

**CONSERVATION COMMISSION  
MINUTES OF OCTOBER 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 Walt Haug, Betsy Rickards, Craig Smith, Mark Klopfer 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.

**Approve Minutes:** The minutes of 09/14/06 were approved by four members. One member arrived just after this vote.

**40-896 59 NAUGUS AVENUE CLARK**

Resource Area: Coastal Bank

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

Appeared: C. Clark

The applicant requested an amendment to the NOI for the following changes. (1). The stairs on the coastal bank will now be constructed from concrete and stone instead of wood. (2). The pier will now be constructed from treated wood, not steel, and there will be some minor changes to its construction (but not to its length, height, number of pilings or any other major component). A new, up-dated drawing will be submitted.

Clark pointed out that one of the special conditions from the commission forbids the use of arsenic (ACQ) treated wood. His research indicates that this restriction is applicable for land use but not in salt or brackish water. He submitted a data sheet from the U.S. Environmental Protection Agency (Pesticides: Topical & Chemical Fact Sheets dated 6/16/04) listing Chromated Copper Arsenate (CCA) as the recommended treatment of lumber and timber for salt water use. The referenced special condition will be re-written to incorporate this change.

All members voted to review these changes as amendments. The hearing for these changes will be held on October 26, 2006.

**40-0000 3 PARK LANE M'HD WATER & SEWER**

Resource Area: Perennial stream

Interest of the WPA and Bylaw: Prevention of Pollution

Appeared: Carl Siegel and Dana Snow of M'hd Water & Sewer

Control Drawing: As submitted with the NOI

No DEP file number had been received. The applicant was informed that the hearing would proceed but could not be closed until the file number is received. The properties at 3 Park Lane (Clifford) and 90 West Shore Drive (Wassman) had flooding during the May, 2006 (Mother's Day) rain storm. Both Mr. and Mrs. Clifford and Mrs. Wassman attended this hearing. They claim the flooding resulted from the overflow of the stream. Snow described the actions they would like to take to "clean:" the stream bed (see Attachment "B" of the NOI).

Haug read from 310 CMR 10.56 (1) to point out the function of streams. ("...prevention of pollution, remove dissolved and particulate nutrients ...trap toxic substances..."). He also read from 10.56 (4) (a) 1 which allows work provided the "water carrying capacity within the defined channel" is not impaired. Our local Bylaw, chapter 194, section 2.12 allows hand cleaning of a stream. Haug then read from his notes regarding several visits to the site:

"Clifford 3 Park Lane

July 2006: Saal and Haug met with Mrs. Clifford and Mrs. Wassman on site for a preliminary review. It was agreed to come back with Snow.

7 August 2006: Sasso, Saal, Snow and Haug met at this residence to review the flooding problem. A neighbor, Mr. Jackson of 49 Shorewood Road, was also present. He has one/two sump pumps in his basement and has never experienced any flooding problems. Per Snow, the residents on Shorewood Road have never reported any flooding problems.

28 August 2006: Saal, Snow and Haug met with Mrs. Clifford and Mrs. Wassman of 90 West Shore Drive. Haug emphasized that this is a naturally flowing perennial stream and has been documented as far back as 1881. As such, it is protected by the Wetlands Protection Act. He pointed out that the vegetation in the stream acts as a filter to remove nutrients and pollutants from the water. This stream serves as the outlet for a watershed of ca. 250 acres. Per Clifford, when her house was built (for another prior owner), the area behind the house was a pond or totally wet. She said the water level from the

overflowing stream did not reach her cellar at the time of the Mother's Day storm. The edge of the water was about 5-6 feet from the edge of her cellar. She said the water comes up through her cellar floor. Her cellar floor appears to be very close to the current ground water level. The ground on both sides of the stream was saturated as we walked the area.

