

**Marblehead Conservation Commission**  
**Minutes March 14, 2019**

Meeting was held in the lower conference room at the Mary A. Alley Building, 7 Widger Road

Meeting was called to order at 4:00 PM

Present was: Commission Chairman Brian LeClair. Also present was Charles Quigley, Conservation Administrator.

The Commission began a recess at 4PM and resumed the hearing at 7:05 PM.

Note: The commission currently has seven 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 four members.

At 7:05 PM

Present were: Commission Members Chairman Brian LeClair, Bill Colehower, Lindsey Serafin, David Vanhoven David Depew, Michael Smith and Jesse Harlan Alderman. Also present was Charles Quigley, Conservation Administrator

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

A motion was made and seconded to approve the amended minutes of February 14, 2019. All members voted in the affirmative.

**Discussion**

**Salem Harbor Moorings that bottom out periodically**

Appeared: Mark Souza, Marblehead Harbormaster

It was decided that the Commission will draft bylaws to address boats on moorings that bottom out during low tides. The Harbormaster will act as consultant to the process. The bylaw will also address clothesline or outhaul moorings. It was agreed that the bylaw will be tested for feasibility in the back of Salem Harbor.

Part of the research will be to find a map that delineates the height of different tides. In addition, the bylaw will speak to the minimum clearance for a specified tide.

**Proposed changes to Chapter 195 bylaws**

Appeared: Amy McHugh, Superintendent of Marblehead Water and Sewer Department

Discussed Chapter 195 Bylaw changes.

It was noted that all construction needs to meet regulation and construction best practices. Construction also needs to meet EPA standards.

Proposed changes will be presented at a Town Meeting on March 28, 2019.

All members voted to close the discussion. The Commission voted to recommend the submitted changes.

**OOC 40-1359, 73 Naugus Avenue**

Appeal discussion

Appeared: Todd Barbera, David Smith, GZA GeoEnvironmental, Inc.

GZA has filed a document containing revised impacts.

The DEP has issued a superseding order approving the plan. The commission refused to discuss the current NOI.

The Commission denial can be appealed to the State Supreme Court, if the owners wish. If the denial is brought in front of the Supreme Court, then the matter can be referred to town council after a vote in an executive session.

The Commission informed the attendees that they could also file another NOI for this project, if they desired.

**Request for a Certificate of Compliance**

Request was approved by the Commission

**COC 40-1364 9 Sunset Road – Harold Daly et ux – Seawall maintenance**

**Request for Minor Modification**

**OOC 40-1383, 67 Nanepashamet Road**

Appeared: Scott Patrowicz, Patrowicz Land Development Engineering

Control Drawing: Landscaping plans by Patrowicz Engineering, dated March 11 and 14, 2019

Presented two landscaping plan revisions. The Commission directed Patrowicz to submit a final plan containing both set of revisions.

**Continued Public Hearings**

**NOI 40-1385, 73 Naugus Ave**

Appeared: Karl Strohmeyer, Susan St. Pierre, Susan St. Pierre | Consulting Services

Control Drawings: Construction plans by Al Dennis Construction LLC, dated February 26 and January 28, 2019, Site plans by Patrowicz Engineering [see order of conditions 40-1385 attachment A]

Three alternative plans were presented.

All members voted to close the hearing. The NOI did not pass; the vote was 4-3 (LeClair, VanHoven, Colehower and Alderman voted to not approve; Depew, Smith and Serafin voted to approve Option #2.

**NOI 40-1384, 65 Naugus Ave**

Appeared: Scott Patrowicz, Patrowicz Land Development Engineering and Zach Jenkins, Collins Engineering, Edward Breed

Control Drawing: Plans by Collins Engineering dated February 19, 2019

All members voted to close the hearing. The Commission voted to issue an order of conditions with the following special conditions:

### **During construction:**

33. 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.).

34. To the maximum extent possible, all driveways, terraces, patios or similar ground-level surfaces shall be constructed as permeable surfaces to allow water to infiltrate through their surfaces into the ground on site.

35. All demolition debris shall be removed from the site as soon as possible and not stored within a resource area or a buffer zone. If a dumpster is used to contain debris, the dumpster shall be covered after each work day. The debris shall be properly disposed of in accordance with applicable federal, state and local regulations.

36. All construction material shall be stored outside the resource area and its buffer zone or as far back from the resource areas as possible.

37. The construction of the pier/dock and any structure over the water permanently secured to the earth shall withstand a 100-year storm without damage to the integrity of the structure. All piers/docks shall conform to the requirements of Chapter 91.

