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Orleans Conservation Commission
Town Hall, Nauset Room
Hearing Meeting, Tuesday, July 2, 2013

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

ABSENT: James Trainor; Nancy O'Mara, Associate.

8:30 a.m. Call to Order

For the purpose of this meeting, Philips Marshall will be a voting member.

Continuations

Last Heard 5/21/13 (BR1)

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. Bill Riley explained that he tried to send an alternatives analysis via e-mail to the Conservation Department, and passed around the information. Judith Bruce pointed out that all materials for continued agenda items needed to be submitted to the Conservation Department no later than the Thursday prior at 12pm. Bill Riley suggested that he could give an oral report or return the following meeting, and John Jannell explained that in lieu of the agenda and having just received the information, that the applicant continues the hearing for one week. Bill Riley apologized for the late materials.

MOTION: A motion to continue the hearing to July 9, 2013, was made by Jamie Balliett and seconded by Judy Brainerd.

VOTE: Unanimous.

Notice of Intent

Robert & Robin Bardwell, 14 Pond View Road. by East Cape Engineering, Inc. Assessor's Map 43, Parcel 11. The proposed removal of an existing dwelling, construction of a new dwelling, gazebo, & plantings. Work will occur within 100' of the Top of a Coastal Bank & within the Pleasant Bay A.C.E.C. Tim Brady of East Cape Engineering, Trevor Kurz of Kurzhaus Designs Inc, and Sam Southworth of SWS Services, were present. Judy Brainerd explained that she was a friend and a neighbor of the applicant, but could participate without prejudice. Judith Bruce inquired if she was an abutter, and asked if her participation was ok with Tim Brady. Judy Brainerd replied that she was not an abutter, and Tim Brady was fine with her participating in the hearing. Tim Brady went over the proposed plan, noting that the basement currently flooded and was not adequate for long-term year-round use. Tim Brady explained that this could not be done in its existing location, but that a gazebo was proposed within the current footprint of the existing house, and the current septic system for the existing house was to be re-used. Tim Brady noted that the Board of Health granted waivers so

that the building foundation could be closer to the septic system, therefore pushing the building as far from the resource area as possible. There was an overall improvement to the site within the 0-25' buffer and limited building was proposed in the 25-50' buffer. Tim Brady commented that they wanted to start construction of the new dwelling prior to demolishing the old dwelling and therefore timing the issuance of the occupancy dwelling for the new permit and the removal of the existing dwelling to be at the same time. Tim Brady noted that during the on-site there was a question about the asphalt at the bottom of the bank, and they were willing to take a mini-excavator and remove this material if the Commission wanted, or they could leave it in place. Judith Bruce felt the first thing that needed to be done was removing all new structure outside of the 50' buffer, and Tim Brady said that he was aware that this was a concern. Tim Brady suggested that he could speak with the owners, Judith Bruce asked for the deck and house to be outside of the 50' buffer, and noted that oaks and cedar trees were to be removed, and replacement trees should be offered. Tim Brady explained that the trees proposed to be removed were so that other trees could flourish, and explained that Sam Southworth, who was in the audience, could look to determine where and how additional trees could be provided. Judith Bruce asked for clarification about the gazebo, and Tim Brady said the entire building was to be removed and the gazebo would be constructed after its removal in the existing location. Steve Phillips asked if the house could be rotated to set it along either side of the property line. Tim Brady explained that the existing septic tank and pump chamber were located within the driveway, and were supposed to be at least 10' from the foundation, as well as the house being 25' from the property line. Tim Brady noted that the house could not be rotated without altering the septic system, whose tanks were already quite deep, or relocating the septic system, which would be a lot of work. Tim Brady suggested that he could square off the house to remove structure out of the 50' buffer. Steve Phillips asked if the paved walkway to the old front door would be coming out, and Tim Brady said it would be rearranged to access the gazebo. Steve Phillips suggested removing the paving on the bank, and Judith Bruce felt it would be better if removed. Tim Brady said he would comply with whatever the Commission recommended, and Steve Phillips asked if haybales and siltfence would be used along the rest of the work area. Tim Brady said that was their intention, and Jamie Balliett inquired about the plan for the existing shed, and if it would be replaced. Tim Brady said that it would be removed, and Trevor Kurz said it would be replaced at some point. Jamie Balliett thought the modification to square off the corner of the house and take it out of the 50' buffer was a good idea, and Tim Brady was concerned about the impact to the layout of the rooms. Trevor Kurz agreed, and Judith Bruce asked that they look further to determine how it could be kept out of the 50' buffer. Tim Brady went over the changes the Commission suggested, including modifying the patio and the house, removing the asphalt on the bank, and Bob Royce asked that the deck and the house be moved outside of the 50' buffer. Jamie Balliett asked for John Jannell's opinion on the staging that Tim Brady had suggested of keeping the existing house. John Jannell noted that this was a house located in a resource area to be removed, and the Commission needed to hear how it would be put back together, such as with a narrative or land management plan, and that a landscape plan was needed. Judith Bruce asked since the house was in the Coastal Bank and foundation material was to be removed, how the area would be mitigated and

