

**Orleans Conservation Commission**  
**Town Hall, Nauset Room**  
**Hearing Meeting, Tuesday, May 21, 2013**

ORLEANS TOWN CLERK

K. Daily, Asst  
'13 AUG 26 11:45AM

**PRESENT:** Judith Bruce, Chairwoman; Steve Phillips, Vice-Chairman; James Trainor; Jim O'Brien; Jamie Balliett; Nancy O'Mara; Nancy O'Mara, Associate; Philips Marshall, Associate; John Jannell, Conservation Administrator.

**ABSENT:** Bob Royce

8:30 a.m. Call to Order

*For the purpose of this meeting Nancy O'Mara will be a voting member.*

**Continuations**

Last Heard 5/7/13 (SP1 NO1)

**Steve Simon, 8 & 10 Beach Road.** Assessor's Map 36, Parcel 23 & 24. The proposed installation of a water line. Work will occur within 25' of the Edge of Wetland. Steve Simon, applicant, and Bill Riley, legal representation from the Law Offices of Toabe and Riley, were present. Steve Simon noted that the Commission was in receipt of a letter from Tim Brady of East Cape Engineering who went as far as 8' without encountering water. Judith Bruce asked about groundwater alternatives, and Steve Simon said that he did receive a number on moling. Moling would involve digging a minimum of 5 holes referred to as coffin holes, which were 6' by 4' by 5', and backfilled afterwards. Steve Simon stated that he would like to stay with what he proposed, which was 200' of line without any joints and no need to revisit for leaks. Judith Bruce asked if directional drilling also avoided joints, and Bill Riley said it was very expensive to directionally drill. Steve Phillips inquired about the difference between the two methods, and Steve Simon explained that directional drilling is used typically when water is present and is a 6-10" pipe, whereas moling is designed for shorter distances such as underneath a driveway. Bill Riley explained that in his recent experience in Chatham with a directional bore at the end of Strong Island, the installer dug a 10" hole, filled it with slurry, and pulled the pipe back through, all of which was costly. Judith Bruce noted that the work in Chatham was under Pleasant Bay and was for all utilities for that area, and Bill Riley said the costs were comparable. Judith Bruce thought the work in Chatham was much more than what was required here, and Bill Riley said the slurry would still be needed. Judith Bruce said that an alternative analysis should be provided since the proposed work was within 5' from the Edge of Wetland. Steve Simon noted that the Right of Way was within 12' of the Edge of Wetland, not the water line, and was willing to mole and trench in the water line and try to avoid joints. Steve Simon felt the work could be completed within a day with minimal disturbance, and Phillips Marshall asked if the Right of Way Water Department questions had been answered. John Jannell explained that Steve Simon had the task of providing an alternative analysis including the cost and probability of installing a water line from Beach Road which has not been submitted at this time. John Jannell found out that the Water Department has an easement, and it was also brought up during the previous meeting whether this work could be help up until property rights had been resolved. John Jannell explained that an Order of Conditions

grants no property rights. John Jannell reported that two additional letters of correspondence, one from John Haynie Jr. in opposition and one from Mike and Myra Murphy, also in opposition, had been received by the Conservation Department and circulated accordingly. John Jannell witnessed the test holes yesterday, noting that the wetland flags were re-hung but that the Right of Way was not staked. During the on-site yesterday, the Right of Way was staked in the field, and Steve Simon commented that it had been staked previously but that the stakes had been removed without his permission. Bill Riley reiterated that Town Counsel had validated the legality of the Right of Way, and Judith Bruce said that the Commission was waiting on an alternative analysis. Steve Simon asked if the Commission was looking for a cost breakdown, and Judith Bruce clarified that the Commission was looking for an option that would avoid working within the buffer zone to the resource area. Jamie Balliett inquired if a Construction Protocol was warranted, and Judith Bruce noted that the type of construction had yet to be decided. Jamie Balliett asked that it be provided, and Judith Bruce said that if the proposed work was in the jurisdiction of the Conservation Commission that a Construction Protocol should be included. John Jannell asked the applicant how long it would take him to provide such an analysis. Mike Murphy, abutter at 10 Beach Road, said that Mr. Riley had expressed that Mr. Ford had agreed that there was an easement, but that it was being contested due to abandonment and merger of ownership, and therefore a ruling should not be made until this was determined. Mike Murphy agreed that water access needed to be researched for all the possible locations, and noted that the abutters on Cole Place were against the proposed work. Judith Bruce explained that this was why the Commission had requested an alternative analysis, but that Town Counsel had advised the Commission that it could not wait for property rights to be determined to make a ruling. Bill Riley asked that the hearing be continued for two weeks to June 4, 2013.

**MOTION:** A motion to continue to June 4, 2013, was made by Jamie Balliett and seconded by Judy Brainerd.

**VOTE:** Unanimous.

Last Heard 5/7/13 (SP1 NO1)

