

## CONSERVATION COMMISSION MINUTES OF JULY 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 7:00 PM

Present were: Commission Members Walt Haug, Mark Klopfer, Fred Sullivan and Craig Smith. Also present was 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 only five members. Per the MACC Handbook, section 4.1.2, most lawyers agree that a quorum is of a majority of commissioners currently serving. The quorum for this meeting is therefore three members.

**Discussion:** D. Cox asked that his proposal to the commission requesting a reversal of its vote allowing chemical treatment of Black Joe's pond be addressed at this meeting (this discussion was postponed from the July 12 meeting). Cox briefly reviewed the history of NOI 40-880 up to this time point and suggested that the approval of the commission on June 22, 2006 for one application of chemicals might have been premature. He said that after the approval the Pond Committee was formed in the fall of 2006 and, in March 2007, an evaluation program for the pond was formulated and eventually initiated thus giving the commission an alternative to consider beyond chemicals. G. Field reminded the commission that two representatives from the DEP ponds program met with members of both groups (pro- and con- chemicals) in October, 2006 and they did not feel that the pond was in immediate danger of drying up and that it would make sense to formulate a long term management plan for the pond.

The commission, in its position as a landowner and abutter to the pond, said it felt it was now in the midst of a legal battle and did agree its approval might have been premature due to the turn of events. Unfortunately, a regrettable amount of mistrust has developed between the pro and con groups as evidenced by an exchange of emails between D. Cox and C. Campbell (see email from Campbell to Cox dated July 18, 2007 at 4:50 PM. Subject: Decision re Salem State College, Black Joe's Pond) and various appeals or threat thereof. To date, the commission is aware of only its own approval in writing. Due to the ongoing appeals and threats of litigation, the commission felt it prudent to reassess its position regarding its approval. The commission then read an email exchange between B. Rickards and W. Haug (note: No other members were a party to this exchange.) dated July 23, 2006 at 12:23 PM. Rickards expressed that she was not in favor of the original vote to allow chemicals and recommends that the commission rescind its approval. After further discussion, the commission, as a landowner, voted all present in favor to rescind its approval for the application of chemicals. The commission very strongly emphasized that this decision applies only as a landowner. It does not in

any way reverse the original OOC, both under the Wetlands Protection Act and the local Bylaw. The commission will again visit this decision once all litigation has been resolved.

#### **40-928 15 BROWN STREET JANSKY**

Resource Area: BVW

Interest of WPA and Bylaw: Protection of Ground Water Supply, Prevention of Pollution, Protection of Wildlife Habitat, Flood Control

Appeared: Mr. Jansky and James K. Emmanuel of James K. Emmanuel Associates

Control Document: Jansky Residence, 15 Brown St., (L-1), dated July 2007, prepared by James K. Emmanuel Associates

The driveway will be one foot wider than the present driveway. Due to the redesign of the landscaping the commission did not feel this would impact the wetland. The one issue of concern was the proposed sports court. Two abutting neighbors, Pevear and Zimmer, expressed concern about the drainage off this court onto their properties. Since the issue could not be resolved to everyone's satisfaction, the applicant agreed to withdraw the court from the plans in order to allow the remainder of the project to go forward.. 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.
3. A revised control drawing eliminating the sports court will be submitted to the commission before any work is started.

#### **During construction:**

4. 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.).

5. 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.

6. 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:**

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. 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.

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](http://www.mnla.com) or [www.newfs.org](http://www.newfs.org).

10. Upon completion of the work allowed under this OOC, the applicant shall within 30 days apply for a Certificate of Compliance (COC) and, if required by the commission, submit an "as built" drawing with the application for the COC.

**40-929 1 PIG ROCK LANE EVANS/WEBSTER**

Resource Area: Coastal Bank

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

Appeared: R. Griffin of Griffin Engineering Group, LLC

Control Document: David Evans/Karen Webster, One Pig Rock Lane, pages C-1 and S-1

C-1 dated 06/26/07 and S-1 dated 07/11/07, prepared by Griffin Engineering Group, LLC

Griffin presented a page with four color photos showing the condition of the seawall. Individual members of the commission had visited the site. The major point of concern for the commission was the manner in which debris and materials would be contained and prevented from entering the resource waters. See Section 4.0 of the Project Description (Attachment A) as submitted with the NOI. This section describes the manner in which debris and materials will be contained and prevented from entering the resource waters. 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.
6. 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:**

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. 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.

9. Upon completion of the work allowed under this OOC, the applicant shall within 30 days 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:**

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

**Request for Extension:**

40-713: A one year extension was voted.

40-780: A one year extension was voted.

**Sign Documents:** All documents per the agenda were signed.

**Other Matters:**

D. Cox request to rescind a vote: See above.

Sign for Robinson Farm: Carl Siegel will be asked to submit an invoice for \$100. The sign is currently with Nick Freeman. Rec., Park and Forestry (T. Hamond) has agreed to erect the sign after Labor Day.

P. Lynch, John Muldoon, corner Green and Beacon Streets: Various members visited the site individually. After reviewing drawings "Green Street Condominiums", sheets 1-10, dated July 5, 2006, prepared by RIM Engineering Co., Inc., the commission noted that the No Disturb and No Build Zones were erroneously referenced, in part, to the proposed, replicated wetlands. When they are referenced to the existing wetlands, there is even much less area available for

the building proposed. The commission felt the footprint of the proposed building was much to large for the site since it violated all buffer zones and left no room for compensatory measures. The applicant will review his plans.

Next Meeting: Presently there are no hearings scheduled for August 9. If none are received in time, this meeting will be cancelled. Haug will not be available for this date.

The meeting was adjourned at 10:00 PM.