stabilized. Tim Brady noted that the removal would be easy, it would be filled with sand, and the area would be planted similar to how the area looked. Judith Bruce commented that what existed was grass and lawn, and that they would be looking for a naturalized buffer. Judith Bruce thought that the Coastal Bank was to be naturalized, and Tim Brady said that right now they proposed a 15' buffer. Tim Brady noted that the applicant liked having lawn in front of their house, and Judith Bruce reminded him that this work was within the A.C.E.C., and that any work within this resource area needed mitigation and a landscape plan. Tim Brady pointed out that the 50' buffer came up to the building, and outside of the path the area was naturalized. Judith Bruce stated that at the end of the day a significant improvement to the resource area needed to be demonstrated. Tim Brady felt that removing the building from the resource area was significant, and Judith Bruce felt that work was a start. John Jannell noted that 1795' of building was proposed and 1205' was coming out, and asked about the number of trees coming out, if trees were to be planted, what the strategy to plant and stabilize the area would be, or if irrigation blankets would be used. John Jannell pointed out that there was a waterways license for the rock revetment, and asked if Tim Brady had made sure that there was no alteration to this license by doing the proposed work. John Jannell pointed out that the license did show the toe of the slab, and Tim Brady said he would speak with John Jannell regarding the licensing and the work. Judy Brainerd inquired how the elevation of the house would impact the area and the view, and John Jannell noted that the homeowner made a comment that some of the foundation may stay. Judith Bruce asked if the audience had any comments, and noted that NHESP had not issued their comments for this project. John Jannell thought that NHESP may have suggested conditions, and Tim Brady asked that the hearing be continued to July 23, 2013.

MOTION: A motion to continue the hearing to July 23, 2013, was made by Jamie Balliett and seconded by Jim O'Brien.

VOTE: Unanimous.

Robert Adamo, C/O Robert Michael LLC, 47 Briar Springs Road. by Ryder & Wilcox, Inc. Assessor's Map 51, Parcel 12. The proposed construction of a single-family dwelling; the installation of a Title V septic system & utilities; construction of a driveway; grading & landscaping; the pumping & abandonment of an existing cesspool; & the abandonment of the existing water line servicing the adjacent parcel. Work will occur within 100' of a Coastal Bank & Ditch, & within the Pleasant Bay A.C.E.C. David Lyttle of Ryder & Wilcox, Inc., and Robert Adamo, applicant, were present. David Lyttle said that an error had been made and Ryder & Wilcox, Inc. had referenced that work was proposed within the A.C.E.C., and the work was well outside of this resource area. David Lyttle went over the proposed project, noting that they would maintain a completely undisturbed 50' buffer, the 50-75' buffer would have lawn area, and the new septic system would be located outside of Conservation Commission jurisdiction. Judith Bruce asked if the Limit of Work and silt fence could be located outside of the 50' buffer line, and David Lyttle pointed out that the work limit was located outside of jurisdiction. Steve Phillips asked about the 20' minimum setback requirement, and David Lyttle explained that the Board of Health required that a septic system be located 20' from a full foundation wall, and that specific portion had to be a slab foundation as it was

located only 12' from the leaching area. Steve Phillips inquired if this would cause problems later with the system, and David Lyttle said no. John Jannell noted that a piece of correspondence from Pat & Jim Roberts, abutters to the project, had been received questions the size of the house and number of proposed bedrooms. John Jannell did not feel that this was a Conservation concern, and David Lyttle explained that the previous owner had filed with the Board of Health and had been grandfathered into constructing a 4 bedroom property on the site. Jim Robert, abutter at 51 Briar Springs Road, explained that he met with Robert Adamo this morning and discussed landscape buffering between the two properties. Jim Robert inquired if there would be mitigation below the 50' buffer zone as there was a lot of overgrowth. David Lyttle stated that while a standard plan note was on the proposed plan said that any work within the 100' buffer zone would have to come in front of the Conservation Commission, but that at this time Robert Adamo was not proposing any work within the 50' buffer. Jim Robert hoped that elevations were provided to determine if they would be staring at their new neighbor, and Judith Bruce explained while she was pleased that the neighbors were able to discuss their concerns about screening between the lots, this was not a Conservation Commission issue. David Lyttle noted he could e-mail the elevations to Jim Robert, and John Jannell asked that based on the discussion about plantings along the property line, whether there would be any additional landscaping proposed. Robert Adamo explained that he met with his landscaper the night before, and the view from the first floor faces the wetland, with the second floor facing the Robert house. David Lyttle pointed out jurisdiction, and Robert Adamo explained that while he may want to re-shape the back yard to install some lawn, that he would come before the Conservation Commission prior to any work commencing. John Jannell noted that the plan just called for loam and seed, and asked to submit foundation plants plans once they were determined. Robert Adamo explained that foundations plants would be in the front such as Cherry trees, as well as Cape Cod lawn and a shell driveway. David Lyttle reiterated that they understood that any changes to the plan within Conservation Commission jurisdiction required them coming in front of the Commission.

