

**CONSERVATION COMMISSION
MINUTES OF MAY 25, 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 Betsy Rickards, Walt Haug, Mark Klopfer, Neal Mizner and Fred Sullivan (representing a quorum – see below Note). 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 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.

Other Business:

Pond Management: Mizner recommended that all members read the document, "Guidance for Aquatic Plant Management in Lakes and Ponds: As it Relates to the Wetlands Protection Act"

Approve Minutes: The minutes of 05/11/06 were approved with the following changes.
Morring Road Pier: Special Conditions: A third condition under "Pre-construction" will be included and will read as follows: Before any work is started the contractor employed will submit a detailed description of the work processes to be used/followed to the commission for approval.

Other Matters: Chatham court case: Briefly discussed.

Sexual Harassment: All members signed to acknowledge cognizance of the town policy regarding sexual harassment.

40-882 24 HARBOR AVENUE FITTS

Resource Area: Coastal Bank and Beach

Interest of the WPA and Bylaw: Prevention of Pollution, Protection of Wildlife Habitat

Appeared: R. McCann, atty., and David Fitts

Control Drawing: NOI Plan, David A. & Joanne H. Curtis, 22 Harbor Avenue, dated May 24, 2006, prepared by Hayes Engineering, Inc.

This was a continuance from 04/27/06. A previous NOI dealing with this property was 40-838 and was for seawall repair only. The owner of the pier is #24 Harbor Avenue but M/M Fitts, along with others, have deeded rights for using the pier. The DEP form had no comments. The pier footing closest to the seawall will be raised and re-set in the same location but at a lower depth to be flush with the top surface of the ocean bottom. A crane, sitting on the driveway, will perform this task. A backhoe will be lowered by the crane onto the tidal land at low tide to allow this backhoe to dig and re-cover the footing once it is in its new, lower flush position. In the event ledge does not allow the footing to be placed at the desired depth, a new footing may have to be constructed and/or pinned to the ledge. If this is the case, the applicant will submit details of this construction to the commission for approval before any work is started.

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. If a new footing is to be constructed, plans detailing this construction will be submitted to the commission for approval before any work is started.

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 the structure shall be arsenic-free. The applicant will investigate the possible use of wood treated with sodium silicate (see http://pubs.acs.org/subscribe/journals/esthag-w/2006/apr/tech/mf_wood.html)

Post-construction/in perpetuity:

7. Minor maintenance repairs to the superstructure only of the pier are allowed. 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.

40-884 18 COOLIDGE ROAD ROTHBARD

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

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

Appeared: Paul Lynch, representing the applicant

Control Drawing: Site Plan of Land, 18 Coolidge Road, Robert Rothbard, dated February 1, 2006, prepared by North Shore Survey Corporation

The NOI contained two errors: (1) A 10: "No" should have been checked. (2) C: "5" should have been checked and the resource area defined as coastal bank. Lynch estimated the amount of new impervious surface in the No Build Zone will be ca. 250 sq. ft. and the new driveway will be either gravel or pavers. Per Haug the No Disturb Zone already has a wide vegetated buffer strip with a small seawall which acts to prevent nutrients/pollutants from flowing over the bank. All members voted to close this hearing. All members vote 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. 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

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.

40-883 21 SUNSET ROAD McMAHON

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

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

Appeared: Paul Lynch, representing the applicant, W. Jacobs, building architect and Mr. Emmanuel, landscape architect

Control Drawing: Site Plan of Land, 21 Sunset Road, Teresa McMahon & Edward McMahon, Jr., dated April 5, 2006, prepared by North Shore Survey Corporation

A previous NOI for this site was 40-759 with OOC issued 12/05/02. The current NOI is from new owners. The DEP form had not been received. Since some of the work is in the resource area, this form is required by the commission before an OOC can be issued. Lynch was informed the application would be discussed but will have to be continued. The elevation of the new deck projecting out over the coastal bank (seawall) will be the same as the current deck elevation. This new deck will have essentially the same footprint and location as the current deck and will use the same existing support columns.

A town sewer easement runs through this property and restricts where the house addition can be located. This was considered as a mitigating factor by the commission thereby allowing a small portion of the addition in the area of the current patio to be located in the No Disturb Zone and the remainder of the new addition to be in the No Build Zone. According to Emmanuel, even with this small intrusion, considering the previous

“impervious” patio, there will be a net reduction of ca. 150 sq. ft. in the amount of impervious surface in the NDZ. In addition, the seaward edge of the new impervious surface (the new house addition) is moved ca. eight feet landward compared to the current “impervious” patio. The new deck in this area will use open decking and will be underlain with pea stone.

