

Marblehead Conservation Commission
Minutes March 14, 2013

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

Meeting was called to order at 7:15 PM

Present were: Commission Members Walt Haug, Fred Sullivan, Don Tritschler, Brian Leclair, Ken Fisher, David VanHoven and David Depew. 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.

Discussion: 11 Susan Road: Mr. Browning appeared to discuss the restoration of wetlands on his property as required under an Enforcement Order. The commission noted that the sketch thus far provided by Wetlands Preservation, Inc. (no date) is difficult to read, is missing buffer zones, is questionable regarding the path of the "Fence/boulder barrier" and why this fence/barrier is set five (5) feet away from the driveway and not directly abutting the driveway. Mr. Browning said he would contact C. Young and report back to the commission before any work is started. The commission will impart this information directly to C. Young.

Approve Minutes: A motion was made and seconded "to approve the minutes of 14 February 2013". All members voted in the affirmative.

40-1111 75 FRONT STREET TOWN OF MARBLEHEAD

Resource Area: Coastal Bank

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

Control Drawing: Two sketches "Proposed Concrete Repair - State Street Landing", dated 01/18/2013 by Craig Smith

Appeared: C. Smith, Assistant Harbor Master

This is a continuance from 02/14/2013. A revised sketch showing the rebar and wire mesh to be embedded in the poured concrete threshold was submitted. 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:

36. 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.**

37. 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.**

38. When small areas of paving blocks are dislodged from the terraced area landward of the Top of Coastal Bank during a storm, these may be replaced. A new NOI is not required for this work. **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".**

Discussion: 15 Spray Avenue: Appeared Kevin Pessolano, Licensed Professional Engineer (in the state of Maine), representing Groom Construction. An Emergency Certificate had been issued on 03/12/2013 by the Marblehead Conservation Commission. The breach in the seawall compromised the entire seawall and the house on top of the seawall. As a result of the storm on 8/9 March 2013 approximately 1,000 – 1,500 cubic yards of soil had been removed from behind the seawall by ocean wave action. The cement slab underlining the patio at the ocean front of the house and the footing of the house were very severely undermined by the erosion of the soil. In addition, the "footing" of the seawall had been exposed. If the seawall failed entirely, neighboring properties as well as public roadways would be endangered. As of 03/14/2013, the date of the hearing, all work is focused on abatement of the emergency. Pessolano stated that it will require about 2-3 more weeks to stabilize the footings of the house. At the suggestion of the commission, he will initiate a measuring system to monitor the stability of the wall during the on-going abatement work. The commission will send a letter to Groom Construction instructing them of their obligations regarding abatement and longer term solutions vis a vis an NOI. Pictures A-G were introduced to document the emergency. Photos A, B, C and D (all dated March 11, 2013), Photos E and F (both dated March 12, 2013) and Photo G dated March 13, 2013 were introduced for the files. The firm of Childs Engineering has been mentioned as involved with this seawall stabilization.

40-1110 12 FOSTER STREET MAYNARD

Resource Area: Coastal Bank and Coastal Beach

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

Control Drawing: Site Plan ... Pool at #12 Foster Street, dated January 29, 2013, latest revision 03/12/2013, prepared by Patrowicz Land Development Engineering

Appeared: S. Patrowicz of Patrowicz Land Development Engineering, R. McCann (atty.) and P. Muldoon architect)

This is a continuance from 02/14/2013. A currently outstanding NOI for this property is 40-1071. The latest site plan revision for 40-1110 shows the section of lawn lying between the pool and the Top of Coastal Bank with plantings not requiring fertilizing. 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.**

42. When a pool/spa/hot tub is to be drained, no chlorine or other chemicals are to be added to the pool water for a period of at least four (4) days prior to draining to allow for the chlorine and other chemicals to dissipate; and there shall be an appropriate sign placed permanently at or immediately adjacent to the pool/spa/hot tub drainage valve or mechanism indicating this requirement. The method of pool drainage shall be such as to prevent any soil erosion by the draining water and to allow the draining water to seep into the ground prior to entering any resource waters. No direct discharge to resource waters is allowed. **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"**.