MOTION: A motion to close the hearing was made by Steve Phillips and seconded by Judy Brainerd.

VOTE: Unanimous.

MOTION: A motion to approve the site plan dated June 7, 2013, was made by Steve Phillips and seconded by Jim O'Brien.

VOTE: Unanimous.

Jacquelyn & Robert Moore II, 25 Primrose Lane. by Ryder & Wilcox, Inc.

Assessor's Map 57, Parcel 22. The proposed construction of a gabion revetment to stabilize an eroding Coastal Bank due to a failed fiber roll revetment. Work will occur on a Coastal Bank, Coastal Beach, Land Subject to Coastal Storm Flowage, & in the Pleasant Bay A.C.E.C. *Steve Phillips recused himself as he had a title interest in the project.* David Lyttle and Robert Moore, applicant, were present. David Lyttle went over the history of the project, explaining that in 2009 2 rows of fiber rolls were installed by Wilkinson Ecological Design, and within a month's time, due to storm events, the fiber rolls were damaged beyond repair. Since that time, the fiber rolls have been re-installed

3 times, demonstrating that the original project was in turn a failure. David Lyttle noted that the applicant wanted to use Primrose Lane for access, and that all of the abutters who were on Primrose Lane up to Barley Neck Road had been notified of the proposed work. Judith Bruce inquired the status of this road, and David Lyttle said it was a private way to be used for construction access for the fiber roll removal and installation of the gabions. Judith Bruce inquired if there was a formal association that oversees the road, and Robert Moore explained that it was an informal group that gathered funds for the road maintenance. Judith Bruce noted that a letter from an abutter had been received and circulated asking the Commission to approve the work. David Lyttle noted that there were additional abutters at the hearing who would want to speak, and explained that 6 rows of gabions 3' tall were proposed, 1.5' of which would be exposed. This work would be done with a skid steer to provide the least amount of damage to the beach, with a plate over the marsh to protect it, and the work taking one week. David Lyttle pointed out that there were several successful gabion projects north of the site, all of which had not seen evidence of damage to the beach or marsh. Round stones were proposed, extending in front of the large cedar right on the property line, and built in a manner to create steps over onto the beach. Judith Bruce commended the applicant for trying the soft solution. John Jannell noted that before public comment was taken, a letter was read into record from Steve Phillips of 12 Primrose Lane in support of the proposed work. John Jannell explained that during the on-site the Commission discussed end scour, particularly at the Primrose side, which had not been a concern on the previous Order because the Fiber Rolls ended on the Moore property. John Jannell reiterated that an Order did not grant property rights, and asked that based on the summation of the proposed work that the applicant had the right to work on Primrose. John Jannell asked that any Order issued should require the applicant to deal with end scour, that nourishment by the applicant be at the toe of the bank, and where the steps over the baskets would be located. David Lyttle explained that because the boxes were 2' long, they could be turned into steps and part of the revetment. David Lyttle met with one of the neighbors who was concerned about scour, and noted that they were committed to cleaning up all of the cobble and concrete blocks. David Lyttle explained that Robert Moore owned the fee in this way, and intended to improve the access. Judith Bruce inquired if the gabions would be covered and replanted, and David Lyttle said no, it did not seem appropriate for the resource area. Judith Bruce noted that it had been successful in the past, and David Lyttle suggested that they could cover and plant as a one-time event. David Lyttle pointed out that it would end up on the beach and in the marsh, and Judith Bruce noted that it had held in the past. David Lyttle explained that if there were not significant storm events then it may be ok. John Jannell pointed out that there was grass growing successfully up through the fiber rolls, and that covering may be a good option. John Jannell was not sure if the neighbors wanted additional treatment, and that given the healthy fronting marsh, time of year restrictions, such as work only to occur from November 1 to May 1, may be an option. Judith Bruce was uncomfortable permitting work on shared property without further notification to the abutters, and John Jannell reiterated that while all abutters had been properly notified, an Order of Conditions granted no property rights. Jamie Balliett inquired about the extent of the notification, and John Jannell felt that a comprehensive filing had been properly submitted. Elaine Flanigan, abutter at 190 Barley Neck Road, explained that

