

**Orleans Conservation Commission**  
**Town Hall, Nauset Room**  
**Work Meeting, Tuesday, March 25, 2014**

'14 APR 8 2:25PM  
*C. May*  
ORLEANS TOWN CLERK

**PRESENT:** Judith Bruce, Chair; Steve Phillips; Vice Chair; Bob Royce; James Trainor; Jim O'Brien; Rich Nadler, Associate; Kevin Galligan, Associate; John Jannell, Conservation Administrator.

**ABSENT:** Judy Brainerd; Jane Hussey, Associate.

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

8:30 a.m. Call to Order

**Continuations**

Last Heard 3/18/14 (JH1)

**Kenneth J. & Albarosa Cuccina Gandolfi, 84 Captain Linnell Road.** by Ryder & Wilcox, Inc. Assessor's Map 32, Parcel 53. The proposed removal of an existing deck & construction of a screened porch attached to an existing single-family dwelling. Work will occur within 100' of the Top of a Coastal Bank, Edge of Wetland, Stream, & Land Subject to Coastal Storm Flowage. David Lyttle of Ryder & Wilcox, Inc, was present. David Lyttle announced that a letter from NHESP had not been received yet and asked to continue the hearing for one week.

**MOTION:** A motion to continue the hearing to April 1, 2014, was made by Bob Royce and seconded by Jim O'Brien.

**VOTE:** Unanimous

**Certificate of Compliance**

**Stephen Ellis (2009), 210 Rock Harbor Road.** The request for a Certificate of Compliance for an Order of Conditions for the installation of a new septic system to serve an existing dwelling, the pumping and abandoning of an existing cesspool, the construction of an addition and deck to an existing garage, and the removal of invasive species and replacement with native species. John Jannell reported that the mitigation and septic work had been completed, but that the work shop and addition had not been built, and the owner had no intention to build. John Jannell commented that by issuing this Certificate of Compliance, the applicant would have to re-file should he want to pursue the addition at a later time.

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

**VOTE:** Unanimous.

**Revised Plan**

**Donald & Karen Bachman: Order SE# 54-2187, 2 Mayona Circle.** The Order for the removal of an existing dwelling & construction of a single family dwelling; the pumping & abandonment of existing cesspools; the installation of a new septic system, & grading & landscaping has been revised to allow for a flat area adjacent to the walkout portion of

the basement and expand the limit of work. Work will occur within 100' of the Top of a Coastal Bank & within the Pleasant Bay A.C.E.C. David Lyttle went over the proposed changes to the site plan, and Judith Bruce inquired if the work was just for a walkway as opposed to a patio. David Lyttle explained that it was to be Cape Cod Lawn all along, and that the applicant wanted to create a flat area to be able to traverse from the approved walkout. Judith Bruce inquired if the applicant would lose protection outside of the floodplain. John Jannell went over the history of the filing, commenting that the Commission, while out on their site visit, had noticed that the Salt Marsh was being mowed. The Commission asked as mitigation that the applicant stop mowing in the resource area, and create a 25' no mow zone. John Jannell pointed out that this area where the mitigation was proposed was a lot co-owned by the abutter, and that while the applicant was willing to commit to the mitigation, the other owner was not agreeable to this condition. Judith Bruce noted that while the Commission did not generally mandate removal of pre-existing lawns, mowing of the marsh was not something the Commission could allow to continue. Judith Bruce suggested that the applicant could return with additional mitigation before changes to a Revised Plan were approved, and John Jannell suggested a letter would be a good start to the process. Rich Nadler inquired whether or not the approved mitigation was enforceable, and if so, could require the applicant to complete the work. David Lyttle thought that the no-mow area within the resource area was enforceable, and Judith Bruce thought that the approved mitigation within the buffer zone may be difficult to enforce. David Lyttle thought that it may require a site visit to see how it was being dealt with, and that the applicants were willing to work with the Commission. John Jannell inquired if both homeowners could meet to determine what could be done, and suggested that the Commission hold this agenda item until they were able to speak to both owners. Steve Phillips asked if there was a planting plan which had also been incorporated with this Order of Conditions, and John Jannell said no. David Lyttle thought that a meeting would be something which he could arrange, and John Jannell said he would work with David Lyttle to determine when a site visit could be arranged to this site.

