

**CONSERVATION COMMISSION
MINUTES OF JANUARY 12, 2006**

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: Neal Mizner, Walt Haug, Mark Klopfer, Betsy Rickards, Margo Carey and Fred Sullivan (representing a quorum).

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

The commission welcomed our new member, Mark Klopfer.

HEARING: 40-864 8 FOSS TERRACE VELLECO

Resource Area: BVW

Appeared: No one

Control Drawing: Proposed 2-Family, 8 Foss Terrace, dated 11/21/05, prepared by Grazado Velleco Architects and Proposed Site Plan 8 & 10 Foss Terrace, dated December 6, 2005, prepared by Kane Land Surveyors

This was a continuance from 12/08/05 and 12/22/05. A letter from Paul Lynch, atty., dated January 11, 2006 requested a continuation of this hearing to February 23, 2006. All members voted to continue this hearing to February 23, 2006. (Note: Haug had been contacted by phone by neighbors prior to the hearing and he informed them of the pending continuation.)

Minutes: The minutes of 12/22/05 were approved as written.

Sign Documents: The Schedule of Bills Payable was signed. The two OOC's were not signed since Saal was not present and these documents could not be notarized.

Other Matters: Rickards informed the commission she has taken a job with Coastal Zone Management and questioned the suitability of her participation in matters dealing with coastal issues in the future. Mizner will research this and report at the next meeting.

40-867 46 PINECLIFF DRIVE McCARRISTON

Resource Area: Coastal Bank

Appeared: Mr. McCarriston; and Peter Ogren of Hayes Engineering, Inc.

Control Drawing: Site Plan of Land, Peter & Mary T. McCarriston, dated December 8, 2005 prepared by Hayes Engineering, Inc.

Interest of the WPA and Marblehead Bylaw: Beach nourishment (WPA) and resource pollution (Bylaw).

This site consists of a house built into the side of a steep slope which then flattens out toward the coastal bank. The existing house is to be razed. The existing foundation will be used for the new construction. The foundation footprint will not be changed except for a frost wall on the landward side of the house for a porch (just inside the 100 foot buffer zone). The foundation is outside the 50 foot No Build Zone. The construction of the stairs on the S.W. side of the house, the slopes surrounding the house and the landscaping were discussed in detail. All members voted to close the 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 shall be submitted before any site work is started. It shall show two trench drains built into the stairs on the S.W. side of the house. One trench drain will be located at the bottom of the first set of stairs. The second trench will be located midway within this set of stairs. Both trench drains will empty into a drywell.
4. A landscape plan shall be submitted before any site work is started. It will show a vegetated buffer strip averaging ten feet in width. This strip will be located immediately adjacent to and along the entire length of the top of coastal bank. This strip will be planted with native plants, requiring no fertilizing or other maintenance, to minimize the flow of nutrients/pollutants from the lawn area into the resource waters. This landscape plan will also show how the very steep slope located immediately adjacent to the waterside of the house will be designed and vegetated.

During construction:

5. 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.).
6. 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.

7. 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:

8. 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.

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. This condition shall survive this order.

40-868 13 GOODWINS'S COURT OUELLETTE

Resource Area: Coastal Bank

Appeared: Mr. Ouellette and Mr. Bill Kelley (Note: Kelley stated he has just been engaged to represent Ouellette.)

Control Drawing: Topographic Plan, # 13 Goodwin's Court, prepared for James Ouellette by Hancock Associates, dated 12/05/05, revised 12/14/05.

Interest of the WPA and the Bylaw: Storm damage prevention.

This application was not opened. Since an Enforcement Order had been issued on 12/01/05 by the commission against this property and since the E.O. had not yet been discussed, the commission decided to address the E. O. before any discussion of the NOI.

Enforcement Order: 13 Goodwin's Court, issued 12/01/05. Haug asked if he had applied for a building permit. Ouellette said he had not. Haug had already checked with the Marblehead Building Inspector, Bob Ives, and determined Ouellette had previously done work in the past in Marblehead and, at that time, had applied for building permit(s). Ouellette stated he had started the work due to an emergency. Haug pointed out that if he

had applied for a building permit, even under an emergency, the Building Inspector would have directed him to the Conservation Commission for its emergency permit.