**Eric & Reva Fischman, 27 Ruggles Road.** by Artistic Grounds, Assessor's Map 11, Parcel 21. The proposed landscape project to include the construction of a pool, fire pit, outdoor grill, stone walls, and re-surfacing of an existing patio using permeable pavers. Work will occur within 100' of the Top of a Coastal Bank & Land Subject to Coastal Storm Flowage. Dustin Wolfe of Artistic Grounds was present. Dustin Wolfe explained that the revised plan removed the proposed pool but retained the proposed spa, and pulled back the work as far as possible past the 75' buffer line, with the remainder of the project staying the same. The applicant intended to put in beach grass plantings adjacent to the stone wall, and all of the reconstruction work was within existing walls. Steve Phillips confirmed that the wall shown on the plan was already in place, and Dustin Wolfe said this was correct: the two adjacent to the deck they wanted to rebuild because they were falling apart, with the work occurring in the same location. Steve Phillips inquired about the limit of work, and Dustin Wolfe said it was the same as from the previous plan. Judith Bruce noted that they were still looking at a pool within 75', with mitigation offered as a planting bed to beach grass. Dustin Wolfe said the lawn

section between the cedar tree and native vegetation would be the replanting of 600' of native vegetation to give back some of the lawn. Judith Bruce felt this was a better proposal, but asked if there was any way to pull the pool back further from the resource area. Dustin Wolfe noted that the front corner of the spa was within the 75', with work occurring within existing walls and the work in compliance with the setback limitations to the house. Judith Bruce noted that other properties which were developed pools and additional structures are not plausible, and Steve Phillips inquired what was there now. Dustin Wolfe explained that there was a wall, planting bed, and staggered set of walls. Steve Phillips asked if any of this area was currently naturalized, and Dustin Wolfe said no. James Trainor asked if they were required to put a fence around the spa, and Dustin Wolfe said the walls would act as a natural fence as they were proposed at 4' in elevation. James Trainor noted that the plan said existing deck and then pool deck edge, and inquired what the difference was between the existing and proposed deck. Dustin Wolfe explained they would be re-shaping and would lose a couple of feet, and it was better if they redesigned the deck. James Trainor noted the reduction as a positive, and Dustin Wolfe pointed out that the lawn area would be reduced as well. Jamie Balliett compared the previous proposal and the current plan, and inquired if the proposed 8'x8' structure was a pool or a hot tub. Dustin Wolfe clarified that it was a hot tub, and Judy Brainerd asked if it was still proposed to be a salt water hot tub. Dustin Wolfe said yes, and Jamie Balliett inquired about the proposed mix grasses to be planted. Dustin Wolfe said that after looking through the suggesting Native Plant List that the plantings would include bearberry, high and lowbush blueberry, and would run from the lawn to the existing Edge of the Bank. Dustin Wolfe said that it was their goal to regain some of the 50' buffer, and Judith Bruce stated that their goal was to regain all of the 50' buffer. Dustin Wolfe noted that this would be to the back door, and James Trainor inquired what the percentage of deck to increasing square footage. Dustin Wolfe said that they were removing the same square footage in exchange for building that same amount of square footage, and then removing a portion of the deck to compensate for the increased use. Jim O'Brien commented that this was a difficult property, and the applicant's 1 to 1 work was something the Commission could support. John Jannell asked about the deck modification, where the sketch showed the modification while the site plan showed the existing, and inquired if it was to be completely reconstructed or just modified. Dustin Wolfe explained that the existing deck would not change, the railing would have to be moved, and the remainder of the deck would stay the same. John Jannell inquired about the railing removal given the proximity to the water, and Dustin Wolfe clarified that the same railing would be used, and if needed the new railing would match the existing railing. John Jannell asked if this would result in the nipping of the corner, and Dustin Wolfe said yes. Judith Bruce inquired if anyone from the audience had any comments, and noted that in her opinion the plan presented did not provide enough significant mitigation for the work proposed, she had hoped to pull back the new structure further from the resource area, but that the proposal provided was not egregious. Steve Phillips felt the work proposed would not have a significant impact as it was proposed in existing yard.

**MOTION:** A motion to close the hearing was made by Jamie Balliett and seconded by Jim O'Brien.

**VOTE:** Unanimous.

Steve Phillips began a motion to approve but noted that there was not a limit of work shown on the plan. Dustin Wolfe said that this was something which he could draw in, and John Jannell asked that if the Commission was going to act, that they make the approval subject to the receipt of a planting spec and the modification of the plan to show the deck correction as well as the limit of work. Steve Phillips inquired if this would be approvable given the revisions necessary, and Jamie Balliett pointed out that the Commission would have John Jannell ensure that the plan was acceptable to what the Commission needed before the Order of Conditions was issued.

**MOTION:** A motion to issue an Order of Conditions pending the receipt of a revised plan showing the deck modification, limit of work, and the planting spec was made by Steve Phillips and seconded by Jamie Balliett.