38. Any pressure-treated wood proposed to be used in the construction of a structure for land-based use 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 the MADEP which is less polluting and harmful to the salt water and its environment.

39. All piers, docks and floats must follow the guidelines established in the document, "Small Docks and Piers – A Guide to Permitting Small Pile-Supported Docks and Piers" dated November 2003. Float stops are permitted provided they meet the aforementioned guidelines.

### **Post-construction/in perpetuity:**

40. 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 Lawn care 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.**

46. All gangways, docks or other items not permanently secured to the earth shall be stored during the "off season" (late fall, winter, early spring) so as to prevent them from causing any damage to other structures or resource area. **This condition shall survive this order.**

47. All gangways, docks or other items not permanently secured to the earth shall be properly secured and/or removed in the event of a major storm so as to prevent them from causing any damage to other structures or to the resource area. **This condition shall survive this order.**

48. All floats/docks will be so constructed so as not to bottom out (rest) on the ocean floor at low tides. **This condition shall survive this order.**

50. 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.**

51. Minor maintenance repairs to the superstructure only of the pier 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.**

52. If the pilings supporting a pier have not been painted or treated with a chemical substance, the pilings may be hand scraped to remove barnacles and other marine growth. The scraped material may remain on the beach/tidal flat. However, if the state declares a state of contamination (such as Red Tide) in an area wherein the pilings have been resident, tarps or a similar containment method must be located in the work area so as to cover the entire work area where scraping is performed. Tarps are to be cleaned of scraped material at the end of each day when scraping is performed and the scrapings disposed of in a proper manner for such contaminated materials.

If the pilings supporting a pier have been painted or treated with a chemical substance, the pilings may be hand scraped to remove barnacles and other marine growth. Tarps or a similar containment method must be located in the work area so as to cover the entire work area where scraping is performed. Tarps are to be cleaned of scraped material at the end of each day when scraping is performed and the scrapings disposed of in a proper manner for materials which include paint or treatment.

For all types of pilings (painted or unpainted/treated or untreated), a protocol must be submitted to the Conservation Commission for approval in advance of the scraping. The protocol must contain: whether the pilings are painted or unpainted/treated or untreated; whether the pilings have been contaminated; if painted or treated, the exact type of paint being scraped/if treated, the exact type of treatment; the dates and times of intended scraping (start and finish); the exact location of the intended scraping; a description of the containment method; a description of the scraping method; the final location for disposal of the paint scrapings or, if applicable, contaminated scrapings. If the pilings are to be repainted/re-treated, the exact type of paint/treatment must be identified and must be approved per the latest state and federal guidelines for such applications. The person ordering the scraping/painting/treatment must sign and date the protocol and submit it to the Marblehead Conservation Commission before any work is started. **This condition shall survive this order.**

54. The control drawing/s for this project were prepared by a licensed Professional. The construction of this project shall be regularly inspected by said licensed professional to insure that the project complies with the control drawing/s. Progress reports shall be submitted by said professional at regular intervals while work is progressing on the project. The reporting interval shall be determined by the Conservation Administrator based on the scope and anticipated duration of the project. Upon completion of the work authorized by this OOC, said licensed professional shall submit a written statement to the Conservation Commission certifying that the completed work is in substantial compliance with the control drawing and setting forth any deviations that may exist between the completed work and the plan approved by the Conservation Commission.

55. Upon completion of the work allowed under this Order of Conditions the applicant shall apply for a Certificate of Compliance (COC) (a) within 30 days after completion of the work or (b) thirty (30) days prior to the expiration date of the original or extended OOC, whichever time comes sooner. If no work was started under the OOC or if some of the work will not be performed, the applicant must still apply for a Certificate of Compliance at least 30 days prior to the expiration of the OOC. The Conservation Commission may require the submission of an "as built" drawing (signed and stamped by a licensed Professional Engineer or licensed Professional Land Surveyor) with the application for the COC. Failure to submit an application for a COC shall result in a fine issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E. **See Attachment "C" for "Schedule of Fines"**.

105. Tarps shall be spread and secured over the work area on top of the existing resource area for debris containment and collection during low to medium tides. The tarps and debris will be removed between tides and at the end of workday. At no time are the tarps to be inundated due to rain, tidal or wave action. The tarps are to be removed no less than ½ hour prior to expected inundation. At that time all work is to cease in the area near the resource area.

106. Coatings used shall be approved by the DEP.

The Manufacturer's Written Specification for curing time shall be furnished to the Conservation Agent prior to mobilization.

Coating shall be applied only as specified in the Manufacturer's written specifications.

