

Orleans Conservation Commission
Nauset Room or Via Zoom
Hearing, Tuesday, November 7th, 2023

Janet Hegg
ASST.
ORLEANS TOWN CLERK

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

ABSENT: Member Mike Brink; Associate Member Ken Johnson

8:30 a.m. Call to Order

Notice of Intent

Town of Orleans Pilgrim Lake, access at 83 Herring Brook Wy
By BSC Group, Inc. Map 55, parcel 41. The proposed implementation of an alum treatment within Pilgrim Lake which aims to reduce the availability of phosphorous and thereby limit the growth of cyanobacteria and reduce hypoxic/anoxic conditions within the Lake. Work will occur in a Great Pond, within Land Under Waterbodies and Waterways, and within the Pleasant Bay ACEC.

Matthew Creighton, BSC Group, was present to review the application. Virginia Martell, BSC Group, is a freshwater mussel expert and was present via Zoom. Mr. Creighton reviewed the reason for the proposed treatment. He reviewed the Town Meeting vote. And stated that the SMAST report is where they received a lot of their data for this proposal. He reviewed the work protocol and potential time of year restrictions. The dosing for Pilgrim Lake would put a 20-year lock on the phosphorous, giving the Town time to sewer and get a handle on the phosphorous load. They also propose to monitor the water quality for several years after the project to make sure the dosing is correct and it's functioning the way it is intended.

Ms. Bruce asked about time of year restrictions and if it's an option to apply in mid to late February. The herring seems to be coming earlier every year. Mr. Creighton said they want to avoid ice and if the herring come up before we have the treatment in we would hold until the Fall. Ms. Bruce said to her the earlier the better. Ms. Bruce was concerned a survey was never done of the number of freshwater mussels. She said she understood there wouldn't be any harm to mussels but what about benefit? Are there other approaches that would actually improve the habitat and give the mussels a better shot. Ms. Bruce said she was concerned about turtles and eels; where are these species and will there be an impact? She asked, are there impacts to Herring as a result of the remaining alum after treatment? Ms. Bruce requested there be pre and post monitoring.

Mr. Wander asked how many bacterial blooms have we had in Pilgrim Lake? Is this the first-time swimming was closed because of this? As a Town, we are trying to address it using sewer systems, are we being too reactive to 1-year of bloom?

Ms. Henson was also concerned about eels, she said there is no reference to them in the report. In terms of the herring, one of the deeper areas is very close to the entrance of the run, will that have an effect? She understood that if ten fish died, the treatment would stop but then what? Is there a way to reverse it? Mr. Creighton responded that the alum would bind and go to

the bottom and no further treatment would occur. Ms. Henson said she would hesitate to schedule the treatment past the first week of March. Mr. Creighton said he would also have to check on how the treatment might be affected by the water temperature.

Ms. Farber asked about the performance standard for the ACEC which is no adverse impact. She said to her a ten fish kill is a potential adverse impact. She would like to know if they could reach out to DMF to get more information on eels and herring, she thought it would be good to have some comments from them. Ms. Bruce requested Brad Chase be present for some dialogue, and it may speed up the process.

Ms. Farber asked what the standard is for treating with alum, does it typically occur after one bloom or multiple blooms? Mr. Creighton said there isn't a specific trigger unless DEP steps in and says the Town must do something about it. Ms. Farber asked about access via the public beach area. She said there is a project there that restores the beach area so any disturbance from this proposal would need a restoration plan, and storage of anything should be out of the ACEC.

Mr. North requested information on the physical implementation in the narrative. He asked him to explain the logic behind the proposed dosages. Mr. Creighton said all of their information on dosing comes from SMAST, they propose the least amount they can that still gets the phosphorous down.

Mr. North asked if there has been continuous water sampling since the SMAST report, and would the data change the conclusions about dosage? He asked, what happens to the benthic load, is it capped? He said the aeration alternatives seem to be all over the place with cost and benefit. Is there a better way to state the choices? He asked, what is the delta between doing aeration and the alum? Mr. Creighton said they could extrapolate the two and better understand the difference between the two.

Ms. Ward asked if we have considered the birds that feed on insects that could be taking up more dietary alum after this event? It would be helpful to have a baseline for the aluminum levels in the birds naturally.

Mr. Jannell reviewed the process he witnessed used by the contractor during Uncle Harvey's Pond treatment. He reviewed the specific findings they drafted for that application. It sounds like the Commission wants aggressive monitoring, and a formal answer to what happens if there is a fish kill. He said the location of the staging areas will be easy to achieve so it's protective. He said he also heard questions about eels, turtles, and the potential long-term impacts to foraging wildlife. Mr. Jannell said the time-of-year (TOY) discussion is interesting, he asked the applicant to please look into whether a TOY will challenge the efficacy of the treatment. Ms. Farber said if efficacy is determined by the water temp it might be better to do treatment in early December as opposed to February.

