

Orleans Conservation Commission  
Nauset Room or Via Zoom  
Hearing, Tuesday, May 16<sup>th</sup>, 2023

  
ORLEANS TOWN CLERK

**PRESENT:** Chair Ginny Farber, Vice Chair Drusilla Henson, Clerk Jerry Wander, Member Walter North, Member Bob Rothberg, Member Mike Brink, Associate Member Judith Bruce (via Zoom), Associate Member Ken Johnson & Conservation Agent John Jannell

**ABSENT:** Member Ron Mgrdichian, Associate Member Maia Ward

8:30 a.m. Call to Order

**New Business**

Meet with Tom Biebighauser, Wetland Ecologist and Wildlife Biologist, regarding implementation of Wetlands Restoration at Putnam

Tom Biebighauser and Ian Ives were present via Zoom. Mr. Jannell introduced Tom Biebighauser and Ian Ives. He briefly reviewed the proposed scope of work.

Mr. Ives was thankful for the opportunity to make a case for the restoration and active management of these wetlands. Mr. Ives reviewed some of the work they've already done elsewhere on the Cape.

Tom Biebighauser shared his screen to present his report and reviewed the plans in detail. He reviewed the objectives of the project and the species the wetland restoration would support.

Mr. North asked for clarity on what it is the Commission was acting on today. Mr. Jannell responded, it's to hear and accept Tom's final report, if there are any questions on the report now is the time. Mr. North said there's a lot of considerations that interact with our regulatory review.

Mr. Jannell noted the depth of groundwater and potential ease of expanding the resource areas because of that. Is there consideration for the reuse of any spoils for A and O soil layers that may come out to be put at the bottom of wet meadows to help them perform. Mr. Biebighauser responded that organic soil could be used in the farm plots and then sandy soils used for the wetlands and the sandplains because if there are too many organics it would regrow the trees that would shade out the pollinators.

Ms. Henson asked, does clearing impact the heat signature of the property and would it have an impact on the saltmarsh and saltwater wildlife nearby. Mr. Biebighauser said the species that rely on sunlight are struggling, but yes it would warm up the ground, but we want more sunlight on the ground.

Ms. Bruce said there seems to be no specific proposal for going forward. She said it seems like you're looking at two vernal ponds. She was worried about the warming of the pond. She was concerned about the concept of a wet meadow, Cape Cod tends not to support wet meadows. She said she was on board with developing sandplain grassland but it's not clear to her that it would be possible. She said her final concern is what's involved in getting it established and then maintaining this.

Maia Ward joined the meeting Via Zoom at 9:15 a.m.

Mr. Biebighauser responded that this is a specific proposal with areas that have been identified on the ground for action. We can build wet meadows on this site, it's not something

we are guessing at, we have the information needed to move forward with a project that will meet our objectives. As far as maintaining the grasslands and wet meadows, it can be done by maintaining groundwater near the surface, periodic prescribed fire, and/or an occasional mowing. Mr. Ives said, the wet meadow component is an extension of the improvements of the wetlands themselves. What we have now are wetlands that are not performing, they have low species diversity, they've been hugely disturbed.

Ms. Bruce said in terms of a specific proposal, to her it includes a site plan and exactly what elevations we are going to. That's what I'm referring to in terms of what's going to be happening. She said she thought the proposal is a bit aggressive.

Mr. Jannell said if we advance toward a regulatory hearing we would like to know what the proposal will need to permit the project.

Ms. Farber asked for public comment.

Rick Francolini, 7 Barney Wy, expressed how fortunate we are to have expertise of this magnitude focused on our property. He said if there are concrete concerns about expansion this would be a good time to address them so Ian and Tom can provide answers and the public can get answers.

David Lyttle said he was speaking as someone who comes before the Commission regularly, he suggested they embrace the project and use your regulations to get something like this to move forward.

John Lipman stated this project really impresses me. Given it's next to a working farm supporting pollinators is a terrific idea.

Peter Jensen, Monument Rd, Chair of Agg Council, said on behalf of all the farmers this is an unbelievably powerful opportunity to show Agriculture and Conservation as allies for one another and to have experts like this is an amazing opportunity.

Carol Alper, 116 South Orleans rd., works with pollinator pathway of Cape Cod. She said the national pollinator pathway is going to recognize Cape Cod Pollinator Pathway as one of the top 15 in the country. She stated this is a tremendous opportunity to put the Cape on the map for doing this type of work.

