

Orleans Conservation Commission
Town Hall, Nauset Room
Work Meeting, Tuesday, May 28, 2013

ORLEANS TOWN CLERK

V. Derby
13 JUN 18 1:14PM

PRESENT: Judith Bruce, Chairwoman; Steve Phillips, Vice-Chairman; Bob Royce; James Trainor; Jim O'Brien; Judy Brainerd; Philips Marshall, Associate John Jannell, Conservation Administrator.

ABSENT: Jamie Balliett; Nancy O'Mara, Associate.

8:30 a.m. Call to Order

Please note: the minutes reflect the order in which each filings were addressed, and is different than the published Agenda. This change was to accommodate the applicants for the proposed projects.

Certificate of Compliance

Robert Anslow, Jr. (2012), 46 Freeman Lane. The request for a Certificate of Compliance for an Order of Conditions for the establishment of a view corridor. David Lyttle of Ryder & Wilcox, Inc. was present. John Jannell explained that this project was two phases of cutting, with the Commission conducting a site visit between phases to see the level of success and allow the second phase to occur. John Jannell pointed out that they were still actively mowing, as shown on a picture from a recent site visit, and said that he had not been able to follow up with the applicant on this matter. Judith Bruce recalled while the Commission was not concerned about mowing the path to the water, the area below the cedar trees was supposed to be an understory. David Lyttle thought that would be fine, and asked if this applicant would be allowed to mow the area twice a year. Judith Bruce recalled the initially mow was to reduce invasives and was concerned that mowing would not allow an understory to establish itself. John Jannell felt mowing twice a year would be permissible, and Judith Bruce inquired how an herbaceous understory would be able to establish itself. Steve Phillips asked how often the site was being mowed, and David Lyttle said they were trying to determine the frequency. John Jannell pointed out that the Commission had not required the planting an understory, and Judith Bruce thought that while it was not necessary for them to restore that area, the mowing was to discontinue underneath the cedar trees. David Lyttle agreed that regular mowing was to discontinue and there was a healthy understory, but that not much could grow due to the shading from the trees. Jim O'Brien and Steve Phillips felt that a twice a year mow would be suitable, and David Lyttle was fine with whatever time of year the Commission recommended for these mows. Steve Phillips said that it was currently a scrub habitat, and Judith Bruce pointed out that it was supposed to have that appearance. Jim O'Brien noted that a twice a year mow would not constitute a manicured lawn, with it growing 6-12" between mows. Steve Phillips agreed, and John Jannell said that while the removal was in substantial compliance, the Commission could include an on-going condition which would be for the twice a year mowing. Judith Bruce suggested April and October to maintain seed heads, and Bob Royce agreed with the mowing based on the specific timeline when it could be done.

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

VOTE: Unanimous

Restoration Plan

Forrester & Linda Quinn, 4 Overland Way. The proposed restoration plan for operations that have encroached onto town property. Work has occurred within 100' of the Edge of Wetland and the Cape Cod Bay A.C.E.C. Forrester Quinn of FL Quinn Construction was present. Forrester Quinn explained that he received a letter from John Kelly's department stating that his drainage proposal in exchange for squaring off the property lines for his property would not be a suitable option for the Town of Orleans. John Jannell explained the history of this property for the newer members of the Conservation Commission, saying that there was an encroachment issue into the buffer zone of a wetland and on Town property. The Commission had been working with Forrester Quinn under voluntary compliance to develop a plan of retreat and restoration, and in May of 2012, the Commission sent him to the Board of Selectmen for a lease of the town property on which he was working. The Conservation Department received a letter dated February 15, 2013, from John Kelly asking the applicant to file an acceptable restoration plan for the town property which Forrester Quinn was presently occupying. John Jannell explained that this was put on the agenda to give the applicant some guidance on how they would want the property restored, and that the issue of long term use of this property was something for the Town Administrator's office to determine. John Jannell noted the Commission had a sketch copy of a plan and the correspondence from John Kelly to Forrester Quinn giving advice on the drainage recommended to be in the lease area. The applicant was also using land owned by Reardon Realty MA Inc., at 26 Bay Ridge Lane, of which the Commission had no Order for use, and John Jannell had asked Forrester Quinn to provide the Commission with a letter demonstrating that he had the legal right to use the property. Forrester Quinn explained that while New England Supply presently occupied the building, when Comm Electric was using the building, he had asked for permission to loam and seed the property of which the owner was fine. John Jannell explained that he was looking for a letter that allowed Forrester Quinn to be on and restore the property, and that what his recommendation in addition to any guidance the Commission may provide. Judith Bruce recalled in 2012 when this issue was brought to the Commission, it was the advice of the Commission that the further from the resource area the applicant could get the better, and the proposed buffer strip would be adequate. Judith Bruce noted that the other issue was that this was an encroachment on Town property, and the Commission did not have authority to determine what could be done on that land as it was a town-owned parcel. Judith Bruce said that the Commission would love to eliminate the 10" drainage pipe, and that the area to the north had a good restoration proposal. Judith Bruce asked about the southern area on the map, and Forrester Quinn explained that it was owned by Reardon Realty Ma, Inc. Judith Bruce asked if this area was proposed to be loamed and seeded, and Forrester Quinn said he would like to use Conservation meadow mix to be mowed twice a year because of invasives. Steve Phillips asked about the access road that ran along the 3' wall, and Forrester Quinn said that was gone, and the small triangle was the Town of Orleans property. Forrester