Ms. Martell said given the status of the freshwater mussels on the Cape and in this pond, if you were trying to determine a TOY for the project, it being done in February would be better because they will still be buried. If a treatment can't be done in February or early March, waiting until the following September would be best. She said not enough pretreatment monitoring of mussel beds have been done to report upon and expand the study for comparison of the beds post alum treatment.

Public comment:

Tessa English spoke at the podium; she said this has been performed on 15 or more lakes and ponds on the Cape already. Other communities are equally concerned about these species and maybe someone can speak to what the findings are.

Mr. Jannell said one of the ways we protected wildlife habitat was through monitoring. Mr. Creighton said surveys of mussels have been done in Barnstable. He said he has people he can reach out to internally.

Tom Coleman spoke at the podium; he asked what is the adverse impact on wildlife of a cyanobacteria bloom? With respect to Uncle Harvey's Pond, what was the severity of the problem versus the response. Uncle Harvey's Pond suffered cyanobacteria blooms for an extended period of time, that leads to a negative condition in terms of water quality.

Chet Crabtree spoke at the podium; he said his neighborhood association has frontage on Pilgrim Lake. In his observations as a swimmer in Pilgrim Lake there is a problem. There is an impact on the Town of Orleans, with limited access to the Outer, sharks, and lakes becoming polluted, Orleans is a less attractive place to live. I'd hate to see water access decline. Please help us find a solution.

Judy Scanlon spoke at the podium; she provided additional information about herring coming earlier each year. She can provide all the arrival dates going back to 2008. To her recollection, March 16 was the earliest, and last year was March 23. There was a mussel survey done, it's in the report. She supported getting input from Brad Chase.

Carolyn Kennedy spoke at the podium; she said she's been involved with ponds in Orleans for 20 years now. She said, I would suggest you invite Ed Eichner to a meeting. He knows about the chemistry and waters of our ponds more than anyone else.

Robert Castleberry spoke at the podium; He said he hopes the Commission can act quickly so that the problem can be remedied. He supported moving forward with the alum treatment with all the care in monitoring that is required.

Ms. Henson gave a brief recap of the Commission requests: She said most Commissioners said treatment earlier is better in terms of the mussels; consider post application survey; more information about turtles and eels; we should hear from Brad Chase; more information on pre and post monitoring; any new information from Ed Eichner; Ed Eichner attend a hearing; clearer information on the cost of aeration; information on the effect on insects and birds; signage.

Mr. Jannell requested they pull the last 5 years of herring arrival.

Mr. Creighton requested a continuance to 11/21/23.

MOTION: A motion to continue the public hearing to 11/21/23 was made by Jerry Wander and seconded by Ginny Farber.

VOTE: 7-0-0 Unanimous

JB, JW, DH, GF, WN, BR, MW

Continuations

Towhee Lane, LLC

71 Towhee Ln

By WRS Engineering, LLC. Map 92, Parcel 60. The proposed reconstruction of an existing licensed boathouse and deck in kind, increase in deck elevation of 1 foot, removal of existing walkway and replacement with elevated walkway, installation of aluminum walkway, installation of pile supported boat lifts, restoration of Coastal Bank, and increase in elevation of existing revetment. Work will occur on a Coastal Bank, in Land Subject to Coastal Storm Flowage, and within the Pleasant Bay ACEC.

Adam Brodsky, an Environmental and Land Use Lawyer, was present with Don Bliss, the property owner. Mr. Brodsky explained that he had been retained by the applicant, he referenced the letter he sent to the Commission on 10/30. Roy Okurowski was present via Zoom, and he described the revised plan.

Theresa Sprague. Blue Flax Design was present and reviewed her minor revisions to her plan. She said they added a note to restore the access pathway to the boathouse area down to a footpath no wider than 4' after completion of the restoration of the boathouse. We are not proposing any regrading on the Coastal Bank, we are proposing only to bring in organic material to help establish a ground cover layer and some planting material for proposed shrubs. The Commission pointed out that the engineered site plan still had extensive notes on regrading. Mr. Okurowski responded to the regrading shown on the plan. Ms. Sprague said it should be coined "temporary regrading" because it is only to achieve access down the toe of the Coastal Bank to get down to the revetment work. The sand will be redistributed behind the stone revetment.

Ms. Bruce said she thought the work should be done by barge. Ms. Sprague responded that barge work taking place in Pleasant Bay could be more destructive because of the tidal action.

Ms. Bruce didn't see any plans showing what they are proposing for the revetment. Mr. Okurowski described the work.

Mr. Jannell asked to hear more about where the 4-6 stones are going. Ms. Henson said the concern with new stones would be heightening or lengthening.