**VOTE:** 6-1-0; Motion Approved.

### **Notice of Intent**

**Donald & Karen Jenen, 10 Viking Road.** by Ryder & Wilcox, Inc. Assessor's Map 70, Parcel 18. The proposed invasive plant management & native plant restoration. Work will occur within 100' of the Top of a Coastal Bank & on a Coastal Bank, on Land Subject to Coastal Storm Flowage, & in the Pleasant Bay A.C.E.C. Tabitha Kaigle of Wilkinson Ecological Design was present. Tabitha Kaigle explained that it was the goal to establish 2 modest view windows, diversify the area with native shrubs and species, and retain the bank in the long run. Tabitha Kaigle explained that the cynipid wasp had caused significant problems for the existing oak tree population, with the remaining vegetation in various states of health. Tabitha Kaigle noted that pruning would not be required to maintain the proposed view, located in areas where small view pockets were already located. Tabitha Kaigle went over the goal for the property, noting that while a large pine was proposed to be removed due to its proximity to the house, and all of the roots from those trees to be removed from the Coastal Bank would remain in place. Steve Phillips inquired about the large black circles drawn on the plan. Tabitha Kaigle explained that those were areas of research to determine the oak density where an assessment of the health of the species as well as the DBH was completed. Tabitha Kaigle stated that since the conditions of this oak density were similar throughout the bank, these samples were extrapolated to determine the vegetation across the entire bank. Steve Phillips asked how many trees were to be removed, and Tabitha pointed out that everything to remain was flagged, 39 in total to remain. Anything dotted in black or light grey would remain. Steve Phillips inquired about the visual impact from the water, and Tabitha Kaigle said this view would be protected given the amount of trees to remain and that the house was lower to the ground. Judith Bruce noted that during the on-site the Commission noted that the owners had done a good job with the property and provided snags for wildlife habitat. John Jannell noted that the on-site was fairly straightforward, easy to see what the project involved, with 251 shrubs going in as understory. John Jannell felt that the view in the future would be filtered with a shrub layer. John Jannell reported that a DEP number had been issued, and should the Commission act today, that they make any Order of Conditions subject to the Land Management Plan. Judith Bruce inquired if the Commission or the audience had any additional questions or concerns. Jamie Balliett inquired if there was something which could be done as a future preventative measure for the wasp infestation. Tabitha Kaigle

explained that as far as she knew there was no cure for the wasp, and there was not a lot that was known of how it would act over time. Tabitha Kaigle explained that this plan addressed this concern by saving those oaks which were both healthy and appeared to have established a tolerance to the wasp.

**MOTION:** A motion to close the hearing was made by Jamie Balliet and seconded by Jim O'Brien.

**VOTE:** Unanimous

**MOTION:** A motion to approve the Site Plan Showing Existing Conditions, as well as the Restoration and Land Management Plans, all dated 4/25/13, was made by Steve Phillips and seconded by Jim O'Brien.

**VOTE:** Unanimous.

**Jeffrey Smith, 12 Spider Web Lane.** by Ryder & Wilcox, Inc. Assessor's Map 49, Parcel 38. The proposed construction of a single-family dwelling; installation of a Title 5 septic system; driveway; utilities; grading; & landscaping. Work will occur within 100' of the Edge of an Inland Wetland. Stephanie Sequin of Ryder & Wilcox, Inc, was present. Stephanie Sequin explained that this was a vacant lot on Spider Web Lane and the closest point for the Limit of Work was at 56', with the closest building point at 76'. Stephanie Sequin noted that the proposed dwelling was a modest house whose septic system would be located outside of the 100' buffer zone and the driveway would be pervious, with materials stockpiled outside of the buffer zone and gutters and downspouts or crushed gravel located at the dripline. Judith Bruce noted that this was a modest footprint, and inquired if it would be possible to tighten up the limit of work to keep additional undisturbed wooded area. Stephanie Sequin said that the limit of work shown on the northeast side, and it was something which could be tightened to about the 70' buffer. Judith Bruce thought it would be great to leave the 75' buffer undisturbed, and Steve Phillips asked what the future plans for the 50' buffer would be and if a line could be established so that the owners would not creep into the buffer zone. Judith Bruce heard willingness from the representative for the applicant to stay at the 70' buffer, and Stephanie Sequin said that the applicant would understand that any work beyond the approved Limit of Work would require Conservation Commission approval. Steve Phillips wanted to know if the applicants understood that this was a sensitive area and treat it accordingly, and Stephanie Sequin said that while this had been said to them, she would reinforce this. Judith Bruce asked that if the applicant sought landscaped area that they return with at least an Administrative Review, and Judy Brainerd said that this included mowing. Steve Phillips said the rest of the plan looked great, and Jamie Balliett asked if the parking area was paved or gravel. Stephanie Sequin said it would be gravel. John Jannell noted that the on-site was pretty straightforward, with the tightening of the Limit of Work as one discussion which had already been brought up. John Jannell pointed out the proposed 20' contour, and inquired about the raising of the grade in the back. Stephanie Sequin explained this was on the north-west side drive-under garage, with the same type of grading under the porch and around the corner. John Jannell noted that they were maintaining 20' from the Limit of Work and it wandered off around the driveway side. Stephanie Sequin explained that she was following the 17' contour, and she could move it closer. John



Jannell inquired if plantings were proposed along the wetland/driveway side, and Stephanie Sequin said that a landscape plan had not been discussed at this time. Stephanie Sequin said that given the wooded setting, she thought the wetland side of the driveway would be a native ground mix. Judith Bruce asked if anyone in the audience wished to speak, and John Jannell stated that there was a nice naturalized buffer to the wetland and the building was out of the 75' buffer.

**MOTION:** A motion to close the hearing was made by Steve Phillips and seconded by James Trainor.

**VOTE:** Unanimous.

Steve Phillips suggested a motion with the condition that the Limit of Work be tightened, and John Jannell said that they could advise Stephanie Sequin to bring in a Revised Plan showing this change. Stephanie Sequin said she could bring it up on the northeast and southerly sides, and Steve Phillips asked for the northeast driveway side as well, and Judith Bruce suggested that they could approve it subject to the receipt of a Revised Plan showing these changes.

**MOTION:** A motion to approve this project pending the receipt of a Revised Plan showing the changes to the Limit of Work line was made by Steve Phillips and seconded by Jamie Balliett.