40-1109 2 DRIFTWOOD ROAD SUYDAM

Resource Area: Coastal Bank and Coastal Beach

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

Control Drawing: Site Plan ... Repair of Existing Patio, Wooden Steps and Boulder Revetment at #2 Driftwood Road, dated January 28, 2013, latest revision 03/12/2013, prepared by Patrowicz Land Development Engineering

Reference: Letter from Marblehead Water & Sewer Commission dated February 7, 2013

Appeared: S. Patrowicz of Patrowicz Land Development Engineering

This is a continuance from 02/14/2013. As a result of a site visit the control drawing was revised and now shows all the changes required by the commission except one change. This change (not

to remove the vegetation and timbers above the "embankment blocks") will be added to the control drawing. In addition, the lettering of the changes/notes will be simplified for clearer reading and a sketch showing the construction of the new stairs and its footings will be submitted. 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 will 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 will 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 will 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.

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 stone masonry walls including the replacement of occasional, missing stones in the wall is allowed as a surviving condition to the Order of Conditions. 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.

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 2 HUMPHREY STREET MARBLEHEAD HIGH SCHOOL

Resource Area: ?????

Interests of the WPA and Bylaw: Flood Control and Prevention of Pollution

Control Drawing: Site Plan for RDA, Piper Field, Marblehead High School, dated January 21, 2013

Appeared: W. Quigley, atty., and C. Huntress, Landscape Architect

This application is to replace natural turf on a playing field with artificial turf. Huntress pointed out that there will be an improvement in ground water re-charge, there will be no fertilization

and there will be no increase in surface run-off. All members voted to close the hearing. All members voted to issue a negative determination with on condition as follows.

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.

RDA 72 NANEPASHEMET STREET ZION

Resource Area: BVW

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

Control Drawing: Site Plan, 72 Nanepashemet Street, Zion, dated January 28, 2013, prepared by North Shore Survey Corporation

Appeared: P. Lynch, atty., and P. Muldoon

A previous negative determination was issued in 2012. After review of the current changes to the plans, the commission voted to close the hearing and voted to issue a negative determination with no conditions.

40-1112 89 FRONT STREET MARBLEHEAD BOAT YARD

Resource Area: Coastal Bank

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

Control Drawing: Existing Site Detail Plan, 89 Front Street, dated December 10, 2012, prepared by North Shore Survey Corporation and Marblehead Boatyard Renovation, pages C 1 and L 1, latest date 08/01/2012, prepared by Walter Jacob Architect

Appeared: J. Tucker of Walter Jacob Architects

After discussion, 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 will 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 will be stored outside the resource area and its buffer zone or as far back from the resource areas as possible.

Post-construction/in perpetuity:

50. If the control drawings for this project were prepared and stamped by a licensed Professional Engineer, licensed Professional Land Surveyor, licensed Professional Architect or licensed Professional Landscape Architect, the construction of this project shall be regularly inspected by said licensed professional to insure that the project complies with the control drawings. 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 drawings and setting forth any deviations that may exist between the completed work and the plans approved 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".

OldBusiness:

11 Susan Road: see above

Lead Mills: The commission voted to allow the old coir fascines that had been replaced by larger fascines to be placed at the foot of a small section of the coastal bank at Lead Mills.

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.

New Business:

Proposed Amendment to Bylaw Regulations: A proposal for an amendment to the local Bylaw regulations was advertised for two consecutive weeks in the local newspaper. All members voted to accept the amendment.

Section 5.4.4 Minor Activities in Buffer Zones **and in Land Subject to Coastal Storm Flowage:** In addition to the Minor Activities specified in 310 CMR 10.02 (2)(b)1, additional minor activities for an existing dwelling within 100 feet from a resource area **or within Land Subject to Coastal Storm Flowage** are allowed under these Marblehead regulations.

New Special Condition: The commission voted to add the following special condition:

XX. The following special condition is a surviving condition.

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.

The meeting adjourned at 9:10 PM.