At both the north and south sides of the house, on the coastal bank, a five foot wide strip of vegetation will be planted directly abutting and along the entire bank. A planting plan will be submitted and will reflect plants capable of taking up nutrients. Ms. Pfister (abutter) was assured by Emmanuel that the post-construction drainage off site will not be greater than that of pre-construction. Mr. Bailey (abutter) was assured by Emmanuel that drainage off the proposed pool will not enter the property of Mr. Bailey. A cross section of the pool and surrounding elevations will be submitted. No blasting will be done for the foundation.

With the concurrence of the applicant, all members voted to continue this hearing to June 8, 2006. 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.
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 planting plan showing the five foot wide vegetated strip at the top of coastal bank and the plants capable of taking up nutrients will be submitted to the commission for approval before any work is started.
4. A drawing showing the cross section of the pool and associated structures with elevations will be submitted to the commission for approval before any work is started.
5. A plan describing how and where the pool will be drained will be submitted to the commission for approval before any work is started.

During construction:

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.

Post-construction/in perpetuity:

9. 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.

10. 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.

11. 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.

40-000 MOORING ROAD PIER FLUEN POINT ASSOCIATES

Resource Area: Coastal Beach, Land Under the Ocean

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

Appeared: No one

Control Drawing: See Affidavit of Service for description of work to be performed

This was a continuance from 05/11/06. No DEP file number of form had been received. All members voted to continue this hearing to June 8, 2006.

40-880 BLACK JOE'S POND GINGERBREAD HILL

Resource Area: Land Under Waterbodies and Waterways

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

Appeared: Craig Campbell, representing the neighbors and Gerry Smith of Aquatic Control Technology, Inc.

Control Document: NOI for the Aquatic Management Program at Black Joe's Pond, dated March 2006, prepared by Aquatic Control Technology, Inc.

Campbell submitted a letter dated May 25, 2006 detailing further actions proposed by the neighborhood group. Ownership of the pond has not been determined and apparently is not within the capability of this application to be determined. Campbell spoke with the owner of the house at the end of Barry Road from whose property the pipe emanates. This pipe was originally for a roof drain but is now broken and no longer serves as a drain. Since Barry Road is a dead end road and is a gravel surface it appears this area is not a serious source of nutrients or pollutants into Black Joe's Pond.

Smith said dredging would cost hundreds of thousands of dollars and that other hand/mechanical means of removing submerged/surface plants is not very effective. He said application of the proposed chemicals would be done so there would be no dispersing of the chemicals into the air. He said the sand bags sealing off the outlet of the pond would remain in place for five days, thus insuring no water outflow until the chemical concentration had dropped well below any limits that could be harmful to other life. He said he has treated Whittier Pond for over ten years and the results are very positive without harmful side effects. He said DEP has already issued a permit for the application of the chemicals specified at Black Joe's Pond. Hand removal of purple loosestrife could also be done.

At this point, Pic Harrison of the Organic Pest Management Advisory Committee made a power point presentation. The presentation included a short history of the committee and its function, the reasons why chemicals should not be used (or at least as a measure of last resort), and alternative methods for clearing ponds of nuisance vegetation. A major concern for any pond is the nutrient load in the pond bottom sludge. Harrison showed a pump system which he said could be used to agitate and oxygenate the sludge. He estimated the cost of each pump at around \$10,000. Smith said it is not safe to place any electrical device in water accessible to humans or other animal life. D. Perkins (of the Marblehead Conservancy) said they could mobilize people to work in the ponds to remove the nuisance vegetation. Haug countered that he has been involved with previous attempts by other groups to use hand labor and the physical effort required is overwhelming. Thus, it was abandoned.

M/M Ehrich, 58 Beacon Street, said a spring has opened up on their property. They questioned if this comes from Black Joe's Pond. If so, they would not want chemicals flowing across their property. Another resident commented that it has been suggested that such a flow might emanate from Steer Swamp. Klopfer asked Smith for the ideal

solution if cost were not a factor. Smith said one needs to consider in-lake/vegetation and watershed management. He would still proceed in the same manner and that, eventually, dredging would be needed.

At this point, Mizner suggested the opponents to this project detail the alternatives they offered (be more specific) in the power point presentation so the commission could try to determine how immediate and effective these alternatives might be. It was recognized that the pond is stressed and, if it is to be saved, needs immediate attention. With the agreement of the applicant, all members voted to continue this hearing to June 8, 2006.

Old/New Business:

Approve Minutes: See above.

Sign Documents: All documents per the agenda were signed.

Meeting was adjourned at 10:40 PM.