

**CONSERVATION COMMISSION
MINUTES OF DECEMBER 11, 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 Walt Haug, Fred Sullivan, Deb Payson, Don Tritschler and Brian LeClair. Also present were Jan Smith, Associate Member and Doug Saal, 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 11/13/08 were approved without change, four members voting "yes" and one abstaining.

Approve COC: The COC for 40-866, 20-50 Doaks Lane (National Grid) was approved, four members voting "yes" and one abstaining.

40-965 75 BEACH STREET MILLER

Resource Area: Land Subject to Coastal Storm Flowage, Salt Marshes

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

Appeared: S. Patrowicz of Patrowicz Land Development Engineering and M/M Miller

Control Drawing: Proposed Site Plan, 75 Beach Street, Steve and Lisa Miller, dated Nov. 12, 2008, prepared by North Shore Survey Corp.

The "deer" fence will have an open space of a minimum of six inches along its entire length between the bottom of the fence and the ground to allow the movement of wildlife under the fence separating the wetland from upland. This condition is in keeping with the sense of 310 CMR 10.02 (2) (1) b.

The deck will be constructed of open decking set on cement filled sono tubes. The rain gardens will be exfiltrating to allow recharge to ground water. Patrowicz will submit a drawing of the construction of these gardens. He will also provide a maintenance plan

for the gardens. The garden immediately adjacent to the town drain culvert will contain two dry wells to further facilitate filtration.

The existing gravel driveway on the east side of the property will remain as is. The driveway on the west side of the property will be of an impervious surface. The paved driveways will drain into the adjacent rain garden.

An existing berm immediately adjacent to the town drain culvert will act as an erosion control barrier. The house will set on a slab on grade with the first floor elevation at 10.6.

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. An existing berm immediately adjacent to the town drain culvert will act as an erosion control barrier.

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.
6. Any pressure-treated wood proposed to be used in the construction of a structure for land -based use shall be arsenic-free. Any pressure-treated wood proposed to be used in the construction of a structure for salt water contact shall be treated with Chromated Copper Arsenate (CCA) or other preservative approved by the EPA and/or the MADEP which is less polluting and harmful to the salt water and its environment.

Post-construction/in perpetuity:

7. 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.

8. 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.

9. 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.

10. 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

40-927 8 CORN POINT ROAD HARKINS

Resource Area: Coastal Banks

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

Appeared: Scott Indermuhle of Sudbury Design Group and Brian Montejunas of Meridian Associates.

Control Drawing: Permit Site Plan for David & Sheryl Harkins, dated June 28, 2007, latest revision 11/17/08, prepared by Meridian Associates, Inc. and Harkins Residence (Bank Stabilization & Planting Plan), 8 Corn Point Road, dated Nov. 20, 2008, prepared by Sudbury Design Group.

Reference: Letter from Meridian Associates dated November 26, 2008.

This is an amendment to the original OOC and refers only to new drainage systems since the house is not being torn down. The proposed drain basin behind the garage is a roof drain. The applicant was informed the amended OOC has the same termination date as the original. All drains have been designed to achieve a high level of filtration and thus are much improved over the existing drain system. All members voted to close this hearing. All members voted to issue an amended OOC without additional special conditions.

40-933 452 ATLANTIC AVENUE FALK

Resource Area: Land Subject to Coastal Storm Flowage, Coastal Bank, Coastal Beach

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

Appeared: C. Young of Wetlands Preservation Inc. and Mr. Falk

Control Drawings: Site Plan, Seawall Replacement/Reconstruction Project, 452 Atlantic Avenue, dated October 25, 2007, latest revision October 6, 2008, prepared by Patrowicz Land Development Engineering. (Note: This drawing will be further revised to show the approved location of the seasonal stairway to the beach.) Seawall Repair Project, Falk Residence, dated November 2008, prepared by Vine Associates, Inc.

Reference: Letter from Wetlands Preservation, Inc. dated November 26, 2008 requesting an amendment to the special conditions as delineated under the local Bylaw.

Reference: DEP letter stamped October 31, 2008 with Superseding Order of Conditions (SOC).

