

Marblehead Conservation Commission
Minutes January 10, 2013

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, Fred Sullivan, Don Tritschler, Brian Leclair, Ken Fisher, David Depew and David VanHoven. Also present was Willy Lanphear, Conservation Administrator.

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.

At 7:00 PM four members were present and the meeting was called to order. The commission welcomed its new member, David Depew.

Approve Minutes:

8 November 2012 Executive Session: Four members voted "to approve the minutes".

13 December 2012 Regular Session: Four members voted "to approve the minutes as changed".

13 December 2012 Executive Session: Four members voted "to approve the minutes".

Old/New Business:

9 Ramsdell Street Michalowski: Michalowski complied with the requirement of the commission to remove his yard waste from conservation land. Four members voted "not to levy a fine against Michalowski for this violation and so notify him in writing".

Wilson Road: Lanphear will contact the owners of 9 and 11 Wilson Road and Mr. Solomon of 25 Marion Road and request their appearance to discuss encroachment and wetland infractions.

Note: At this juncture, D. VanHoven, D. Tritschler and F. Sullivan arrived.

Goldthwait Reservation: Appeared Mr. Charles Ives and Christian Schluter asking for permission to erect a nest stand for Ospreys on Goldthwait Reservation. They presented information explaining the need and method for the nest stand. The nest will rest atop a cedar post (ca. 8 inches diameter or square). The post will extend ca. 8 feet into the ground and be ca. 20 feet above ground and supported with guy wires, if necessary. They would erect this stand in the early spring of this year and in a location as far away from human presence as possible. Mr. Ives has been in contact with G. Lubbock and M. Bacon (past and current presidents of the Goldthwait Association) for their approval. All members voted "to approve the erection of the Osprey nesting stand in the Goldthwait Reservation without the requirement of a formal wetlands permit".

40-1094 5 WOODFIN TERRACE TOWN LANDFILL/TRANSFER STATION

Resource Area: Stream Bank, BVW, IVW and LUW

Interests of the WPA and Bylaw: Flood Control, Protection of Wildlife Habitat, Protection of Ground Water Supply and Prevention of Pollution

Control Drawing: Landfill Closure and New Transfer Station Construction Project, dated September 2012, prepared by Kleinfelder and as revised per revised Attachment F, dated December 12, 2012.

Reference: Memo from Amy Green Environmental Consulting dated October 29, 2012
Letter from Eggleston Environmental dated October 30, 2012
Letters from Kleinfelder dated November 8, 2012, November 29, 2012, December 11, 2012 and December 12, 2012.

Appeared: A. Petty of M'hd Board of Health and S. Wright of Kleinfelder

Note: The same quorum members were present for both hearings of this application. This was a continuance from 12/13/2012.

The top of the OOC form will have the following sentence:

This permit constitutes an OOC issued under the Massachusetts Wetlands Protection Act and the Town of Marblehead, Wetlands Protection Bylaw. It also serves as a Land Disturbance Permit under the Town of Marblehead Stormwater Management and Erosion Control Bylaw

Attachment B for the Wetlands Protection Act and Wetlands Protection Bylaw and Attachment D for the Stormwater Management and Erosion Control Bylaw were briefly reviewed. A motion was made and seconded "to approve the issuance of the permits, OOC and LDP".

40-1106 425 OCEAN AVENUE 425 OCEAN AVENUE REALTY TRUST

Resource Area: Coastal Bank

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

Control Drawing: Site Plan, 425 Ocean Avenue, dated 29 November 2012, prepared by Patrowicz Land Development Engineering.

Appeared: S. Patrowicz of Patrowicz Land Development Engineering and R. McCann, atty.

This was a continuance from 12/13/2012. No discussions had been held at the previous hearing.

Note that the coastal bank referred to as Figure 2 should be Figure 4. All members voted to close this hearing. All members voted "to issue an OOC with the following special conditions".

Pre-construction:

28. Any land disturbance of an area less than 40,000 square feet requires that Section II.C of the regulations pertaining to the Stormwater Management and Erosion Control Bylaw, Chapter 195 of the Marblehead Code must be followed and implemented.

29. All special conditions are to be included in the construction contracts between the applicant and his/her contractor.

30. 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.

31. Prior to commencement of construction activities, the Applicant shall obtain all federal, state and local permits (in addition to this OOC) that may be required for the proposed project.

During construction:

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 or streets.

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.**

47. 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.**

50. 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.

51. 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".**

40-1105 99 PITMAN ROAD THOMPSON

Resource Area: Coastal Bank

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

Control Drawing: Site Plan, 99 Pitman Road, Thompson, dated November 25, 2012, latest revision December 27, 2012, prepared by North Shore Survey Corporation.