she was located south of the proposed gabion structure. Elaine Flanigan explained that she had a 30' natural access to the marsh which abutters would use because no one would go down Primrose Lane because it was too steep, and this access was between the existing cedar and pear trees. Elaine Flanigan read into record a letter going over her concerns, noting that she was disappointed to see the structure curve back at the bank edge on the southern side, as she felt this would create significant problems in the event of a nor'easter. Judith Bruce pointed out that a curved end is a design trait to reduce end scour. David Lyttle said that based on the comments thus far, he could create a detail of how the area would be impacted, noting that there would always be potential for disturbance. Judith Bruce suggested a requirement for renourishment, and John Jannell asked to show the existing footpath, as well as the cedar and pear trees. John Jannell asked if the path could be relocated, and Robert Moore said that it had been their intention to re-direct the traffic down the right-of-way. John Jannell noted that the Commission was still waiting to hear comments from NHESP and have DEP issue a file number, and Jamie Balliett asked for the plan to show the existing fiber rolls and where the gabions would be located on the plan. Judith Bruce asked for details on the end, and David Lyttle reiterated that the Commission wanted to show the path to redirect traffic, detailed sections of where it ends, and to have it covered and planted. Elaine Flanigan pointed out that she did not object to people using her land, and John Jannell asked if there was a possibility that the stairs would be built and they were not used. John Jannell asked if the Commission was acceptable of the proposed stair design, and Robert Moore felt that this creation of the stairs would divert people towards the correct right of way. David Lyttle said he would speak with the owners on Primrose Lane, as well as consult with Elaine Flanigan to have these issues buttoned up. David Lyttle asked that the hearing be continued to July 23, 2013.

MOTION: A motion to continue the hearing to July 23, 2013, was made by Jim O'Brien and seconded by Philips Marshall.

VOTE: Unanimous.

Edward & Elizabeth Daly, 20 Driftwood Lane. by Coastal Engineering Company, Inc. Assessor's Map 27, Parcel 28. The proposed construction of fiber roll shorefront protection. Work will occur within 100' of the Edge of Salt Marsh, on a Coastal Bank, & in Land Subject to Coastal Storm Flowage. Robert Michniewicz of Coastal Engineering Company, Inc, was present. Robert Michniewicz explained that the site had been previously approved to have fiber rolls installed, and this proposal was to repair the existing fiber roll system, as over the years the area has been susceptible to large storms. Robert Michniewicz went over the existing site conditions, noting that the coconut fibers were gone, and the filter fabric remained in place from where it had been installed 20 years prior. Robert Michniewicz noted that this would be built in the same location to the same slope, going from 12" diameter coconut rolls to 20" rolls, and that they would be put into metal cages. Judith Bruce explained that this modification would make them a hard structure, as fiber rolls were strictly biodegradable. Robert Michniewicz said they were going to reutilize the anchors, and they were proposing stainless steel cable or nylon to be covered with sand fill and beach grass or another comparable species. Robert Michniewicz pointed out that the beach was in good shape, with either end well covered. The existing path would provide access for the

site, and they would not be getting close to the property lines. Steve Phillips pointed out that the filter fabric on site was not biodegradable, and it should be replaced. Robert Michniewicz said it would be removed, and Steve Phillips inquired what time of year the work was proposed to be done. Robert Michniewicz said it would be as the Commission deemed it to be, and Steve Phillips inquired if beach grass was presently growing in that area. Robert Michniewicz said the area was sparsely vegetated, and Steve Phillips asked if there were additional plantings the Commission could suggest besides beach grass. Robert Michniewicz said they were open to suggestion, and John Jannell suggested a mixture of salt-tolerant grasses. Steve Phillip noted that Note 4 on the site plan stated "as approved by engineer," and asked for clarification on that note. John Jannell noted that during the on-site the Commission saw that the previous fiber roll project last 20 years and the applicant had good success with American Beach grass. Over the past winter the beach grass was all gone, and suggested that this project be a straight replacement of what had existed. John Jannell noted that end scour had not been a concern, and thought it was probably because of the existing grade. Robert Michniewicz explained the original project proposed transects, and John Jannell explained that the movement of glacial boulders would not be permitted. John Jannell asked if they would be able to work around them, and Robert Michniewicz felt they could be worked around. John Jannell noted that during the on-site the Commission discussed restoring the path after the work was completed. John Jannell explained that they were still waiting for a letter from NHESP and a DEP file number, and Robert Michniewicz asked for the hearing to be continued to July 9, 2013, to make the plan modifications including removing the changes and clarifying the plan notes.

