

Orleans Conservation Commission
Town Hall, Nauset Room
Work Meeting, Tuesday, February 12, 2013

ORLEANS TOWN CLERK

K. Darling, Asst.

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PRESENT: Judith Bruce, Chairwoman; Steve Phillips, Vice-Chairman; Bob Royce; James Trainor; Jamie Balliett; Jim O'Brien; Judy Brainerd; Nancy O'Mara, Associate; John Jannell, Conservation Administrator

8:30 a.m. Call to Order

Judith Bruce welcomed Nancy O'Mara who was appointed as an Associate Member of the Orleans Conservation Commission on 2/6/13 by the Board of Selectmen.

Continuations

Last Heard 1/15/13

Stephen Brodeur, 25 Weeset Proprietors Way. by Coastal Engineering Company, Inc. Assessor's Map 6, Parcel 4. The proposed property redevelopment including select structural & site demolition; reconstruction & reconfiguration of the existing dwelling; installation of a new septic system; & the enlargement of buffer planting areas. Work will occur within 100' of the Top of a Coastal Bank and within Land Subject to Coastal Storm Flowage and the Pleasant Bay A.C.E.C. John Jannell explained a letter had been received asking for the hearing to be continued to February 26, 2013.

MOTION: A motion to continue the hearing to February 26, 2013, was made by Jamie Balliett and seconded by Bob Royce.

VOTE: Unanimous.

Last Heard 2/5/13

Clifford Hampton & Thomas P. Heiser, 27 & 34 Carlton Road. by Ryder & Wilcox, Inc. Assessor's Map 82, Parcel 1 & 2. The proposed replacement of an existing timber stairway and the stabilization of an eroding Coastal Bank with gabions. Work will occur on Land Subject to Coastal Storm Flowage, on a Coastal Beach, and within the Pleasant Bay A.C.E.C. David Lyttle of Ryder & Wilcox explained that the revised plan incorporated the suggestions made by Greg Berman's report and the suggestions of the Conservation Commissions. David Lyttle presented the revisions and noted that the work would be done by Anchor Marine, who would bring in the gabions by a barge the same way the East Egg work had been done. Judith Bruce asked if the applicant was ok with a note on the construction protocol which required the work to be done by April 1, and David Lyttle said this condition was fine. Steve Phillips asked if the 3 oaks shown on the plan had to be removed, whether or not they were leaning, or if the roots were damaged. David Lyttle said that in order to work on the bank the trees would have to be removed. James Trainor asked if damage to the property had occurred as a result of the weekend storm event, and David Lyttle said no. John Jannell suggested to the Commission that if they chose to act on an Order of Conditions today for the proposed work that they incorporate conditions which included that all work must be completed by April 1st and a pre-construction meeting occur on-site with the contractor because the proposed work involved stone movement. John Jannell asked if a lot of the stones would remain because they were below Mean High Water (MHW). David Lyttle thought

that the stones would have to be moved seaward and then put back while work was being done, and Judith Bruce said they were concerned about moving the stones seaward. John Jannell suggested a condition that no work takes place below MHW, and David Lyttle said he was fine with that condition. John Jannell asked that there be no pruning of the bank vegetation, and asked that some type of nourishment protocol be included, such as the need for nourishment be monitored while the Order of Conditions was open. Jamie Balliett asked what the trigger would be for nourishment, and suggested if gabions became exposed. David Lyttle suggested if the bottom two rows became exposed that nourishment be required, and Jamie Balliett said that the Commission needed a clear indicator that nourishment was needed. Steve Phillips asked about the removal of the brushpile, and David Lyttle anticipated that to be a condition of the Order.

MOTION: A motion to approve the site plan dated February 7, 2013, with the conditions that the construction protocol be included, work was to be completed by April 1, no work below MHW was permitted, and nourishment of the Coastal Bank will be discussed with the Orleans Conservation Commission if the bottom two rows of gabion baskets become exposed was made by Steve Phillips and seconded by Jamie Balliett.

VOTE: Unanimous.

