

**Orleans Conservation Commission**  
**Town Hall, Nauset Room**  
**Work Meeting, Tuesday, February 26, 2013**

**PRESENT:** Steve Phillips, Vice-Chairman; Bob Royce; James Trainor;  
Jim O'Brien; Judy Brainerd; Nancy O'Mara (Associate); Philips Marshall (Associate);  
John Jannell, Conservation Administrator.

**ABSENT:** Judith Bruce, Chairwoman; Jamie Balliett.

8:30 a.m. Call to Order

**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. John Jannell announced that a letter had been received requesting a continuance of the hearing to March 5, 2013.

**MOTION:** A motion to continue the hearing to March 5, 2013, was made by Bob Royce and seconded by Jim O'Brien.

**VOTE:** Unanimous

Last Heard 2/19/13

**John F. Whitesides, 22 Franz Road.** by Ryder & Wilcox, Inc. Assessor's Map 16, Parcel 4. The proposed construction of a new foundation & first floor, the reuse of the existing house as the second floor & roof, & the construction of a patio. Work will occur within 100' of a Coastal Dune. David Lyttle of Ryder & Wilcox, Inc., John Whitesides, applicant, and Kristen Rufo, Attorney from La Tanzi, Spaulding, & Landreth, P.C., representing Barry Jacobs of 8 Franz Road, were present. David Lyttle explained 2540 square feet of floor area was proposed, and a note stating that the area where the house would temporarily be situated was to be restored to its original condition upon the moving back of the house onto the new foundation. David Lyttle explained that the Orleans Fire Department did not have any issues with the temporary location of the house. David Lyttle felt they had addressed all of the Commission's concerns, and Bob Royce asked if the second limit of work shown would be for after the building was moved into its temporary location. David Lyttle confirmed this, stating that the work limit around the existing structure would be tight to the dune, and the limit of work for the new structure would be as tight as possible to protect the buffer to the resource area. Steve Phillips inquired if the temporary location which was presently sparse would match other areas on the property. David Lyttle said that the areas outside of the 50' buffer line would remain as is, and north of the 50' buffer zone would only have the path to the water. Kristen Rufo addressed the Commission stating that her client was still against the project, and felt that there had not been a clear and convincing argument as to why the variance should be granted. John Jannell recommended the Commission only close the hearing if they felt that the plans presented were suitable and alternatives had been fully vetted. John Jannell recommended that in a previous meeting the

applicant had offered that no work would take place between Memorial Day to Columbus Day and make this a special condition of the Order of Conditions. John Jannell also recommended the Commission consider including a condition to restore the temporary location of the house with native plants and groundcover, that the patio be pervious, and that the Planting Plan be completed as part of the Order.

**MOTION:** A motion to approve the site plan dated 2/19/13 with the conditions that no work take place between Memorial Day to Columbus Day, the temporary location of the house be replanted with native vegetation, the patio must be pervious, and that the planting plan dated 2/19/13 must be completed as part of this Order was made by Bob Royce and seconded by Jim O'Brien.

**VOTE:** Unanimous.

### **Revised Plans**

**Susan C. Kelley, 221 Rock Harbor Road.** by Ryder & Wilcox, Inc. Assessor's Map 17, Parcel 89. The proposed pumping & abandonment or removal of existing cesspools, & the installation of a new septic system to serve an existing single-family dwelling has been revised to relocate the proposed septic system per the requirement of the Orleans Board of Health. Work will occur within 100' of a Coastal Bank, Salt Marsh, Land Subject to Coastal Storm Flowage, & within a Riverfront. Steve Phillips read into record a letter from the Orleans Health Department denying their initial variance request due to the location of the water line. John Jannell explained that this revision to the site plan resulted in the system being located further from the resource area, and the leaching area outside of the 100' buffer.

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

**VOTE:** Unanimous.

**David Keeffe, 124 Monument Road.** by Land Design Associates, Assessor's Map 55, Parcel 24. The proposed construction and repair of stone walls and steps, construction of a granite cobble apron, and mitigation plantings has been revised to replace the wooden steps with granite steps. Work will occur within 50' of the Edge of Wetland, 50' of the Edge of Crystal Lake, and within the Pleasant Bay A.C.E.C. George Reilly of Land Design Associates and John Burlane of Nauset Gardens were present. George Reilly passed around photos to the Commission showing the steps below the wall which had rotted away, and that the applicant wanted to replace this with a granite box. George Reilly reported that the drywells had been installed and there was no runoff from the Top of the Bank down the hill. Steve Phillips and John Jannell felt the change was straightforward, and John Jannell said he was not sure if the ivy had been removed. John Burlane said that the ivy had been removed.