MOTION: A motion to continue the hearing to July 9, 2013, was made by Jamie Balliett and seconded by Jim O'Brien.

VOTE: Unanimous.

Jim O'Brien left at 9:51am.

Kevin & Marcia Doherty, 4 Duck Pond Lane. by Blue Flax Design. Assessor's Map 28, Parcel 153. The after the fact filing for unauthorized cutting, filling, & grading in a Bordering Vegetated Wetland, mitigation of disturbed areas, & management of invasive species. Work will occur in a Bordering Vegetated Wetland, within 100' of the Edge of a Bordering Vegetated Wetland, & within 100' of the Edge of Critchett's Pond. Theresa Sprague of Blue Flax Design, Jamie Veara of Zisson & Veara, and Kevin Doherty, applicant, were present. Theresa Sprague went over the existing conditions on site, noting the progression of the invasives since the unauthorized cutting, and how the proposed site plan would remedy these concerns. Theresa Sprague pointed out that although fill had been brought on site and was proposed to be removed, it had not been put in a location subject to NHESP. Theresa Sprague explained the goals of the plan, which included managing existing aggressive plants, remove the fill brought into the buffer strip, create a buffer strip adjacent to the wetland, manage and dispose properly of invasives, installing a split rail fence to prevent mowers from entering buffer zone, and creating a 4' wide path to the pond. Theresa Sprague discussed the monitoring protocol for the area, and discussed the Land Management Plan which had been submitted to the Commission. Theresa Sprague requested that the existing flagpole

remain, and discussed the replanting effort which would take place, as well as the removal of border privet. Theresa Sprague explained the photos from the Land Management Plan were close ups demonstrating the regrowth of the cut species. Theresa Sprague noted that the edge of pond had been delineated June 13th, and due to significant rainfall, the area had since flooded and was mostly underwater. Theresa Sprague said that it was still quite wet where the proposed plant material was to be installed, and Judith Bruce noted that despite the significant rainfall, water levels were still down and they could anticipate them to be higher and closer to the proposed plantings. Theresa Sprague noted that there was a historic edge but was not sure if it had been delineated. Judith Bruce noted that the canopy species were on the side as opposed to the center of the area, stating that the public viewshed was from Brick Hill Road, and that it was one of the things which the Commission was concerned. Theresa Sprague explained that she had not seen stumps where the red maples were removed, and would provide additional trees within the buffer strip. Judith Bruce knew that the area would recover, but that the nesting habitat would take 10 years to reestablish. Theresa Sprague agreed that the shrubs had been severely degraded, but that most of the shrubs had been inundated with fox grape. Theresa Sprague stated that the shrubs were being delivered to the site today, but that she would not be able to plant them until the water receded. Judith Bruce commented that the BVW restoration area had been extended to the north, and inquired why not to the south. Theresa Sprague said they were trying to follow a line along the edge of the property, and Judith Bruce suggested following contour line 54. Theresa Sprague commented that the goal was to create a buffer strip of 4,000', varying in width with its narrowest area at 11', its widest at 42', with an overall average of 35'. Judith Bruce explained that the Commission had asked for the restoration of the 50' buffer to the resource area, and did not suggest taking down the flagpole as it could be a risk. Theresa Sprague said the area should be allowed to naturalize, with a mow in late March, and installing the split rail fence to prevent mowers in the area. Judith Bruce inquired the location of this fence, and Theresa Sprague pointed out the line of green to prevent encroachment. Judith Bruce asked if the vegetated buffer was still proposed to be mowed, and Theresa Sprague explained that although prescribed burns were the best management practice, mowing is the second best, and reiterated that it would be done in late March. Judith Bruce commented that the Commission did not advocate undisturbed areas to be mowed, and Theresa Sprague said this was the vegetated buffer strip transitioning to a mix of Little and Big Bluestem. Judith Bruce was concerned about which areas on the plan were to be mowed, and Theresa Sprague explained that mowing was only proposed in the transition area, and John Jannell asked if this was the transition area between the green and yellow colored areas. Theresa Sprague said the area shown in yellow was where the mowing would occur, and the area in green was mostly shrubs. Judith Bruce suggested waiting until a year had passed before mowing the site, and Theresa Sprague said that mowing was not recommended until the second growing season. Judith Bruce did not think there was a need for a split rail fence when there was a green living fence present, as the split rail fence could inhibit wildlife. Jamie Veara asked if this was the north side along the property edge where this could be just a living fence, and Judith Bruce said yes, continuing as far east of the northern border, following along the 54' contour. Jamie Veara felt that Theresa Sprague did an excellent job outlining

