

**Orleans Conservation Commission**  
**Town Hall, Nauset Room**  
**Work Meeting, Tuesday, March 11, 2014**

'14 APR 8 2:25PM  
*CD Moore*  
ORLEANS TOWN CLERK

**PRESENT:** Judith Bruce, Chair; Steve Phillips; Vice Chair; Bob Royce; Judy Brainerd; Rich Nadler, Associate; Kevin Galligan, Associate; John Jannell, Conservation Administrator.

**ABSENT:** James Trainor; Jim O'Brien; Jane Hussey, Associate.

*For the purpose of today's hearing, Rich Nadler and Kevin Galligan will be voting members.*

***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.***

8:30 a.m. Call to Order

**Revised Plans**

**David Wiener, 72 Keziah's Lane.** by East Cape Engineering, Inc. Assessor's Map 49, Parcel 53. The proposed removal of an existing licensed pier and float, and construction of a new pier and seasonal float has been Revised to leave the existing piles in place and bolt 6x6' timbers to the existing pilings in order to raise the structure as originally proposed. Work will occur within a Salt Marsh, Land Under Water, Land Subject to Coastal Storm Flowage, and within the Pleasant Bay A.C.E.C. Tim Brady of East Cape Engineering, Inc., was present. Tim Brady explained that the applicant wanted to complete the work himself, and therefore the plans had been revised to reduce the amount of construction. Judith Bruce pointed out that this widened the proposal, and Tim Brady said that it would widen the frame. Tim Brady explained that this was the best way to ensure that the weight of the structure came down on the pier as opposed to creating bending. Steve Phillips suggested bolting on the inside of the pier, and Tim Brady noted that the walkway between was already narrow. Rich Nadler suggested one on the inside and one on the outside, and Tim Brady thought that this may be a possibility. John Jannell pointed out that the 4' rule which did not allow for docks and piers to be wider than 4' measuring from the outside of the structure, and that the Order of Conditions issued for this work had met that requirement. Tim Brady suggested that he could speak with the owner to make sure that it would be no wider than the existing, and Bob Royce felt that there was not a structural issue since the length would strengthen the pier. Tim Brady explained that where it was bolted could cause bending, and that this proposed work would lessen the impact because they would not be removing the old pilings. Tim Brady suggested a condition that it not be any wider than 4', and John Jannell explained that the Commission would not want to approve this site plan since it did not reflect the 4' wide rule. Judith Bruce suggested that their approval could be contingent upon receipt of a revised plan, and Tim Brady said that he could provide the Conservation Department with a revised plan by the end of the week. Bob Royce was concerned about the disturbance from digging in the bolt,

and Tim Brady commented that the hole would be dug next to the existing piling. Judith Bruce inquired if there was already going to be disturbance if this was an increase, and Rich Nadler inquired about how many timbers would be installed. Tim Brady counted 6 pairs, and Steve Phillips asked if there was any work to be done on the float. Tim Brady had not looked into it, and John Jannell reminded the applicant that there was a Time of Year restriction that stated "all work associated with this OOC shall only be allowed to take place between April 15-June 15 of any calendar year." Tim Brady felt that this proposed work created less of a disturbance than what had been approved, and Judy Brainerd noted that there was less heavy equipment required. Bob Royce concurred, and Steve Phillips stated that as long as the 4' requirement was met in the revised plan.

**MOTION:** A motion to approve this work contingent upon receiving a plan that showed no more than a 4' width was made by Bob Royce and seconded by Steve Phillips.

**VOTE:** Unanimous.

### **Proposed Maintenance Work**

**Stop & Shop, 10 Route 6A.** The Proposed Filter Dam Maintenance Work under the On-Going Maintenance Condition for the Certificate of Compliance for Order SE 54-878. Dave Michniewicz of Coastal Engineering Company, Inc., and Eugene Dubis of J.W. Dubis & Sons, were present. Dave Michniewicz explained that work to the existing filter dam had not been done in quite some time, and that the management company for Stop & Shop, Keypoint Properties, had contracted JW Dubis & Sons to complete the work. Dave Michniewicz felt that this work was acceptable under the on-going conditions associated with this Order of Conditions, and went out on site with the Conservation Administrator to see the current state of the property. Judith Bruce questioned why nothing had been done for 7 years, and Dave Michniewicz explained that Coastal Engineering Company, Inc., had not been under contract with Stop & Shop for a long time. Judith Bruce commented that she had been on the Conservation Commission back in 2007 when this came in front of the Commission with the annual maintenance spelled out, and was disappointed to see that this work had not been followed through accordingly. Judith Bruce pointed out that fines were something which they may consider, and Dave Michniewicz completely understood her concern. Dave Michniewicz commented that Coastal Engineering Company, Inc. had not been under contract for this applicant in quite some time, and Rich Nadler asked if the Standards could be reviewed to determine why fines would not be cumulative from 2008. Steve Phillips felt that the Commission shared the responsibility to ensure that the work was being done, and Judith Bruce noted that it was not the Commission's responsibility to remind applicants to do the required work. John Jannell went over the history of the filings on site, and Judith Bruce recalled that the removal of phragmites on the adjacent parcels had been part of the work to be done. Bob Royce recalled this as well, and John Jannell said that he could look over the approved plan. Judith Bruce asked about the parking lot work, and John Jannell explained that this was under another Order of Conditions. John Jannell commented that SE 54-878 was for the filter dam itself, and that there had been multiple expansions of the site under different filings. Judith Bruce thought that it would be best to put together a plan which demonstrated the proposed work as well as the existing site conditions, and Dave Michniewicz was not aware of any changed which may have been made to the filter dam. Kevin Galligan pointed out that