**VOTE:** Unanimous.

**Pleasant Bay Narrows Trust, 30 Horseshoe Lane.** by Ryder & Wilcox, Inc.

Assessor's Map 89, Parcel 10. The proposed extension of fiber rolls for stabilization of a Coastal Bank. Work will occur on a Coastal Beach, on a Coastal Bank, on Land Subject to Coastal Storm Flowage, & in the Pleasant Bay A.C.E.C. David Lyttle of Ryder & Wilcox, Inc., and Seth Wilkinson of Wilkinson Ecological Design, were present. David Lyttle noted that this plan should look somewhat similar to the Commission, as this was for work whose access went from 26 Horseshoe Lane onto 30 Horseshoe Lane, where the Orleans Conservation Trust held a Conservation Restriction. This work would be done in conjunction with the Amended Order of Conditions work at 26 Horseshoe Lane. David Lyttle noted that if and when nourishment was needed, this would be the way to approach it, and thought it was an appropriate way to address the scarp. Steve Phillips inquired if they would be traversing over the fiber rolls. Seth Wilkinson explained that as part of the original Notice of Intent for 26 Horseshoe Lane, there was an agreement that access would be granted through the development of a sand ramp. Seth Wilkinson explained that they anticipated using that access again, with fiberglass mats used to provide protection for traversing over the fiber rolls. Judith Bruce assumed that this work would be contingent upon the same Land Management Plan, and Seth Wilkinson said the Land Management Plan would be the same as that for 26 Horseshoe Lane. John Jannell noted that he had not received this information, and Seth Wilkinson said he could re-submit it for the work at 30 Horseshoe Lane. Steve Phillips asked about how the bank would be stabilized and Seth Wilkinson said it would be coir blankets, and the plugs would be planted through the blankets. Jamie Balliett inquired when the work would be done. Seth Wilkinson said that the applicant was concerned about hurricane season, and given that this was not a bathing beach, anticipated that the work would be done quickly. Steve Phillips asked about the

reference in the plan to the Land Management Plan, and Seth Wilkinson explained that it spoke to how the work would be done and the types of plants used to stabilize the area. David Lyttle said this would be something which they could submit, and Judith Bruce asked that it address the nourishment as well. Judith Bruce noted that an approval could be issued pending the receipt of such a document.

**MOTION:** A motion to close the hearing was made by Jamie Balliett and seconded by Jim O'Brien.

**VOTE:** Unanimous

**MOTION:** A motion to approve this plan dated 5/3/13 and subject to the receipt of a Land Management Plan was made by Steve Phillips and seconded by Jim O'Brien.

**VOTE:** Unanimous.

**Timothy & Andrea Howell, 25 Cheney Road.** by Ryder & Wilcox, Inc. Assessor's Map 42, Parcel 1. The proposed removal of an existing single-family dwelling; the construction of a new single-family dwelling; the replacement of an existing timber stairway; invasive plant management; & native plant restoration. Work will occur in the buffer zone to the Top of a Coastal Bank, on a Coastal Bank, on a Coastal Beach, on Land Subject to Coastal Storm Flowage, & in the Pleasant Bay A.C.E.C. David Lyttle of Ryder & Wilcox, Inc., and Doug Guey-Lee, of Wilkinson Ecological Design, were present. David Lyttle passed an elevation sheet to the Commission, noting that this property had recently come in front of the Commission for the reconstruction of a licensed pier. David Lyttle explained the proposed work, noting that the handouts previously provided to the Commission included GIS maps noting the location of the house in relation to other homes within the area. David Lyttle noted that the applicant's dwelling was set back, and had a natural window which looked out onto Meetinghouse Pond. The proposed dwelling, which would be moved further back from the Coastal Bank would be taller, but the majority of the trees were to stay, and the canopy was up higher than the house. The project would result in a 476' reduction in the 0-50' buffer, although there was still a 250' increase within the A.C.E.C. The Land Management Plan which was submitted would provide mitigation for this work within the A.C.E.C. David Lyttle noted that 3 trees would need to be removed as a result of the change to the footprint, one of which, the 20" cedar tree, may be able to be saved. Doug Guey-Lee explained that the site lacked an herbaceous layer, and the applicant wanted to take advantage of the natural view while at the same time removing invasive species and creating an herbaceous layer. Doug Guey-Lee said there would be stone steps dry-laid creating the path to the water, and no tree would be removed as a result of this placement. Doug Guey-Lee explained that there were some non-native trees and trees infected with fungus which needed to be removed, and Jamie Balliett asked how many trees in total would be removed. Doug Guey-Lee and David Lyttle counted the trees from their plans, and determined 9 trees were to be removed in all. Judith Bruce noted that the Land Management Plan was good, but was concerned about the expansion within the A.C.E.C., and was hopeful that there would be a reduction in the turn lawn. Judith Bruce noted that the Commission was concerned about losing the trees listed on David Lyttle's plan, and was concerned that if there was an attempt to save the cedar tree, that it not suffer root damage during construction. Judith Bruce inquired about the increase in usage include volume and footprint calculations, and David Lyttle said there

