

**Marblehead Conservation Commission
Minutes March 11, 2010**

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, Brian LeClair, Craig Smith, Ken Fisher and Deb Payson. Also present were Willy Lanphear, Conservation Administrator and Jan Smith, Associate Member.

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.

Approve Minutes: The minutes of 02/11/2010 were approved by all members present.

Old/New Business:

40-986 2 Eustis Road: A brief overview of the site visit on 03/10/2010 was given. The conservation commission will send Nancy White of DEP a copy of all minutes dealing with this application. Ms. White is interested in any discussions of soft solutions that may have been held during the hearings.

Request for Extension: 40-888: A letter was received from Glover Landing Condominium Trust requesting a one year extension. A review of this file showed that one of the special conditions (30) had never been met, i.e., an annual report of intended work to be performed during the year of permit extension. This item was continued pending receipt of a report from Glover Landing Condominium Trust listing work proposed for the upcoming fiscal year as required by condition 30 of the OOC.

40-990 75 WEST SHORE DRIVE - TOWER SCHOOL

Resource Area: BVW, Land Under Water (Perennial Stream)

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

Appeared: Peter Ogren of Hayes Engineering, Inc. and Chuck Mccollum of Marblehead Water & Sewer Department

Control Drawing: Brook Channel Maintenance (Tower School & Town of Marblehead), dated 12/14/2009, prepared by Hayes Engineering, Inc.

Reference: Comments from DEP as related in the email from Pamela Merrill to William Lanphear dated 01/28/2010

Note that the NOI (page 2 of 8) should check B.2.c, "Land Under Water bodies and Waterways" as a resource area.

Peter Ogren reviewed the application and stated he interprets this project as maintenance of road drainage per 310 CMR 10.53(3)(k). DEP refuted this interpretation (see the referenced DEP email) and the ConCom tended to concur with DEP since the segment of stream under discussion lies within a BVW and drains much more than just any runoff from West Shore Drive. The Con Com pointed out it is of the impression that the impetus for this application came primarily from Tower School because of their concern of the water table under their buildings. Chuck Mccollum of the Marblehead Water & Sewer Commission said this was not entirely true but did not deny the Con Com impression. It was stated that the culverts need to be cleaned.

Mr. Ogren stated there will be no alteration of the BVW nor of the stream banks. The Con Com administrator, Willy Lanphear, will monitor any work to insure there is no alteration of the aforementioned resource areas. Ogren will add to the control drawing the notation that the stream is perennial. He will report on the anticipated amount of dredged sediment (DEP email refers to 100 cubic yards). There will be no work in the Riverfront areas. Access to the stream will be along the stream bed and all removed material will be via this same route.

The Con Com then addressed three specific sections of the WPA, said sections relating to Land Under Water bodies. Section 310 CMR 10.35 does not apply to this application because the stream is not a fish run. Section 310 CMR 10.56 (4) (3) and (4) does apply as referring to fish and wildlife habitat. This section then refers to Section 10.60. Mr. Ogren was asked to address these two pertinent sections at a subsequent hearing.

Part of the stream intended to be cleaned crosses the property of Jeffrey & Michelle Gates. Mr. Ogren will address this issue as well. Subsequent to these discussions, Jan Smith warned about proper drainage so as not to lower the established level of water in the BVW, thereby damaging the BVW.

With the consent of the applicant, all members voted to continue this hearing to April 15, 2010.

Old/New Business:

Proposed Design Changes: 40-989 - 27 Ticehurst Lane, Henry Hammond

Appeared Scott Patrowicz of Patrowicz Land Development Engineering and Craig Bosworth of Grazado Velleco Architects.

Control Drawing: Site Plan, Proposed Work, #27 & #31 Ticehurst Lane, Henry Hammond dated January 5, 2010, revised 03/11/2010, prepared by Patrowicz Land Development Engineering and

North Shore Survey Corporation. See also letter from Patrowicz dated January 5, 2010 (PLDE #09-03).

Landscape Plan for Hammond Residence, 27 Ticehurst Lane, prepared by For Seasons Landscape Design, dated February 11, 2010.

The proposed new deck will now be constructed with all pilings located outside the resource area (pond, Land under water bodies). There will be no alteration to the resource area, thereby following the recommendation of the DEP (see DEP Notification dated February 11, 2010). This design change makes moot any further concerns expressed in the DEP Notification. In addition, Mr. Hammond confirmed in his email of March 11, 2010 that the drain pipe under the old deck is from a sump pump only. A question was raised concerning the definition of “stream crossing” and its applicability in this application. Jan Smith stated this applies only to flowing waters and not to a pond.

The commission viewed this design change as an improvement in protecting the resource area and in having no effect on any abutter or neighbor. Therefore, this design change was not reviewed as an amendment and all members accepted this design change.

Sign Documents: All documents per the agenda were signed.

The meeting was adjourned at 8:50 PM.