

Marblehead Conservation Commission
Minutes August 12, 2021

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 7:00 PM

Present were: Commission Members David VanHoven, William Colehower, Kate Melanson and David Oster Also present was Conservation Administrator and Town Engineer, Charles Quigley.

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

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.

Approval of Minutes:

May and June meeting minutes - held for the September meeting

DISCUSSION:

Marblehead Conservancy- naming Lead Mills trails - one trail will be called the **lower trail** and the other trail will be called the **upper trail**. The Commission voted unanimously to approve the naming..

CERTIFICATE OF COMPLIANCE REQUEST:

40-1443 102 Harbor Ave-Angelo Arena- [Patrowicz]-pier repairs the Commission voted unanimously to approve.

40-1361 7 Ft Sewall Terr - Glen Knickrehm - site work, seawall repair the Commission voted unanimously to approve.

ORDER OF CONDITIONS EXTENSIONS:

40-1137 21 Goodwins Ct - Stephen Gallagher - home improvements the Commission voted unanimously to approve.

40-1363 2 Coolidge Rd.- David P. Wedel et al- landscaping, sitework the Commission voted unanimously to approve.

MINOR ACTIVITY PERMITS:

91 Naugus Ave - Naugushead Assoc. Inc. - Gayle Fraiser 70 Naugus Ave - tree removal the Commission voted unanimously to approve with the condition that replacement trees should be of sufficient root mass and canopy coverage.

6 Edgwood Rd - Michael Ruben - remove dead willow. An Arborist noted that the tree is unsafe. The Commission voted unanimously to approve with a condition to replace the tree with a 2" to 3" calliper native species tree..

81 West Shore Dr - Patrick Devlin - tree removal walnut tree that is significantly rotted and presenting safety concerns to the property. Mr. Devlin does not believe replacement is an option. The Commission voted unanimously to approve the tree removal with a condition that a native species will be planting will be planted in the area where the tree is removed.

PUBLIC HEARINGS:

40-1486 16 Rainbow Rd- Mark Rowe-[DeRosa]-Renovation to a single family residence. [DEP comment: The site plan shows "area of lawn to be restored". If BVW was disturbed, mandatory restoration should be memorialized through issuance of an enforcement order (EO) pursuant to 310 CMR 10.08]- single family home improvements and sitework. The project includes work in previously disturbed areas where lawn goes up to the wetlands. All work will be outside the 25' no disturb area. Restoration will include planting of native species in existing lawn area and will reduce impervious surface area. Commission asked if the erosion control barriers be designed to overlap during the construction. All members voted to close the hearing. All four (4) members voted to issue an OOC 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.).

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.

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.**

44. The back-filling of small areas of erosion landward of a seawall is allowed as a surviving

condition provided the erosion is not on a coastal bank. This back-filling applies to areas defined primarily as Land Subject to Coastal Storm Flowage. Any work on a coastal bank requires an NOI. The back-fill material must be clean and compatible with the eroded material. Prior to any back-filling, the scope of the proposed back-filling must be approved by the Conservation Commission. 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".**

40-1470 12 Davis Rd- Davis Point LLC-[Hayes]- [DEP no comment available yet]-amendment to an existing Order of Conditions To add a ladder for beach access. Requested that a revised plan be submitted that include impervious calculations that were previously approved, proposed changes to impervious area, and recommended that the owner consider a rain garden or similar feature to mitigate runoff. All four (4) members voted to continue the hearing to September 2021.

40-1488 Brackett Place- Glover Landing Condo Trust - [Patrowicz] - Bldg#33 2nd Egress. Need for a second means of egress to the building with a five-foot safety fence landward of the coastal bank.. All members voted to close the hearing. All four (4) members voted to issue an OOC with the following special conditions:

32. This project shall not cause an increase in run-off onto adjacent properties or streets, either during construction or after completion. Appropriate measures shall be taken to prevent the movement of silt or debris onto adjacent properties, streets and Resource Areas.

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.

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.