In her letter dated July 13, 2006, Clifford stated she has lived in this house since 1984 and the first flooding problem occurred in July 2003. Further, she stated that "the frequency of unusual storms has now turned out to be more common than not." We reminded her of the change in the general weather patterns due to a normal cyclical change and/or global warming. Haug pointed out that due this change, many insurance companies are refusing to insure certain flood-prone properties. He further pointed out that the drain system from the 250 acre watershed has not changed in the last few years. This system is designed for 25 year storm events and now we are starting to experience 100 year storm events.

Basically, all houses in this immediate area sit in the flood plain of the stream. Clifford wants us to solve a high ground water table problem. We repeatedly suggested she install a sump pump and tried to explain how such a pump could better manage the water and most likely prevent the high ground water from rising above her cellar floor within the cellar itself. She did not seem receptive to this idea but rather continued to view the problem as due to the stream overflow. The possibility of cleaning out the stream by removing some of the vegetation and stones in the stream bed was discussed. Also, removing a foot bridge on the Wassman property and deepening the stream bed at this location was discussed. Further, removing a portion of a wood fence at the edge of the Clifford property and raising the two foot bridges on this property were discussed. Even with these actions (if approved), this will not resolve the basic problem of high ground water table.

Snow, Saal and Haug will meet Thursday, 31 August to define the contents of an NOI to be heard 14 September. Haug told Clifford he does not speak for the entire commission. A site visit by the commission most likely will be necessary.

25 September 2006: C. Smith and W. Haug met with Mr. Clifford. Clifford said sand from storm drains accumulates in the stream and has made the stream shallow. Some sand was evident in parts of the stream but only in small amounts. The lawn area was very spongy/wet. Clifford also pointed out that at one time long ago there was a pond in this area for watering livestock."

Snow said the culvert under Shore Wood Road is adequately sized to handle storms like that of May, 2006. He and others from his department were at this culvert multiple times during this storm. The water flowing through the culvert never reached the maximum capacity of the culvert. Regarding the bridges, based on pictures submitted, the three bridges across the stream (2 on Clifford and 1 on Wassman properties) act as dams at times of high water levels and impede water flow.

Haug reiterated the comments from his notes that the high ground water level in this area is the real problem. Based on consultations with Saal and Snow during the visits it is recognized that cleaning the stream bed will allow the initial surge of storm water to flow within the stream channel more freely. However, once a certain water flow of "x" gallons per minute is reached and exceeded, the water will do what is natural and overflow its banks.

Mr. Clifford reminded the commission that a "French" drain of one to two foot depth was built under his cellar during the initial construction. This indicates that the potential problem of flooding was understood to exist when the house was built. Clifford asked if the town would pay for sump pumps. He was told "no". Klopfer and Sullivan both stated that the houses in this area sit within a flood plain and most likely would not have been allowed to be built today, at least with cellars. Rickards suggested a vegetated strip along the entire length of the stream be planted with various types of plants that take up water. Something like this already exists on the Wassman property. The Cliffords did not commit to such a strip. Mrs. Wassman asked if the town properly maintains its drain system. She was informed the town has a regular and active schedule of street cleaning and catch basin cleaning.

All members voted to continue this hearing to October 26, 2006. In the event a positive OOC is issued, it will contain the following special conditions.

1. Remove sand and sediment at the upstream end of the stream by use of a vacuum truck.
2. Remove large rocks which are impeding flow by hand.
3. Remove a minimal amount of vegetation by hand
4. A member of the Conservation Commission will be on site to monitor the work.
5. No work is to be started by the Water & Sewer Department until a written statement is received by the commission from both Clifford and Wassman agreeing to either remove their bridges or raise them by approximately 18 inches over the ground level as measured at the top of the bank. The time for removing/raising the bridges will be at the discretion of the respective property owners.

Haug once again stated that the real problem is a high ground water level and strongly recommended the Cliffords install one or more properly sized sump pumps.

#### **40-874 40B CLOUTMAN'S LANE COLLINS**

This was a continuance from 04/13/06 and 05/11/06. A letter from Childs Engineering Corporation dated 10/11/06 requested a continuation of this hearing to October 26. Fred Davis, M/M Eisenhower and other neighbors requested the hearing be continued to November 9, 2006. Their rationale was that the request for continuance by the applicant was not made know to them in advance and they had personal commitments for October 26. All members voted to continue this hearing to November 9, 2006.