Quinn said he had proposed to install drainage for free in exchange for the use of the triangle piece to square off his property, but based on recent e-mail conversations with John Kelly, did not think this would be a possible option. Forrester Quinn said he was starting with the Commission before he went forth to the Selectmen. Steve Phillips asked if the abutting property would be loamed, seeded, and then no longer used, and Forrester Quinn said yes. Steve Phillips suggested a statement from the owner of the abutting parcel stating this should also be provided. Judith Bruce asked what specifically would be loamed and seeded, and John Jannell clarified for the Chair where the work would be conducted. Judith Bruce suggested a site visit would be in Order, and John Jannell noted that since Forrester Quinn had done cleanup work since their last site visit and that there were 3 new Commission members who had not been present during last year's discussion, a site visit would be beneficial. Steve Phillips inquired where the 10 trees would be planted, and if it could be shown on a plan. Forrester Quinn said he could stake it on site, and the reason why he had designed them accordingly was to allow the Town to eventually deal with the drainage issues without disturbing vegetation. Judy Brainerd commented that tupelos are better grouped together versus straight-lined, and Forrester Quinn said he would look into it. James Trainor asked if the drainage shown on grey was the town's responsibility, and Forrester Quinn said it was up in the air. Forrester Quinn reiterated that he had suggested that he could install the drainage and also utilize the area as a driving area, but he did not think the Town was receptive to this idea. James Trainor noted that it would pick up some of the Overland Way drainage, and Forrester Quinn though his proposed drainage would be a good solution in exchange for squaring off his lot. Judith Bruce asked if this was an option, and John Jannell explained that the outfall pipe may be abandoned as part of this work. John Jannell explained then the town would have to address the drainage problems. Jim O'Brien asked if this would create a flooding problem, and John Jannell said yes, that this work dated back to a land swap due to a drainage issue. Forrester Quinn said that the previous drainage work went onto his property. John Jannell said the e-mail from John Kelly said that the Town wanted him to remove his materials from the Town parcel. Judith Bruce asked if this meant removing what existed, and John Jannell said this was for all new work. James Trainor said that Town Meeting approved 2.5 million dollars in storm drainage, and should be taken care of accordingly. Forrester Quinn said while he was willing to do the work, he wanted to have something in exchange. John Jannell read into record a portion of the letter from John Kelly ordering Forrester Quinn off of Town property. John Jannell clarified that drainage would only be permissible on Forrester Quinn's property, and Jim O'Brien said he was not comfortable ordering to abandon the outfall pipe if there would not be an improvement in another area. Steve Phillips felt that they needed to better understand the Town's plan, and Judith Bruce noted that the pipe itself was quite damaging. John Jannell said he would get clarification on how and when the Town would deal with the drainage, and Jim O'Brien suggested that the Commission could say that the pipe be abandoned once the Town addressed the drainage concerns. James Trainor asked if the Commission was comfortable with the loaming and seeding, and Judith Bruce felt that it was satisfactory. John Jannell noted that the Commission wanted another site visit, and John Jannell said they could schedule that for June 11, 2013. John Jannell said he would work with the applicant to get a plan showing what

was proposed. Forrester Quinn brought the previous plan to show what had previously been discussed, and Judith Bruce felt that it was a good reference. John Jannell stated that the applicant get a letter from the abutter, and noted that this was not a public hearing, and that the Commission could hear from the applicant again at the end of the month. Forrester Quinn said he would stake out the proposed trees and speak with Jay Putnam of Wilkinson Ecological Design about grouping the trees together. The Commission asked that John Kelly be included in the site visit for June 11th. Forrester Quinn reiterated that he would like to do the drainage work if it was permissible by the town. Forrester Quinn felt the end of June deadline would be fine.

Administrative Reviews

Joan Rubin, 14 Brick Hill Road. The proposed removal of a locust and stump. Work to be done by A to Z Treez. John Jannell explained that this was a storm damaged black locust whose stump was to be removed and the hole would be filled.

MOTION: A motion to approve this Administrative Review was made by James Trainor and seconded by Bob Royce.

VOTE: Unanimous.

Samuel Scialabba, 32 Harbor View Lane. The after the fact removal of 2 pine trees and pruning of trees and shrubs. John Jannell explained that this application was in response to an Enforcement Letter send back in April after it was determined that cutting had taken place without Conservation Commission approval. John Jannell said that after conducting an on-site he did not recommend approval, but wanted to speak with the homeowner. John Jannell was concerned that tree replacement would be needed, and Judith Bruce asked if this was something which should transition into an Enforcement Order. John Jannell explained that he wanted to speak with the applicant, and Judy Brainerd asked if the Commission should conduct a site visit. John Jannell explained that the Commission did not have right of entry to the property at this time, and that it may require re-vegetation. John Jannell felt the application should be turned down but wanted to speak with the homeowner to determine the next course of action. The Commission agreed to wait to until John Jannell spoke with the applicant.

