

Marblehead Conservation Commission
Minutes May 13, 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, Don Tritschler, Ken Fisher and Deb Payson . 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.

Approve Minutes: The minutes of 04/15/2010 were approved by all members present.

9 Sparhawk Terrace (Rob Borden) and 50 Naugus Avenue (Denis Boucher): Both parties had been sent a letter from the Commission regarding unauthorized cutting on a coastal bank. Denis Boucher appeared at this meeting and asked that this matter be continued until June 10, 2010 to allow their landscape architect, Laura Lautner, to be present. All members agreed to this continuation.

40-990 75 WEST SHORE DR – TOWER SCHOOL / MARBLEHEAD WATER & SEWER DEPT

Resource Area: BVW, Land Under Water, Riverfront Area

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

Appeared: Peter Ogren of Hayes Engineering, Inc.

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

This was a continuance from 02/11/2010, 03/11/2010 and 04/15/2010. Ogren said his firm was still working to provide the information required by the state and the commission and asked for a continuance to June 10, 2010. All members voted to continue this hearing to June 10, 2010.

40-991 27 NAUGUS AV – MONTROSE SCHOOL PARK LLC c/o SYMES ASSOC

Resource Area: BVW

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

Appeared: Peter Ogren of Hayes Engineering, Inc.

Control Drawing: Intervale Road & Naugus Avenue, dated February 17, 2010, prepared by Hayes Engineering, Inc.

This was a continuance from 04/15/2010. The fee of \$50 for lot number 3 was paid. A letter from Hayes Engineering dated May 13, 2010 was submitted confirming various conditions stipulated by the Commission in its previous hearing. Ogen copied Tom Manna, the individual chosen by the Town for the peer review. At the request of Ogren, all members voted to continue this hearing to June 10, 2010.

Request for Extension:

40-880 Black Joe's Pond: A letter from C. Campbell, dated April 13, 2010 requested an extension. The local permit issued on June 22, 2006 under the local By-law was not appealed, and would have expired on June 22, 2009. An extension Permit was issued on August 13, 2009 extending the OOC to June 22, 2010. The commission voted all in favor to extend the Town of Marblehead permit to June 22, 2011.

40-921 Gregg Thibodeau: A letter from Gregg Thibodeau dated April 17, 2010 requested an extension of the Town of Marblehead Local Permit. The commission voted all in favor to extend the Town of Marblehead permit to June 28, 2011.

Request for COC:

40-578 4 Fort Sewall Terrace: All members voted to approve/sign this COC.

40-602 4 Fort Sewall Terrace: All members voted to approve/sign this COC.

Sign Documents: All documents per the agenda were signed.

Open Meeting Training: All members were reminded of the training to be held at Abbot Hall on Monday, June 7, 2010 at 7:00 PM. Willy Lanphear said a notice has also been posted.

40-993 27 NAUGUS AV – MONTROSE SCHOOL PARK LLC c/o SYMES ASSOC

Resource Area: BVW

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

Appeared: Peter Ogren of Hayes Engineering, Inc.

Control Drawing: Topographic Plan Mound Road, dated March 17, 2010, prepared by Hayes Engineering, Inc.

This NOI for phase II was submitted concurrently with the application for a Land Disturbance Permit (LDP) for the same phase II site. A final permit for phase II, if issued, will be in the form

of a single Order of Conditions and will cover both permits for the Wetlands Protection Act and the LDP.

All reviews and evaluations of the Storm Water Management and Erosion Control Plan will be conducted concurrently for the entire site (phases I and II). The Town of Marblehead has engaged the services of Thomas Mannetta to conduct a peer review of the afore referenced plan and to verify the boundaries of the BVW. The evaluation is due June 1, 2010. An initial joint meeting of all pertinent parties will be held ASAP. The commission stated the applicant will have to provide an on-going monitoring of the execution of the plan with periodic reports to the commission. This will at the expense of the applicant.

With regard to the WPA permit, possible special conditions will be similar to those delineated at the April 15 meeting for 40-991. The commission will also require a permanent demarcation of the boundary of the No Disturb Zone (NDZ) for lot 3 of Phase II. This applies where the NDZ overlaps the property. This permanent demarcation should also be located along the remainder of the lot line of lot 3 where the property approaches the NDZ.

With the agreement of Ogren all members voted to continue this hearing to June 10, 2010.

40-997 33 CLIFTON HEIGHTS LANE - JOHN PAYNE

Resource Area: Coastal Bank

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

Appeared: Scott Patrowicz of Patrowicz Land Development Engineering and Attorney Paul Lynch.