Last Heard 2/5/13

134 Namequoit LLC, 134 Namequoit Road. by Ryder & Wilcox, Inc. Assessor's Map 70, Parcel 13. The proposed removal of an existing single family-dwelling; the construction of a new single family dwelling, patio, & pool; grading; landscaping; & the stabilization of an eroding Coastal Bank. Work will occur within 100' of a Coastal Bank, Salt Marsh, & Land Subject to Coastal Storm Flowage; on a Coastal Bank; & within the Pleasant Bay A.C.E.C. David Lyttle of Ryder & Wilcox, Inc, and Tabitha Kaigle and Jen Exner of Wilkinson Ecological Design, were present. Jen Exner went over the revisions to the Restoration Plan which included but were not limited to the adjustment of the proposed pool to match the Ryder & Wilcox site plan, and the inclusion of the A.C.E.C. line. Jen Exner stated that there would not be any further hard pruning of the canopy in the future for this site. Jen Exner explained that they proposed spading and moving trees relative to the location where the undermined trees would be removed. Jamie Balliett asked about the size of the trees to be moved and replanted, and Jen Exner said 3" caliper trees were flagged to be relocated, with more than 3 marked so that if there were problems with the proposed candidates, additional trees were available. John Jannell asked from where these candidates would be removed and relocated, and Jen Exner said they were from the area noted as existing trees to remain, and were the smaller saplings which were to be thinned. John Jannell asked how they had been marked on site, and Jen Exner explained they were the 4 to 5 saplings marked in pink flagging. John Jannell suggested a condition that the Land Management Plan and Construction Protocol submitted by Wilkinson Ecological Design be completed as part of the Order of Condition.

MOTION: A motion to approve the site plan dated 1-11-13, Restoration plan dated 2/7/13, Land Management Plan dated 1/11/13, and Construction Protocol dated 2/5/13, was made by Steve Phillips and seconded by Judy Brainerd.

VOTE: Unanimous.

Certificate of Compliance

Thomas Fiorentino (2004), 38 Bridge Road. The request for a Certificate of Compliance for an Order of Conditions for the construction of a second story onto to an existing cottage. John Jannell reported this project, a local bylaw filing only, was in substantial compliance.

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

VOTE: Unanimous.

Revised Plan

Town of Orleans/Parks Department, 192 Skaket Beach Road. The removal & reconstruction of a snack bar within an existing parking area; installation of a septic system for bath house & snack bar, & the pumping, abandonment, & removal of the existing system has been revised to eliminate the grease trap. Work will occur within 100' of a Coastal Beach, Coastal Bank, Coastal Dune, & within Land Subject to Coastal Storm Flowage. David Lyttle explained that in 2009 the Commission issued an Order of Conditions for the installation of a new septic system which included tying into the existing snack shack, and the location of the piping and pump chambers within the buffer zone. The revised plan now showed the elimination of the connection between the snack shack, and a future grease trap should one be installed. David Lyttle explained that the town had done a report on the snack shack which showed that it was in need of repair, and they had been asked to not show the proposed connection at this time. Judith Bruce asked if the existing system was removed, what would the snack shack use, and David Lyttle assumed that the selectmen were abandoning its use. Jamie Balliett asked if something portable would be used, and David Lyttle explained that Judy Bersin was asked by Ron Collins to make these proposed changes to the approved plan. John Jannell suggested that the Commission continue the discussion of the Revised Plan as the file for this Order was part of the pre-construction meeting, and David Lyttle agreed. Steve Phillips was confused by the note which said the snack shack was to be reconstructed, and David Lyttle clarified that this was for a future relocation. John Jannell said he did not want the Commission to approve something being taken away only to try to do more later under the same filing, because an increase to an approved Order would not be advisable without a new filing. The Commission was concerned about the lack of clarity on what was being proposed, and David Lyttle asked that he continue for one week to February 19, 2013.

MOTION: A motion to continue to February 19, 2013, was made by Jim O'Brien and seconded by James Trainor.

VOTE: Unanimous.

Administrative Reviews

Last Heard 2/5/13

Andrew Santonelli, 67 Uncle Israels Road. The proposed after the fact construction of a chain link fence. Work occurred within 100' a Bordering Vegetated Wetland and an unnamed Pond. Andrew Santonelli and Allison Carns were present. John Jannell went over the history of this After the Fact application, and that this was the complete fencing of a yard, largely which was encumbered by the 50' buffer zone to a Bordering Vegetated Wetland. John Jannell explained that this was something which he would

