

**CONSERVATION COMMISSION
MINUTES OF APRIL 24, 2008**

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

Meeting was called to order at 7:00 PM

Present were: Commission Members Ken Fisher, Walt Haug, Fred Sullivan, Deb Payson, Don Tritschler, Craig Smith and Brian LeClair Also present were Doug Saal, Conservation Administrator and Jan Smith, Associate Member.

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.

Discussion: DOA 25 Harbor Avenue Tejwani: At the hearing on April 10, 2008, the commission issued a negative determination for a small second floor addition over an existing porch at 25 Harbor Avenue. See the minutes of April 10, 2008 for the special conditions attached to this negative determination. One of the special conditions, which was required to be fulfilled before any work is started, was re-visited at the request of Dr. Tejwani. This condition is:

5. No work on this DOA will be started until the planting of the No Disturb Zone under 40-794 per the plan to be submitted has been satisfactorily completed.

Working with D. Saal, Dr. Tejwani submitted a revised planting plan, revision date of April 24, 2008, for the 25 ft. No Disturb Zone. The revised plan shows a farmer's wall of stone and additional plantings within the NDZ. Per Tejwani, the stones will measure ca. 12 inches long and will be placed directly abutting one another along the edge of the zone as shown on the revised plan. No gaps between the stones are allowed. The farmer's wall will be in place by the first week of May, at which time D. Saal will review the wall. The additional plantings will be planted in the beginning of June and, again, reviewed by D. Saal. Following this schedule, the commission agreed to allow work on the house to begin as soon as the farmer's wall is in place and approved. Failure to fulfill the plantings per the aforementioned time schedule could result in an Enforcement Order stopping the work on the house. A fine of \$300.00 was levied against the Applicant, Dr. Tejwani, for failure to meet two of the special conditions under 40-794.

NOI 40-947 44 and 46 FOSTER STREET, EASTERN YACHT CLUB

Resource Area: Coastal Bank

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

Appeared: Messrs. Burke and Whitmore of the Eastern Yacht Club and Peter Ogren of Hayes Engineering, Inc.

Control Documents and Drawings: Topographic Plan, Eastern Yacht Club, 32 Foster Street, dated 11/02/07 and last revised 3/26/08, prepared by Hayes Engineering, Inc.

The new pool and patio areas are entirely within the footprint of the existing pool and patio. All proposed work in the buffer zone. The proposed area of impervious surface remains essentially the same as the existing area. No new storm water or pool discharges are proposed. One improvement regarding discharges is that the new pool will use filters to clean its water and will require no discharge as does the current pool. During rain storms, rain water may be discharged into the ocean via the proposed surge tank. The roof on the proposed pool house will be asphalt shingles and requires no treatment of rain runoff. Showers, etc. will drain into the sewer drain. All members voted to close this hearing. All members voted to issue an OOC with the following special conditions.

Pre-construction:

1. All special conditions are to be included in the construction contracts between the applicant and his/her contractor.
2. 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.

During construction:

3. 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.).
4. 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.
5. 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:

6. 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 Lawncare 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.

7. When a pool/spa/hot tub is 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. 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.

8. 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, Section 11E

NOI 40-948 26 STRAMSKI WAY, M'HD HARBORS & WATERS BOARD

Resource Area: Coastal Bank, Coastal Beach, Land Under the Ocean, Stream

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

Appeared: G. Gregory of the M'hd Harbors & Waters Board, W. Kelley of Kelley Marine Resources and D. Lynch of D.J. Lynch, Engineers

Control Documents and Drawings: Proposed Pier, Ramp and Float System, Town of Marblehead, Harbors & Waters Board, dated 07/01/02, latest revision 04/06/08, prepared by D.J. Lynch, Engineers

W. Haug stated that he is against this project but will decide the application solely on the basis of the WPA and the local Bylaw. Referring to the comments from DEP, the applicant agreed that the top surface of the pier deck will be above 17 feet based on the Marblehead Vertical Datum. The applicant also agreed to have the Marblehead Harbor Master approve the lifting mechanism for the ramp. Per the applicant, no eel grass beds will be disturbed and the roadway and parking lot will be pervious graded gravel.

The discussion turned to the stream and its 200 ft. riparian zone. In compliance with the WPA, the commission stated that any reconstruction within a riparian zone must attempt to improve an existing condition. In this case, one interest of the Act is to prevent pollution into the stream. The commission stated it believes the significant increase in

vehicular traffic into this area will increase the possibility of increased pollution from automobiles. With regard to the proposed parking lot, the commission required that it be located outside the inner riparian zone (100 feet from the top of bank of the stream) and that it allow for no more than 32 parking spaces.

The matter of handicap access was raised concerning the type of surface for this purpose. This refers to a possible access path from the end of the existing turn-around to the edge of the proposed pier. If such a path is required, the commission said it should not be made of an impervious surface.

At this point in the discussions, it was recognized that the DEP Form 3 (dated 02/00) used for this NOI is not the current form. The current form is dated 02/21/08. The commission required the filing of the current form with attendant submissions to appropriate governmental bodies but agreed to continue the discussions for public input.

Public input:

- R. Forbes: concerned about the surface of the parking lot if it is Lynn Pak.
- M. Goodman: said property lines need to be defined; does not want the handicap access paved.
- H. Mulligan: said the commission must be careful in reviewing this application.
- G. Friedman: does not want any blasting to remove ledge.
- J. Goodman: said there are a number of issues that should be considered.
- J. Andaloro: is concerned about the width of the roadway and the effect that driving pilings into the ocean bottom will have on raising sediment/pollutants.
- R McCarthy: raised the issue of resident only parking
- A Doren: concerned about the parking lot and its effect on the stream.

The motion was made and seconded to continue this hearing to June 12, 2008 at which time the above concerns will be addressed. All voted in the affirmative.

NOI 40-000 PHILLIPS ST & GOLDTHWAIT RD, GOLDTHWAIT RESERVATION, INC.

Resource Area: Coastal Dune

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

Appeared: J. Lubbock, Treasurer Goldthwait Reservation

Control Documents and Drawings: As submitted with the NOI

The applicant was informed that the DEP file number had not been received and that the hearing could not be closed until the number is received. However, discussions could commence. The project area per the submitted sketch/photo measures ca. 50 ft. X 70 ft.

It is currently covered with asphalt. The asphalt is to be removed and replaced with sod. The cobble berm seaward of this area has moved landward onto the area. This encroachment will be temporarily removed and replaced after the sod has been placed. All members voted to continue this hearing to June 12, 2008. In the event an OOC is issued it will contain the following special conditions.

Pre-construction:

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

During construction:

2. 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.
3. 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:

4. 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 Lawncare 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.
5. 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.
6. 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, Section 11E

Old/New Business:

Approve Minutes: The minutes of April 10, 2008 were approved by all members.

Sign Documents: All documents per the agenda were signed.

The meeting was adjourned at 10:00 PM.