the proposed work, and that if the 54' contour line was followed, it became a little disjointed. It was their goal to create more of a natural line, and was not sure what the benefit would be to follow the 54' contour line as opposed to doing what was presented on the current plan. Jamie Veara said that in terms of the natural buffer, he knew that his client was interested in installing a 4' split rail fence along the property line, and did not think it would cause disruption to the performance standards of the Conservation Commission. Judith Bruce suggested going east rather than west, and John Jannell passed around photos showing an existing fence that was not located on the plan. Judith Bruce felt thickly planted viburnum along the property line would be good to delineate it, and John Jannell did not think that the existing fence followed the property line. Judith Bruce suggested putting in stakes where the fence was proposed, and Jamie Veara agreed. Steve Phillips asked if the loam would be removed from within the BVW, and Theresa Sprague said that the soil was to be reseeded with native seed mixes, and the existing lawn mix would be removed. Steve Phillips asked if they would start at the 56' contour line and move towards the pond to remove loam, and Theresa Sprague confirmed this. Steve Phillips asked if the path shown on the plan was accurate, and Theresa Sprague said she would like to work the path around existing vegetation, and it would be marked and flagged as an open area no wider than 4'. Steve Phillips was concerned about mowing to the ground and asked how the area would be delineated that early in the season, and if they were relying on the skill of the machine operator. Theresa Sprague said she would rely on the shrubs delineating the line, and Judith Bruce noted that the applicant would need to file an Administrative Review to determine if mowing was warranted at that time, not an automatic mowing. Jamie Balliett asked for clarification again of the area to be mowed, and Theresa Sprague explained that the area in yellow was to have the fill removed and re-seeded with native grasses and wildflowers. Jamie Balliett asked about the area between the 54'-56' contour, and Theresa Sprague noted that anything between the buffer strip and the house was to remain. Theresa Sprague explained that 40 cubic yards of fill had been put in between the 0-50' buffer, but felt that it would be more detrimental to remove it with a machine versus replant the area, and re-seed over the fill. Jamie Balliett asked if the area from the light green lawn to the right was going to be mowed on a regular basis, and Theresa noted that no herbicides or pesticides were to be used. Judith Bruce asked that no fertilizers be included in that, and Theresa Sprague said $\frac{1}{4}$ " compost would only be used if necessary, and had recommended a soil test. Steve Phillips asked when the work was proposed to start, and Theresa Sprague explained that due to anaerobic soil conditions, she had to wait until it stopped raining otherwise the nursery stock would suffer shock. Judith Bruce inquired why buttonbush was not planted since it thrived in underwater conditions. Theresa Sprague explained that they were waiting to plant the spicebush and arrowwood, and John Jannell clarified that this Notice of Intent applicant is for planting within the buffer strip, not the restoration work under the Enforcement Order. John Jannell stated that the applicant had an executed and approved restoration plan for the Enforcement Order, and any Order to be issued for the planting of the buffer strip including potential mowing could include a special condition to discuss mowing after two years. John Jannell wanted a better understanding of why the existing fence was not shown on the plan. John Jannell explained that he contacted Lynn Hamlyn of Hamlyn Consulting after walking the site to

move a wetland flag 5' further inland, and she agreed that this needed to be moved. This would bring the resource area further into the privet hedge and require modification to the wetland line shown on the current plan. Theresa Sprague submitted the wetland delineation data sheets which Lynn Hamlyn filled out, noting that on the site plan the orange line was the delineated BVW and the red dashed line was the water level on June 13th. John Jannell asked if this was the Pond level or if it was Isolated Land Subject to Flooding, and Theresa Sprague said she would speak with the consultant. John Jannell was not sure if the Commission had given the applicant proper guidance on the 54' contour line and what they wanted to see on a site plan, or whether the Commission wanted the split rail fence. Theresa Sprague explained that the fence was following the green line shown on the plan, and John Jannell noted that abutter correspondence from Nancy and Robert Burkert had been received explaining their affinity of the border privet hedge. Judith Bruce said she would like to see additional canopy species proposed, and Theresa Sprague said that while they were looking into that, there was a significant existing canopy, and was not sure where the Commission would like to see additional trees. Judith Bruce said that in the past when the public looked from the wetland you could not see the house or lawn, and within 15 years this area would be restored, but in the meantime additional species were needed other than the proposed smaller species. Theresa Sprague was unaware of any canopy species having been removed, and showed Kevin Doherty where additional trees on the plan could be installed. Nancy Burkert, abutter at 7 Harbor View Lane, explained the history of the site, noting that they have an existing view easement over 4 Duck Pond Lane. Nancy Burkert explained that they strongly objected to the installation of the fence and the arrowwood, since any vegetation installed could block their view, and the fence was not needed since there were existing rocks delineating the property line. Steve Phillips was not clear where the view easement was located, and Nancy Burkert showed the Commission how the view easement crossed the Doherty property. Jamie Veara trusted that the Commission was aware that while they could recognize that there was a view easement between the two owners, it was outside of their jurisdiction to take that into consideration. Judith Bruce noted that the Commission tried not to get involved, particularly when they were looking at the installation of plantings, and asked that the Commission not be put in the middle. Jamie Veara felt the change of the fence to the east would be easy, and Judith Bruce questioned whether the viburnum could be staggered along with rocks to establish the line to keep the interests of the act at the forefront. Jamie Veara said the applicant would also be amenable to a row of vegetation, and would look into potentially staggering it as a possibility. John Jannell noted that the Commission could allow the applicant time to consult and modify the plantings, and Jamie Veara said he would look over the abutter's letters. Judith Bruce understood that there was a historical privet hedge, but was hard pressed to allow it to continue. Nancy Burkert asked if the proposed fence to the east would be within the view easement, and Judith Bruce thought it hard to tell given the two different maps. Theresa Sprague showed Nancy Burkert on her site plan a rough idea of where the proposed fence would be located, and Steve Phillips asked if viburnum could be mixed with the other plants to soften the look. Theresa Sprague felt this would be possible, and Steve Phillips pointed out the area where he wanted to soften the view was in front of the house facing the resource area. Jamie Veara explained that the preference was

