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RCASS
ORLEANS TOWN CLERK Asst.

Orleans Conservation Commission
Nauset Room or Via Zoom
Hearing, Tuesday, August 15th, 2023

PRESENT: Chair Drusilla Henson, Vice Chair Jerry Wander, Clerk Ginny Farber, Member Walter North, Member Bob Rothberg, Member Ron Mgrdichian, Member Mike Brink, Associate Member Judith Bruce, Associate Member Maia Ward, Associate Member Ken Johnson & Conservation Agent John Jannell

8:30 a.m. Call to Order

Notice of Intent

Town of Orleans 113 Rock Harbor Rd
By Foth Infrastructure & Environment, LLC. Map 8, Parcel 1 & 7. The proposed removal and replacement of two 2,000-gallon existing underground storage tanks with two new above ground storage tanks of equal capacity to address the current aging infrastructure, update to modern tank standards, and achieve long-term coastal resiliency. Work will occur within Riverfront Area, Salt Marsh, and Land Subject to Coastal Storm Flowage.

Tom Daley, Director of the Dept. of Public Works and Natural Resources, Christine Player, Foth Infrastructure & Environment, and Nate Sears, Natural Resources Director, were present at the meeting.

Christine Player reviewed the project and presented a PowerPoint to the Commission. Her presentation included a history of the facilities, the aging infrastructure, existing coastal resource areas, an alternative analysis, work protocols, and an overview of the project and why it is essential.

Ms. Bruce said what is proposed is so much better than what now exists. She was concerned about screening the fence. Mr. Coluccio said the color of the tanks is part of the vapor recovery aspect of the fuel tanks, white must be the color. Trees need to be chosen carefully in the vicinity of the tanks.

Mr. North asked about storm surge and would the structure be able to resist that. Mr. North asked if they considered additional mitigation. Ms. Player reviewed the proposed mitigation and why she believed it was substantial.

The Commission had concerns about potential spillage of fuel. Robert Coluccio, Web Engineering, was present via Zoom. Mr. Coluccio and Mr. Daley reviewed the systems in place and the design mechanisms that prevent and/or manage spills.

Ms. Farber said just getting the tanks out of the ground is a significant mitigation. She asked if they have a planting plan or are they coming back with a revision at some later date. Lori MacDonald was present via Zoom, she responded that they could provide a planting that be submitted prior to start of construction. Ms. Farber requested something more permanent for delineating the edge of the Marsh.

Mr. Johnson asked about the timing of the project. Mr. Sears responded that winter is the time to do it, it's mainly a seasonal harbor. It's just the connection time to the new lines, it will be relatively short.

Mr. Sears asked if they'd like them to include a planting plan that includes soil remediation type and how we will prepare the site for plantings, what level of material we will be moving, etc.

MOTION: A motion to close the public hearing was made by Jerry Wander and seconded by Ginny Farber.

VOTE: 7-0-0 Unanimous

MOTION: A motion to approve the project at 113 Rock Harbor Rd attaching the Conservation Commission findings and standard conditions and with the special conditions that a planting plan be submitted prior to start of construction, there be a property line delineation, and screening for the fuel tank, and seasonal maintenance of the area required was made by Jerry Wander and seconded by Ginny Farber.

References: Foth Project Narrative 7/23; Foth Site Plans dated 7/25/23

VOTE: 7-0-0 Unanimous

Revised Plan Request

Towhee Lane, LLC

71 Towhee Ln

By Blueflax Design LLC. Map 93, Parcel 60. DEP # SE 54-2533. The proposed removal and replacement of two standing dead English oak trees.

Theresa Sprague, Blue Flax Design, was present and reviewed the application. She clarified that only one standing dead oak tree is proposed for removal. She reviewed the mitigation for the loss of this tree.

Ms. Henson said she doesn't see the location of the new tree. Ms. Sprague showed the Commission on the site plan. She said since in the original project they proposed 3 white oaks be planted in front of the home, there really isn't room between the home and the water for this replacement tree.

Ms. Bruce understood you couldn't plant over decaying roots. She thought there was enough room to put a new tree. Where the new tree is proposed doesn't provide any screening.

Ms. Henson said she understands the tree must go but wants to see a better position for the replacement tree.