not recommend its approval had it come in front of the Commission prior to its installation. Andrew Santonelli apologized to the Commission stating that he had received bad advice from local contractors, and the fence was installed due to a civil issue which concerned the neighbor and the safety of the applicant's dogs. Judith Bruce explained that one of the main concerns of the Commission was that this fence prevented wildlife passage and that while there was clearly a need to fence the property due to civil issues, any work within and within the buffer zone to a resource area must be filed for prior to its completion. Andrew Santonelli explained that Pro Fence, Cape Cod Fence, and Crosby Fence said this work did not require a filing, and Crosby Fence was the installer that did the work. Judith Bruce asked how many days it took to complete the work, and Andrew Santonelli said 2 days. Andrew Santonelli said he did not permit the installer to use concrete, and asked them not to cut anything down, and to match the neighbor's split rail fence. Steve Phillips asked if he had been in contact with Crosby Fence since the installation, and Andrew Santonelli said he had not contacted the company, and said that he, the owner, thought that he assumed the risk from the fence installation. Judith Bruce felt the Commission should contact Crosby Fence regarding local and state fence regulations, and that as the property owner he was responsible for making sure that all work was permitted should it be required. Steve Phillips asked if the fence went to the ground, and Andrew Santonelli said in some locations it was up to 2" off of the ground. Steve Phillips said that if a fence went to the ground it became a barrier for wildlife, and Judith Bruce said the Commission typically recommended at least 6" from the ground to provide passage. John Jannell said that while fences are sometimes permissible under the Wetlands Protection Act, they did need to demonstrate wildlife passage, and they did require approval from the Conservation Commission. Jamie Balliett suggested shifting the existing fence, and Judith Bruce recommended bringing it tighter to the house. John Jannell explained that he had advised the applicant that if this was a new application, a portion of this fence may be approved but perhaps not all of it. Andrew Santonelli said he was agreeable to raising the fence 6" to allow for wildlife passage, but did not want to tighten the fence closer to the house. Judith Bruce felt while it was not necessary to remove it completely, it did need to be smaller than what was there now, and Jim O'Brien commented that there was limited space available in the back yard. Andrew Santonelli said he would prefer to raise the fence as opposed to reducing its size, given the amount of money already spent on the fence. Steve Phillips asked if modifications could be made to make it a combination of electric and the current fence, and Andrew Santonelli was concerned that the dogs may go through the electric fence to the abutting property. Andrew Santonelli felt the fence was there as a safety measure for the children which played in that area. Steve Phillips asked if it was within the Commission's authority to request the installer come to speak on behalf of the application, and Jamie Balliett asked if there was a contract between the applicant and Crosby Fence for the work performed. John Jannell asked how the Commission wanted the applicant to proceed from here. Judith Bruce recommended the fence be moved, and Steve Phillips suggested some type of compromise, but with notice send to Crosby Fence, as he felt they shared some of the responsibility for the unpermitted work. Judy Brainerd suggested raising part of the fence and removing another portion, and James Trainor asked if a site visit could be conducted to see the fence. Steve Phillips said that he was opposed to leaving the fence as it existed, and Judith Bruce

said they would need the applicant's permission in order to go onto their property to see the fence. Judy Brainerd felt the contractor needed to be notified about this unpermitted work, and John Jannell said that if the applicant wanted, he could provide the Conservation Department with a copy of the contract for the work as well as contact information for Crosby Fence. Andrew Santonelli said that he paid the company in cash, and no formal contract existed. Andrew Santonelli said the Commission was welcome to come by to look at the fence. John Jannell said the Conservation Department could notify the installer and the office could put this on an agenda two weeks from today on Tuesday, February 26, for possible Enforcement Action. The Commission agreed to table this application until notification could be sent to all parties involved, and agreed to an Enforcement Action discussion on the February 26, 2013 Conservation Commission meeting.

Sara Corcoran, 111 Freeman Lane. The proposed clearing of invasive species and mowing of a field to maintain the honey beehive. Work will occur within 100' of a Freshwater Wetland. John Jannell said this was annual work and recommended approval

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

VOTE: Unanimous.

George & Susan Krouse, 42 Old Field Road. The proposed removal of an existing window and replacement with an 18" bay projection window. Work will occur within 100' of the Top of a Coastal Bank, Land Subject to Coastal Storm Flowage, and within the Pleasant Bay A.C.E.C. Work to be done by Cape Associates. John Jannell explained this would be the installation of a bay window, with no additional floor space or usable square footage being proposed. Judith Bruce asked how many feet it would be off of the ground, and John Jannell estimated 8-10 feet.