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.**

44. The back-filling of small areas of erosion landward of a seawall is allowed as a surviving condition provided the erosion is not on a coastal bank. This back-filling applies to areas defined primarily as Land Subject to Coastal Storm Flowage. Any work on a coastal bank requires an NOI. The back-fill material must be clean and compatible with the eroded material. Prior to any back-filling, the scope of the proposed back-filling must be approved by the Conservation Commission. 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".**

40-1487 452 Atlantic Ave- Alexander Falk - [Curt Young] - [DEP no comment available yet]-berm/revetment repair All members voted to close the hearing. All four (4) members voted to issue an OOC 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.).

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.

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.

43. When the repair of a seawall entails the use of existing rip-rap which was previously located at the toe of the seawall but has been distributed onto the beach seaward of the seawall by wave action, the following applies. The rip-rap lying above the mean high tide line can be re-located to the toe of the seawall. The rip-rap lying at or below the mean high tide line cannot be disturbed. This special condition is not a surviving condition and is valid only for that work specified for this particular application. The property owner shall inform the Conservation Commission in writing at least seven days prior to any proposed repair work on an existing existing riprap revetment.

44. The back-filling of small areas of erosion landward of a seawall is allowed as a surviving condition provided the erosion is not on a coastal bank. This back-filling applies to areas defined primarily as Land Subject to Coastal Storm Flowage. Any work on a coastal bank requires an NOI. The back-fill material must be clean and compatible with the eroded material. Prior to any back-filling, the scope of the proposed back-filling must be approved by the Conservation Commission. This condition shall survive this order.

54. The control drawing/s for this project were prepared by a licensed Professional Engineer. The construction of this project shall be regularly inspected by said licensed professional to insure that the project complies with the control drawing/s. 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"

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.

108 Stones, coarse sand and rock deposited by wave action may be relocated to the beach following review and authorization by the Marblehead Conservation Commission administrator or an authorized member of the Marblehead Conservation Commission. Relocated material will be clean of soil and other debris such as organic plant material, metal tires, plastic, trash or other debris that may result in a hazard in the resource area or a navigational hazard if refloated. All unsuitable material shall be removed and properly disposed of off-site. Hand loading of mechanical equipment may be required to avoid the indiscriminate placement of unsuitable material in the resource area. No soil or plant material will be allowed to be placed on the beach. Any resulting invasive or other plant material which grows from replaced material is the responsibility of the property owner to control and remove following review and approval of the Marblehead Conservation Commission administrator. Material must be placed on the lot from which it was removed or in a location approved by the Marblehead Conservation Commission administrator. Property owners will be required to provide photo documentation of preexisting beach conditions and restore the dune areas to the preexisting conditions which is expected to be a relatively gradual slope to the high water line. Stones will not be piled in a manner that obstructs access to the beach from properties or easements. Failure to comply with these guidelines to the satisfaction of the MCC may result in the revocation of the perpetual condition, the issuance of an enforcement order and the need to refile to reinstate the condition. The post storm topography of the resource area shall match the pre-storm topography. A topographic survey may be required at the discretion of the Marblehead Conservation Commission. The Conservation Commission may for any reason require the material to be removed and properly disposed of off-site away from the resource area. This condition shall survive this order.

ENFORCEMENT ORDERS:

13 Ramsey Rd - Cheryl Brill-310 CMR 10.00 violation: alteration in a buffer zone to a resource area without filing a NOI. Enforcement order was for alterations to a resource area without a permit. Owner added patio and removed weeds, trash, and dead trees and replanted trees. Owner is not able to afford the cost of hiring an engineer to produce a NOI. All four (4) members voted to issue continue the discussion to the September meeting.

DISCUSSION:

Con Com Agent Requests approval to pay the Mass. Assoc. on Conservation Commissioners FY22 dues of \$897.00. All members voted to approve the payment.

Un-permitted Floats - more follow up with the harbormaster is needed and also need to confirm elements (piers, floats, gangways) that require permits.

Meeting adjourned – 8:30PM