

Marblehead Conservation Commission
Minutes February 13, 2020

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

Meeting was called to order 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.

Present were: Chairman Brian LeClair, Commission members 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 minutes of January 9, 2020. All members voted in the affirmative.

Enforcement Orders

23 Pinecliff Road

Appeared: Alex Bender (owner)

Derosa (an agent of the owners) submitted the NOI on Feb 11. The NOI will be discussed at the March 12 meeting.

22 Whittier Road

Appeared: David Quade, 22 Whittier Road

Discussion of the enforcement order was done when the NOI was discussed.

Discussion Items

Moorings that bottom out in Salem Harbor

The Marblehead Harbormaster accepted the edits made to his regulation by the Conservation Commission.

Shanty Lot Storm Cleanup

Appeared: Toby Reilly, 5 Doaks Lane

Storms have pushed a large quantity of sand and debris onto the shanty lot. The neighborhood association wants to pick up the debris and nourish the beach with the cleaned sand.

The Park & Rec Dept was granted a minor activity permit with following special conditions:

The beach and the sand will be cleaned.

The cleansed sand will be placed back on the beach.

Massachusetts Assoc of Conservation Commissions Annual Dues

Town Engineer requested permission to pay dues of \$762.

The Commission approved the request

Minor Activity Request

137 Front St.

Appeared: Cheryll Saltzman, owner

Applicant wants to replace shingles on the roof.

The Commission voted to approve the above minor activity request with the following special conditions:

Tarp to be placed on ground adjacent to roof

Clean up will be promptly done.

No work done when the winds are so high that the tarp will not catch debris.

Order of Conditions Extension Request

40-834 Redd's Pond Weed Control

The Commission voted to grant the extension.

Certificate of Compliance Requests

40-1262 8 Gregory St.

The Commission voted to approve all the COC.

Public Hearings

NOI 40-1425 Boston Yacht Club

Improvements and repairs to waterfront

Appeared: John Dick, Wetland Scientist

Proposed:

- 1) Fill in a notch in the seawall with concrete
- 2) Elevate the gangway
- 3) Maintenance
- 4) Bolt the freestanding deck to the footings

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

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.

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.**

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 or 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.**

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".**

There are the following special conditions:

Hang a tarp below the drilling to catch debris

Before construction starts, the applicant will provide written narrative of the work methodology.

NOI 40-1385 73 Naugus Avenue

Superseding Order of Conditions issued December 5, 2019

Appeared:

Susan St. Pierre, Consulting Services

Paul Lynch, Attorney

Paul Plaske

Control Drawing:

Plans by Al Dennis Construction LLC, Date August 24, 2019

Site Plan by Patrowicz Land Development Engineering, Dated August 27, 2019

In 2019, the Commission voted to deny the NOI 4-3. At that time the Commission stated that alternative #2 was the best plan.

The proposed plan is based on alternative #2, and is the plan used by the superseding order. The new plan incorporates a new (2018) eelgrass mapping provided by the DMF. This is different than the DEP mapping or the survey Consulting Services provided.

Because of the DMF eelgrass mapping, the plan has a 50 foot gangway instead of the existing 40 foot gangway complying with a DMF wish to reduce eelgrass impact. The float and the pier are unchanged in new plan.

When the NOI was denied, the applicant immediately filed an appeal. The applicant received the superseding order on December 5, 2019. The appeal stays any action by the Commission to change the rules in this case. The appeal will be decided by the regulations in force at the time of the appeal. The appeal still exists, but will be dismissed if the Commission issues an order of conditions.

The Chair stated that any review of the superseding order by the Superior Court will be under the prior Marblehead regulations which did not have any performance standards. Therefore the superseding order would probably be approved by that body.

All members voted to close the hearing. The Commission voted to issue an order of conditions under the local bylaw with the following special conditions (all but David VanHoven voted in the affirmative; VanHoven voted against):

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.**

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 or 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.**

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".**

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.

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.

NOI 40-1422, 22 Whittier Road

Appeared:

Scott Patrowicz, Patrowicz Land Development Engineering

Bill Manual, wetland scientist

David Quade, owner

Control Drawing: Plans by Patrowicz Land Development dated December 22, 2019

Certified mailing receipts were given to the Town Engineer.

Patrowicz represents Quade and nine other property owners.

Owner provided a planting plan for the area and will remove the work done in the resource area. The owner stated that the resource area work area was previously lawn (and it should be noted that lawn is defined as “disturbed”). He also noted that the “stream” was actually a ditch dug to help drain Whittier Pond.

The owner also wanted the trees in the area evaluated by an arborist and then perform the recommended tree work (e.g., pruning).

An area was designated Bordering Vegetated Wetland on the property. At the time of the hearing the area was lawn. This BVW could have been created by development in the area and the drainage stream. The Commission decided the owner could continue to maintain this lawn in its current state.

John Boyle, an abutter, was concerned about keeping drains clear. He was referred to the proper town departments.

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

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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.

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Post-construction/in perpetuity:

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There will be the following surviving conditions allowing the owner to do the following activities:

- Remove debris from the stream
- Trim broken branches from trees in the area
- Mow a grass belt around the restored vegetated wetlands

There will be no tree crown pruning without approval.

In addition from the completion of the plantings, there will be a one year and a two year monitoring report to be delivered to the Commission.

1800 square feet of buffer zone was disturbed, and the property owner is restoring 2800 square feet of buffer zone. In light of proposed improvements to the buffer zones by the owner, the Commission voted not to levy a fine as part of the enforcement order as long as the proposed work is completed satisfactorily.

NOI 40-1426 4 Broadmere Way

Appeared: Scott Patrowicz, Patrowicz Land Development Engineering

Control Drawing: Plans by Structures North Consulting Engineers dated January 21 and 22, 2020

A notch in the seawall contain concrete steps. This notch will be filled in with concrete.

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.).

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Meeting was adjourned at 8:45 PM.