**MOTION:** A motion to approve this Revised Plan dated 2/14/13 was made by Jim O'Brien and seconded by Judy Brainerd.

**VOTE:** Unanimous.

**Franklin & Kimberly Moss, 46 Old Field Road.** by Ryder & Wilcox, Inc. Assessor's Map 64, Parcel 3. Proposed landscaping; the rebuilding of stairs & second floor deck attached to an existing single family dwelling; & mitigation plantings has been revised to replace the existing pool with a smaller pool; eliminate the proposed changes to the existing stone walls and steps; move the proposed location of the spa; rebuilding the

existing wood deck and patio with non-treated natural wood; & replace the roof on the pool equipment shed. Work will occur within 100' of a Coastal Bank, Salt Marsh, Land Subject to Coastal Storm Flowage, and within the Pleasant Bay A.C.E.C. David Lyttle went over the proposed changes, explaining that the 298' of coverage had been reduced to 78', and that despite the reduction, the applicant still wanted to go forward with the mitigation. Steve Phillips and Bob Royce felt these were all positive changes. John Jannell noted that during the on-site for the hearing process he recalled the Commission's most significant concern was the wall work which was now gone. Steve Phillips inquired about the existing wall, and David Lyttle said it would remain.

**MOTION:** A motion to approve the Revised Plan dated 2/11/13 was made by Bob Royce and seconded by Jim O'Brien.

**VOTE:** Unanimous.

**176 LLC & Peter H. Carter, 176-178 Quanset Road**. by Ryder & Wilcox, Inc. Assessor's Map 94, Parcel 4, and Assessor's Map 93, Parcels 21-1 & 21-4. The proposed redevelopment of the existing site has been revised to replace the proposed 2-1,000 gallon propane tanks with one 1,900 gallon tank; reconfigure the location of the generator and air conditioner; keep the retaining wall at the east end of the building; enlarge the parking area; add a small water feature; reconfigure the deck; and Amend the Land Management Plan. Work will occur within 100' of the Top of a Coastal Bank, Salt Marsh, Land Subject to Coastal Storm Flowage, and in the Pleasant Bay A.C.E.C. David Lyttle of Ryder & Wilcox, Inc., Seth Wilkinson of Wilkinson Ecological Design, and Max Makowsky, on behalf of the owner, were present. David Lyttle provided the Commission prior to the meeting a handout similar to what had been provided for the hearing process showing the proposed changes, approved changes, and proposed revised changed to the site. David Lyttle explained the revision to the driveway was a result of difficult navigation which required the moving of the wall. David Lyttle pointed out in the previous meeting where this site was addressed, that the viewing deck would be increased. David Lyttle noted that the water feature would not have its water displaced within the resource area. Seth Wilkinson explained that the invasive species had been successfully addressed within the first and second phase, and passed around photos of the site showing the damage to the pitch pine due to root exposure. Seth Wilkinson said that this 20"DBH tree was a significant specimen; it, along with several cherry trees and a holly tree, had suffered wind thrown damage. Seth Wilkinson and David Lyttle showed the Commission where the cut had taken place, and that the tree was to eventually be compromised. Seth Wilkinson stated that the understory found underneath the recently constructed wall was very healthy, and since the trees were not doing well in that area, they wanted to replant the area with more salt tolerant species. Seth Wilkinson explained that the trees to be removed had an average DBH of 6", and the trees to replace them would have 4-5" DBH. Bob Royce asked where the two propane tanks being replaced by one was located on the plan, and David Lyttle indicated it was southeast of the driveway in the same location as the previously approved tanks. Steve Phillips asked if the existing coverage of 5,661 changing to 8,369 was a change from the approved plan, and David Lyttle said this was an increase due to the enlarging of the viewing deck from 80 to 192', the increase in driveway coverage, and the subsequent increase of the walls and walkway. Steve Phillips noted that the paved turn was paved at one point, and it was going from gravel drive to dirt, and asked how it would be protected. David Lyttle explained that this was part of the

original approval, and the paved area would be removed once the septic system was installed. The reason that the lower driveway was used would be for the septic system to be pumped or access for emergency vehicles. David Lyttle explained that this septic system needed to be inspected twice a year because it was an I/A system. Steve Phillips asked of the 10 trees to be removed what would be planted, and Seth Wilkinson said 12 additional trees were proposed. Steve Phillips pointed out the note which said that because of the driveway expansion additional planted were to be relocated. Seth Wilkinson said that this was covered on the restoration plan, which noted that the area near the turnaround could result in slight loss of shrubs, and they wanted to be clear that they would be relocated should they become lost. John Jannell said that he would recommend the acceptance of the additional mitigation plan as well as the revised site plan, keeping in mind that the existing restoration plan provided during the hearing process was not being replaced but rather this was a supplement to that plan.