MOTION: A motion to approve this work was made by James Trainor and seconded by Jim O'Brien.

VOTE: Unanimous.

Request to Use Conservation Properties

James Trainor recused himself.

Christian Education Walk 2/16/13 OCT 10-11:30am 20-30 People

MOTION: A motion to approve this event was made by Bob Royce and seconded by Jim O'Brien.

VOTE: Unanimous.

Kent's Point Educational Walk 3/7/13 OCT 9-10:30am 20-30 People

MOTION: A motion to approve this event was made by Bob Royce and seconded by Jim O'Brien.

VOTE: Unanimous

Kenrick Woods Educational Walk 4/18/13 OCT 3-4:15pm 20-30 People

MOTION: A motion to approve this event was made by Bob Royce and seconded by Jim O'Brien.

VOTE: Unanimous

Chairman's Business

Approval of the Minutes from the Meeting on January 15, 2013

Erin Shupenis noted that the minutes from this meeting were not available at this time.

Correspondence

John Jannell explained that he would now be copying the Conservation Commission on letters that go out regarding Conservation issues. These letters were either sent by the Conservation Department itself, or written by the Conservation Department and endorsed by the Conservation Commission Chairwoman.

21 Bog Hollow Road: Progress report RE: Enforcement Order.

John Jannell reported that there was a Progress Report from February 4 stating that several vehicles had been removed. John Jannell explained that there had been two group site visits, one of which when the applicant was present, the second which was unannounced. Judith Bruce inquired if multi-departmental site visits were continuing, and John Jannell said yes.

15 Bog Hollow Road: Conservation Commission Letter

NSTAR response and plans

Conservation Department Letter

John Jannell explained that this was in response to e-mail complaints regarding unpermitted work on this site. John Jannell reported the area was graded around 2010, and what was given to the Commission was the initial letter, the notice which went out to the Commission, the NStar response, and the letter of "no-take" from Natural Heritage. Subsequent correspondence to NStar was provided to the Commission for the after the fact regrading of the area and installation of a fence. Jamie Balliett inquired what type of fence was installed, and John Jannell said chain link. Steve Phillips asked about the window for NStar to respond, and Judith Bruce asked if it was a 30 day window. John Jannell clarified that the Conservation Department asked NStar to file within 30 days of the letter, and there was approximately 17' of jurisdiction in which they were encroaching according to the measurement John Jannell took out in the field.

190 Barley Neck Road, Conservation Department Letter.

8 Longstreet Lane, Conservation Department Letter.

John Jannell offered no discussion on the above letters, and welcomed any and all suggestion for improvement to correspondence sent by the Conservation Department.

Other Member's Business

Orleans Highway Department, 18 Bay Ridge Lane.

John Jannell explained that there was an uncovered sand-salt mix pile which has since been covered. This area was the Orleans Highway Barn located at 18 Bay Ridge Lane, and passed around photos of the site. Bob Royce inquired if they were fixing the roof at this site, and Judith Bruce explained that she was concerned about the material

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exposed due to the roof exposure, and the potential for runoff into the resource areas. Judith Bruce reported that there was minimal water being discharged from the pipe at this site, and the holding tank appeared to be working well. James Trainor asked if silt fencing should be installed to prevent any potential runoff leaching through the retaining wall, and Judith Bruce did not think that the runoff was able to penetrate the retaining wall. Judith Bruce suggested periodic checks to ensure that runoff was not a problem at this location. Jamie Balliett asked if material was being stored still in the building, and John Jannell said the material being stored is now under cover. Judy Brainerd and Jamie Balliett asked if a site visit had been conducted since the recent storms, and John Jannell said no. Judith Bruce requested a drive by of the site, and John Jannell explained that the Town Administrator has asked for a report of the area. John Jannell said there was no additional action needed unless the Commission instructed, and Judith Bruce suggested a date certain for the roof to be fixed. John Jannell thought the roof was to be fixed within the near future.

Administrator's Business

John Jannell noted that the DEP Emergency Storm Regulations would be circulated, and were in place until March 8th for on-going projects and the removal of storm damaged trees. John Jannell noted that these regulations were different from previous storm regulations, and did not allow for a local repeal.

The Commission discussed the site visits.

The meeting was adjourned at 9:40am.

Respectfully submitted,

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