

**CONSERVATION COMMISSION
MINUTES OF SEPTEMBER 10, 2009**

Meeting was held in the lower conference room at the Mary Alley Building, 7 Widger Road

Meeting was called to order at 7:00 PM

Present were: Commission Members Walt Haug, Fred Sullivan, Brian LeClair, Deb Payson, Don Tritzschler, Craig Smith and Ken Fisher. Also present was Willy Lanphear, Conservation Administrator.

The hearings were conducted under the Massachusetts Wetlands Protection Act and the Marblehead Wetlands Protection Bylaw.

Note: The commission currently has seven members. Per the MACC Handbook, section 4.1.2, most lawyers agree that a quorum is "...a majority of commissioners currently serving". The quorum for this meeting is therefore four members.

Approve Minutes: The minutes of 08/13/09/09, with a minor change, were approved by all members.

Request for COC: 40-974 Audubon Wildlife Sanctuary: All members voted to approve this COC.

Sign Documents: All documents per the agenda were signed.

Request for Extension: 40-897 26 Nonantum Road: All members voted to grant a one year extension. The new expiration date is October 12, 2010.

40-975 27 TICEHURST LANE, HENRY HAMMOND

Resource Area: BVW, Pond, Land Under Water

Interests of the WPA and Bylaw: Prevention of Pollution, Protection of Wildlife Habitat

Appeared: No-one

Control Drawing: Site of Plan, 27 Ticehurst Lane, Henry Hammond dated February 26, 2009, prepared by North Shore Survey Corporation.

This was a continuance from 04/19/09, 05/14/09 and 07/09/09. Mr. Patrowicz sent an email dated August 28, 2009 wherein the applicant requested a continuance. All members voted to continue this hearing to October 8, 2009.

40-983 7 MOORING ROAD, NATHANIEL GREENE

Resource Area: Coastal Bank and Beach

Interests of the WPA and Bylaw: Prevention of Pollution, Flood Control and Storm Damage Prevention

Appeared: Curt Young of Wetlands Preservation Inc., Robert McCann, atty., Dan Lynch of Lynch Engineering and Louisa Greene

Control Drawing: "Plan for Conservation, 7 Mooring Road, Marblehead, Mass" dated August 24, 2009, prepared by Lynch Engineers

McCann will verify that Fluen Point Associates does not allow salt or other melting chemicals on the roads within their jurisdiction. Regarding the end of the driveway as it approaches the top of coastal bank, the present gravel end will be replaced with bituminous concrete but the end will be ca. 12-13 feet further landward from the top of coastal bank. In addition, the placement of large boulders will insure snow plows dump their snow further back from the top of coastal bank. A planting bed raised about one foot above the surface of the proposed driveway will be planted along the end of the driveway. The aforementioned measures will help to prevent any pollution from entering the resource waters.

Regarding the planting plan, the commission requires that, in lieu of separated, individual plant beds, the entire perimeter along the ocean be planted and that the width of the beds average ten feet in width. Regarding the pool, the commission expressed concern because one corner of the pool is in the FEMA V zone and the vulnerability of the pool being raised/floated by storm water is a factor. Lynch assured the commission both the existing pool (if it is salvaged) or a new pool could be adequately anchored to prevent such an event. Lynch pointed out that the existing pool had withstood both the 1978 and 1991 storm events.

With regard to repairing the existing rip rap, the commission requires specific details on the lengths to be repaired with cross sections showing the amount of proposed new rip rap. Finally, the applicant was reminded any herbicide like Round Up can only be applied by hand-brush application on the individual plant shoots and not by spraying.

All members voted to close this hearing. Six members and one abstaining voted to issue an OOC with the following special conditions.

19. This Order of Conditions is issued under the Wetlands Protection Act and its Regulations (MGL Chapter 131, Section 40 and 310 CMR 10.00 et. seq.), and under the Town of Marblehead Wetlands Protection Bylaw (Marblehead Bylaws Chapter 194) and its Regulations (Wetlands Protection Bylaw Regulations for Administering Marblehead Bylaws Chapter 194, Sections 194-1 through 194-14). As such this Order constitutes a wetlands permit both under the Act and under the Bylaw.

20. The project shall be performed in accordance with the Final Approved Plans and Other Documents referenced in Attachment A to this Order of Conditions, except as the project may be altered or amended by these Special Conditions.

21. The project shall be performed in accordance with the representations made by the applicant and his/her representative(s) and in accordance with the requirements of the Marblehead Conservation Commission, all as reflected in the public hearing record as documented in the minutes of the Marblehead Conservation Commission referenced in Attachment A to this Order of Conditions, except as the project may be specifically altered or amended by these Special Conditions.

22. These Special Conditions relate equally to both the Wetlands Protection Act and the Marblehead Wetlands Protection Bylaw unless herein indicated otherwise.

23. In accordance with General Condition No. 8 contained in this Order of Conditions, the applicant shall record this Order at the Registry of Deeds and shall submit the recording information to the Conservation Commission on the form for said information found at the end of the Order prior to the commencement of any work authorized by this Order. Failure to submit said recording information prior to the commencement of work may result in a fine issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E.