**MOTION:** A motion to approve the Revised Site Plan dated 2/14/13 and additional mitigation plan dated 2/19/13 was made by Jim O'Brien and seconded by Judy Brainerd.

**VOTE:** Unanimous.

### **Certificate of Compliance**

**Russell & Hope M. Ford (1994), 110 Freeman Lane.** The request for a Certificate of Compliance for an Order of Conditions for pruning, tree removal, planting, mowing a footpath, poison ivy control, and sprinkler system. John Jannell explained that no work was done under this Order of Conditions and recommended that a Certificate of Compliance be issued for this project.

**MOTION:** A motion to issue a Certificate of Compliance was made by Bob Royce and seconded by Jim O'Brien.

**VOTE:** Unanimous.

### **Administrative Reviews**

Last Heard 2/12/13 (JB1 JO1)

**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. Allison Carns was present. John Jannell reported that this had been continued so that the Commission could conduct an on-site, and at the last meeting where this was heard the Commission directed the Conservation Department to mail Crosby Fence Company and the applicant that there would be a fine discussion taking place. Allison Carns reported that she had not heard from Crosby Fence Company, and apologized that Andrew Santonelli was unable to attend the meeting due to a work conflict. John Jannell explained that the maximum fines which could be issued under this case to either Andrew Santonelli or Crosby Fence Company or both would be \$200.00, and opened up the discussion to the Commission. Steve Phillips inquired if the Commission had gone out to see the site. Judy Brainerd and Bob Royce both said yes, and Bob Royce felt uncomfortable talking about Crosby Fence Company when they did not have representation at the meeting. John Jannell reported that the Conservation Department had received the signed green card from the certified mailing which had been sent, and Steve Phillips noted that they were properly notified of the meeting but chose not to attend. Bob Royce felt that Crosby Fence Company should be fined \$200 for the unpermitted work.

**MOTION:** A motion to issue a fine for \$200 to Crosby Fence Company was made by Bob Royce and seconded by Judy Brainerd.

**VOTE:** 5-0-1; Jim O'Brien abstained, motion approved.

John Jannell stated that the Orleans Conservation Department would prepare the necessary fine paperwork, and asked the Commission how they would like to address the applicant. Allison Carns pleaded with the Commission to allow them to take 6" from the bottom of the fence to allow for small wildlife passage.

**MOTION:** A motion to accept the fence modification was made by Jim O'Brien and seconded by Bob Royce.

**VOTE:** Unanimous.

Judy Brainerd noted that this was for the entire fence not just the area in the back, and the Commission agreed. Steve Phillips noted that while conducting the on-site there was a pile of leaves outside of the fence in the back within the buffer zone. Allison Carns explained that she had dragged a tree into that area, and Steve Phillips said that a more suitable location outside of the buffer zone needed to be sought. Jim O'Brien confirmed that the proposed raising of the fence would not cause concern for the dogs, and Allison Carns said this would not be a problem. John Jannell reported that he would follow up with the homeowner to make sure this was done.

**Jack & Ellie Millard, 17 Uncle Harveys Way.** The proposed removal of invasive plants. Work will occur within 100' of the Edge of Uncle Harvey's Pond. John Jannell recommended approval of this application

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

**VOTE:** Unanimous

**Finlay Road Condominiums, 101,103, & 105 Finlay Road.** The after the fact removal of an oak tree. Work occurred within 100' of the Edge of Wetland. John Jannell reported that he did not see any of the owners in the audience, and he had not spoken with any regarding the tree removal. John Jannell reported that the applicants had felled a large oak in the woods and in the wetland buffer which had been since cut up and removed. Bob Royce asked about the size of the removed tree, and John Jannell estimated it to have been a 14-16" DBH oak. John Jannell said that this is not an application that he would support, and asked if the Commission wanted to continue this for one week. Judy Brainerd asked if this was a fineable offence, and John Jannell said yes. Steve Phillips said he would like to continue the hearing to notify the owners about the possibility of fines. Judy Brainerd inquired about the number of owners, and John Jannell said there were three owners total for the 3 units.

**MOTION:** A motion to notify the applicants of a fee discussion on March 12, 2013, was made by Bob Royce and seconded by Judy Brainerd.

**VOTE:** Unanimous.

**James Mitola, 8 Pine Ridge Lane.** The proposed removal of a tree. Work will occur within 100' of the Edge of a Bog. John Jannell reported that this was a good tree in a bad spot, and passed around site photos showing the tree leaning towards the house. John Jannell commended the applicant on leaving the tree over the years, and felt the Commission could approve this application



**MOTION:** A motion to approve this application was made by Jim O'Brien and seconded by Judy Brainerd.

**VOTE:** Unanimous.

**Judith Bruce, 26 Towhee Lane.** The proposed removal of standing dead Pitch Pines and installation of a gravel generator pad and screen. Work will occur within 100' of the Edge of Shoal Pond. John Jannell reported that while the property had many standing dead pines, several came down during the recent storm event. The proposed pad will be constructed adjacent to the other two utilities located within the buffer zone.

