

**Marblehead Conservation Commission
Minutes 12 December 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 Don Tritschler, Brian Leclair, David VanHoven, Ken Fisher and Walter Haug. 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 Items: After the meeting was called to order, on behalf of the commission members, D. Tritschler read a statement (with a "Dali-like paper watch) thanking W. Haug for his service with the commission. K. Fisher, again on behalf of the commission members, presented Haug with a gift (a golden Cod) to express their appreciation. In return, Haug offered to supply each member with a compilation of his jokes. The offer was (not so graciously) refused by all members.

Approve Minutes: The minutes of 14 November 2013 were approved by all members with changes.

40-1154 352 ATLANTIC AVENUE DEMETRI REALTY TRUST

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

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

Appeared: C. Markos and Mr. Polemenakos

Control Drawing: Subdivision Plan filed with the Land Registration Office on 12 November 1948

Reference: Haug memo dated 11 June 2013 re site visit to 352 Atlantic Avenue

After discussion, the commission emphasized that the OOC to be issued will contain some surviving conditions and these conditions give the property owner the ability to perform certain specified actions without re-applying for a new permit. The commission noted that any other actions (for example, the re-building of portions of the seawall or the entire seawall) beyond the scope of those allowed under the surviving conditions do require a new permit. All members voted to close the 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. The erosion control must be in place, erected per the drawing, before any work is started on the site.

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, 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.).

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 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.**

42. The repair/replacement of small sections of damaged caps on seawalls is allowed as a surviving condition. All dislodged and removed caps will be immediately contained and removed from the work site to prevent any such material from entering the resource waters. Prior to any work, the scope of the proposed repair/replacement must be approved by the Conservation Commission. If the cap on a major length or on an entire wall needs to be repaired/replaced, this requires an NOI. **This condition shall survive this order.**

43. 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.**

XX. Cobble stone which is washed on shore from the beach over the lawn can be removed from the lawn and replaced onto the beach. **This condition shall survive this order.**

54. 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".**

40-1156 151 GREEN STREET-MARBLEHEAD LANDFILL TOWN OF M'HD

Resource Area: BVW

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

Appeared: A. Petty of M'hd Board of Health Department; S. Wright of Kleinfelder; J. Bobowski and D. Bitsko of Bioengineering Group and J. Smith of Western Ocean Engineering

Control Drawings: See NOI prepared by Kleinfelder dated November 2013

Reference: NOI 40-1094 for the M'hd Landfill issued 25 January 2013

Note: Mr. Smith is the Owner's Project Manager. For this NOI, 40-1156, via a temporary taking, the "owner" is the Town of Marblehead allowing the Town to clean the contaminated areas of 151 Green Street. Smith will be the primary contact for the Conservation Commission

on this project and will insure all required documentation is available/supplied to the commission.

It was clarified that, under DEP Stormwater Management guidelines, only standard #8 applies to this project and the appropriate management, monitoring and reporting plan will be submitted to the commission before any work is started. Another plan required by the commission is the three year plan by the M'hd Board of Health for the controlling of invasive plants on site. A further plan for implementing, monitoring and reporting deals with the Proposed Wetland Restoration and Wetland Creation for 151 Green Street Corrective Action Plan.

Mr. B. Fogel of Keegan Werlin LLP, representing the owner of 151 Green Street raised the following matters to be addressed. 1. Assurance all contaminated material on site will be removed. 2. The number of trees to be planted for providing a visual barrier. 3. A planting plan and schedule. 4. Recognize a couple of small areas shown on the remediation drawing are part of the housing construction plan. Fogel will meet with Wright (and any other necessary parties) to discuss these matters.

It was agreed that all pertinent plans and conditions delineated in the OOC for 40-1094 will be incorporated into this project (40-1156) in so far as they apply to the remediation of 151 Green Street. All conformed documents will be supplied to the commission and the contractor.

All members voted to continue this hearing to 9 January 2014.

40-1157 STAMSKI WAY SOUTH ESSEX SEWERAGE DISTRICT

Resource Area: Coastal Beach, Coastal Bank,

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

Appeared: A. Taubert of South Essex Sewerage District; J. Darling of Serafini, Darling & Correnti; and R. Burckardt and S. Williamson of Parsons Brinckerhoff

Control Drawings: See NOI prepared by South Essex Sewerage District dated 25 November 2013

After a presentation and discussion of the project, all members voted to close this hearing. Note that the major staging will be done in Salem and, thereby, minimize disturbances in Marblehead at Stramski. All members voted to issue an OOC with the following special conditions.

Pre-construction:

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. The erosion control must be in place, erected per the drawing, before any work is started on the site.