the history of this filing shows that it was amenable to abutting property owners, and recommended that they be incorporated as well, doing the work systematically. Steve Phillips inquired if the upper pond being pumped into the lower pond would create a surge into Town Cove, and Dave Michniewicz felt that it would be something similar to a heavy storm typical of the area. Steve Phillips asked that a temporary filter be installed prior to the work being done before the water went into Town Cove, and Dave Michniewicz explained that they would be placing straw bales to keep heavy sediment out, and cover the inlet with the filter fabric. Steve Phillips pointed out that by pumping down to the cove directly the applicant was bypassing the pond filtration system, and Dave Michniewicz pointed out that at this time it was not being filtered because the dam was being topped over. John Jannell explained that he required the applicant to notify DMF to let them know about the work, since they do the testing at the pipe. Steve Phillips thought it would be better to do the testing at the upper pond before it created a problem, Dave Michniewicz explained that they did not have source control from the parking lot. Judith Bruce pointed out that the pond was to act as the control, and Bob Royce recalled that the parking lot had a filter system installed as a control. Dave Michniewicz was unsure of the filtration system for the parking area since Coastal Engineering Company, Inc., was not always the engineering firm of record throughout the entire permitting process. John Jannell suggested that the Commission could go out on site, since the pipes were visible in pond 2, and they could better understand the proposed work. Rich Nadler inquired if the pumping into town cove would exacerbate the controls in place for a storm event, and Judith Bruce felt that was something which needed to be figured out. Dave Michniewicz explained that Eugene Dubis had a contract through Keypoint Partners, the property management group over the Stop and Shop property, and that Eugene Dubis hired Coastal Engineering Company, Inc. Judith Bruce felt it would be best to get the property manager to come to the meeting. Eugene Dubis explained that there were water quality structures on site, a baffle wall system which cleaned the water prior to it going into the pond, and Bob Royce inquired when it was installed. Eugene Dubis recalled that it was when Stop and Shop was reconstructed, and said that he had a plan from VHB, the prior engineer of record. Judith Bruce inquired if the baffle wall system had been maintained, and Eugene Dubis said that according to Keypoint Partners it was cleaned every year. Eugene Dubis commented that when the pond was to be pumped, it would be pumped from the top down, dropping it down to access the inlet pipes. Judith Bruce felt that comments from DMF still needed to be heard prior to acting on this application, and Eugene Dubis inquired if the Commission wanted a water sample of the upper pond at this time. Judith Bruce said yes, and Eugene Dubis commented that road runoff from the state highway impacted this pond more so than Stop and Shop. Carolyn Kennedy, Head of the Water Quality Task Force, recalled that the Commission had approved the transfer of this runoff water into Vault One, diverting it under the Windmill. Judith Bruce was not sure if the work done from the Windmill was included with the highway work, and Carolyn Kennedy suggested as part of this process determine if the volume had changed. Steve Phillips asked about the filter fabric to be cleaned and reinstalled, and Dave Michniewicz explained that it would be all new filter material. Eugene Dubis noted that the crushed stone would be removed with a vacuum truck and new stone would be installed, and Judith Bruce asked if all the material would be removed from the site.

Eugene Dubis explained that the material would be transported to the dewatering site, where the water would be let out from the material, and would then be removed. Rich Nadler inquired if the scope of the work required a new plan and a new filing, and Steve Phillips asked what of the annual maintenance in the Certificate of Compliance they would be addressing. Judith Bruce inquired if the replacement of the filter fabric was to be an annual event, and Eugene Dubis said he did not know. Eugene Dubis noted that there was a lot of visual inspection with this work, and Judith Bruce noted that this area plugged frequently. Rich Nadler inquired if there were other ways to clean the area, and suggested a monitoring process. Dave Michniewicz was not sure of the different options available, and Eugene Dubis inquired if additional work was to be done on the adjacent parcels, who would be paying for it, since he was only under contract with Stop and Shop. Judith Bruce felt he should speak with Stop and Shop. John Jannell stated that based on the discussions taking place, he would write to Stop and Shop about what the Commission needed, reading into record the On-Going Conditions listed in the Certificate of Compliance. John Jannell pointed out that Stop and Shop did not have a contractor retained for this work, and would include a condition that the applicant respond within 30 days of receipt of the letter. Judith Bruce asked that a file search be conducted to determine whether or not additional revisions or additional conditions had been incorporated. John Jannell noted that he could also get and circulate information about the stormwater runoff in relation to the Windmill property. Dave Michniewicz suggested that he could look at the property Thursday night during the predicted rain storm, and Judith Bruce stated that the file search may also reveal the frequency of water testing. Kevin Galligan pointed out that once feedback from DMF and the adjacent property owners had been received, this issue would need to be addressed sooner than later. John Jannell pointed out that the Commission asked Dave Michniewicz for a current water quality test, and Rich Nadler suggested that as a failure of the maintenance, determine whether additional water documentation was necessary. John Jannell clarified that some of the work which the Commission wanted to take place would take the form of an enforcement letter, and Judith Bruce clarified that they wanted to move forward, as well as determine what had been done and what needed to be done. Eugene Dubis inquired whether or not he or the Commission was to address Stop and Shop, and John Jannell explained that he would draft a letter, copying Keypoint Properties, and Eugene Dubis confirmed that no work was to happen until they returned in front of the Commission. John Jannell explained that they would keep it on the agenda, and Dave Michniewicz explained he would be in touch during the interim. Steve Phillips asked about the phragmites removal, and Eugene Dubis said that while they would need permission from the other owners to determine where the work would stop, they were planning to use a long stick excavator. John Jannell asked if everything was going to be removed that could be reached or the dam itself, and Judith Bruce stated that there was a balance between how much needed to come out versus how much needed to stay. Eugene Dubis said they would only go from where they could reach at the dam. The Commission agreed to have John Jannell reach out to DMF, and that this would be on the agenda the following week.