was a coverage calculation sheet provided within the packet given to the Commissioners. Judith Bruce noted that volume also needed to be included, as well as usable square footage within the buffer zone as opposed to the footprint comparison. David Lyttle stated that the property was well treed, and if the Commission wanted replacement trees for the 3 to be removed as part of the house construction, the area which this could be done was limited. Judith Bruce noted that she did not want to speak for the entire Commission, and said that she would like to see turn lawn replaced with a naturalized area and the use of pesticides and herbicides discontinued. Steve Phillips asked if the retaining wall on the northeast side was proposed or existing. David Lyttle said yes, and there currently was a stockade fence not along the property line which needed to be moved. David Lyttle explained that the applicant and Nancy Newlove, of 21 Cheney Road, wanted to maintain privacy between the two properties. The applicant wanted to expand parking, the garage would be accessed on the northeast side, and the grade would be raised and a new retaining wall installed. David Lyttle asked if the Commission had noted the tree which came down from the utility pole, and explained that the applicant was trying to improve the situation along the property line while increasing the parking area. This new parking area would be a paved driveway extending only 10' into the 100' buffer zone. James Trainor inquired if the existing foundation would be removed and a new one installed, and David Lyttle said yes. James Trainor asked if it would be possible to move the new foundation back an additional 10' therefore taking the construction outside of the 75' buffer line. David Lyttle said that he was not sure if it would be possible due to the current location of the septic system, and would look into it. Steve Phillips pointed out that the 32" maple may cause a problem with this shift, and inquired if the building could be moved without damaging or removing this tree. David Lyttle said that tree would have to be removed, and would look into whether or not he could move the house outside of the 75' buffer. David Lyttle noted that the existing deck was 37' from the Top of the Bank, and James Trainor felt it would be nice to get it outside of the 50' buffer. David Lyttle said that if the house were to be moved it may address the concern about the increase in square footage within the A.C.E.C. as well as the volume calculations of proposed versus existing. James Trainor asked about the pathway and a reference to stone steps, and Doug Guey-Lee clarified that between the steps there would be nothing but grass. David Lyttle noted that typically the Commission was concerned about the view from the resource area which he felt would not be an issue, and Judith Bruce reminded him that this was still work within the A.C.E.C., and John Jannell pointed out that there was work within the 50' buffer for which a variance request had been received. John Jannell wanted to look at the elevations for the proposed work, and David Lyttle said that was what he had given the Commission at the beginning of the meeting. John Jannell pointed out that the Commission did not have this information while they conducted their on-site, and there was a lot of screening for the existing building. David Lyttle went over the needs of the Commission, which included the elimination of fertilizers, addressing the square footage, reducing the turf lawn, and inquired if replacement trees were needed for those proposed to be removed. Judith Bruce did not think additional trees were necessary, and Steve Phillips did not think it would impact the visibility. David Lyttle said he would speak with his clients, and Judith Bruce reiterated that additional structure and use in a fragile resource with the proposed mitigation was a good start but



had the potential to be better. David Lyttle inquired if there were any concerns from the Commission about rebuilding the timber stairway, and Judith Bruce and James Trainor felt that it was fine. John Jannell asked about the seaward jog for the stairway, and David Lyttle said it would be 2'. John Jannell noted that it was already getting flooded, and asked if it was because of the platform. David Lyttle said that they were trying to make it an easier stairway to navigate, and that a variance would still be needed for the work on the stairway. David Lyttle noted that these numbers were included in the Notice of Intent, and Jamie Balliet inquired if it was part of the 237' mentioned. David Lyttle said yes, that he may be able to pull it back, and he would speak with his clients. John Jannell noted that the Commission had seen retreat due to tidal change, and David Lyttle explained that it had been pulled back and a middle landing proposed. Jamie Balliett asked if it could be reduced in size, and David Lyttle said he would look into that possibility. John Jannell noted that the Commission was waiting on a DEP number and comments from NHESP, and David Lyttle requested a 2 weeks continuance to June 4, 2013.

**MOTION:** A motion to continue the hearing to June 4, 2013, was made by Jamie Balliett and seconded by Jim O'Brien.

**VOTE:** Unanimous.

*Jim O'Brien left at 9:59am; for the purpose of the remainder of the meeting Philips Marshall became a voting member.*

### **Restoration Plans**

**Kevin Doherty, 4 Duck Pond Lane.** The proposed issuance of an Enforcement Order for the alteration of land within 50' of the Edge of Wetland and an Unnamed Pond. Jamie Veara of Zisson & Veara, legal counsel for the applicant, and Theresa Sprague of Blue Flax Design were present. Jamie Veara requested that the Commission allow for additional time for the applicant to file a Restoration Plan since there had been a change in the Landscape Designer to Theresa Sprague of Blue Flax Design. Judith Bruce explained that 3 weeks was not acceptable given that there was a short window for additional plantings and the work which had been done on site was an egregious violation. Jamie Veara explained that they were confident that they could make their submission and that they were trying to proceed cooperatively. Judith Bruce said that she would like to hear from Theresa Sprague to determine what she needed to do so that a filing for the restoration work could be submitted. Theresa Sprague said that she spoke with Jason Ellis of JC Ellis Design Company who was out of the state on professional business, and could not locate the delineation line for a revised site plan showing the most accurate buffer lines. Theresa Sprague explained that she would be working on getting out on site this week, and that as soon as a revised plan was produced, would proceed with a restoration plan. Theresa Sprague felt that if she received the plan by the end of next week, she would be able to put something together mid-week the following week. Theresa Sprague noted that she would be proposing to restore the wetland shrub vegetation herbaceous layer, and that since she had not been on site prior to the violation, she only had the photos of the fox grape, and that it was difficult to determine what was there on site. Theresa Sprague noted winterberry, buttonbush, and viburnum, and understood that some soil had been brought on site to