Mr. Rothberg asked about stump removal. Ms. Sprague responded that she would not recommend pulling the stump this close to the top of the Coastal Bank. Mr. Rothberg asked how close to the stump you can plant it. Ms. Sprague responded.

The Commission discussed placement of the tree and how this proposal coincides with a current filing for the property.

David Lyttle, Ryder & Wilcox, was present in the meeting room, he came to the podium. He said while he is not involved in the new project at this property, he remembers Ms. Sprague saying at the site visits this tree is going to die. The additional screening was proposed at that time.

MOTION: A motion to approve the project at 71 Towhee Ln with the understanding that the applicant will move the new tree as close as possible to the old tree and that the new tree be 3" caliper was made by Walter North and seconded by Ginny Farber.

VOTE: 7-0-0 Unanimous

Enforcement

Sally Mills

54 Tonset Rd

Review and ratify and Enforcement Order for the unpermitted clearing of vegetation in the 100' buffer zone to a salt marsh.

Caroline Smith, McGregor Legere & Stevens PC, was present to represent Sara Mills of 54 Tonset Rd. She expressed that their office takes Enforcement Orders very seriously and they have conveyed that to their client. She said they had requested the entire file from the Commission. She has read all of the packets and has seen the draft Enforcement Order (EO). She reported that Ms. Mills was surprised she received an EO and she didn't understand the process fully. Her client is now hesitant to go to the back of her property near the resource area. She said they are working to get a coastal wetlands scientist involved and get everything delineated. This is taking time so she asked the Commission to consider delaying a motion to issue the EO until they can get up to speed.

Mr. Jannell said the office is working through the FOIA request to get all of the information to the representative. We are responding to Ms. Mills who undertook activity in the Marsh and the buffer zone without permits from the local Commission. He reviewed the previous Administrative Review approvals and final denial. No new permits were issued, and she was notified to file a Notice of Intent. The main goal of the draft is to stop the unpermitted activity. The Commission won't prohibit the applicant to engage to process to do work.

Mr. Jannell began to review the Enforcement Order. The Commission provided Mr. Jannell with suggested edits on the form including additional text and further requirements.

Ms. Bruce suggested adding to #2, the removal of root structure of material in the Marsh. Mr. North suggested adding is parenthetically.

Mr. Jannell reviewed Page 2, C. Order. The Commission discussed allowing regeneration of the resource area being the restoration plan.

Ms. Henson said leave Box #2 checked. She suggested editing to say "alterations resulting from said activity shall be corrected by allowing for unimpeded regeneration so that it may return to its original condition". If after 2 growing seasons, there hasn't been sufficient regeneration, we may require additional conditions.

Ms. Jannell reviewed Page 3.

The Commission finalized the language for Page 3. It should read, "In the areas intended for regeneration and naturalization, no storage of boats or activity shall take place." While you won't prohibit the property owner from using their waterfront, you don't want them benefiting from the area of the unauthorized work.

Ms. Farber asked if we should record the Enforcement Order. Mr. Jannell responded he would have to check with Town Counsel. Ms. Bruce thought we must record it because of their timeline. Mr. Jannell suggested language that reads, the property owner shall apply for a Certificate of Compliance for the release of the EO in order to give the owner clear direction.

Ms. Smith offered an edit to the EO, she said that the fines were dated 8/3, not 8/1. In response to the violation notices, she has 21 days to either appeal or pay. She did go to the site today, the phragmites is regenerating. Her concern with having the EO recorded is that there are some gray areas. It's concerning for a future owner who may be trying to comply.

MOTION: A motion to ratify and sign the EO for 54 Tonset Rd as edited was made by Jerry Wander and seconded by Ginny Farber.

VOTE: 7-0-0 Unanimous

MOTION: A motion to have staff inquire with Town Counsel on advice if the EO can be recorded and subsequently removed against the deed of the property was made by Jerry Wander and seconded by Ginny Farber.

VOTE: 7-0-0 Unanimous

Mr. Rothberg said find out about the advisability. Ms. Henson said the motion was to get the advice, if we actually want to do it we will have to bring it back on an agenda.

Extension Request

Jake Beinecke & Julia Felsenthal

48 Horseshoe Ln

The request to extend the Order of Conditions for DEP # SE 54-2506 in order to obtain a Ch. 91 Waterways License and MEPA Certificate for the catwalk.