Coating shall not be applied if the surface is expected to undergo exposure to rain or seawater within the manufacturer's specified curing time plus ½ hour.

In addition, the Commission requires that the length of the float be reduced by one foot to 19 feet to avoid eelgrass beds (plans will be submitted to reflect this change).

Helical anchors will be used. If they are not feasible, the owners must come before the Commission for permission to use concrete blocks.

109. Tarps shall be placed to capture all debris generated during the site preparation and concrete placement process.

The tarps shall be cleaned continuously as work proceeds and removed between tides.

If at any time the tarps are threatened with inundation through tidal or wave action, the tarps shall be removed immediately and work shall cease in the intertidal zone.

110. Coatings shall not be applied to any surface that may be subject to wetting from rain, or seawater, within the coating manufactures specified curing time plus ½ hour.

111. Concrete shall not be poured that may be subject to wetting from rain, or seawater, within the curing time plus ½ hour the concrete being hard to the touch.

112. A davit shall be placed at the end of the pier for use in raising and lowering the ramp.

## **Public Hearings**

### **NOI 40-1388 28 Foster Street**

Appeared: Scott Patrowicz, Patrowicz Land Development Engineering

Control Drawing: Plans by Patrowicz Engineering dated February 21, 2019

All members voted to close the hearing. The Commission voted to issue an order of conditions with the following special conditions:

#### **During construction:**

33. 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.).

35. All demolition debris shall be removed from the site as soon as possible and not stored within a resource area or a buffer zone. If a dumpster is used to contain debris, the dumpster shall be covered after each work day. The debris shall be properly disposed of in accordance with applicable federal, state and local regulations.

36. All construction material shall be stored outside the resource area and its buffer zone or as far back from the resource areas as possible.

#### **Post-construction/in perpetuity:**

40. 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 Lawn care 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.**

41. Maintenance pointing and repairs of existing stone masonry walls and concrete walls

including the replacement of an occasional missing stone or patching cracks and minor defects in a concrete wall are allowed as a surviving condition to this Order of Conditions. **The property owner shall inform the Conservation Commission in writing at least seven days prior to any proposed repointing or repair work on existing walls.** All dislodged and removed mortar/cement will be immediately contained and removed from the work site to prevent any such material from entering the resource waters. Any future razing, rebuilding or enlarging of the subject wall(s) will require the filing of a new Notice of Intent. **This condition shall survive this order.**

42. The repair/replacement of small sections of damaged caps on seawalls is allowed as a surviving condition. All dislodged and removed caps will be immediately contained and removed from the work site to prevent any such material from entering the resource waters. Prior to any work, the scope of the proposed repair/replacement must be approved by the Conservation Commission. If the cap on a major length or on an entire wall needs to be repaired/replaced, this requires an NOI. **This condition shall survive this order.**

50. 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.**

55. Upon completion of the work allowed under this Order of Conditions the applicant shall apply for a Certificate of Compliance (COC) (a) within 30 days after completion of the work or (b) thirty (30) days prior to the expiration date of the original or extended OOC, whichever time comes sooner. If no work was started under the OOC or if some of the work will not be performed, the applicant must still apply for a Certificate of Compliance at least 30 days prior to the expiration of the OOC. The Conservation Commission may require the submission of an "as built" drawing (signed and stamped by a licensed Professional Engineer or licensed Professional Land Surveyor) with the application for the COC. Failure to submit an application for a COC shall result in a fine issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E. **See Attachment "C" for "Schedule of Fines".**

102. A tarp will be laid down at the base of the seawall during all repair work to capture all construction debris. The tarp will be on the seaward side of the seawall. The tarp will be rolled up and dumped into a disposal trailer as required throughout the work day and will be removed at the end of each work day.

105. Tarps shall be spread and secured over the work area on top of the existing resource area for debris containment and collection during low to medium tides. The tarps and debris will be removed between tides and at the end of workday. At no time are the tarps to be inundated due to rain, tidal or wave action. The tarps are to be removed no less than ½ hour prior to expected inundation. At that time all work is to cease in the area near the resource area.

107. Before any landscape work begins, the applicant shall submit a landscape plan to the Commission for approval. No landscape work may commence until the Commission has approved the landscape plan.

109. Tarps shall be placed to capture all debris generated during the site preparation and concrete placement process.

The tarps shall be cleaned continuously as work proceeds and removed between tides.

If at any time the tarps are threatened with inundation through tidal or wave action, the tarps shall be removed immediately and work shall cease in the intertidal zone.

Meeting was adjourned at 8:50 PM.