

*C. May*

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**Orleans Conservation Commission**  
**Town Hall, Nauset Room**  
**Work Meeting, Tuesday, May 13, 2014**

**PRESENT:** Judith Bruce, Chair; Bob Royce; James Trainor; Jim O'Brien; Judy Brainerd; Rich Nadler, Associate; Kevin Galligan, Associate; Jane Hussey, Associate; John Jannell, Conservation Administrator.

**ABSENT:** Steve Phillips, Vice Chair.

*For the purpose of today's hearing, Rich Nadler & Jane Hussey 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

**Continuations**

Last Heard 4/15/14 (RN1)

**Minglewood Homes, 27 Franz Road.** by Clark Engineering LLC, Assessor's Map 16, Parcel 5. The proposed lifting of an existing single family dwelling; demolition of an existing foundation; construction of a new foundation; expansion of & replacement of decks; & second floor expansion. Work will occur within 100' of a Salt Marsh, Coastal Dune, & Land Subject to Coastal Storm Flowage. *For the purpose of this specific hearing item, Kevin Galligan will be voting in lieu of Rich Nadler.* Dave Clark of Clark Engineering, Jen Exner of Wilkinson Ecological Design, Tim Smith of Minglewood Homes, and Jim O'Connell, Wetland Specialist, were present. Jen Exner went over the proposed changes to the vegetation plan, and Jim O'Connell presented his findings on whether or not there was a Coastal Landform delineation done to determine the resource areas on site. Jim O'Connell went over the report submitted to the Conservation Department, providing a detailed explanation that there was clearly dune sand on the seaward side of the road. Jim O'Connell explained that the landward limit of the Coastal Dune from the DEP website indicated that the Coastal Dune was located on the seaward side of Franz Road. In addition to not finding any Dune sands on the ridge, there were no landward forms such as mounds or hills indicating as such. Judith Bruce questioned the green lines indicated on the report, and John Jannell noted that there were only 3 figures provided with the reports given to the Conservation Commission. Jim O'Connell apologized, noting that there were 12 figures in total, and Kevin Galligan inquired if he concurred with the plans showing the Edge of the Coastal Dune. Jim O'Connell concurred, and stated that he would e-mail the additional figures to the Conservation Department. Judith Bruce replied that a full report would be important to have for the record, and asked about the other delineations done on abutting sites. Jim O'Connell said that he did not want to trespass and therefore did not go onto the additional sites. Dave Clark clarified that the Commission had inquired about the presence of an A.C.E.C. with the creek, and that it was now shown on the plan. Dave Clark pointed out that two plastic chambers had been added to the yard to collect the discharge from the sump pump, and that the basement slab was 0.5' higher than adjusted groundwater. Dave Clark did not think that the sump pump would be

used frequently, and Judith Bruce was concerned about the potential for the oil tank to leak, or chemicals from stored items in the basement to leak, and be pumped through the sump pump into the buffer zone. Dave Clark explained that a sump pump was not required, and that the oil tank would be replaced with a double walled tank. Kevin Galligan questioned if the PVC pipe coming out of the northeast corner was part of the sump pump, and Dave Clark clarified that the sump pump discharged to a 2" pipe on the ground, and was not sure about the pipe from the northeast corner. The Commission inquired about changes to the septic system, and Dave Clark explained that there were not enough suitable soils to add a bedroom, but that the most recent inspection of the existing septic system showed it to be working well. Judith Bruce inquired if the foundation would be higher, and Dave Clark stated that the basement slab and top of foundation would increase 2.1'. Judith Bruce inquired about the total increase in elevation for the house, and Dave Clark clarified that it would be 7.9' higher. Tim Smith pointed out that a hip roof had been designed to break up the visual effect of the house, with a red cedar roof to blend in the new work. John Jannell asked for clarification on the driveway since the Wilkinson Ecological Design and Clark Engineering Plans were in conflict, and Dave Clark explained that the paved driveway was to stay during the construction process, and would be removed at the end and changed to gravel. Kevin Galligan inquired which portion of the deck had been reduced, and Dave Clark said the northeast side. Rich Nadler inquired about the depth of the sand found during the borings, and Jim O'Connell replied that he typically went 1'. Kevin Galligan inquired if it would be a traditionally poured foundation, whether the floors were to be finished, and if it was feasible to install drywells. Dave Clark said it would be a traditional foundation, with a cement floor and sump pump, with the material at the top suitable for infiltration. Kevin Galligan inquired if they had considered raising the building on pilings, and Dave Clark explained that they wanted to be able to have storage space on the lower levels.