David Lyttle, Ryder & Wilcox, was present to review the request. Ms. Bruce said the catwalk was particularly positive for the site.

MOTION: A motion to approve the 3-year extension for the project at 48 Horseshoe Ln was made by Jerry Wander and seconded by Ginny Farber.

VOTE: 7-0-0 Unanimous

Contractor Change Request

Michael Pepi

38 Tides End Ln

Review and vote on the request to authorize Peter Jensen of Terra Firma to perform the approved restoration under DEP # SE 54-2535.

Mr. Jannell reviewed the request. He said the majority of the work was done by Crawford Land Management per the plan but there is a minor area where Terra Firma will be doing the work.

Peter Jensen, Terra Firma Perma Gardens, was present and reviewed the work he would be doing on site. He reviewed some of the plantings he would be replacing. If there is additional work, they must file an Administrative Review.

MOTION: A motion to approve the contractor change request was made by Jerry Wander and seconded by Ginny Farber.

VOTE: 7-0-0 Unanimous

Administrative Reviews

Michael & Michele MacDonald

223 Rock Harbor Rd

The proposed upgrade of an existing failed septic system with a new Title V system.

Mr. Jannell reviewed the application.

MOTION: A motion to approve the project at 223 Rock Harbor Rd was made by Jerry Wander and seconded by Ginny Farber.

VOTE: 7-0-0 Unanimous

Joan Morgan & Roger McDaniel

37 Jack Knife Pt Rd

The proposed rebuilding and expansion of an existing deck.

Mr. Rothberg recused.

Mr. Jannell said that the office exhausted their search in Town Hall for a set of plans. He said he sat with the homeowner and determined that the proposed deck expansion is between 50-100 ft from the wetland and that it is also in the ACEC. It is deck expansion proposed over lawn, no vegetation is proposed for removal. He has a plan that adequately shows the edge of wetland. It doesn't show the top of bank and buffer, or the ACEC area. If you turn down this AR you should direct them how to file.

The Commission said to direct the applicant to file an RDA with an engineered plan.

MOTION: A motion to deny the Administrative Review for 37 Jack Knife Point was made by Drusy Henson and seconded by Jerry Wander.

VOTE: 0-7-0 Unanimous

Mr. Rothberg returned to the meeting.

Mayflower Point Association

Association beach adjacent to 9 Kescayogansett Rd

The proposed cleaning of the beach area, removal of fallen pine tree branches, and the trimming and/or pulling out of invasives and phragmites from the swim area.

Mr. Jannell reviewed the application. Ms. Bruce asked what are the invasives that they wish to remove. Ms. Farber said she would not approve this with the Administrative Review. The Commission felt they did not have enough information to approve this.

MOTION: A motion to deny the project adjacent to 9 Kescayogansett Rd was made by Jerry Wander and seconded by Ginny Farber.

VOTE: 0-7-0 Unanimous

Administrator's Business

Pilgrim Lake Swim Area update

Mr. Jannell reviewed the work protocol and contract he received from Solitude starting in December. The only thing that came up that wasn't originally discussed was a silt curtain. The Commission discussed the work.

Vote to authorize the spending of \$8,000 out of the Conservation Trust Fund for the Pilgrim Lake Swim Area project.

MOTION: A motion to authorize the spending for the Service Contract with Solitude for the Pilgrim Lake Swim Area project for up to a maximum of \$10,000 was made by Jerry Wander and seconded by Ginny Farber.

VOTE: 7-0-0 Unanimous

The Commission discussed the closure at Pilgrim Lake due to the algal bloom.

Chairman's Business

Mr. North wanted to give public recognition to Ginny for being Chair. He expressed his thanks.

Meeting minutes of 8/1/23

Mr. North said to edit "call the question" to "to question".

MOTION: A motion to approve the minutes was made by Jerry Wander and seconded by Ginny Farber.

VOTE: 7-0-0 Unanimous

MOTION: A motion to adjourn the public hearing was made by Jerry Wander and seconded by Ginny Farber.

VOTE: 7-0-0 Unanimous

The meeting adjourned at 11:28 a.m.

Submitted by:

Kristyna Smith, Principal Clerk, Orleans Conservation