smooth out the area. Theresa Sprague inquired if the Commission wanted the material removed or for new plantings to be provided within this area and the new Bordering Vegetated Wetland line. Steve Phillips asked how much fill was brought on site, and Theresa Sprague said it was her understanding that the lawn was top-dressed and over seeded with a couple of inches of material. Steve Phillips asked if this top-dress has smothered some of the existing plants. Theresa Sprague said no, and that there was no evidence that there were shrubs or herbaceous vegetation which may have been smothered. Judith Bruce said that she was familiar with this pond, and knew that viburnum and shrubby material had been present, and that submerged vegetation and land under water was disturbed. Judith Bruce noted that there had been significant habitat loss, and thought that if the area under water was left alone, that vegetation should come back. Judith Bruce felt the Commission would want the complete restoration to the Bordering Vegetated Wetland line, and that the soil which was added should be removed. Judith Bruce noted that the area where lawn and grass was would need to be naturalized and asked that a Restoration Plan include additional habitat to compensate for what had been lost. Theresa Sprague reiterated that she was new to the site, and she was trying to find the balance to what was allowed to be removed versus what had been removed from the site. Theresa Sprague explained that there was no doubt that the permitted fox grape was removed, additional unpermitted shrubs were removed, and that the Bordering Vegetated Wetland would need to be restored. Theresa Sprague reported that there was a lot of sensitive fern seen on site as well as regenerating fox grape and bittersweet was now on site. Part of the Restoration Plan would include the removal of the existing border privet, and she was waiting to see everything located on a site plan so that a comprehensive plan could be developed. Theresa Sprague asked if the Commission wanted to remove the lawn since this may cause more disturbance, and John Jannell recommended that the Commission make the removal of the fill as part of a Restoration Plan. John Jannell estimated that 4-6" of loam had been brought on site, and that there were wetland indicator species which had been exposed due to the applicant's unpermitted work, and that the Commission should require that native plantings to Paul Shea's delineated line be installed. Judith Bruce asked if the removal of the soil would do more damage than leaving it, and John Jannell felt the removal of this fill would be something which could be easily removed without causing significant problems. Steve Phillips stated that it looked like plants in the water were cut. Theresa Sprague said that the fox grape growing over into the Bordering Vegetated Wetland had been cut, and hoped that the additional plantings which were cut would regenerate. Theresa Sprague noted that with any restoration effort they could look to keep poison ivy and greenbrier, two of the more aggressive species, at bay. Theresa Sprague explained that when a vine was typically removed, the species underneath tended to be leggy and weak. The Viburnum and High Bush Blueberry which had been exposed were beginning to regenerate, and Theresa Sprague felt that they would regenerate well. Theresa Sprague felt that there was a change to make this buffer a better habitat, and felt that with the winterberry and buttonbush which had not been cut that there would be significant growth over the next few weeks. Steve Phillips inquired if there was a difference in the regulations when someone went underwater and tried to manage the growth, and John Jannell explained that the applicant altered a resource area, something which neither DEP nor the Commission would have issued an

Order to do. John Jannell explained that the Commission had not notified DEP at this time, and were going to talk about fines under the local by-law and give the applicant some directions to see this property properly restored and planted. The guidance which had been given to the previous representative had been to stake the Bordering Vegetated Wetland. John Jannell explained that restoration of the Bordering Vegetated Wetland was the first priority, with woody planting to take place as well as the removal of the fill. John Jannell noted that the buffer strip was removed, with some plantings left over, and that the buffer strip needed to be restored. The installation of lawn and flagpole were not things which had been approved by the Commission, and could be rolled into a Restoration Plan. Subject to approval by the Commission, a maintenance plan should be considered, as there was a competitive advantage for invasives to take over this site. Judith Bruce felt this may be an excellent chance for a maintenance plan to be extended to 5 years. John Jannell noted that the Commission had required a Restoration Plan by May 12, and for the sake of moving this along, should maintain an aggressive schedule so that this resource area was restored as soon as possible and work was seen on the ground. Judith Bruce felt the Commission had conveying that time was critical for this work to be done, and thought that good faith could be shown. Theresa Sprague asked what was to be done under the Enforcement Order versus in the long term, which would be a 3 or 5 year land management plan to be filed under a Notice of Intent with an Order of Conditions as the acting instrument. John Jannell thought that the Commission reserved the right to require a Notice of Intent, but explained that the Commission normally would not require a Notice of Intent for work which would not be approvable. Jamie Veara explained that they would be filing a Notice of Intent to address the long-term points, and that for right now they wanted to address the short-term points. Steve Phillips inquired if Theresa Sprague had a copy of the anonymous letter which said there was stump grinding occurring on site, and Theresa Sprague said she was unaware that trees were removed. Steve Phillips wondered if when the soil was stripped, if they would find other trees which were cut. Theresa Sprague said it was her understanding that shrubs were cut, fox grape was removed, and additional soil was brought in, and Judith Bruce added that regrading was also done. Theresa Sprague stated that the area was now delineated as Bordering Vegetated Wetland brought the line 5-7' higher than a previous delineation. Jamie Balliett asked if a revised site plan would be received by next week, and Theresa Sprague asked for clarification on what was required. Theresa Sprague asked if a plan was sought under an Enforcement Order for the restoration of shrubs and the herbaceous layer, then she could submitted something next week. If a site plan would be required for a Notice of Intent including the creation of a buffer strip, removal of the existing border privet, and the restoration of native shrubs, then that would be something which would require additional time. John Jannell explained that the Enforcement Order issued on May 7, 2013 was for the restoration of the 50' buffer and a 3 year management plan. John Jannell noted that the management plan was much more suitably filed under a Notice of Intent, but the restoration work was required at the initial hearing along with the removal of fill. Clarification of the date which material was required was sought, and John Jannell said the Enforcement Order asked for a restoration plan either on or before May 21<sup>st</sup>. Jamie Balliett suggested that an initial restoration plan be submitted next week, with a plan accompanying a Notice of Intent