#### **Other Business**

**Orleans Fresh and Marine Water Quality Task Force**

- Meet with Larry Minear to discuss draft Renters Brochure
- Review request from WQTF to support Renters Brochure cost with funds from the Wetlands Protection Filing fees account (vote required)

Carolyn Kennedy and Larry Minear of the Water Quality Task Force were present. Carolyn Kennedy explained that the Commission had received a final version of the renters Brochure, and wanted to know if the Commission had any comments or concerns regarding the content or overall appearance of the Brochure. Judy Brainerd asked that a new bullet be provided for the septic system information, and Rich Nadler pointed out that the bottom two photos had question marks. Steve Phillips asked what the cost estimates were for this production, and Carolyn Kennedy broke down the funding for 15,000 copies to be produced. Carolyn Kennedy explained that they were asking for the Commission to expend \$1,000.00 for the production of this Brochure. John Jannell explained that the Commission could support this funding since it was for the support of the administration of the Wetlands Protection Act; one of the things for which these funds may be used.

**MOTION:** A motion for finding this expenditure appropriate as supporting the Wetlands Protection Act was made by Judy Brainerd and seconded by Kevin Galligan.

**VOTE:** Unanimous.

**MOTION:** A motion to fund this proposal contingent upon approval by the Board of Selectmen was made by Steve Phillips and seconded by Kevin Galligan.

**VOTE:** Unanimous.

Carolyn Kennedy and Larry Minear thanked the Commission for their support.

**Administrative Reviews**

**Michael Smith, 88 Route 6A.** The proposed construction of an addition. John Jannell explained that this was work which had been previously approved under Administrative Review, and had since been modified to reduce the proposed work within the buffer zone, resulting in less of an impact. John Jannell recommended that the Commission could approve this without further filing.

**MOTION:** A motion to approve this application was made by Bob Royce and seconded by Kevin Galligan.

**VOTE:** Unanimous.

**Deidre Root, 166 South Orleans Road.** The proposed removal of 4 trees. Work to be done by After Hours Tree Service. John Jannell explained that 3 of the trees were storm damaged, and the 4<sup>th</sup>, a Sycamore Maple, had a carpenter ant infestation.

**MOTION:** A motion to approve this work was made by Kevin Galligan and seconded by Bob Royce.

**VOTE:** Unanimous.

**Orleans Yacht Club, 39 Cove Road**. The proposed placement of 2 kayak racks and the installation of a light pole. *Bob Royce, Judy Brainerd, and Rich Nadler recused themselves.* Judith Bruce announced that there were not enough Commission members present for the 4 person quorum to be able to vote on this matter. John Jannell said the applicant was aware of this, and would bring this application back in front of the Commission the following week.

**Chairman's Business**

Approval of the Minutes from the Meeting on March 4, 2014

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

**VOTE:** 5-0-1; Motion approved, Judith Bruce abstained.

**Other Business**

**Discussion on Chapter 196A-Regulations**

**- Review suggested changes to code**

John Jannell explained that this is a draft format of the proposed changes to the regulations. John Jannell went over the procedure for this change, and went over the proposed changes. The Commission brought up their concerns as John Jannell outlined each proposed change, and John Jannell said he would bring these back in front of the Commission with their suggestions. The Commission thanked John Jannell for his time.

**Conservation Commission Lands: Management Plan Status List**

**-Discuss Management Plan updates**

John Jannell explained that a list of the 14 properties under the Conservation Commission's control had been circulated, and said what was needed was to update the needs and assessment of each of these properties. Judith Bruce asked the Conservation Agent to determine how he would best like to handle this, and John Jannell asked the Commission to consider this correspondence for now.

The Commission discussed the site visits.

The meeting was adjourned at 11: 47am

Respectfully submitted,

Erin C. Shupenis, Principal Clerk, Orleans Conservation Department