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

**VOTE:** Unanimous.

**MOTION:** A motion to approve the Site Plan dated 5/2/14, Land Management Plans, Project Narrative, and Restoration Plans by Wilkinson Ecological Design, all dated 5/2/14, and Construction Narrative dated 3/31/14, with the condition that the driveway be converted from asphalt to gravel after construction was made by Jim O'Brien and seconded by Judy Brainerd.

**VOTE:** Unanimous.

### **Certificate of Compliance**

**Greg & Patricia McGauley, 1 Sandbar Lane.** The request for a Certificate of Compliance for Order SE 54-2234 for the replacement of dug-in timber steps with new dug-in timber steps & an elevated stairway. John Jannell reported that the stairs had been constructed and the Order was in compliance.

**MOTION:** A motion to issue a Certificate of Compliance was made by Bob Royce and seconded by Judy Brainerd.

**VOTE:** Unanimous.

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**Harold Tubman, 9 Meadow Way.** The request for a Certificate of Compliance for Order SE 54-1986 for the proposed construction of additions to an existing dwelling. *Rich Nadler recused himself.* John Jannell asked that the Commission take the Administrative Review for the proposed construction of a shed up with the Certificate of Compliance request. John Jannell explained that the Administrative Review request was for the construction of a shed in the general area where the proposed garage was to be installed. John Jannell noted that the Commission could vote to issue the Certificate of Compliance and close the Order, acting on the Certificate of Compliance first.

**MOTION:** A motion to issue the Certificate of Compliance was made by Bob Royce and seconded by Kevin Galligan.

**VOTE:** Unanimous

**Harold Tubman, 9 Meadow Way.** The proposed construction of a 10x16 shed.

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

**VOTE:** Unanimous.

*Rich Nadler returned.*

**Harry Ahlheim, 38 Briar Springs Road.** The request for a Certificate of Compliance for Order SE 54-1421 for the construction of an addition on to an existing single family home. John Jannell noted that this was an Order of Conditions from 2000 which was built and in compliance.

**MOTION:** A motion to issue this Certificate of Compliance was made by Bob Royce and seconded by Judy Brainerd.

**VOTE:** Unanimous

**Vincent Ollivier & Kevin Galligan, 22 Great Oak Road.** The request for a Certificate of Compliance for Order SE 54-2080 for the removal of a portion of an existing dwelling and the construction of additions to a single-family dwelling. *Kevin Galligan recused himself.* John Jannell reported that his inspection found that all of the work was completed and that the Commission could issue the Certificate at this time.

**MOTION:** A motion to issue this Certificate of Compliance was made by Bob Royce and seconded by Judy Brainerd.

**VOTE:** Unanimous

Judith Bruce recommended that the Commission take Carl Trevison's application out of order prior to the fine discussion.

**Carl Trevison, 25C Doane Road.** The proposed removal of 2 leaning trees, and the hand removal of bittersweet and ivy. Work to be done by Mark Anderson. Carl Trevison, applicant, was present. John Jannell reported that Carl Trevison kept a tree inventory for the condominium association and that the proposed removal was something which the Commission could approve under this type of filing, with the ivy and pachysandra to remain.