The commission agreed there appeared to be no justifiable reason for Ouellette to have by-passed the regular permitting procedures, especially as he has had prior experience dealing with building issues in Marblehead. At the suggestion of Mizner, the commission reviewed previous infractions wherein fines had been imposed, said fines ranging from \$3,000 in a buffer zone and up to \$7,500 in a resource area. It agreed a fine should be imposed in the instance.

At this time, comments were invited from the audience. The comments were as follows:

M. Berman of 17 Goodwin's Court: He observed work starting around July, 05 rebuilding the basement. This work then expanded out to the deck/patio. The work continued throughout the summer. Berman raised the question as to whether there was really an emergency with this project. He questioned whether the new seawall was a re-enforced construction. Berman said the wall should be removed. Haug explained that the commission might not require removal if the interest of the WPA and the Bylaw was not ultimately compromised.

S. Willard of 64 Orne St., representing his mother living at 19/21 Goodwin's Court: Willard asked if a licensed builder had done the work or if Mr. Ouellette was a licensed contractor in Massachusetts. Ouellette answered "no" to both questions. Willard said the new seawall had been moved six feet further out seaward. He questioned if the seawall had been designed by a professional engineer. Ouellette said "no". At this point, Kelley said the wall had been supervised by Charles F. Quigley, P.E. (Note: The only documentation with the stamp of Quigley was for the construction of the deck. See Ouellette Cottage, Deck Repairs Section, stamped 12//19/05.)

Willard said the wall should be removed. He questioned why the commission would only fine the applicant and allow un-permitted work to remain. He said if this is how the commission works, he would feel free to do work on the seaward side of his mother's property, recognizing it might not be permitted before the fact, but then just pay a fine and get away with un-permitted work. Mizner refuted the generality of such thinking and pointed out the commission reviews each and every situation on its own merits/demerits.

E. Falk of 10 Goodwin's Court: Falk is an architect and has been involved in numerous seawall constructions. He observed the seawall work being done at 13 Goodwin's Court over the summer and fall. He said the new stone veneer covering the seawall is not anchored to the inner concrete wall and, therefore, is susceptible to falling away from the wall. He questioned the integrity of the wall and its ability to withstand high velocity waves from ocean storms. He also stated the supports for the deck are now resting on the veneered section of the seawall, not on more substantial underpinnings. Falk offered a letter dated January 10, 2006 from Clare Mahan of 15 Goodwin's Court wherein she expressed concern about view obstruction.

The commission also added its concern about the projection of a section of the wall (it was referred to as a "turret") and any wave reflection this might cause onto the neighbor's wall. Berman said this "turret" was not in existence before this current construction. Klopfer said a marine engineer should review this construction. Citing section 194-4, paragraph E of the Marblehead Bylaw, the commission agreed to require the applicant to conduct a review by a marine engineer selected by the commission at the applicant's expense to establish if the new seawall had been moved seaward and to determine if the new seawall meets the required federal and state construction guidelines. Mizner will obtain a list of marine engineering companies who were potential or actual participants on the design of the proposed Marblehead Causeway seawall. The commission agreed to continue this hearing to February 23, 2006 and to hold in abeyance any review of 40-868.

HEARING: 40-859 141 FRONT STREET SAHAGIAN

Resource Area: Coastal Bank

Appeared: Ted Peach

Control Drawing: Sketch, Exhibit C, dated 10/14/05, drawn by E.W. Peach

This was a continuance from 10/27/05, 11/10/05, 12/08/05 and 12/22/05. The DEP File No. and form had been received. DEP raised some questions and these were discussed with Peach. He will submit further information per the request of DEP to more closely define the scope of the proposed work. All members voted to continue this hearing to February 23, 2006.

Old/New Business:

Minutes: see above

Sign Documents: see above

Other Matters: The Town of Marblehead web site is now up and all members were asked to visit it and offer any comments regarding the pages dealing with the conservation commission.

Meeting was adjourned at 9:30 PM.