

**CONSERVATION COMMISSION  
MINUTES OF APRIL 26, 2007**

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

Meeting was called to order at 7:12 PM

Present were: Commission Members Betsy Rickards, Fred Sullivan and Mark Klopfer. Also present was Doug Saal, Conservation Administrator. Betsy Rickards chaired the meeting in the absence of Walt Haug.

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

Note: The commission currently has only five 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 three members.

**Old/New Business:**

**Approve Minutes:** The minutes of 04/12/07 were approved without change.

**Other Matters:**

OOC 40-902 Park Lane, members present agreed to allow Water & Sewer Department to proceed with the work without the compliance of Wassman with Special Condition 27. The Commission agreed to allow Dana Snow, Superintendent of Water & Sewer Department, to perform the work of removing sediment build-up in the culvert and stream in the area of Park Lane (pursuant to OOC 40-902), even though one of the landowners has expressed that they will not remove their footbridge over the stream. In reading Special Condition 27 of the OOC, discretion as to the timing of the removal of the footbridges was granted—leaving it open for some interpretation. In the interest of controlling flooding and storm damage, the Commission will encourage Mr. Snow to perform his part of the job with the hope to convince others to do the same.

**Hearings:**

**40-920 11 Bradlee Road, Rand**

Resource Areas: Coastal Bank, Rocky Intertidal Shore, Land Subject to Coastal Storm Flowage

Interest of WPA and Bylaw: Storm Damage Prevention, Flood Control, Prevention of Pollution, Protection of Fisheries and Protection of Wildlife Habitat

Appeared: Daniel J. Lynch, Engineer and Michael Welch of J.J. Welch, Contractors representing the applicant Rand.

Control Documents: Plan entitled Proposed Repairs to Existing Pier, Ramp, Float, Land of Rand dated 3/30/07 as revised 4/4/07 by D. J. Lynch, Engineers.

The applicant proposes to replace the pier in the same footprint, but use timber rather than steel. Currently the steel has corroded and rusted to a point where it is unsafe for use. The applicant requested rather than 10 ft on center spacing (as with the current pier), that 20 ft on center spacing be used for the bents. Mr. Lynch stated that a majority of new piers are designed with 20 ft spacing, so as to allow debris or even small boats to pass through rather than pound against and damage the bents in a storm event.

The Commission expressed concern with the proposal as stated - maintenance and repair - when in reality the entire structure is to be demolished and replaced. Mr. Lynch stated that using the terminology "replacement" will trigger a new Chapter 91 and Army Corps of Engineers review. After much discussion about what would be considered repair versus replacement, the Commission decided that the applicant must decide what they want to do and come back before the Commission with a revised plan (i.e., they must either show repair, meaning a majority of the superstructure is maintained; or they show replacement as is basically shown on the plan now). The Commission did not want to be in a position of allowing the applicant to avert the proper permitting process through a misnomer. The Commission also requested that if the applicant intends to pursue the application as a replacement, they incorporate a gallows into the design, and if they pursue it as a repair, a gallows won't be warranted.

The applicant requested a continuance and the Commission voted to continue the meeting to the meeting of May 10, 2007.

#### **40-874 40B Cloutman's Lane, Collins**

Resource Areas: Coastal Bank, Coastal Beach, Rocky Intertidal Shore, Land Under the Ocean, Land Containing Shellfish, Land Subject to Coastal Storm Flowage

Interest of WPA and Bylaw: Storm Damage Prevention, Flood Control, Prevention of Pollution, Land Containing Shellfish, Protection of Fisheries, Protection of Wildlife Habitat.

Appeared: Joshua Singer and Fred Radcliffe of Childs Engineering Corp, Jed Schaefer, Colleen Collins representing the applicant.

Control Documents: Plans prepared by Childs Engineering Corporation dated 4/6/07 bearing the general title Collins Residence Pier 40B Cloutman's Lane Marblehead, MA 01945 in seven sheets labeled W-01A, W-01, W-02, W-03, W-04, W-05, and W-06.

History: Meetings for this application were conducted on 4/13/06, 5/11/06, 10/12/06, 11/9/06, 12/14/06, and 1/25/07 (see minutes). Due to the length of time since first submitting the application, the Commission decided at their meeting on January 25<sup>th</sup> to indefinitely postpone the hearing and require that the applicant re-notify abutters and re-advertise in the paper at such time when they were ready to submit new plans and come back before the Commission. The hearing this date was re-advertised in the Marblehead Reporter on 4/19/07 and abutters were re-notified.

The applicants provided the Commission with revised plans showing an extension to the length of the proposed pier of approximately 27-feet, in order to provide enough water at low tide so that the float would not bottom out. This modification was pursuant to the Commission's request to meet the requirements of the DEP Guidelines for permitting small docks and piers, specifically the provision that requires a minimum of 18 inches measured from the bottom of the float to the bottom of the ocean floor at mean low tide. The applicants also provided a revised plan showing survey points and elevations taken by John Halnon Co. on 11/30/06. In addition, Doug Saal had a survey conducted based on NAVD 1988 datum to ensure points were accurate.

The Commission verified that the eelgrass delineation was performed at the proper time of year (the end of the growing season). The applicant confirmed that the delineation on October 10, 2006, gives a good indication of the short term growth pattern (actual line of vegetation), as well as long term delineation (with depth contours, light availability, etc).

Pursuant to a request by the Harbormaster, the Commission asked if the applicant would be interested in stabilizing the float using a helix system (which bores into the substrate) rather than mooring blocks which require more excavation and disturbance. The applicant expressed a willingness to use them, as long as the substrate and depth were suitable.