24. Any land disturbance of an area less than 40,000 square feet requires that Section II.C of the regulations pertaining to the Stormwater Management and Erosion Control Bylaw, Chapter 195 of the Marblehead Code must be followed and implemented.

Pre-construction:

25. All special conditions are to be included in the construction contracts between the applicant and his/her contractor.

26. A drawing of the erosion control techniques to be used on site shall be included in the construction contracts between the applicant and his/her contractor.

27. Prior to commencement of construction activities, the Applicant shall obtain all federal, state and local permits (in addition to this OOC) that may be required for the proposed project.

28. If the existing pool is used or a replacement pool is constructed, before any work is started on the pool the applicant will submit drawings for approval by the commission showing how the pool will be anchored to insure it will not be lifted/raised by the action of inundating ocean waters.

29. Before any work is started on the site, the applicant will submit drawings for commission approval showing the areas of rip rap that will be repaired and showing by cross section the amount of new rip rap in these areas.

30. Before any work is started on the plantings/landscape the applicant will submit a landscape plan showing a vegetated buffer strip along the entire land perimeter abutting the ocean. Separate, individual planting beds are to be replaced with the foregoing described planting. The vegetated buffer strip will measure on average ten feet in width.

During construction:

31. There shall be no cleaning or rinsing of cement concrete ready-mix trucks, or cement concrete mixing equipment, such that the byproduct of the cleaning or rinsing operation finds its way to any resource area by any means, especially, but not limited to, by means of a storm drainage system (catch basins, pipes, drainage ditches, etc.).
32. To the maximum extent possible, all driveways, terraces, patios or similar ground-level surfaces will be constructed as permeable surfaces to allow water to infiltrate through their surfaces into the ground on site
33. All demolition debris will be removed from the site ASAP and not stored within a resource area or a buffer zone. If a dumpster is used to contain the debris, the dumpster shall be covered. The debris shall be properly disposed of in accordance with applicable federal, state and local regulations.
34. All construction material will be stored outside the resource area and its buffer zone or as far back from the resource areas as possible.

Post-construction/in perpetuity:

35. By voluntary agreement with the applicant, only organic fertilizers are to be used on the property landward of the resource areas. Fertilizers should not contain pesticides or herbicides; should contain slow release nitrogen and should not contain more than 3% phosphorous. To mitigate chemical runoff, do not fertilize directly before a rainstorm and do not over fertilize. Apply fertilizer in late April and in September (refer to: A Homeowner's Guide to Environmentally Sound Lawn care published by the Massachusetts Department of Food and Agriculture and the booklet, Don't Trash Grass, published by the Massachusetts Department of Environmental Protection). This condition shall survive this order.
36. When a pool/spa/hot tub is to be drained, no chlorine or other chemicals are to be added to the pool water for a period of at least four (4) days prior to draining to allow for the chlorine and other chemicals to dissipate; and there shall be an appropriate sign placed permanently at or immediately adjacent to the pool/spa/hot tub drainage valve or mechanism indicating this requirement. The method of pool drainage shall be such as to prevent any soil erosion by the draining water and to allow the draining water to seep into the ground prior to entering any resource waters. No direct discharge to resource waters is allowed. This condition shall survive this order.
37. Invasive plants shall not be used nor maintained in the landscape of the project site. This applies to the existing landscape as well as to any proposed landscape. A list of invasive plants in Massachusetts can be found in the latest update of The Evaluation of Non-Native Plant Species for Invasiveness in Massachusetts (with annotated list) produced by the Massachusetts Invasive Plant Advisory Group. For most recent update, visit www.mnla.com or www.newfs.org.
38. In attempts to remove/control invasive plants such as Japanese knotweed/snotweed and bittersweet using an approved herbicide, the herbicide can only be applied by hand-brush application on the individual plant shoots and not by spraying. This condition shall survive this

order.

39. Upon completion of the work allowed under this Order of Conditions, the applicant shall within 30 days apply for a Certificate of Compliance (COC) and, if required by the commission, submit an “as built” drawing (signed and stamped by a Registered Professional Engineer) with the application for the COC. Failure to submit said application within 30 days may result in a fine issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Sec 11E.

40-984 CROCKER PARK, MARBLEHEAD RECREATION & PARK DEPT

Resource Area: Coastal Bank

Interests of the WPA and Bylaw: Prevention of Pollution, Flood Control and Storm Damage Prevention

Appeared: Chuck Nyren of the Marblehead Recreation & Park Department

Control Drawing: Project Narrative and Photos

Some of the work will be done working from a barge in the harbor. After a discussion of the details of this project, all members of the commission voted to close the hearing. All members voted to issue an OOC with the following special conditions.

19. This Order of Conditions is issued under the Wetlands Protection Act and its Regulations (MGL Chapter 131, Section 40 and 310 CMR 10.00 et. seq.), and under the Town of Marblehead Wetlands Protection Bylaw (Marblehead Bylaws Chapter 194) and its Regulations (Wetlands Protection Bylaw Regulations for Administering Marblehead Bylaws Chapter 194, Sections 194-1 through 194-14). As such this Order constitutes a wetlands permit both under the Act and under the Bylaw.