The commission had earlier agreed to review the Special Conditions issued under the local Bylaw for the original hearing and to amend these conditions to complement but not compete with those conditions issued by the DEP in its SOC.

After discussions with the applicant and C. Young, all members voted to close this hearing. All members voted to issue the following revised special conditions under the local Bylaw.

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.

3. 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.
4. All site plans will show the No Disturb Zone and the No Build Zone.
5. Test borings will be made in the area of the pool to insure a proper foundation for supporting the pool. This information will be documented to the Commission before any work on the pool is started.
6. Prior to the start of work, the applicant shall submit the following documents to the commission for its files (not for approval).
 - a) A construction sequence of work that includes the schedule of when work will be performed.
 - b) A detailed plan for the construction of the proposed landform.
 - c) a plan for vegetating the coastal landform with beach grass prepared by a restoration specialist that includes the timing of planting, planting schematic, monitoring plan covering two full growing seasons after planting and protocols for re-planting, if necessary.

During construction:

7. 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.).
8. 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
9. 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.
10. All construction material will be stored outside the resource area and its buffer zone or as far back from the resource areas as possible.
11. In the event of a major storm forecast, the area and all equipment will be secured to protect the wetland resource areas.

12. If any work is done on the beach and this work disturbs the beach, the disturbed areas will be restored to their conditions as they existed prior to the work. The on-site manager will notify the commission at least 48 hours before any work is started on the beach.

Post-construction/in perpetuity:

13. 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.

14. 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.

15. 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.

16. 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. This condition shall survive this order.

17. Upon completion of the work allowed under this OOC, the applicant shall within 30 days apply for a Certificate of Compliance (COC). This application shall be accompanied by a written report from the project wetland scientist confirming all work has been done in accordance with the design as defined under this NOI. If required by the commission, an "as built" drawing shall also be submitted with the application for the COC.

40-966 FORT SEWALL TERRACE KNICKREHM

Resource Area: Coastal Bank

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

Appeared: Rich Williams of Hayes Engineering, Inc.

Control Drawing: Plan of Land, 7 Fort Sewall Terrace, dated November 4, 2008, prepared by Hayes Engineering

No DEP comments were yet received regarding the coastal bank. Haug pointed out to Mr. Williams that he took umbrage with the statement in the Hayes narrative that “no alternative design is available ... due to the purpose of the project.” Haug stated that such verbiage is very self-serving and does not reflect reality since other alternatives are definitely available.

Williams said Hayes thinks there is earth slippage on the bank since the house foundation shows cracks, which Hayes interprets as due to such a condition. However, Hayes did not think it necessary to shore up the foundation and felt stabilization of the bank would suffice to protect the foundation. The commission questioned this approach as possibly being not entirely sufficient to protect the foundation.

The commission also expressed doubts about replacing the existing boulder seawall with a vertical concrete wall. The commission is concerned about wave reflection, erosion and possible effects on the neighboring property. The adjacent neighbor expressed concern about any effect on his property. Further, the commission wants construction details on all proposed walls. In addition, a landscape plan for the bank is required. And all water and electric utilities planned for the terrace should be shown as well as any planned outside work. A site visit was scheduled for Saturday, December 20 at 9:00 AM. With the concurrence of Williams, all members voted to continue this hearing to January 8, 2009.

40-967 120 JERSEY STREET KRAY

Resource Area: BVW

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

Appeared: Mr. Joe Orzel of Gulf of Maine Research Center, Inc. and Mr. Kray

Control Drawing: Existing Conditions Site Plan, 120 Jersey Street, dated November 24, 2008, prepared by Gulf of Maine Research Center, Inc.

A “snow fence” will be erected between the construction and the BVW to act as an “erosion control” and limit of work. After reviewing the site plans and the BVW, 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.

During construction:

2. 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.).
3. 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.
4. 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:

5. 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.
6. 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.
7. 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: See above.

Minor Activities: D. Saal explained all permits issued under minor activities.

Sign Documents: All documents per the agenda were signed.

Meetings: There will be no further meetings in December (other than the site visit on December 20.). The next meeting is January 8, 2008.