The applicant also confirmed that they will be using the Seaflex tethering system.

The applicant will be using CCA treated wood for all parts of the pier, decking, and float that are exposed to salt water. Areas that do not come into contact with the salt water will be treated with ACQ.

At this time, the Commission requested any comments from the audience. Milton Fistel, a registered professional engineer, representing the abutter, Robert Hansen (and who designed Hansen's pier) posed some questions to the Commission. He questioned why there were no elevations on the site plan. He was told that a plan had been submitted at the hearing with those survey and elevation points. Mr. Fistel questioned why the float was over the property line of Mr. Davis, and was told that property lines do not extend that far into Land Under the Ocean, unless specifically deeded. This is also not a matter under the purview of the Commission. Mr. Fistel lastly disagreed with the length of the Seaflex tether that was proposed (15 feet), and stated that he spoke with a representative of Seaflex who gave him a different (and longer measurement) when he submitted the

specs for the area. Mr. Fistel felt that a 15 foot length would not be adequate in a high tide or storm event to hold the float in place, but also felt that a longer length could interfere with the chains securing Mr. Hansen's float. The Commission decided that they would defer to the calculations and specifications that were given to Childs Engineering, as they were directly in relation to the proposed pier, float and area and not hypothetical figures that may have been submitted by Mr. Fistel. The Commission also believes this is an issue for the Harbormaster and will defer to any comments he may have.

Robert Hansen, abutter to the property, spoke next. He questioned why the entire project was within 25-feet of the property line, when the DEP Guidelines for docks and piers specifies that this setback be met. The Commission responded by saying that they follow the guidelines in the manual that are relevant to protecting the resources – and not those that would be under another authority's jurisdiction. Mr. Hansen also argued that since there were errors with the vertical datum, perhaps there may be errors with the horizontal datum—inferring that the delineation of the eelgrass bed may be wrong. Through an analysis of previous information and discussions, the Commission stated that they are satisfied with the delineation and feel no independent survey is necessary.

Mr. Davis, another abutter, cautioned the Commission that they not rush to judgment and that they should question the information that the consultants are providing. He believes the Commission should not make a hasty decision and should wait until more members are present. The Commission responded that deliberations on this project have occurred over the course of an entire year, that the consultants have responded to the Commission's request for more data, information, and have made modifications accordingly, and they have done due diligence through the course of hearings. The Commission felt that small nuances of the project could be argued forever, without much substantive change in potential impacts to the resource areas. As such, the Commission felt satisfied with the modifications to the plans and the current proposal.

All members voted to close this hearing. All members voted to approve an OOC to include the following special condition.

**Pre-construction:**

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

3. Construction of the pier/dock that is to be accomplished from a barge or boat shall operate in at least 2 feet of water and shall not ground out at low tides.

4. The Helix system of anchoring the float shall be used unless otherwise demonstrated to be inappropriate due to soil and substrate conditions.
5. If the applicant must use mooring blocks, they shall NOT BE placed in a location of eelgrass beds, since their required excavation and burial will likely disturb eelgrass growth and distribution.
6. 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.).
7. 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.
8. All construction material will be stored outside the resource area and its buffer zone or as far back from the resource areas as possible.
9. The construction of the pier/dock and any structure over the water permanently secured to the earth shall withstand a 100-year storm without damage to the integrity of the structure. All piers/docks will conform to the requirements of Chapter 91.
10. All piers, docks and floats must follow the guidelines established in the document, "Small Docks and Piers – A Guide to Permitting Small Pile-Supported Docks and Piers" dated November 2003. Float stops are permitted provided they meet the aforementioned guidelines.
11. All floats and docks will be constructed so as not to bottom out (rest) on the ocean floor at low tides (mean low tide). This condition shall survive this order.
12. Any pressure-treated wood proposed to be used in the construction of a structure for land-based use (contacting with soil) 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 MADEP which is less polluting and harmful to the salt water and its environment.

**Post-construction/in perpetuity:**

13. 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.

14. Minor maintenance repairs to the superstructure only of the pier are allowed as a surviving condition of this order. Minor maintenance repairs are, typically, replacement of occasional deck boards, sections of hand rails, etc. Complete new decking, complete new hand rails or other such large repairs require an NOI. Minor maintenance repairs do not apply to the main support structure (stringers, bents, etc.) and do require an NOI. This condition shall survive this order.
15. Motorized vessels shall approach the float and be moored so as to minimize propeller dredging and turbidity to the mudflats and eelgrass beds to the maximum extent possible.
16. Within 30 day of completion of the work allowed under this OOC, the applicant shall apply for a Certificate of Compliance (COC) and, if required by the commission, submit an "as built" drawing with the application for the COC.

**Old/New Business:**

**Minor Activity Permits:**

Two minor activity permits have been issued on 4/25/07:

- 363 Ocean Avenue for re-shingling the roof of a house, and
- 4 Nonantum Road for re-roofing the house.

**Sign Documents:**

The Commission signed the appropriate documents as listed on the Agenda.

**Other Matters:**

The Commission agreed that an A-frame gallows could be replaced on a pier at 15 Kimball Street, since there were no impacts to the resource area and that replacement could be performed quickly and easily with a bolt system.

The Sexual Harassment Policy Acknowledgement Sheet was signed by those members who hadn't yet signed it.

**Meeting Adjourned:**

Meeting was adjourned at 8:51 PM