Reference: Memo re 40-1105, dated 22 December 2012 from W. Haug
Letter from the Goodmans, dated January 4, 2013
Letter from the Mulligans, dated January 9, 2013

Appeared: S. Patrowicz of Patrowicz Land Development Engineering and Mr. Thompson

This was a continuance from 12/13/2012. The same quorum members were present on 12/13/2012. A major part of the discussion dealt with the seawall (#1) and lower retaining wall (#2). In response to the Goodman letter,

1. The drain pipe (4 inch, PVC) will be re-directed so it does not drain onto the Goodman property. The source and type of the drain water will be determined. The new re-located egress (if permitted) will not cause any erosion.

2. The coastal bank vegetation will carefully be removed before any decision is made as to how to proceed with the re-building of the corner of walls #2 and #3. A site visit (date to be determined) will be held by a maximum of three members of the commission along with the Goodmans and the Mulligans.
3. Regarding wetland issues, the footprint of the existing foundation cannot be expanded but the existing footprint can be maintained.
4. Regarding wetland issues, the expanded footprint of the proposed deck is allowed since it will not impact the wetlands.
5. Agreed that utmost care be taken.

In response to the Mulligan letter,

As agreed with the applicant, the proposed deck abutting the Mulligan property will be reduced to protect the existing 12 inch tree. This tree will not be removed.

Before any work on the sea and retaining walls is commenced, a site visit (date to be determined) will be held by a maximum of three members of the commission along with the Goodmans and the Mulligans.

All members voted to close this hearing. All members voted “to issue an OOC with the following special conditions”

Pre-construction:

ZZ A revised drawing showing the reduced footprint of the deck abutting the Mulligan property and the saving of the 12 inch tree will be submitted for approval by the commission before any work is started.

ZZ A revised drawing showing the re-location of the drain pipe and its egress will be submitted for approval by the commission before any work is started. The source and type of drain water from this pipe must be identified and approved by the commission.

ZZ A site visit will be held to review the retaining walls, #2 and #3, after the existing vegetation has been removed. No work on these walls will be started until the reconstruction has been approved by the commission.

28. Any land disturbance of an area less than 40,000 square feet requires that Section II.C of the regulations pertaining to the Stormwater Management and Erosion Control Bylaw, Chapter 195 of the Marblehead Code must be followed and implemented.

29. All special conditions are to be included in the construction contracts between the applicant and his/her contractor.

30. 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.

31. Prior to commencement of construction activities, the Applicant shall obtain all federal, state and local permits (in addition to this OOC) that may be required for the proposed project.

During construction:

ZZ A barge will be used to bring in two steel beams. The barge will not be allowed to “bottom out” and will be present for only two high tides.

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 or streets.

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.

ZZ. A tarp or appropriate containment system will be laid down/installed 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.

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.

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 of existing (a) stone masonry and (b) concrete walls including the replacement of occasional, missing stones in the stone masonry wall or the patching of cracks and minor defects in a concrete wall is allowed as a surviving condition to the Order of Conditions. **The property owner shall inform the Conservation Commission in writing at least seven days prior to any repointing work.** 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. The future razing, any rebuilding of entire wall sections or enlarging of the subject wall(s) will require the filing of a new Notice of Intent. **This condition shall survive this order.**

47. 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.**

50. 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.

51. 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".**

RDA 158 & 158R FRONT STREET BOYD

Resource Area: Coastal Bank and Land Subject to Coastal Storm Flowage

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

Control Drawing: Site Plan, 158 and 158R Front Street, dated December 18, 2012

Appeared: C. Young of Wetlands Preservation Inc.

Six members voted to close this hearing. One member abstained. All members voted “to issue a negative determination with the condition that appropriate measures be taken to contain all construction debris and materials”.

40-1107 11 ROLLESTON ROAD KANTER

Resource Area: Coastal Bank

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

Control Drawing: Plan to Accompany NOI, 11 Rolleston Road, dated December 17, 2012, prepared by Hayes Engineering.

Appeared: P. Ogren of Hayes Engineering

All members voted to close this hearing. All members voted “to issue an OOC with the following special conditions”.

Pre-construction:

28. Any land disturbance of an area less than 40,000 square feet requires that Section II.C of the regulations pertaining to the Stormwater Management and Erosion Control Bylaw, Chapter 195 of the Marblehead Code must be followed and implemented.

29. All special conditions are to be included in the construction contracts between the applicant and his/her contractor.

30. 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.

31. Prior to commencement of construction activities, the Applicant shall obtain all federal, state and local permits (in addition to this OOC) that may be required for the proposed project.