for a split rail fence, and Theresa Sprague said that while the plan mentioned boulders, the applicant wanted a fence. Nancy Burkert noted that there were naturally placed stones along the property line, and Theresa Sprague explained that they were talking about two different fence lines, one of which was along the property line, and the other which was along the upper portion. Judith Bruce noted that the Commission discouraged fences to the water because they deterred wildlife passage, and Theresa Sprague reiterated that they would look to change the fence line south of the planted, with additional plantings to protect the view from the resource area. Jamie Veara did not think they would be able to meet the deadline for revised plans for the following meeting, and Theresa Sprague concurred. Judith Bruce did not feel that the continuation of this hearing impeded the other planting work, and Jamie Veara and Theresa Sprague asked that the hearing be continued to July 23, 2013.

MOTION: A motion to continue the hearing to July 23, 2013, was made by Jamie Balliett and seconded by Judy Brainerd.

VOTE: Unanimous.

Enforcement Order

Kevin & Marcia Doherty, 4 Duck Pond Lane. The discussion of the Restoration Plan required under an Enforcement Order for the alteration of land within 50' of the Edge of Wetland and Critchett's Pond. Update on progress and compliance. Theresa Sprague felt that they had covered this during the earlier hearing, noting that the hand-picked plants were on site waiting to be planted once the water receded. Judith Bruce reminded the applicant that the area would flood often, and Theresa Sprague said that the plants picked to be installed were happy in the water, but they could not be planted underwater initially otherwise they would not survive. Jamie Veara noted that they were running afoul of the date the plants needed to be installed, and Judith Bruce understood that there was no control over weather conditions. Judith Bruce asked that within 24 hours of drying out when Theresa Sprague felt conditions were best, that the plants be installed. John Jannell suggested a vote that the plants be installed by July 22, 2013, or sooner, and wanted to make the record clear that they had approved a restoration plan and that this work was taking place under an Enforcement Order.

MOTION: A motion to move the deadline for installation of the plants under the restoration plan to be by July 22, 2013, was made by Steve Phillips and seconded by Jamie Balliett.

VOTE: Unanimous

Theresa Sprague said they would be in touch with John Jannell about the progress, and Judith Bruce noted that the Commission would put off the discussion of fines until after the restoration plantings had been installed.

Jamie Balliett left at 10:55am.

Request for Determination of Applicability

Lisa A. Cohen, 165 Tonset Road. by Ryder & Wilcox, Inc. Assessor's Map 27, Parcel 55. The after the fact installation of a larger deck to replace an existing deck attached to a single family dwelling. Work occurred within 100' of the Edge of an Inland Wetland. David Lyttle said that this was the after the fact removal of a greenhouse and the

construction of a new deck over existing lawn. David Lyttle asked that since she had removed the greenhouse that the applicant be allowed to move forward, and Steve Phillips inquired if the shed shown on the plan was still there, and Judy Brainerd asked if it had been permitted. David Lyttle said that the shed was still there, and was not sure if it had been permitted. David Lyttle explained that Ryder & Wilcox, Inc. had represented the previous owner when they upgraded the septic system, and at that time the greenhouse and shed were on the property, and had since received a Certificate of Compliance. Steve Phillips said he thought he was going to request mitigation, but he felt that the backyard looked great and there was no reason for additional plantings. John Jannell explained that this application came in as a response to an Enforcement Order issued to the applicant for a deck constructed without permission. John Jannell explained that the deck replacement was an expansion from what had existed, and Judith Bruce commented that the removal of the greenhouse as mitigation would have probably been what the Commission would have requested should this have come in prior to work commencing on site. Judith Bruce explained that any additional work on site needed to be filed for ahead of time. David Lyttle noted that he did pay twice the fee as required for after the fact filings.