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

**VOTE:** Unanimous.

### **Sea Call Farm License Agreement**

Discussion to amend the Sea Call Farm License agreement between the Sea Call Supporters and the Town of Orleans. James Snow and Hank Schumacher of the Sea Call Supporters were present. Bob Royce inquired if significant changes were proposed, and John Jannell explained that a draft maintenance plan had been circulated to the Commission for the purpose of discussion. James Snow went over the history of the grounds, explaining that their purpose at the meeting was to make changes to the contract for the following year. Hank Schumacher explained that in lieu of the restoration work to the house, the Sea Call Supporters wanted to propose that the agreement allow for a caretaker/occupant as a year round tenant. Hank Schumacher explained that there had been a caretaker in the past who was a Town of Orleans Employee. Jim O'Brien felt it sounded like a good proposal to pursue, and Steve Phillips felt a conservation minded tenant would be best, and James Snow said they would want a tenant interested in maintaining the property while keeping in mind that their area would be the house, with the rest of the area open to the public. James Snow explained that there had been problems in the past with previous tenants taking over the front yard facing Town Cove, with people feeling as though they could not enjoy the property. James Snow wanted the tenant to have full knowledge of open space property and actively participate in the maintenance of the house. Steve Phillips asked how to reasonably maintain a 6.5 acre parcel, and James Snow said he was not sure at this time. Steve Phillips was concerned that since the property was open to the public from 7am to 10pm, it was not fair to ask a tenant to confine themselves to the house during this time. Steve Phillips suggested giving them a yard area, and asked what would happen if a family with children resided in the house. James Snow said this was the same procedure which had been followed before, and Steve Phillips asked what would be charged for a monthly rental. James Snow said the rental fee had not been determined, as it would be dependent on their role maintaining the property. Steve Phillips asked how the public would be impacted, and Hank Schumacher said the main concern was getting someone there that would take an interest in the property. Steve Phillips asked about the public concerns which had happened with previous tenants, and James Snow explained that in the past the lifeguards had left wetsuits out, but that in recent years there had not been problems. Steve Phillips suggested that it would be helpful to set some limits to give the Commission an idea of rules which the supporters would want followed, and Judy Brainerd asked if the supporters envisioned the tenant working on the grounds and the house. James Snow said it would depend upon the

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qualifications of the tenant, and other than paint and putty there was not much to be done to the house. Judy Brainerd asked if this would be a full time job for the tenant, and James Snow said no, it would be asked of the tenant to set aside a number of hours a month to dedicate to the maintenance. Judy Brainerd was concerned that a family would spread out and use the property in a similar fashion as the lifeguards. Steve Phillips felt that while the proposal was doable, it was something which needed more specifics. John Jannell explained that there was a caretaker from 2000-2003 whose work was limited to mowing the grounds and while they were single occupancy, the rent at that time was \$300. James Snow said the tenant, Cheryl Esty from the Orleans Parks and Beaches Department, was limited to the second floor, and she mowed the lawn, maintained the flower beds, and attended a couple of the Sea Call Supporters work parties. Steve Phillips felt it would be good to provide specifics of the work to be done versus making it an open ended contract. John Jannell said that the lease agreement was not up until November of 2013, and he would need to speak to the Town Administrator to determine what else needed to be included. John Jannell noted that the previous agreement required the tenant to be a Town of Orleans employee, and that more work into what was required would be needed. Steve Phillips noted that snow removal could be an issue, and James Snow said that in previous years the town had plowed the driveway. James Snow noted that this past year the plowing was not done, and that the driveway needed to be maintained by the Town of Orleans. John Jannell noted that the Commission seemed to be in support of a year round tenant, and Steve Phillips noted that the idea of a year round tenant seemed like it would be a good idea.

*Steve Phillips welcomed Philips Marshall who was appointed as an Associate Member of the Orleans Conservation Commission on 2/20/13 by the Board of Selectmen.*

### **Chairman's Business**

**Approval of the minutes from January 15, 2013.** Steve Phillips noted that he had worked with Erin Shupenis to make minor corrections to the minutes, and the one of note was that the vote for 11 Freeman Lane was 0-7-0; Motion Denied.

**MOTION:** A motion to approve the minutes as amended was made by Jim O'Brien and seconded by Judy Brainerd.

**VOTE:** Unanimous

The Commission discussed the site visits.

The meeting was adjourned at 10:03am

Respectfully submitted,

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