### **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. Christopher Lowd, Property Manager for Keypoint Properties, was present. John Jannell reported that Coastal Engineering Company had submitted a Construction protocol to DMF, but as of this morning they had not responded to this submission. John Jannell also commented that the applicant had put Coastal Engineering Company, Inc, under contract, and wanted to hear from DMF prior to the Commission making any decisions. Christopher Lowd introduced himself, and Judith Bruce commented that two of the Commission's significant concerns were why this work has not been done since it was required to be done annually, and going forward, what the work would consist of, since they did not want to create more problems. Kevin Galligan asked if Coastal Engineering Company was under contract for both the annual and quarterly work, and Christopher Lowd said both. Kevin Galligan wanted to emphasize to the representative that the Commission wanted this work addressed as soon as possible, and inquired if the Commission should also contact DMF. John Jannell said he would follow up with a

phone call to DMF to determine if they had received their materials from Coastal Engineering Company, and Judith Bruce said that the sampling of the pools was something which could be done right away. John Jannell asked for the Commission to provide the representative with guidance, and Steve Phillips explained that the Commission was concerned about the presence of hydrocarbons. Judith Bruce asked that both chemical as well as nutrient counts be sampled, and Kevin Galligan suggested that they get the baseline work done. Judith Bruce pointed out that there was concern that if water was released that it may need some form of cleaning or filtering, and Christopher Lowd said this would depend on the water quality. John Jannell stated that the water testing could be done while they were waiting to hear from DMF, and Christopher Lowd said he would speak with Coastal Engineering Company, Inc. Judith Bruce asked for insight into why work had not been done, and Christopher Lowd explained that he had only just begun with the company. John Jannell said this would remain on the agenda.

#### **Administrative Reviews**

**David McConney, 4 Megs Lane.** The proposed removal of a storm damaged red maple. Work to be done by A to Z Treez. John Jannell reported that this was a red maple located down the path to the pond, and most of the wood would remain.

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

**VOTE:** Unanimous.

#### **Chairman's Business**

Approval of the Minutes from the Meeting on November 5, 2013,

**MOTION:** A motion to approve these minutes was made by Steve Phillips and seconded by Bob Royce.

**VOTE:** Unanimous.

Approval of the Minutes from the Meeting on March 11, 2014

Judith Bruce announced that these minutes were not available for the Commission's approval.

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

John Jannell explained that David Lyttle wanted to address the Commission on an item which was not listed on the agenda. John Jannell explained that the recent Order of Conditions issued to 2-4 Ewing Drive included a Time of Year special condition that no work take place between April 1<sup>st</sup>-November 1<sup>st</sup> to protect the Salt Marsh. David Lyttle stated that Jeff Norgeot was no longer the contractor for this work, but rather E-Z Doze It of Wellfleet would be doing the work. David Lyttle explained that since the hearing process, DEP had determined that a new Chapter 91 Waterways license was not needed for the proposed work. The applicants wanted to start to do the work immediately, but would mean that they would go 3-4 weeks beyond the Time of Year Restriction of April 1<sup>st</sup>. Judith Bruce understood that this was a time sensitive project, but that this had not been listed on the agenda, abutters were not notified that this

would be discussed, and no decision could be made by the Commission regarding this potential change to the Order of Conditions. David Lyttle pointed out that a plan revision did not require abutter notification, and Judith Bruce pointed out that the public often checked the agendas to make sure there was nothing which may impact his or her's property. David Lyttle commented that a ramp would be built on the Coastal Bank to remove the machinery from the beach, with the area to be restored, and Judith Bruce was uncomfortable with these changes since they were unfamiliar with the new process which would be used by the new contractor of record. David Lyttle pointed out that they had just received their Order of Conditions, and that the Contractor of record would have to sign an Acknowledgement of Contractor Form prior to the start of work. Kevin Galligan was uncomfortable discussing this application any further given the constraints of Open Meeting Law, and John Jannell explained that the engineer had come to him well after the agenda had been published and could be altered. John Jannell pointed out that the applicant could begin work November 1<sup>st</sup>, and Steve Phillips inquired if there was a significant risk for summer storms causing erosion at this site. The Commission suggested that they could put this on the following agenda for discussion, and David Lyttle said that he would contact the Conservation Department should the applicants wish to proceed that way. The Commission was concerned about the change in contractor after having a presentation by the original person who would complete the work, and stated that while they did not want to impede a person's right to price out the proposed work, it was important to have the Contractor who would be doing the work at the meeting. David Lyttle thanked the Commission for their time.

Rich Nadler inquired if the Commission had an approved list of installers, and John Jannell explained that while they did not have a list, the Commission typically required that a contractor be qualified by the Commission prior to commencing work on site, particularly when an applicant changed contractors after the hearing process.

The Commission discussed the site visits.

The meeting was adjourned at 9:23am

Respectfully submitted,

Erin C. Shupenis, Principal Clerk, Orleans Conservation Commission