MOTION: A motion to issue a Negative Determination was made by Steve Phillips and seconded by Bob Royce.

VOTE: Unanimous.

Revised Plan

Lesley Weller, 62 Barley Neck Road. The proposed construction of an addition to a single family dwelling has been revised to include the after the fact installation of a gas service. Work will occur within 100' of the Edge of Wetland. Stephanie Sequin of Ryder & Wilcox, Inc. was present. Stephanie Sequin said that the line had been moled in to the basement, and when the work was being proposed, the contractor went ahead with the work without a signed contract. Stephanie Sequin explained that during the hearing process someone had inquired about the potential for an oil leak, and therefore the owner decided to switch to gas. Judith Bruce appreciated the plan revision, and Steve Phillips asked about the cost to remove the oil tank. Stephanie Sequin said this was something which was to be determined.

MOTION: A motion to approve the revised plan was made by Judy Brainerd and seconded by Philips Marshall.

VOTE: Unanimous.

Administrative Reviews

Cindy Kawie, 36 Gibson Road. The abandonment of an existing sewage disposal system and the installation of a new sewage disposal system, gas line, and underground utilities. Stephanie Sequin explained that the applicant voluntarily asked for the septic system to be moved from the 25' buffer to outside of the 100' buffer, and relocate the water line so that she could install a gas line. Stephanie Sequin said that this work was taking place on the upland side in an open grass area, and could all be done without disturbing the existing vegetation. Judith Bruce noted the moving of the septic system was a good thing, and commented that the plan said it was going from a 2 bedroom to 3 bedroom system. Judy Brainerd felt this was a lot of work for an

Administrative Review, and Judith Bruce said that most of the work was outside of Conservation Commission jurisdiction. Stephanie sequin said that alterations were being done to the interior of the building to make it a 3 bedroom, and they had pushed all of the components from the buffer towards the road. John Jannell reiterated that the work was being done in existing lawn area, and Steve Phillips inquired if there was an open Order of Conditions on the property. John Jannell said no, and Judith Bruce felt that since there was not an increase in net area that it was a non-event. John Jannell said that there was no increase in deck, floor area, or exterior space. Stephanie Sequin said that if the applicant was to go up another flight or install a bay window that the applicant would return with a filing.

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

VOTE: Unanimous.

John F. Whitesides, 123 Rock Harbor Road. The after the fact installation of a shed on blocks. John Jannell explained that a letter had been sent regarding this unpermitted shed, and showed the Commission a photo of where the shed was on the property. John Jannell noted that the shed had been located outside of the A.C.E.C., and Judith Bruce asked if it was located within the 50' buffer zone. John Jannell explained it was outside of the 50' buffer, and Judith Bruce felt that while it was not a significant concern, the applicant should be made aware that the area did flood, and gasoline should not be stored in the shed. John Jannell said he would make a note of that to make the applicant aware of flooding concerns.

MOTION: A motion to approve this after the fact application was made by Bob Royce and seconded by Philips Marshall.

VOTE: Unanimous.

Judith Kelly, 46 Pershing Lane. The proposed removal of 3 oak trees and the pruning of 1 oak tree leaning over house. John Jannell explained that this was due to gall wasp, and the pruning was for an oak leaning over a second story. Judith Bruce inquired if the area was well treed and if planting was necessary. John Jannell noted that a tree was being left directly adjacent to those being removed, and at this time planting was not needed.

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

VOTE: Unanimous.

Chairman's Business

Other Member's Business

Administrator's Business

Update on FEMA Map Adoption schedule and effective date for Conservation Commission.

John Jannell explained that the Commission had asked specific questions about the FEMA maps, and stated that the appeal period had not started. Once the maps were

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adopted by FEMA, they would then notify the town. John Jannell said the town expected that in December of 2013, and once the Commission was made aware of these changes, the regulations would reflect the changes to the maps. Judith Bruce asked about when the Commission would take into consideration the new maps, and Steve Phillips asked how the current regulations were defined. John Jannell said that there was reference to the FEMA official maps, and that once they are voted in can be used by the applicant. Bob Royce thought that the flood elevation was 13, and John Jannell said that it varied throughout towns.

The meeting was adjourned at 11:19am

Respectfully submitted,

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