Mr. Brodsky said a way of dealing with this is conditioning the project. The Commission disagreed, they said they simply need additional information shown on the plans.

Mr. Jannell pointed out there was no proposed or final grade on the engineered plan.

Ms. Sprague asked if it would be helpful to have a clear construction protocol? The Commission said yes. She said she will put together a work protocol.

Mr. Okurowski said they moved the boat lift to the westside to reduce the visual impact. We submitted the volume difference, there is a 125 cubic yard increase in volume. Mr. Brodsky said there is no alteration of land or water resources in the ACEC. With respect to aesthetics, none of this limited scope of work is going to affect the wetland values, and it is inherently subjective. The modest increase in volume is not going to lessen the aesthetic value of the ACEC and will be indistinguishable from existing conditions.

Ms. Bruce said larger means it's more visually apparent. Volume is considered additional use and indicates additional negative impact.

Mr. Wander said he doesn't think the increase in volume means a lot, it's a roofline. He had an issue with the pathway and the lighting.

Ms. Henson said the regulations say placement of building structures shall not detract and shall blend with the natural landscape; part of the objection is it will further detract how it blends with the land behind it.

Mr. North said he thought the presumption of negative impact could be overcome with mitigation. He said the design isn't significant and that he was more concerned about the boat davits.

Mr. Rothberg said we should be more stringent with our regulations, but it does not say irrefutably presumed.

Mr. Jannell asked, is there any change in the ridge elevation?

Mr. Okurowski said we are not actually changing the deck elevation and that can be in a revised plan.

Mr. Jannell asked, did you consider building material changes? Mr. Bliss responded, it will all be red cedar, no white trim.

Public Comment:

David Lyttle spoke at the podium. He said, as you know I've worked on the landward portion of the project. He thought Mr. Brodsky's individual interpretation of your regulations was illuminating.

Mr. Bliss said as a give back we have agreed to reduce the size of the path to 4'.

Ms. Henson reviewed some of the requested of the Commission: clarification on material for the walkway; add lighting to the plan; clarify they are not raising the deck by 1'; clarify work protocol.

The representative requested a continuance to 11/21/23.

MOTION: A motion to continue the public hearing to 11/21/23 was made by Jerry Wander and seconded by Ginny Farber.

VOTE: 7-0-0 Unanimous

Eastward Companies
By Ryder & Wilcox, Inc. Map 56, Parcel 6. The proposed removal of an existing dwelling and detached garage and construction of new dwelling, swimming pool, the replacement of a timber stairway, landscaping, and site restoration. Work will occur within the 100' buffer zone to the Top of a Coastal Bank, on a Coastal Beach, on a Coastal Bank, in Land Subject to Coastal Storm Flowage and within the Pleasant Bay ACEC. 64 Pershing Ln

David Lyttle, Ryder & Wilcox, and Theresa Sprague, Blue Flax Design (BFD), were present. They reported that the project was waiting to hear from NHESP who acknowledged that this is a potential area for diamondback terrapin. The letter from NHESP included a suggested special condition for the project regarding the limit of work.

No public comment was heard.

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 64 Pershing Ln attaching the conservation commission findings and standard conditions and with the special condition from the Division of Fisheries and Wildlife letter concerning limits of work; and the stairway will be removed when the bank restoration work begins, and a fescue mix in the flagstone seating area shall be required was made by Jerry Wander and seconded by Walter North.

References: Project Narrative by Ryder & Wilcox 10/10/23; site plan by Ryder & Wilcox 10/10/23; coverage calculations Ryder & Wilcox 9/12/23; Land Management Plan by BFD 9/12/23; Mitigation and Restoration Plan by BFD 10/11/23; Landscape Yarmouth Port Design Group 10/6/23.

VOTE: 7-0-0 Unanimous

Certificates of Compliance

Vincent & Suzanne Guntlow

24 Gibson Rd

DEP # SE 54-2478, Map 19, Parcel 8. The replacement of existing bulkhead, stairs, and retaining wall; and invasive species removal. Work occurred on a Coastal Beach, Coastal Bank, on Land Subject to Coastal Storm Flowage, and within 100' of Town Cove.

Mr. Jannell reached out late afternoon yesterday to the applicant and is yet to connect. He recommended the Commission take no action and he'd like to bring it back on the 21st with a recommended action. The Commission took no action.

Michael & Joyce Pepi

38 Tides End Ln

DEP # SE 54-2535, Map 43, Parcel 31. The removal and replacement of a pool, removal of all asphalt driveways and drainage culvert, new drainage systems, construction of a new garage, and landscaping of disturbed areas. Work occurred within the 100' buffer zone to a Coastal Bank and within the Pleasant Bay ACEC.

Mr. Jannell reported that the project is in compliance.

MOTION: A motion to approve the issuance of a Certificate of Compliance at 38 Tides End Ln was made by Jerry Wander and seconded by Ginny Farber.