**MOTION:** A motion to approve this Administrative Review was made by Jim O'Brien and seconded by Jane Hussey.

**VOTE:** Unanimous.

**Enforcement Items**

**Stop & Shop, 10 Route 6A.** The discussion of the issuance of fines for the incomplete work under the On-Going Maintenance Conditions set forth under the Certificate of Compliance for Order DEP # SE 54-878. Andrew Singer of Singer & Singer, legal representation for the applicant, Richard Boiardi of Keypoint Partners, and David Michniewicz of Coastal Engineering Company, Inc., were present. John Jannell went over the history of the current Enforcement situation on site which has led to the current hearing for fines. John Jannell pointed out that the Commission had received the letter sent to the applicant explaining that fines of \$200 for the first offense and \$300 per day thereafter were something which the Commission may consider due to non-compliance by the applicant. Andrew Singer explained that he had worked with the applicants during the early 2000's permitting stage, noting that the maintenance slipped during the proposed gas station phase on site. Andrew Singer commented that there was about \$100,000.00 worth of work going into the detention ponds which would begin next week and continue for 2-3 weeks. After this was completed, there were two contracts which would be implemented: one contract for the Engineer, Coastal Engineering, and the second for maintenance work to begin in May. Andrew Singer presented copies of the draft contracts for the record to the Conservation Commission, and apologized that the maintenance work had slipped. Andrew Singer understood the Commission's right to impose fines, and asked that the commission consider prospective fines as opposed to those for work which had not been completed in the past. Judith Bruce pointed out that there had been a clear understanding of the work which was supposed to be done on site, noting that untreated water had gone into Town Cove. Judith Bruce felt that fines were necessary, and although she did not want to fine \$300/day for the 5 years in which work had not been completed, fines were necessary in order to ensure that work was done on site. Kevin Galligan agreed that the lapse of time in which work had not been completed was a concern, and that Town Cove was a focused resource area. Kevin Galligan suggested a fine of \$2,000.00, and Judith Bruce suggested a daily fine until the work was completed on site. Kevin Galligan noted that the work could've begun the day in which it was approved, but that they did not expedite this process but rather put it into the general workload schedule. Rich Nadler inquired what the approximate cost of maintenance on a quarterly basis was, and Richard Boiardi explained that they spent about \$18,000/year on maintenance between the contractor and the engineer. Rich Nadler pointed out that the 7 years in which work was not completed they saved \$140,000.00, and Andrew Singer noted that the current work was going to cost \$100,000.00. Rich Nadler replied that there was an unintentional net savings of \$40,000.00, and therefore a \$2,000.00 fine was too little. Andrew Singer pointed out that the cost today versus the cost 7 years ago would have been different, and Judy Brainerd was concerned about the lack of urgency, and recommended fining from the date of the first meeting regarding this situation. Judith Bruce suggested the date of the first letter, which Andrew Singer pointed out was April 23<sup>rd</sup>. Bob Royce said that while he did not have a feeling of when the fines should start, but when he had sampled the water 10 years ago, there were problems at that time. Judith Bruce inquired about the start date for the work, and Richard Boiardi replied May 19<sup>th</sup>. James Trainor inquired how long the work would take, and Richard Boiardi stated 2-3 weeks. Jane Hussey inquired what the maintenance schedule would be if work began in May, and Richard Boiardi said the quarterly work would be done in May, October, January, & July. Jane Hussey requested that this be part of the record, and John Jannell noted that it was in

the contracts which Keypoint Partners had submitted. Jane Hussey suggested that the client put funds into escrow to ensure that the work was completed, and suggested that the account be kept at \$100,000.00. John Jannell noted that the Commission had the option to require the applicant to have funds in the form of an escrow agreement, and Jane Hussey clarified that those funds would be there to support the work to be done. Judy Brainerd asked that a letter be provided stating the work had been completed, and Andrew Singer explained that reporting was a requirement listed in the contract. John Jannell pointed out that the continuing conditions had been set with the Certificate of Compliance, which was not something that could be amended, and Judith Bruce pointed out that today's discussion was to be on fines. Judith Bruce stated that two kinds of recommendations had been discussed so far: one that would start today and continue until the work was completed, and the second which would start from April 23<sup>rd</sup> and continue until work was completed. Dave Michniewicz pointed out that when he initially approached the Commission with Eugene Dubis to do the work, a time frame had been set to complete the work, and the discussion with DMF resulted in the time frame being changed. Andrew Singer comprehended that fines were warranted, and asked that they be limited to starting today until the either the start or the termination of work on site. Rich Nadler's issue with fines not being imposed for the work that had not been done had resulted in a net savings for the applicant since the cost of the work would outweigh the cost for the work to be completed. Jim O'Brien felt the applicant should be fined starting today, noting that the Enforcement Order was an incentive to action, and that the fines continue until work was completed as an incentive to expedite the process. Judith Bruce was concerned about motivating the applicant to avoid the lapse in the work which needed to be done, and James Trainor suggested an immediate \$5,000.00 fine, another fine if within 30 days work was not completed, thus allowing one week for the applicant to start, 3 additional weeks to complete the work, with a \$300.00 per day fine to be levied until work was complete. Judith Bruce was concerned that this figure did not add up with the existing timeline and proposed fine structure if they started from April 23<sup>rd</sup>. Judith Bruce suggested the Commission look at the cost of water sampling at Town Cove over the next 10 years, and John Jannell pointed out that since the Commission had become aware of the problems on site, the applicant had done their best to communicate with everyone. John Jannell pointed out that the Enforcement Order was a good way to achieve compliance, and suggested that the Commission could initially fine the applicant starting today, with a daily fine until a date certain. John Jannell noted that the date certain for quarterly reports to be received would now commence again. Jim O'Brien inquired about this fee, and John Jannell explained that the initial fine would be \$200.00. Jane Hussey asked if the daily fine thereafter would be \$300.00, and John Jannell said yes. Kevin Galligan emphasized that this was an opportunity for the representative's team and applicant to become a good partner to the Town of Orleans. Bob Royce suggested that the applicants pick a date to finish the work which was reasonable, and Jim O'Brien felt that the fines, while small, were an incentive to complete the work.