Betsy Furtney, Pochet Rd, has been working in this town with invasive plant species for over 30 years. She asked the Commission to use their regulatory power to expand the project to its maximum. When you're working in an area that has been as degraded as this property you need to propose something this large. This is an opportunity for you to show that the Town of Orleans thinks biodiversity and pollinators are really important.

Mr. Wander said the land was purchased and targeted for farming, the restoration takes up a lot more area and moves into an area that could include more plots. Mr. Wander said we should get a survey so we can understand exactly where the expansion will be.

Ms. Henson said the area proposed for work has been dubbed the conservation corridor, this keeps it away from planned plot areas.

Dick Hilmer, 16 Cross Rd, responded to Mr. Wander's comments. He pointed out that there were other land uses named in the land management plan that are not being carried out.

Kelly Gill, Xerces Society, introduced herself as a specialist in the east region on pollinator and invertebrate issues. She said we support this program and are committed to providing technical assistance and potentially some funding.

Jamie Balliet, Orleans resident, said he was a huge supporter of this project. We don't see projects that are coming forward for restoration and expansion. He suggested the Commission create a formal subcommittee to work on the project to tap into the people who want to work on this stuff.

Vote to authorize up to \$2,500 out of the Conservation Trust Fund for additional survey work for the Putnam Farm Conservation Area.

**MOTION:** A motion to authorize the spending of up to \$2,500 out of the Conservation Trust Fund for additional survey work at Putnam Farm was made by Walter North and seconded by Drusy Henson.

**VOTE:** 7-0-0 Unanimous  
MB, DH, GF, WN, BR, JW, KJ

Mr. Jannell stated before we move on to the rest of the agenda, he wanted to say he is in favor of a subcommittee.

**Notices of Intent**

Robert and Pamela Doiron 18 Uncle Vick's Wy  
By Ryder & Wilcox, Inc. Map 41, Parcel 44. The proposed construction of a porch within the footprint of an existing deck and replacement of an existing deck. Work will occur within the 100' buffer zone to a Vegetated Wetland.

David Lyttle, Ryder & Wilcox, was present and reviewed the application and the history of the property. Mr. North asked if the erosion under the deck would be mitigated. Mr. Lyttle said the drywell system will help tremendously. He said we could put a shade seed mix down. Mr. Jannell said a lot of stormwater won't get through the deck because it now has roof coverage. He said a heavy stone is probably best under the deck. Mr. Lyttle confirmed they will install gravel under the deck.

Mr. Brink pointed out that there was another pipe coming from the basement. Mr. Doiron, homeowner, said we can remove it if the Commission requires it. Ms. Bruce commended the property owners for good stewardship of this property. She has a problem with it becoming a 3-season porch instead of just a screened porch because we translate increased use to increased negative impact. Ms. Henson said because this is 3 seasoned the increased use is an issue but that it may be mitigated by the stormwater capture. Mr. Brink had no issue with the 3-season porch. Mr. Lyttle said he personally didn't see this as a negative impact for increased use.

No public comment was heard.

**MOTION:** A motion to close the public hearing was made by Drusy Henson and seconded by Jerry Wander.

**VOTE:** 7-0-0 Unanimous

**MOTION:** A motion to approve the project at 18 Uncle Vicks attaching the conservation commission findings and standard conditions and with the special conditions that heavy stone

gravel be installed under the deck and porch to control erosion and to include 1 pipe runoff into the downspout drywell connection, and to remove the unused pipe on the east side of the property was made by Drusy Henson and seconded by Jerry Wander.

Project Narrative 4/25/23; Ryder and Wilcox site plan dated 5/12/23; Ryder and Wilcox Coverage Calculations; Architecture Plan from 2023; photos dated 4/25/23.

**VOTE:** 7-0-0 Unanimous

MB, DH, GF, WN, BR, JW, KJ

### **Continuations**

David V Lawler, Trustee, 56 Nauset Road Realty Trust 56 Nauset Rd  
By Coastal Engineering Co., Map 22 Parcel 24. The proposed removal of an existing dwelling and construction of new dwelling and associated site improvements. Work is proposed within 100 feet from the top of a Coastal Bank.