VOTE: 7-0-0 Unanimous

Julie Welch

92 Tonset Rd

DEP # SE 54-2470, Map 26, Parcel 74. The required remedial work to bring into compliance the construction of an attached garage and two additions. Work occurred within 50' to the top of a Coastal Bank.

Mr. Jannell reported that the driveway was altered as agreed upon between the Commission and the applicant at a public hearing and their cooperation was seamless. The project is in compliance.

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

VOTE: 7-0-0 Unanimous

Andrew Barnard 48 Aspinet Rd
DEP # SE 54-2283, Map 30, Parcel 14. The demolition & replacement of an existing single-family residence & septic system, and the proposed removal of invasive plant species & restoration with native plants. Work occurred within 100' of the Top of a Coastal Bank, Coastal Dune, on a Coastal Bank and within Land Subject to Coastal Storm Flowage.

Mr. Jannell reported that he has done his final inspection, this is the original Order that has expired, there is still an open and active Order on site. They have requested an ongoing condition to allow meadow maintenance with an annual mowing one time per year.

MOTION: A motion to approve the issuance of a Certificate of Compliance at 48 Aspinet Rd with the ongoing condition that an annual mowing of the established meadow be allowed once per year was made by Jerry Wander and seconded by Ginny Farber.

VOTE: 7-0-0 Unanimous

Mary Callahan 181 Brick Hill Rd
DEP # SE 54-2616, Map 20, Parcel 87. The proposed raze and replacement of an existing dwelling. Work will occur within the 100' buffer zone to a Vernal Pool. Work under this Order never occurred.

Mr. Jannell reported on the letter from Laura Schofield. Since the historical commission denied the project they'd like to just close it out and strike the Order invalid.

MOTION: A motion to approve the issuance of a Certificate of Compliance at 181 Brick Hill Rd, striking the Order invalid, was made by Jerry Wander and seconded by Ginny Farber.

VOTE: 7-0-0 Unanimous

Administrative Reviews

Kathi Whitaker 176 Quanset Rd
The proposed installation of 2 drywells connected to downspouts on the dwelling.

David Lyttle, Ryder & Wilcox, was present and reviewed the application. Mr. Jannell said he wanted the Commission to be aware because we have an active filing on the site.

MOTION: A motion to approve the project at 176 Quanset Rd was made by Jerry Wander and seconded by Ginny Farber.

VOTE: 7-0-0 Unanimous

Christina A Muto 9 Hinkle Ln
The proposed paving and expansion of an existing driveway.

Mr. Jannell reviewed the application. The Commission had concerns about erosion. Ms. Bruce said she would be concerned about a paved area causing runoff in this area into Bakers

Pond. We also stand to lose 3-4 trees. Mr. Jannell said the applicant is proposing to plant 4 trees to replace the ones removed.

Christina Muto, property owner, was present via Zoom. She said the road is paved in front of our house and the neighbor has a paved driveway. The applicant reported they will be planting 2 pear trees and 1 apple tree. Ms. Henson was concerned they'd be losing canopy and trees within the 50' buffer zone to the wetland. She suggested the Commission could table it and go see the property. Ms. Muto said it was fine if the Commission visited the property. The Commission took no action and requested it be on the 11/14/23 on-site schedule.

Chairman's Business

Ms. Farber reported that on Wednesday Nov 8, the Wastewater Management Advisory Committee is holding a public information session to talk about the amended comprehensive management plan that we will be submitting to DEP at the end of the year.

Ms. Henson reported that the Pleasant Bay alliance is going to have some climate adaptation workshops on Monday 11/27, Tuesday 11/28, and Wednesday 11/29. You can go to the alliance website for more information.

Ms. Henson said that at Putnam there has been a bunch of vegetation clearing and tree moving in anticipation of the new plots. She thanked the DPW workers and the volunteers. Also, the property is officially hooked up to electric.

Mr. North asked if the budget submission was occurring and what is our ask going to be? Mr. Jannell responded that he submitted a budget based on the guidelines provided.

Mr. Jannell reported that Sipson Island is being undeveloped, and the barge is in the bay as of this morning.

Meeting minutes of 10/03/23 and 10/17/23

MOTION: A motion to approve the minutes of 10/3/23 was made by Jerry Wander and seconded by Ginny Farber.

VOTE: 6-0-1

Mr. North abstained.

Mr. Wander provided an edit on attendance for the 10/17/23 minutes.

MOTION: A motion to approve the minutes of 10/17/23 with suggested change was made by Jerry Wander and seconded by Ginny Farber.

VOTE: 6-0-1

Ms. Henson abstained.

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 adjourned at 11:23 a.m.

Submitted by: Kristyna Smith, Principal Clerk, Orleans Conservation