Charles W. Silva, 10 Pershing Lane. The proposed pumping and filling of an existing cesspool. John Jannell stated that all of the new components of the proposed septic system were outside of Conservation Commission jurisdiction.

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

VOTE: Unanimous.

John Bimshas, 34 Thayer Lane. The proposed removal of 6 dead Locust trees and 2 Pitch Pines. John Jannell said that these were all standing dead, the property was well treed, and that he would make a note asking for the wood to be hauled out of Conservation Commission jurisdiction.

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

VOTE: Unanimous.

Nancy Burkert, 7 Harbor View Lane. The proposed removal of invasives and removal of broken and dead branches from shrubs. Work to be done by Wilkinson Ecological Design. John Jannell explained that the applicant had an approved Administrative Review for the hand pulling of grape which she had filed for since 2000, and was looking for help with this work. Jay Putnam of Wilkinson Ecological Design would be performing the work, and this was something which was approvable work under this type of filing. Steve Phillips noted that this was an optimum time to perform the work, and John Jannell said this cut and wipe method was something which Wilkinson Ecological Design had executed many times. Steve Phillips asked about the impact to water fowl, and John Jannell explained that while it was not included when the work would be done, an Administrative Review could not be conditioned. Judith Bruce pointed out that Red Wings were nesting now, and Judy Brainerd suggested that since the applicant was sensitive to the environment that they put in a note about nesting birds. Judith Bruce did not think that Wilkinson Ecological Design would perform the work if there were nesting birds on site. Steve Phillips inquired if there was a timing question on the Administrative Review Form and that perhaps there should be, and John Jannell said at this time there was not a question about time of year on the form. **MOTION:** A motion to approve this work was made by Steve Phillips and seconded by Bob Royce.

VOTE: Unanimous.

Judith & William Gardiner, 35 Payson Lane. The proposed removal of a leaning tree towards the house. Work to be done by Bruce White of Bravo Tree Company. John Jannell said this was a tree leaning towards the house which needed to be removed and recommended approval.

MOTION: A motion to approve this application was made by Bob Royce and seconded by Judy Brainerd.

VOTE: Unanimous.

Max Makowsky, 5 Deep Pond Circle. The after the fact installation of a fence.

Judith Bruce recused herself; Steve Phillips took over the meeting as vice-chair. David Lyttle of Ryder & Wilcox, Inc., was present. Steve Phillips read into record the description of the project, and noted that the main concern of the Commission was whether or not this would have been approved had it not been filed for as after the fact. John Jannell thought that it probably would have been approved, and noted that it was discovered during an on-site for an application for other work on the property. John Jannell passed around photos of the fence, noting the metal wire on the bottom which perhaps thwarted a dog from exiting the property. Bob Royce pointed to a spot on the plan asking if this was where it stopped, and John Jannell explained that the fence lined the property line, and though the property fronts the pond, the fence does not run parallel to the wetland buffer. John Jannell said it was difficult to determine where within the buffer zone the fence was located since it was not on a plan, but that the Commission could consider a fence under the Wetland Protection Act so long as that it did not create a barrier for wildlife passage. James Trainor asked if this was the only fence on the property and whether or not the remaining sides were open. John Jannell

noted there was a small guesthouse on the site, and David Lyttle said that it was the Administrative Review for Construction for a deck expansion filed by his office that lead to the discovery of the fence. David Lyttle said that there were additional fences on the property which did not act as a wildlife barrier. John Jannell recalled that a lot of the fencing was outside of Conservation Commission jurisdiction, and there was a good filter strip of highbush blueberry and native pond shore. Judy Brainerd was concerned that there was a lot of fence on site, and David Lyttle suggested that he could show it on a site plan. Bob Royce felt that somewhere down the line a record of the fence needed to be provided on a plan, and Steve Phillips asked if there was an open Order of Conditions for this site. David Lyttle said he could provide the Commission with a Revised Plan showing the fences on the site, and John Jannell felt the split rail fence did not thwart the wildlife passage along the pond front. John Jannell was unclear how far the fencing extended into the buffer zone, and Steve Phillips estimated about 15'. Bob Royce noted that the fence started from the house, and John Jannell suggested that the Commission hold off on voting on the Administrative Review until the fence was accurately shown on a site plan. The Commission agreed to hold the application.

Chairman's Business

Approval of the Minutes from the Meeting on April 2, 2013

MOTION: A motion to approve these minutes was made by Judy Brainerd and seconded by Bob Royce.

VOTE: Motion approved, Steve Phillips abstained.

Other Member's Business

Administrator's Business

The Commission discussed the site visits.

The meeting was adjourned at 9:17am.

Respectfully submitted,

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