**\*The applicant has requested a continuance to 6/20/23**

Mr. Jannell said no formal notice has been sent about your concern about the multiple continuations. He recommended the commission continue this with a vote and asked the commission if they'd like the office to send a letter. The Commission requested that a letter be sent that they intend to hear this project on 6/20/23.

No public comment was heard.

**MOTION:** A motion to continue the public hearing to 6/20/23 was made by Drusy Henson and seconded by Jerry Wander.

**VOTE:** 6-1-0 Unanimous

MB, DH, GF, BR, JW, KJ

WN-nay

**MOTION:** A motion to send a letter to the applicant that the Commission intends to hear the proposal on 6/20/23 with a comment about a site visit was made by Drusy Henson and seconded by Jerry Wander.

**VOTE:** 7-0-0 Unanimous

Eastward MBT LLC Trustee 44 Tonset Rd  
By Eastward Companies. Map 34, Parcel 27. The proposed construction of a single-family dwelling, pool, and associated hardscape. Work will occur within the 100' buffer zone to a Vegetated Wetland.

Susan Ladue, Eastward Companies, was present and reviewed the application. She reported that the plans have been revised based on the commission's comments.

Andrew Garulay, Yarmouthport Design Group, was present and reviewed the changes made to the landscape plan.

No public comment was heard.

**MOTION:** A motion to close the public hearing was made by Drusy Henson and seconded by Jerry Wander.

**VOTE:** 7-0-0 Unanimous

**MOTION:** A motion to approve the project at 44 Tonset Rd attaching the Conservation Commission findings and standard conditions and with the special condition that the plants and trees added to protect the wildlife corridor on the eastern side of the property remain protected was made by Drusy Henson and seconded by Jerry Wander.

Mr. Jannell said that he understands it is your intent that the special condition be an ongoing condition when a Certificate of Compliance is issued.

References: Eastward Companies project narrative 4/10/23: JM O'Reilly Site Plan 5/11/23; Landscape Plan 5/11/23

**VOTE:** 7-0-0 Unanimous

MB, GF, DH, WN, BR, JW, KJ

Eastward MBT LLC Trustee 46 Tonset Rd  
By Eastward Companies. Map 34, Parcel 29-1. The proposed construction of a single-family dwelling, pool, and associated hardscape. Work will occur within the 100' buffer zone to a Vegetated Wetland.

Susan Ladue, Eastward Companies, was present and reviewed the application. She reported that the plans have been revised based on the commission's comments.

Andrew Garulay, Yarmouthport Design Group, was present and reviewed the changes made to the landscape plan.

Ms. Farber asked if the wildflower meadow was proposed to be mowed and could there be a delineator? Ms. Ladue said they could install a single-rail split-rail fence. The Commission was satisfied with that.

No public comment was heard.

**MOTION:** A motion to close the public hearing was made by Drusy Henson and seconded by Jerry Wander.

**VOTE:** 7-0-0 Unanimous

**MOTION:** A motion to approve the project at 46 Tonset Rd attaching the Conservation Commission findings and standard conditions and with the special conditions that the added corridor protection on the west side of the property remain and the wildflower mix receive a twice-yearly mowing and will be delineated with a low split rail fence or other delineator was made by Drusy Henson and seconded by Jerry Wander.

**VOTE:** 7-0-0 Unanimous

MB, DH, GF, WN, BR, JW, KJ

References: Eastward Companies project narrative 4/10/23: JM O'Reilly site plan 5/11/23; Landscape Plan 5/11/23.

William & Patricia McIvor

71 Briar Spring Rd

By Ryder & Wilcox, Inc. Map 51, Parcel 38. The proposed construction of a screened porch over an existing patio and native mitigation plantings. Work will occur within the 100' buffer zone to the Top of a Coastal Bank, and within the Pleasant Bay ACEC.

David Lyttle, Ryder & Wilcox, was present and reviewed the revisions made since the previous hearing. He reported that Dave Hawk revised his plan and there is no longer a path that goes through the lower terrace area and he extended the meadow in the westerly direction.

No public comment was heard.

**MOTION:** A motion to close the public hearing was made by Drusy Henson and seconded by Jerry Wander.

**VOTE:** 7-0-0 Unanimous

**MOTION:** A motion to approve the project at 71 Briar Spring Rd attaching the conservation commission findings and standard conditions was made by Drusy Henson and seconded by Jerry Wander.