**MOTION:** A motion to direct the Conservation Administrator to issue fines to Stop & Shop beginning today at \$200.00, and \$300.00 thereafter until the work was completed was made by Jim O'Brien and seconded by Jane Hussey.

**VOTE:** Unanimous.

The applicant's team thanked the Commission for their comments and time.

**MOTION:**

**VOTE:**

**Administrative Reviews**

**Kathy Gordon, 3 Skaket Circle.** The proposed removal of a Tupelo growing up into wires. Work to be done by A to Z Treez.

**MOTION:** A motion to approve this work was made by Jim O'Brien and seconded by Judy Brainerd.

**VOTE:** Unanimous.

**Leroy Richardson & Anna Morse, 76 Rock Harbor Road.** The proposed pumping & filling of a cesspool. Work to be done by Minot Reynolds.

**MOTION:** A motion to approve this Administrative Review was made by Jim O'Brien and seconded by Judy Brainerd.

**VOTE:** Unanimous.

**Bill Sargent, 63 Old Field Road.** The proposed removal of one leaning / falling Oak on the Coastal Bank. Work will be done by the applicant.

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

**VOTE:** Unanimous.

**Request to Use Funds**

Request to spend up to \$750 from the Sea Call Maintenance account for Compost and Rototilling of the Sea Call Community Garden. John Jannell noted that this was an annual request for which the Sea Call Gardeners had the necessary funds.

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

**VOTE:** Unanimous.

Request to expend up to \$2050 from the Repair/Maintenance Public Property account for maintenance of the Sea Call Farm House. John Jannell explained that this was for the replacement of a pipe after a clogged drain had been discovered, and that a replace to fund the replacement the floor which had been removed would be forthcoming. Rich Nadler inquired if additional quotes to repair this problem were required, and John Jannell reported no.

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

**VOTE:** Unanimous.

**Other Member's Business**

**Chairman's Business**

Approval of the Minutes from the Meeting on November 12<sup>th</sup>, 2013.

**MOTION:** A motion to approve this set of minutes was made by Jim O'Brien and seconded by Jane Hussey.

**VOTE:** Unanimous.

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Approval of the Minutes from the Meeting on November 19<sup>th</sup>, 2013.

**MOTION**: A motion to approve this set of minutes was made by Jane Hussey and seconded by Jim O'Brien.

**VOTE**: Unanimous.

### **Administrator's Business**

Keziah's Lane Road Committee. Review letter of concern to Fire Chief RE: Wildfire  
John Jannell explained that a letter from the Keziah's Lane Committee had been circulated to the Commission, and after speaking with the Town of Orleans Fire Chief, could engage the Deputy Forest Fire Director if the Commission wanted to proceed. Judith Bruce felt that the opinion of a Forest Fire Manager may be beneficial, especially if there was a problem and Rich Nadler noted that Mayflower Point also had a similar concern. Jane Hussey pointed out that the previous Conservation Administrator had noted the importance of dead trees and their habitat for other critters, and that the area may benefit from signage stating "No Smoking" or the times in which it was open. John Jannell pointed out that the property was closed after dark, and James Trainor suggested having a patrolman on duty after dark. Kevin Galligan pointed out that Bill Clark had grants available for Wildfire Management, and felt that the second opinion would be beneficial to determine what species needed to be removed. Judith Bruce felt it was a question of the amount of fuel a fire may have, and John Jannell said that he would reach out to see if they could have an expert render an opinion.

The Commission discussed the site visits.

The meeting was adjourned at 10:10am

Respectfully submitted,

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