

Marblehead Conservation Commission
Minutes August 13, 2020

Meeting was held remotely in accordance with Governor Baker's March 12, 2020 Order Superseding Certain Provisions of the Open Meeting Law, G.L. c.30A, section 18 and the Governor's March 15, 2020 Order imposing strict limitation on the number of people that may gather in one place.

Meeting was called to order at 7:15 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, and Michael Smith. 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 July 9, 2020. All members voted in the affirmative.

Enforcement Orders

Naugus Road

Appeared: Reginald Hartley, 18 Sparhawk Terrace; Robert York, 9 Royden Rd

Operating a pressure washer in the resource area. A \$100 fine levied.
All members voted to close the hearing. The Commission voted to ratify the enforcement order.

146 Lafayette Street

Forest River Estates Condominium Trust III – Patricia Hart Trust

Appeared: Tyler Ferrick of DeRosa Environmental

Making alterations in the resource area without filing a notice of intent.

All members voted to close the hearing. The Commission voted to ratify the enforcement order.

10 Surf Street – Enforcement order issued to Lynn Nadeau for violation of 310 CMR
10.00 alteration in the resource area without filing a notice of intent.

The NOI 40-1441 for the bench was withdrawn.

There was a question of bare spots and erosion after the activity was done. The Town Engineer stated that the site had thick Rosa Rugosa previously. He stated there is currently no bare spots and no erosion.

Barbara Rippberger (3 Bass Lane) wanted the site restored to the previous state with a hedge of Rosa Rugosa. She wanted a set of plants placed at the top.

David Van Hoven raised the issue of maintenance of restoration. The Commission felt they cannot require someone to maintain something on property they do not own.

Bill Walsh Rigalski stated that restoration requirement means the area should be returned to its previous state. State statute allows for a bond to be posted until restored to previous state. He also stated a contractor can be hired to maintain the area.

Cathy Atkinson feels the root systems are still intact, and the area will regenerate naturally.

Lynn Nadeau questioned when the “before picture” was taken.

A \$200 fine was levied. In addition a supplement to the enforcement order was added; to wit Ms. Nadeau is required to plant a one similar plant at least 2.5 ft high at the end of the fence to discourage traffic in the area.

All members voted to close the hearing. The Commission voted to ratify the enforcement order.

11 Susan Road –Enforcement order issued to Stevie G Browning for violation of 310 CMR 10.00 making alteration in the resource area without filing a notice of intent.

Walter Haug read a narrative describing the actions of the home owner.

All members voted to close the hearing. The Commission voted to ratify the enforcement order.

Doak’s Lane Seawall – Failed Seawall

Pictures were presented showing continued erosion and urban debris washing onto the adjoining beach.

An enforcement order was proposed that will require removing debris from the bank from the beach. It also required an NOI with a plan to stabilize the bank and prevent debris from washing onto the beach. The DEP advised the Commission that protecting the beach from debris is its only mandate.

All members voted to close the hearing. The Commission voted to ratify the enforcement order.

Turner Wood Conservation Area – issue identified by Conservancy.
Damage being caused by bike jumps being built.

Repairs are being done by the Marblehead Conservancy. Signs have been posted.

Minor Modification Requests NOI 40-1436 115 Front Street

Site Plan by Patrowicz Land Development Engineering, Dated May 18, 2020

The request was to approve that a replacement tree be added to landscape plan.

The Commission voted to approve the minor modification request with the special condition that the replacement tree (as well as species and size) is specified.

NOI 40-1439 41 Orchard Street

Approved plan was a site plan by Patriowicz Land Development Engineering, dated May 18, 2020.

Proposed plan from Pate Landscaping shows the existing pool being replaced. The Commission stated that this pool replacement is not a minor modification. The Commission suggested this change requires a new NOI.

The Commission did not vote to approve the minor modification request.

NOI 40-1419 20 Crowninshield Road

Proposed: Grading/fill and tree replacement

Site Plan by Patrowicz Land Development Engineering, Dated October 20, 2019 with proposed modifications

The area with the tree replacement currently contains weeds. In addition, the Commission had required some replacement trees at a previous hearing.

The Commission voted to approve the minor modification request.

NOI 40-1382 20 Crowninshield Road

Proposed: Replacing a patio and steps with a deck and a spa (requiring sono tubes)

Site Plan by Patrowicz Land Development Engineering, Dated January 27, 2019 with proposed modifications

Again the Commission states that changing a plan with more activity in the buffer zones is not a minor modification. Minor modifications are for dealing with changing or unforeseen situations.

The proposed modifications are design changes and entail more activity in the buffer zones. The Commission wants a new NOI for the changes.

The Commission voted to deny the minor modification request.

Certificate of Compliance Requests

NOI 40-1258 279 Ocean Avenue

NOI 40-1426 4 Broadmere

NOI 40-1326 291 Ocean Ave

The Commission voted to approve all the COC requests.