**VOTE:** 7-0-0 Unanimous

MB, DH, GF, WN, BR, JW, KJ

References: Project narrative 4/12/23; site plan 5/11/23; Beechwood design elevations 9/2/22; Hawk revised plan 5/16/23 as initial by DL.

Towhee Lane, LLC

71 Towhee Ln

By Ryder & Wilcox Inc. Map 92, Parcel 60. The proposed reduction in the dwelling, and installation of a cabana and pool. Work will occur within the 100' buffer zone to the Top of a Coastal Bank, and within the Pleasant Bay ACEC.

David Lyttle, Ryder & Wilcox, was present and reviewed the revisions made to the plan since the previous hearing. The only changes made to the Ryder and Blue Flax Design (BFD) plans were to move the pool fence. Andrew Garulay was present and reviewed the changes made to the landscape plan. Mr. Garulay said he moved the pool fence and all the grass areas in your jurisdiction will be the clover fescue seed mix.

The Commission and the representatives discussed the cabana and its use.

Mr. Jannell reviewed the remand Notice of Intent and he detailed the plans to include in the motion. He said some of the plans become moot. Ms. Bruce asked that they revisit the special conditions and add a sentence about the gravel driveway.

Mr. Jannell ran through the list of approved site plans: A memo from Sarah Turano-Flores; Ryder and Wilcox letter 4/3/23; Site plan 5/11/23; Site plan overlay 4/26/23; Coverage calculations 4/7/23; BFD planting plan 5/11/23; BFD Land Management Plan 4/13/23; BFD letter from arborist, undated; BFD tree protection plan 3/3/22; Landscape Plan Yarmouthport Design 5/11/23; Water elevations 2/21/2. The Sudbury Design Group plans have become moot.

Mr. Jannell ran through the special conditions from the original Order of Conditions (OOC) and how they will translate to the Amended OOC. They will eliminate special condition number 1. Special Conditions numbers 2 through 5 will remain unchanged. Special Conditions

number 6 will be modified to add the following: "This condition shall be required to be continuing in the event a COC is issued." Special Conditions numbers 7 through 11 will remain unchanged.

No public comment was heard.

**MOTION:** A motion to close the public hearing was made by Drusy Henson and seconded by Jerry Wander.

**VOTE:** 7-0-0 Unanimous

**MOTION:** A motion to approve the amended project at 71 Towhee Ln attaching the conservation commission findings and standard conditions and with the exclusion of moot conditions and an additional sentence about the gravel driveway remaining in its condition with no future changes and noting the Sudbury Design Plans are now moot and arborist letters and tree protection plan remain on record for the project was made by Drusy Henson and seconded by Jerry Wander.

**VOTE:** 7-0-0 Unanimous

MB, DH, GF, WN, BR, JW, KJ

#### **Extension Request**

Joel & Sally Hughes

16 Sheeps Pasture Pt

DEP # SE 54-2497, map 13, parcel 40. The proposed construction of a new dwelling, garage/guesthouse, swimming pool, septic system, and timber steps over bank/revetment

Mr. Jannell reviewed the letter received from Wilkinson Ecological Design (WED). They are requesting an extension in order to ensure the restoration plantings are established prior to seeking a Certificate of Compliance.

Steve Labranche, WED, was present via Zoom. He said some plants went in late because of supply so they request another year before applying for a Certificate of Compliance.

**MOTION:** A motion to approve the 1-year extension for 16 Sheep's Pasture Point was made by Drusy Henson and seconded by Jerry Wander.

**VOTE:** 7-0-0 Unanimous

#### **Certificates of Compliance**

James & Julie Rainey Welch

92 Tonset Rd

DEP # SE 54-2263: By Ryder & Wilcox, Inc. Map 26, parcel 74. The proposed construction of additions & renovations to an existing dwelling. This work never occurred.

Mr. Jannell said given this work has never occurred and the order has lapsed you can close out this COC by striking it invalid.

**MOTION:** A motion to approve the issuance of a Certificate of Compliance at 92 Tonset Rd, striking it invalid, was made by Drusy Henson and seconded by Jerry Wander.

**VOTE:** 7-0-0 Unanimous

James & Julie Rainey Welch

92 Tonset Rd

DEP # SE 54-2411: By Ryder & Wilcox, Inc. Map 26, parcel 74. The proposed installation of dug-in timber steps and removal of invasive vegetation. Work occurred on a Coastal Bank and Land Subject to Coastal Storm Flowage.