During construction:

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 or streets.

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.

ZZ. A tarp or appropriate containment system will be laid down/installed 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.

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 of existing (a) stone masonry and (b) concrete walls including the replacement of occasional, missing stones in the stone masonry wall or the patching of cracks and minor defects in a concrete wall is allowed as a surviving condition to the Order of Conditions. **The property owner shall inform the Conservation Commission in writing at least seven days prior to any repointing work.** 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. The future razing, any rebuilding of entire wall sections or enlarging of the subject wall(s) will require the filing of a new Notice of Intent. **This condition shall survive this order.**

51. 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".**

Old/New Business:

9 Ramsdell Street: see above

Wilson Road: see above

Minor Activity Permit: The commission agreed to include Land Subject to Coastal Storm Flowage for minor activities as described in Chapter 194, section 5.4.4. This suggested change will be advertised for two consecutive weeks prior to the February meeting. If approved by the commission, section 5.4.4 will read: **5.4.4 Minor Activities in Buffer Zones and in Land Subject to Coastal Storm Flowage:** ...within 100 feet from a resource area and within Land Subject to Coastal Storm Flowage are allowed ...

Project Agreement: Parkland Acquisitions and Renovations for Communities: All members voted to sign the Project Agreement. The Agreement was signed.

Request for Changes in Project Scope:

40-1042, 12 Rolleston Road, Demakes: Appeared James Emmanuel, representing Demakes. The pool and its patio/apron were built at an elevation about 2 feet higher than the approved plan. Per the Fines Guidelines, an administrative fine for "Failure to apply for an Amendment" of \$300.00 was levied against Demakes. Demakes wishes to erect a fence on the top of the new seawall. The commission voted all in favor of considering this a minor change in project scope, not requiring an amendment.

Naugus Avenue Beach: Naugus Head Association: See the following email exchange.

Mr. Riskin. Thank you for this email. We fully understand the process required when dealing with multiple inputs. Your time frame, February/March, is fine. If we can help you in any way, please contact Willy or me. Walt Haug

Sunday, January 06, 2013 8:09 PM
Naugus Head Association NOI and
Beach at 91 Naugus Avenue
Mr. Haug and Mr. Lanphear

I wanted to update you on the status of our NOI. We are well into our process and look forward to submitting our application in the coming weeks. However, because the NOI outlines a wide range of use and activities spanning well over a century of history, our executive committee felt it critical that we communicate the details of this process and the details of the NOI to all our members in the neighborhood. Certain aspects may call for us to vote as an Association in order to adhere to our bylaws. Simply put, I represent the entire membership and not an individual interest, so it gets complicated. Unlike a homeowner submitting an NOI, we are essentially dozens of homeowners, each with opinions and desires. Since November, there has been, and will be, very little activity if any on this beach until May 1st. It is our intent to have details in our NOI finalized with our membership and submitted to the Con. Comm HOPEFULLY for the February meeting, but it may be March. If this presents problems for you, or us, please let me know. Our intent is to comply with these bylaws and be proper stewards of this property. I hope you can appreciate that often some neighbors find this process contentious and we will do our best to steer through these issues as they arise.

If you need to communicate anything, please contact me.
Gregg Riskin
President, NHA, Inc. 2012-2013

Baker, 31 Arthur Avenue: From the 13 December 2012 minutes:

31 Arthur Avenue, Baker: The documents and correspondence relating to this matter are on file. All members voted to levy a fine of \$100.00 against Mr. Baker for driving a powered vehicle on conservation land in violation of Chapter 209, section 209-3E and a fine of \$100.00 for dumping yard waste on conservation land in violation of Chapter 209, section 209-7. There was also a violation per 209-B for removal of vegetation. However, due to a possible miscommunication or misinterpretation, the commission agreed not to pursue this violation. This decision will be relayed to Town Counsel.

The commission will provide a letter to Mr. Baker for his signature wherein he will promise not to perform any activities on conservation lands and will submit payment of the fines levied against him.

Letter:

17 December 2012

The Marblehead Conservation Commission

Widger Road

Marblehead, MA 01945

Subject: 31 Arthur Road

Dear Sirs,

As agreed in our meeting on Thursday, 13 December 2012, I herewith promise to abstain from performing any work of any nature in the future on conservation lands. I will extend the stone wall at the rear of my property so the wall extends across the entire of my rear lot line, thus preventing any incursions on the conservation land with motorized vehicles.

Finally, I enclose a check for \$200.00 made out to the Town of Marblehead as payment for the two violations by me as documented in your files.

Very truly yours,

_____ Baker

The meeting adjourned at 9:15 PM.