval of the Minutes from the Meeting on February 28, 2012

**MOTION:** A motion to approve the minutes was made by Adrienne Pfluger and seconded by Bob Royce.

**VOTE:** 4-0-1; Judith Bruce abstained, minutes approved.

### **Other Member's Business**

Steve Phillips asked the Commission when they would like to discuss changing the fee structure, and Adrienne Pfluger stated that she wanted a full Commission for the discussion. Judith Bruce asked when the next time would be that the Commission would all be present. Erin Shupenis Clerk for the Conservation Department reported that the next time all of the Commissioners would be present would be on March 27, 2012. The Commission decided to discuss the fee schedule on March 27, 2012.

### **Administrator's Business**

John Jannell reported that he circulated correspondence from Bev Carney.

The meeting was adjourned at 10:08am

Respectfully submitted,  
Erin C. Shupenis, Principal Clerk, Orleans Conservation Department.