Mr. Jannell said the project can be found in compliance with a vote.

**MOTION:** A motion to approve the issuance of a Certificate of Compliance at 92 Tonset Rd was made by Drusy Henson and seconded by Jerry Wander.

**VOTE:** 7-0-0 Unanimous

James & Julie Rainey Welch

92 Tonset Rd

DEP # SE 54-2470: By Ryder & Wilcox, Inc. Map 26, parcel 74. The proposed construction of an attached garage and two additions. Work occurred within 50' buffer zone to the Top of a Coastal Bank.

Mr. Jannell reported that there was one issue of a gravel driveway not shown on the original plan but has been installed and is utilized on this property. It did not displace any vegetation. After the proposed garage was added they extended a gravel area, it is shown on an as-built. The Commission reviewed photos of the installed driveway. Ms. Henson was concerned that it is in our 50' buffer zone.

Mr. Jannell said if you can't find it in substantial compliance, I can reach out to the homeowner to either file to approve or remove it.

**MOTION:** A motion to deny the issuance of a Certificate of Compliance at 92 Tonset Rd was made by Drusy Henson and seconded by Jerry Wander.

**VOTE:** 7-0-0 Unanimous

Mr. Jannell said the property owner has an option to come back because the permit is still active. They could use the open permit to do the removal work if necessary.

The Commission suggested that they may want to perform an on-site. Since there is an open Order they do have right of entry.

### **Administrative Review**

A.J. Healy

4 Cullum Rd

The proposed building addition and screened porch over an existing deck.

Mr. Jannell reviewed the proposal and shared hardcopy material with the Commission. Ms. Henson asked, where will the limit of work be and will there be any tree loss. Scott Sisson, contractor, was present. He said he could mitigate for the loss of a Leland Cypress. Ms. Henson said she would want a tree replacement if the tree is removed.

**MOTION:** A motion to approve the project at 4 Cullum Rd with a note to replace a tree if a tree is removed was made by Drusy Henson and seconded by Jerry Wander.

**VOTE:** 7-0-0 Unanimous



## Chairman's Business

Review and discuss the Goals & Policies of the Orleans Comprehensive Plan.

Mr. Jannell said this is an opportunity to request new goals be incorporated in the town plan. Mr. North said at CPC we depend on the committees to come up with the plans and what they think is best. Mr. North said the town has changed a lot and the demands to protect our resources effectively have changed.

Mr. Jannell said climate resiliency could be expanded or are there jurisdictional issues you need to avail the town of. It's an opportunity to comment on community development.

Ms. Farber suggested a letter to the planning board with some broad brush suggestions regarding climate change, expanded jurisdiction, expanded vernal pool protection, and also state that we are in the process of reviewing our regulations and we expect there will be more to say on this.

Ms. Bruce said there are many references in the existing plans that have not been completed, we should focus on those first.

Ms. Henson pointed out the fragmentation of wildlife habitat and corridors when our jurisdiction ends at 100'. We should discuss what cumulative effect really is. There is clear cutting of trees outside of our jurisdiction and the fact that the town doesn't have regulations around that is astounding.

Mr. North said we actually do have large areas of forest, such as the watershed, but we don't have any active forest management.

Mr. North suggested initially drafting a short note saying we looked at the plan and we see issues that haven't been addressed in an earlier plan and we will be taking an interest in this process as it goes forward, etc. Perhaps it doesn't need to be that detailed at this point. We should recognize there has been natural resource successes including plovers, adopted wastewater management plan, keystone open space acquisitions, and pollinators.

Ms. Farber reviewed the goals. The Commission didn't think we'd fully satisfied the goals. Mr. North said it would be great to have a goal that we more effectively manage the open space that we have.

Ms. Farber said she was going to draft a letter and bring it back.

Meeting minutes of 5/2/23

**MOTION:** A motion to approve the minutes was made by Drusy Henson and seconded by Jerry Wander.

**VOTE:** 7-0-0 Unanimous

**MOTION:** A motion to adjourn the public hearing was made by Drusy Henson and seconded by Jerry Wander.

**VOTE:** 7-0-0 Unanimous

The meeting was adjourned at 11:27 a.m.

Submitted by:

Kristyna Smith, Principal Clerk, Orleans Conservation Dept.