20. The project shall be performed in accordance with the Final Approved Plans and Other Documents referenced in Attachment A to this Order of Conditions, except as the project may be altered or amended by these Special Conditions.

21. The project shall be performed in accordance with the representations made by the applicant and his/her representative(s) and in accordance with the requirements of the Marblehead Conservation Commission, all as reflected in the public hearing record as documented in the minutes of the Marblehead Conservation Commission referenced in Attachment A to this Order of Conditions, except as the project may be specifically altered or amended by these Special Conditions.

22. These Special Conditions relate equally to both the Wetlands Protection Act and the Marblehead Wetlands Protection Bylaw unless herein indicated otherwise.

23. In accordance with General Condition No. 8 contained in this Order of Conditions, the applicant shall record this Order at the Registry of Deeds and shall submit the recording information to the Conservation Commission on the form for said information found at the end of the Order prior to the commencement of any work authorized by this Order. Failure to submit

said recording information prior to the commencement of work may result in a fine issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E.

24. Any land disturbance of an area less than 40,000 square feet requires that Section II.C of the regulations pertaining to the Stormwater Management and Erosion Control Bylaw, Chapter 195 of the Marblehead Code must be followed and implemented.

Pre-construction:

25. All special conditions are to be included in the construction contracts between the applicant and his/her contractor.

26. Prior to the start of any work, the applicant shall submit a drawing to the commission for approval showing how all removed/chipped concrete or other material will be contained to insure it does not enter the resource waters.

27. Prior to commencement of construction activities, the Applicant shall obtain all federal, state and local permits (in addition to this OOC) that may be required for the proposed project.

During construction:

28. There shall be no cleaning or rinsing of cement concrete ready-mix trucks, or cement concrete mixing equipment, such that the byproduct of the cleaning or rinsing operation finds its way to any resource area by any means, especially, but not limited to, by means of a storm drainage system (catch basins, pipes, drainage ditches, etc.).

29. All demolition debris will be removed from the site ASAP and not stored within a resource area or a buffer zone. If a dumpster is used to contain the debris, the dumpster shall be covered. The debris shall be properly disposed of in accordance with applicable federal, state and local regulations.

30. All construction material will be stored outside the resource area and its buffer zone or as far back from the resource areas as possible.

Post-construction/in perpetuity:

31. By voluntary agreement with the applicant, only organic fertilizers are to be used on the property landward of the resource areas. Fertilizers should not contain pesticides or herbicides; should contain slow release nitrogen and should not contain more than 3% phosphorous. To mitigate chemical runoff, do not fertilize directly before a rainstorm and do not over fertilize. Apply fertilizer in late April and in September (refer to: A Homeowner's Guide to Environmentally Sound Lawn care published by the Massachusetts Department of Food and Agriculture and the booklet, Don't Trash Grass, published by the Massachusetts Department of Environmental Protection). This condition shall survive this order.

32. Maintenance pointing of existing stone masonry walls including the replacement of occasional, missing stones in the wall is allowed as a surviving condition to the Order of Conditions. The future razing, any rebuilding of entire wall sections or enlarging of the subject wall(s) will require the filing of a new Notice of Intent. This condition shall survive this order.

33. All gangways, docks or other items not permanently secured to the earth shall be stored during the “off season” (late fall, winter, early spring) so as to prevent them from causing any damage to other structures or resource area. This condition shall survive this order.

34. All gangways, docks or other items not permanently secured to the earth shall be properly secured and/or removed in the event of a major storm so as to prevent them from causing any damage to other structures or to the resource area. This condition shall survive this order.

35. Upon completion of the work allowed under this Order of Conditions, the applicant shall within 30 days apply for a Certificate of Compliance (COC) and, if required by the commission, submit an “as built” drawing (signed and stamped by a Registered Professional Engineer) with the application for the COC. Failure to submit said application within 30 days may result in a fine issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Sec 11E.

Old/New Business:

Approve Minutes: see above

Requests for COC: see above

Requests for Extension: 40-897 26 Nonantum Road: A letter was received from Bonita Macaro dated 08/20/09 requesting an extension. All members voted to grant a one year extension to expire October 12, 2010.

Minor Activity Permits: Lanphear reviewed all permits.

Sign Documents: See above.

Other Matters: 40-973, 7 Fort Beach Way , John Albright, architect: This OOC has not yet been recorded at the Registry of Deeds. A Minor Activity Permit was issued to allow minor activity work to proceed. The remaining work on this site has been reduced but still requires the OOC. The commission voted to review the revised work as an amendment.

Minor Activity Permit: On the permit form will be added “Date of Expiration”. The commission voted to grant such permits a one year period.

Vegetation Report: In order to have some control over the survival rate of required plantings in the vegetated buffer strip (in the buffer zone), the commission will address this in a special condition to be reviewed at the next meeting.

The meeting was adjourned at 9:10 PM.