

**CONSERVATION COMMISSION  
MINUTES OF NOVEMBER 9, 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 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 "...a majority of commissioners currently serving". The quorum for this meeting is therefore three members.

**Approve Minutes:** The minutes of 10/26/06 were approved without amendments.

**Meeting Dates:** The commission agreed not to hold meetings on Thursday, November 23 and Thursday, December 28.

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

Resource Area: Coastal Beach, Coastal Bank, Land Under the Ocean, Land Containing Shellfish

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

Appeared: M. Collins, J. Schaefer, applicants, and J. Radcliff and J. Singer of Childs Engineering Corporation

Control Drawing: Collins Residence Pier, sheets 1 through 6, dated 08/28/06. Note that sheet 3 was revised on 11/09/06.

This was a continuance from 04/13/06, 05/11/06 and 10/12/06. The green card dated 03/21/06 from the Post Office documenting the mailing of the NOI to the Division of Marine Fisheries was given to the commission. In response to questions raised during the meeting of 04/13/06, the following answers were submitted.

1. A lifting mechanism (gangway gallows) will be constructed.
2. The top of the mooring blocks will be at or below the top surface of the ocean bottom

3. The datum for the elevation measurements was National Ocean Service Tidal Station Disk VM# 11834 stamped 2645 C 1992 designation 844 2645 C, a MLLW datum.
4. Singer said Sea Flex anchors have been employed at the new pier at the Eastern Yacht Club this past summer. He submitted documentation on these anchors. This type of anchor minimizes lateral movement of the float and will offer more protection for the eel grass bed.
5. The bents will be constructed from steel, not wood and therefore they will not be chemically treated. However, all other wood above the water will be treated with ACQ (this wood will not be in contact with soil).
6. A letter from the Harbormaster will be submitted to the commission before any work is started.
7. All piles will be anchored directly onto/into ledge with minimum profile on the ocean bottom.
8. Property lines were surveyed by the firm, John A. Halmon Co. of Norton, MA and entered on the control drawings.
9. The float will be used to on-load and off-load passengers from a small dinghy. (see minutes of 04/13/06)

In addition, Radcliff stated that at MLW, there will be a minimum of two feet of water below the bottom of the float and the ocean bottom with average weight loads on the float. However, at astronomical low tides the float will bottom out.

The location and size of the eel grass bed was determined by Singer who holds a degree in Marine Biology from Boston University. Measurements were made by direct observation from a boat and using GPS.

The applicant was instructed to apply for a Chap. 91 license. Further, it was agreed with the applicant that he would engage the John A. Halmon Co. (Professional Land Surveyor and Consultant) of Norton MA to take measurements of the ocean bottom elevations along the line of the pier at intervals of 20 feet and at the bottom (mudline) of the rock (located ca. 20-30 feet from the end of the proposed float) and its immediate area. Saal will be notified before the measurements are taken so he can be in attendance. These measurements are meant to clarify the differences between Mr. Hansen and the applicant regarding the true elevations. Mr. Hansen, abutter to the proposed pier, said that, at the astronomical low tides of 6,7 and 8 November 2006 (minus 1.6), the rock referred to above was completely out of the water and he, therefore, contested the accuracy of the elevations given by the applicant. Mr. Davis, a neighbor, supported the statements of Mr. Hansen.

Gary Eisenhower, a neighbor, requested that the conditions of any OOC for this application be the same as specified for the OOC 40-617 granted to 40C Cloutman's Lane for Hansen. These conditions are:

No enclosed structures on the pier.

No permanent seating.

All portable tables and chairs shall not be left on the pier overnight and shall be secured off the pier following intended use.

No storage of fuels or other hazardous materials on the pier.

No boats shall be tied to the pier with their motors running for an excessive period of time.

With the concurrence of the applicant the commission voted (4 yes, 1 no) to continue this hearing to December 14, 2006.

#### **40-905 15 KIMBALL STREET GAULT**

Resource Area: Coastal Beach, Coastal Bank, Land Under the Ocean, Land Containing Shellfish

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

Appeared: Peter Ogren of Hayes Engineering, Inc. and R. Zarelli, architect

Control Drawing: Plan to Accompany NOI for Adele C. Gault, 15 Kimball Street, dated October 11, 2006, prepared by Hayes Engineering Inc.

The proposed porch on the seaward side of the house is in the 25 feet No Disturb Zone but is essentially within the footprint of an existing structure. Most of the ground surface in this area is terrace with very little grass. The proposed porch on the landward side of the house is partially inside the 50 foot No Build Zone but its location will have no impact on the interests of the Act or Bylaw. 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. Said drawing shall 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.

**Post-construction/in perpetuity:**

6. 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.
7. 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).
8. 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.

**40-906 321 WEST SHORE DRIVE VFW POST 2005**

Resource Area: Riverfront

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

Appeared: David Rogers

Control Drawing: VFW Post 2005, Proposed Expansion of Parking Facilities

An enforcement order was issued on 10/19/06. The NOI was filed on 10/23/06. The area concerns the outfall of an underground drain pipe which forms a part of the stream locally referred to as Babbling Brook. No damage had been done to the resource area. A silt fence has been erected and other work specified by Saal has been completed. The commission decided not to levy a fine. After discussing the restoration actions to be taken by the applicant, 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. Said drawing shall be submitted to the commission for approval before any work is started.

**During construction:**

1. The exposed soils will be stabilized using wood chips.
2. Crushed stone of ¾ inch diameter will be used as cover for the expanded parking area.
3. A planting plan will be submitted to the commission for approval for planting the exposed soils in the spring of 2007.

**Post-construction/in perpetuity:**

4. 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.
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).
6. 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.

**RFD 299 OCEAN AVENUE LEVERONI**

Resource Area: Coastal Beach, Coastal Bank, Land Under the Ocean

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

Appeared: Mr. Leveroni and Charles DeMarco of DeMarco Associates

Control Drawing: Land of Leveroni, 299 Ocean Avenue, dated 08/31/06, prepared by D.J. Lynch

The proposed work is outside the 50 foot No Build Zone, is landward of the house and will not negatively impact the interests of the Act or the Bylaw. All members voted to close this hearing. All members voted to issue a negative determination with no additional special conditions other than the standard special conditions issued with DOAs.

**40-900 11 ROLLESTON ROAD KANTER**

Resource Area: Coastal Beach, Coastal Bank, Land Under the Ocean

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

Control Drawings: Plan of Land, Owner Todd & Francene Kanter, #11 Rolleston Road, dated July 27, 2006, prepared by Hayes Engineering, Inc.

Appeared: Peter Ogren of Hayes Engineering Inc.

A correction to the NOI, page 2, question 10, is noted. No work has been performed under an ORAD within 3 years of the date of this application. A letter of support for the project from John & Nancy McBride dated November 8, 2006 was submitted. The proposed pool is partially within the 25 foot No Disturb Zone but this is already an area planted with landscaping and partially terraced. In addition, there already exists a vegetated buffer strip along the entire top of the seawall. None of the interests of the Act or the Bylaw will be negatively impacted. The 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.

**Post-construction/in perpetuity:**

6. 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.

7. 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.

8. 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).

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:** See above.

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

**Other Matters:** After discussing a suggestion proposed by Haug, it was agreed not to levy an automatic fine of \$100 for all violations of failing to obtain a permit. Each violation will continue to be evaluated on a case-by-case basis.

The meeting was adjourned at 9:45 PM.