#### **40-899 24 COOLIDGE ROAD TAYLOR**

Resource Area: Coastal Bank

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

Appeared: Bruce Greenwald, architect and Scott Patrowicz of Land Development Engineering

Control Drawings: Site Plan of Land, 24 Coolidge Road / Taylor, dated September 7, 2006 prepared by North Shore Survey Corporation

The total impervious surface will be increased by 90 sq. ft. but will not extend any closer to the resource area. The new addition will remain entirely within the existing house footprint. All members voted to close this hearing. All members voted to issue an OOC with the following special conditions.

### **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 and shall comply with the Soil Conservation Service methods.

#### **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. All exposed soil will be stabilized to prevent any erosion into the resource waters.

**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. Minor maintenance repairs to the superstructure only of the deck 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.

**40-898 89 FRONT STREET MARBLEHEAD BOAT YARD**

Resource Area: Coastal Bank

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

Appeared: No one

Controlling drawings: General Site Plan, Marblehead Trading Company, 89 Front Street (no date)

This was a continuance from 09/14/06. The fine was paid. All members voted to close this hearing. All members voted to issue an OOC with the single special condition as follows.

Since the work was already completed and no revisions were required to the work, no additional special conditions were issued.

#### **40-0000 CROWNINSHIELD ROAD & EUSTIS ROAD REDMOND**

Resource area: Coastal Bank

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

Appeared: Mrs. Redmond and K. Bradford of Bradford Design Associates, Inc.

Controlling drawings: NOI Schematic Design, Redmond Residence, Crowninshield Road, dated 09/06/06, revised -9/18/06, prepared by Bradford Design Associates

Five Norway maples are requested to be removed. Per Smith, Mass. Audubon says this tree species does not provide habitat for birds but it does facilitate the habitat of the winter moth (which is damaging many native tree species in our region). Bradford pointed out that Massachusetts has banned the sale of Norway maple trees effective January 1, 2007. The trees will be cut at the bottom of their trunks and the stumps will be removed by grinding. No soil will be dug. The new plantings will be per the Plant List submitted with the NOI. No turf lawn will be planted. See Seed Mixture as submitted with the NOI for the type of grasses to be planted. At the time the NOI is filed for the house construction, the existing strip of lawn along and directly abutting the seawall will be removed and replaced with grasses not requiring fertilizing and being mowed only 2-3 time per year. Mr. John McCarthy, a neighbor, submitted a letter dated October 11, 2006 supporting this application.

All members voted to close this hearing. All members voted to issue an OOC with the following special conditions.

#### **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 and shall comply with the Soil Conservation Service methods. Soil socks are preferred over hay bales.

3. See Brush Removal Plan, Redmond Property, dated 10/12/06. Per this plan the invasive plants Bittersweet and Japanese Knotweed on the main part of the Redmond property are allowed to be removed under this OOC.

**Post-construction:**

4. No fertilizers are to be used and no turf lawn is to be planted in the area described in this NOI. This condition shall survive this order.
5. 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). This condition shall survive this order.

**Old/New Business:**

**Approve Minutes:** see above

**Request for Amendment:** see 40-896 above

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

**Other Matters:**

**Enforcement Order:** An E.O. has been issued against the owners of 44 Gallison Avenue for un-permitted landscaping activities. The owners had spoken with Saal before any work was started and were told to obtain a permit. All members voted to approve this E.O.

**Tree Policy:** All members voted to initiate a tree policy using the Rec., Park and Forestry Department policy as a guide. Haug will formulate the policy for approval.

**Fines:** A further revision to the guidelines for levying fines was reviewed and accepted.

**“As built” plans:** It was agreed, on a case by case basis, to consider requiring “as built” plans signed by a licensed professional for projects approved by the Commission. This requirement will be included under special conditions and said “as-built” plans will need to be submitted along with a request for a certificate of compliance.

The meeting adjourned at 9:50 PM.