within the next two weeks. Judy Brainerd asked if the Commission could proceed with a Restoration Plan, and John Jannell explained that the Commission could direct the applicant. Theresa Sprague said that in reading the Enforcement Order, the request was for the 50' buffer line to be restored. There was now a new 50' buffer line, and the previous line ran through existing lawn and deck. Theresa Sprague agreed that a buffer strip needed to be created, but was concerned about bringing vegetation underneath the deck. John Jannell noted that the last wetland delineation line on record was from 1982, and the Bordering Vegetated Wetland where it existed today was based on the current delineation. John Jannell said that there were not specific action plans, and that the Commission could note that while some work would take place immediately, future work would be addressed in a different manner such as a Notice of Intent. Judith Bruce asked if the Enforcement Order needed to be extended, and John Jannell said that the Enforcement Order asked for the 50' buffer. If there were area without plantings provided, they could be dealt with later and that certain areas, such as gravel underneath a deck, may not be planted. Theresa Sprague explained that she did not want to come back with an unacceptable plan since time was of the essence, and John Jannell asked the Chair how much time she wanted to give the applicant so that they would not be in violation of the Enforcement Order. Judith Bruce asked if a plan for the immediate plantings and removal of the loam be provided for the May 28<sup>th</sup> hearing, with a full Restoration Plan coming under a Notice of Intent for our next posted hearing. Theresa Sprague asked when the deadline for the following meeting would be, and Erin Shupenis said materials would be required to be submitted by Thursday, May 23, at 12pm. Theresa Sprague said that this was a very aggressive timeline, and was not sure if that would be possible. Theresa Sprague said that she would not be able to get a copy of the new site plan until Jason Ellis had returned to locate the new Bordering Vegetated Wetland line on a plan. John Jannell agreed that two days did not give the applicant much time to provide the Commission with a comprehensive plan. John Jannell felt it was important that the Commission have the flagged site plan, and suggested allowing the applicant until the June 4, 2013 meeting, with a submission deadline of Thursday, May 30<sup>th</sup>, at 12pm. Jamie Veara agreed that a site plan showing the most recent delineation would provide the least amount of confusion, and felt that the June 4, 2013 deadline was suitable.

**MOTION:** A motion to allow the applicant to continue to June 4, 2013, was made by Jamie Balliett and seconded by James Trainor.

**VOTE:** Unanimous.

John Jannell explained that at the Enforcement Hearing the Commission directed him to address fines of the resource area, and the Commission received a memo dated May 20, 2013, referencing Section 130, which said that there was a \$200 fee for a first offence, with a \$300 fee for every day thereafter. John Jannell noted that they had received correspondence that work had taken place over a long period of time, which exposed the applicant to multiple fines. John Jannell noted that the applicant did have approval for the hand-pulling of grape, and stated that the memo suggested a time period of 5-7 days for the violations. Jamie Veara asked if a new Enforcement Order would be issued in conjunction with a fine, and John Jannell said the Conservation Office would issue a civil ticket to be paid to the Town Clerk's office. Judith Bruce said

that it was her understanding that work had occurred over a month's time in the late winter to spring months, and that while 30 days of fines was excessive, a time period of 10-15 days should be considered. Jamie Veara said that from his experience that the days of reference on which work had occurred had to be specific as opposed to speculative. Judith Bruce noted that the initial discussion of the applicant's proposed work there was not a limit to time for hand-pulling of the grape, and Jamie Veara noted that the approval of the Administrative Review was good for a year from its issuance date. Judith Bruce noted that what had transpired was the applicant taking a chainsaw to the resource area, and Jamie Veara said that they were trying to move forward. Philips Marshall asked how long equipment for the loaming and regrading was on site, and John Jannell thought that the contractor had only been on site for one day. John Jannell explained that he did not disagree with Jamie Veara, and Judith Bruce thought that some type of middle ground could be sought. Steve Phillips felt that the factor in this case was the success of the Restoration Plan, and he suggested that the Commission wait to see what was proposed and then consider fines. Steve Phillips noted that this work was a fineable offence, and Judith Bruce asked if other Commissioners would like to wait on a fine. James Trainor agreed with Steve Phillips, and John Jannell said that the memo was intended to give the Commission guidance, and that they could take it up again on June 4, 2013. John Jannell said that he would try to get more information to determine when specifically work had taken place, and Jamie Balliett said it would be helpful if John Jannell could come up with specific days such as the time period which the contractor was on site. Judith Bruce agreed that they should be as specific as possible, and James Trainor said that while the fine was important, it was not as important as seeing the area restored. Nancy Burkert, abutter at 7 Harbor View Lane, said that she had observed at least two months activity, and that two weeks to a month's time was less than the actual time which work had occurred on site. Judith Bruce noted that no additional work was to occur on site, and Theresa Sprague asked about mowing of existing. Jamie Veara said that the Enforcement Order did not spell out anything about the mowing of the existing lawn was prohibited, and Judith Bruce said it was the area which was regraded and top-dressed which should be left along. John Jannell said that in looking through the Enforcement Order that mowing within the resource area needed to be stopped, Jamie Veara was concerned that the Commission felt that his client was not taking the Enforcement Order seriously. John Jannell said that there was Cape Cod Lawn observed on site prior to any work being done, and Jamie Veara said the applicant was aware that he could not mow below the wetland delineation flags. John Jannell explained that the area directly above the flags was likely to be part of the restoration plan, and the Commission had not issued a stop work Order on the entire property. Steve Phillips noted that once there was a border line established, it may become the no-mow line. Jamie Veara noted that the Commission had said no mowing below the wetland delineation flags, and Judith Bruce pointed out that the restoration line would be above the flagged line. John Jannell noted that the Order did state that all work within the buffer zone was to cease and desist, and Judith Bruce explained that they were trying to avoid any misunderstanding.