Order of Conditions Extension Requests

NOI 40-1120 21 Goodwin's Court
NOI 40-1137 21 Goodwin's Court

Both requests were filed before expiration but did not get on the meeting agenda before expiration. The DEP allows the Commission to approve these requests nonetheless.

The Commission voted to approve all extension requests.

Order of Resource Area Determination Extension Request
NOI 40-1268 80-90 Hood's Lane

Appeared: Elizabeth Wallace Hayes Construction
Site Plan from Hayes Engineering, dated March 15, 2017

Asking for an extension to May 16, 2021. The Commission has the power to extend the time period. There is no form but the current order can be modified.

According to Hayes Engineering, the resource area has not substantially changed. The resource area is defined by the slope of the property.

The Commission voted to approve the extension subject to the Chairman reviewing the Commonwealth of Massachusetts regulations on the subject.

Minor Activity Permit Request
43 Shorewood Road

Appeared: Andrew Emden, owner
Site plan: Sullivan Engineering Group dated December 20, 2018

Owner wants to remove a 80 foot river birch tree that is growing over his house and replace with plants in front of house.

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

- Required to add more information about replacement planting in the permit (owner suggests Japanese or Emperor Maple, Baby Spruce or Arbor Vitae)
- Planting needs to occur before next spring

Public Hearings

NOI 40-1445 11 Susan Road

Proposed: Wetland restoration and invasive plant control
Appeared: Steve Browning, owner
Charles Costalucci, Environmental Services, LLC
Site Plan: Environmental Services dated August 10, 2020

Costalucci responded to some of the DEP comments. Stated they want to remove bittersweet. Will provide a planting plan.

The Chairman stated that plans need enough specificity so that the Commission knows what activities are permitted and what are not.

Walter Haug represented the homeowner at 80 Green St., who feels they have exposure to activities at 11 Susan Rd. He feels the plans are incomplete. He also stated that this property and owner have had a checkered past regarding the Marblehead Conservation Commission.

The Town Engineer was instructed by the Chairman to distribute Mr. Haug's comments to applicant and his representatives.

The Chairman stated that the dates of enforcement orders will be reconciled with the Browning's ownership.

All members voted to continue to the September meeting.

NOI 40-1447 142-148 Lafayette Street

Proposed: site restoration and invasive control

Appeared: Tyler Ferrick, DeRosa Environmental Consulting

Restoration Plan: DeRosa Environmental, undated

Some of the cutting has already grown back. However invasives have come in. Some will be hand pulled.

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

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.**

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:

- Any herbicides will be applied by a licensed applicator.
- Invasives removed from the site will be taken to a composite facility designed to prevent the spread of invasives.

The Commission voted to levy a fine of \$300 for work done in proximity of the coastal bank without an NOI. It was noted that the party is not a repeat offender and did not know about the regulations.

NOI 40-1446 25 Pinecliff Drive

Proposed: Invasive species management

Appeared: Tyler Ferrick, DeRosa Environmental Consulting

Site Plan: Invasive Species Management plan dated July 27, 2020

DeRosa Environmental will edit the form submitted to DEP correcting a mistake. All work is done on the coastal bank.

Small invasives will be removed by hand.

Herbicides will be applied using the cut and dab method.

An Austrian Pine is damaged and leaning towards house. Iron Tree has recommended this tree be removed. It will be removed.

Vista pruning will be up to 20 ft to improve air flow for plants. The Chairman made the comment that vista pruning is typically approved to improve the health of the tree not for views. DeRosa said most of the pruning will be the under branches that are in poor health.

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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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.**

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Report on a meeting to discuss moorings in the Back of Salem Harbor

There was a zoom call during the week following the August ConComm meeting to discuss moorings. In attendance were members of the ConComm, Harbormaster, Harbors and Waters and Town Counsel as well as the Town Engineer.

The Chairman characterized the outcome of the meeting as significant inter-agency progress in this matter.

Town Counsel acknowledged that both the ConComm and the Harbormaster had jurisdiction in this matter.

The Marblehead Harbormaster will provide charts delineating the mooring fields in both Salem and Marblehead Harbors. These charts will be reviewed by the ConComm regarding environmentally-sensitive areas. This will be done after Labor Day 2020.

The Harbormaster promised not to place moorings outside these designated areas. If moorings are placed in areas deemed environmentally sensitive by the ConComm there will be efforts to take measures to deter moorings in these areas and protect these areas. Examples of sensitive areas are resource areas including but not limited to eelgrass beds and mudflats with shellfish.

It was hypothesized that some floats in Marblehead are not permitted and do not meet current standards for floats that bottom out at lower tides. The ConComm will review this at some time.

The environmentally deleterious effects of waterskiing by Lead Mills was also mentioned. The Harbormaster declined to place a No-Wake sign in area.

Meeting was adjourned at 9:28 PM.