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, 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.

xx. The culverts under the access road, Stramski Way, will be protected from any damage by trucks.

xx. A containment system to be used in case of any spillage will be maintained on site.

xx. Any impact on the eel grass beds will be minimized.

Post Construction:

xx. All shoreline and onshore areas that will be disturbed during the project will be returned to their original pre-construction condition.

53. 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.

54. 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 3 FORT BEACH WAY NIEMEYER

Resource Area: Coastal Beach, Coastal Bank,

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

Appeared: S. Patrowicz of Patrowicz Land Development Engineering

Control Drawing: Plan of Land, for Suzanne Niemeyer, 3 Fort Beach Way, prepared by Reid Land Surveyors, dated 21 October 2013.

After discussions all members voted to close this hearing. All members voted to issue a negative determination with the sole condition as follows. No construction debris or material shall be allowed to fall onto the beach. The contractor will survey the beach at the end of each day and remove any such debris or material, if such has fallen onto the beach.

40-1155 6 CORN POINT ROAD POCHARSKI

Resource Area: Coastal Beach, Coastal Bank,

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

Appeared: S. Patrowicz of Patrowicz Land Development Engineering, B. Greenwald, architect and S. Pocharski

Control Drawing: Proposed Site Plan, #6 Corn Point Road, dated 25 November 2013, prepared by Patrowicz Land Development Engineering

This site has had two previous NOI's under the previous owner. After reviewing the proposed house additions, pool, etc., the chair said he could possibly view these as an improvement to the site. Currently, the pool with patio, etc. is lawn and he assumes the owners fertilize and, possibly use other chemicals on the lawn. By converting these areas into hard surfaces with proper drainage, a certain amount of pollution will be eliminated. Prevention of pollution is a major interest of the commission. The chair further suggested that the remaining lawn between the new retaining walls and the ocean be eliminated and planted with salt tolerant vegetation – again,

removing a source of pollution. Patrowicz countered with the suggestion that a depression be constructed in this lawn area to collect surface runoff and proper drainage be installed seaward of the new retaining walls to capture the runoff from the patio. The commission was willing to entertain these suggestions. The commission asked for the amount of new, impervious area. A revised site plan will be presented at the January meeting to address these matters. All members voted to continue this hearing to 9 January 2014.

40-???? 38 TIECHURST LANE MERROW

Resource Area: Land Under a Water Body, Inland Coastal Bank

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

Appeared: P. Lausier, atty. and M. Wolverson of Lausier & Lausier LLC

Control Drawing: Plan of Land, 38 Ticehurst Lane, dated 5 December 2013, prepared by Reid Land Surveyors

The DEP file number had not been received. The commission will discuss the project but cannot close the application. The commission required more specific details of the proposed repairs and the containment system to prevent debris/material from entering the resource waters. No foundation work is proposed. All members voted to continue this hearing to 9 January 2014.

Old Business:

Granite Posts/Lead Mills: The commission voted to change the funding source to Fund 26, Project 479. It also suggested a request to replace a broken granite post at Robinson Farm be included in the quote for the Lead Mills posts.

40-930 Lead Mills: The second annual report of the survival of the vegetation was received from Woodard & Curran. The criterion of 75% survival rate of the vegetation has been met for the overall project but the survival rate of the lower marsh grasses is below this rate. Since the commission did not specify a survival rate for individual plant species or areas, it must accept the overall survival rate.

Request for changes in project scope:

40-1150 76 Beacon Street: The commission voted all in favor to accept these changes as minor design changes.

40-1070 9 Corn Point Road: The commission voted all in favor to accept these changes as minor design changes.

40-1089 9 Corn Point Road: The commission voted all in favor to accept these changes as minor design changes.

Request for COC:

40-1122 3 Point O' Rocks Lane: The commission voted all in favor to approve this COC.

40-1119 323 Ocean Avenue: The commission voted all in favor to approve this COC.

40-0043 257 Ocean Avenue: The commission voted all in favor to approve this COC and levy a fine of \$300.00 for failure to record the OOC.

40-0310 257 Ocean Avenue: The commission voted all in favor to approve this COC and levy a fine of \$600.00 (second violation for same applicant) for failure to record the OOC.

40-1141 257 Ocean Avenue: The commission voted all in favor to approve this COC.

40-1143 265 Ocean Avenue: The commission voted all in favor to approve this COC.

40-0702 12 Hathaway: The commission voted all in favor (LeClair recused himself) to approve this COC and levy a fine of \$300.00 for failure to record the OOC.

40-0718 12 Hathaway: The commission voted all in favor (LeClair recused himself) to approve this COC and levy a fine of \$600.00 (second violation for same applicant) for failure to record the OOC.

Sign Documents: All documents per the agenda were signed.

The meeting adjourned at 9:55 PM. Recorded by W. Haug with a tear in his eye.