*Jamie Balliett left at 10:48am*

**Administrative Reviews**

**Wayne Draeger, 33 Briar Springs Road.** The proposed removal of 7 wind thrown cedar trees. Work to be done by SWS Services. John Jannell explained that there was an existing Order of Conditions for invasive species plant restoration, and that 7 cedar trees had come down during the winter months.

**MOTION:** A motion to approve this work was made by Steve Phillips and seconded by Judy Brainerd.

**VOTE:** Unanimous.

**George Tazzini, 42 Loomis Lane.** The proposed removal of 1 or 2 dead cedar trees and replacement with native species. Work to be done by applicant. John Jannell explained that the applicant was battling a pest, a bore, and he would recommend taking both trees down. The area itself was otherwise well treed with Oaks, and the applicant hoped to eliminate the pest as it has killed off a lot of the Cedars already on site and the adjacent property.

**MOTION:** A motion to approve this application was made by James Trainor and seconded by Phillips Marshall.

**VOTE:** Unanimous.

**Sandra Magner, 9 Seal Lane.** The proposed paving of a driveway. John Jannell explained that the applicant had a gravel drive from Seal Lane up a slope to her house, and the paving would take place from the property line up her driveway, with the asphalt to remain outside of the 50' buffer zone. John Jannell passed around photos of the site, explaining that there was no recent plan outside of the 1985 plan of record for the construction of the house, and was not sure whether or not the Commission would be agreeable to moving from a gravel drive to asphalt under an Administrative Review. John Jannell noted that as the water ran down the existing driveway it recharges onto Seal Lane, and Steve Phillips inquired if there were additional pervious options. John Jannell said he was not sure if the applicant had explored additional options. Judith Bruce noted that pavers were suitable but costly, and Steve Phillips felt that the paving would be the least expensive option for the applicant. Judith Bruce asked where the runoff would go from a paved driveway, and John Jannell said into the lawn area and onto Seal Lane, and would not make it directly into the resource area. Steve Phillips asked if there would be a gravel border to filter runoff, and John Jannell explained that Seal Lane would filter the runoff. John Jannell stated that Seal lane was unconstructed and allows a recharge area. John Jannell said that if the Commission wanted a more extensive filing that he was not sure what would be recommended, and that the applicant asserted that the pavement would end at the lamppost. Steve Phillips said that if a problem was created, the Commission could address it at a later time. Judy Brainerd asked if there were pavers proposed at the bottom, and James Trainor noted that the applicant would be unable to maintain the driveway during winter storm months because of the current gravel base. Judith Bruce did not think they would gain anything from requiring the applicant to file a Notice of Intent, and John Jannell said he would make a note at the bottom of the Administrative Review which said that this paving was for her property only.



**MOTION:** A motion to approve this Administrative Review was made by James Trainor and seconded by Judy Brainerd.

**VOTE:** Unanimous.

**William H. Wibel, 61 Keziahs Lane.** The proposed trimming of an oak tree and removal of an oak tree. John Jannell explained that this was trimming adjacent to the house, and the removal was for a tree infected with the Gall Wasp.

**MOTION:** A motion to approve this work was made by James Trainor and seconded by Judy Brainerd.

**VOTE:** Unanimous.

**Luke & Wendy Foley, 307 Tonset Road.** The proposed residing of an existing house and replacement of an existing deck and footings. Work to be done by George Davis Inc. John Jannell explained that this was replacement within the existing footprint and recommended approval.

**MOTION:** A motion to approve this application was made by James Trainor and seconded by Judy Brainerd.

**VOTE:** Unanimous.

**Judith Chester, 124 Namequoit Road.** The proposed removal of foundation shrubs in front of the house and the removal of a patio and garden to be replaced with loam and seed. Work to be done by Nicholas Sparrow. John Jannell reported that this was a new application which removed the proposed work within the A.C.E.C. from the Administrative Review application. The applicant had been made aware that the work within the A.C.E.C. required a more formal filling. John Jannell explained that he supported the proposed work in this Administrative Review which was located at about 90' from the Top of the Coastal Bank.

**MOTION:** A motion to approve this Administrative Review was made by James Trainor and seconded by Judy Brainerd.

**VOTE:** Unanimous.

### **Chairman's Business**

Approval of the Minutes from the Meeting on April 2, 2013, and May 14, 2013.

Erin Shupenis announced that the minutes from April 2, 2013 were not ready at this time.

**MOTION:** A motion to approve the minutes from May 14, 2013, was made by Steve Phillips and seconded by James Trainor.

**VOTE:** Unanimous.

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

Orleans Conservation Commission Hearing Meeting 5-21-13

Judy Brainerd inquired about the Enforcement Order Hearing for 165 Tonset Road which was to be continued so that John Jannell could speak with the applicant. John Jannell said that the applicant had retained an Engineer regarding the unpermitted work and should be in front of the Conservation Commission during the second public hearing in June.

The meeting was adjourned at 11:00am.

Respectfully submitted,

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