Control Drawing: Existing Conditions Plan, 33 Clifton Heights Lane, Robert & Gail Dale, dated April 5, 2010, prepared by North Shore Survey Corporation. Site Layout Plan, Payne Residence, latest revision 04/14/2010, prepared by Hutker Architects.

This was a continuance from 04/15/2010. DEP commented that “there is insufficient information to condition”. Patrowicz will add the required information (proposed grades, delineation of resource areas, buffer zones, etc.) to a revised control drawing. He will also show which trees are to be removed. Lanphear mentioned that there is a problem with the street drain in front of the property but it was acknowledged that this is not part of the application. All members voted to continue this hearing to June 10, 2010.

40-994 2 & 3 EUSTIS ROAD - CORNELIA STUTZ

Resource Area: Coastal Banks, Land Subject to Coastal Storm Flowage

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

Appeared: Peter Ogren of Hayes Engineering and Cornelia Stutz

Control Drawing: Plan to Accompany NOI for Eustis Road, prepared by Hayes Engineering, dated March 31, 2010

A letter from DEP (Nancy White) dated May 11, 2010 stated the project does not meet the performance standards of 310 CMR 10.30 and cannot be approved as currently proposed. The commission required that the control drawing show the "V" and "A" zones and also define how the coastal banks have been defined per DEP Policy 92-1. Further it required that no fertilizers/chemicals be applied in the "A" zone. Ogren suggested as an alternative that a 25 foot vegetated buffer strip be established along the top of coastal bank #2. This will be considered at the next hearing. With the concurrence of the applicant, all members voted to continue this hearing to June 10, 2010.

40-998 15 KIMBALL STREET – ADELE GAULT

Resource Area: Coastal Banks

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

Appeared: Peter Ogren of Hayes Engineering and Robert Zarelli Architect

Control Drawing: Plan to Accompany NOI 15 Kimball Street, dated March 30, 2010, prepared by Hayes Engineering, Inc.

DEP comments state this application is under review. Therefore, the commission cannot close the hearing. The commission reviewed this application as very similar to a request to build a pier. Zarelli said the Marblehead Harbormaster has no problems with this application and it does not require a chapter 91 license. The piers will sit on ledge. A revised control drawing will show a masonry fillet at the corner of the structure to help deflect wave action and will be submitted to the commission for approval before any work is started. All members voted to continue this hearing to June 10, 2010.

Possible special conditions can include:

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

27. A containment system to prevent any materials/debris from entering the resource waters will be erected after approval by the commission.

During construction:

29. 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.).

31. All demolition debris will be removed from the site ASAP and not stored within a resource area or a buffer zone. If a dumpster is used to contain the debris, the dumpster shall be covered. The debris shall be properly disposed of in accordance with applicable federal, state and local regulations.

32. All construction material will be stored outside the resource area and its buffer zone or as far back from the resource areas as possible.

33. 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.

35. All piers, docks and floats must follow the guidelines established in the document, "Small Docks and Piers – A Guide to Permitting Small Pile-Supported Docks and Piers" dated November 2003 issued by DEP. Float stops are permitted provided they meet the aforementioned guidelines.

Post-construction/in perpetuity:

36. 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 Lawncare 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. Minor maintenance repairs to the superstructure only of this structure 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.

46. Upon completion of the work allowed under this Order of Conditions, the applicant shall within 30 days apply for a Certificate of Compliance (COC) and, if required by the commission, submit an "as built" drawing (signed and stamped by a Registered Professional Engineer) with the application for the COC. Failure to submit said application within 30 days may result in a fine issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E.

40-923 12 CROWNINSHIELD RD – KATHARINE & PAUL REDMOND

Resource Area: Coastal Bank, Rocky Intertidal Shores, Land Subject to Coastal Storm Flowage

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

Appeared: No one

An email was received from K. Bradford of Bradford Design Associates requesting a continuance of this hearing to June 10, 2010. Note that a final landscape drawing will be submitted for approval. A partial COC has been issued to allow the Redmonds to occupy the house but a final COC is still required. All members voted to continue this hearing to June 10, 2010.

40-999 16 WEST ORCHARD ST - DENIS KOKERNAK

Resource Area: Coastal Bank, Rocky Intertidal Shores, Land Subject to Coastal Storm Flowage

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

Appeared: Scott Cameron of McKenzie Engineering Group, Attorney Paul Lynch, Denis Kokernak and Peter Ogren of Hayes Engineering.

Control Drawing: Plan of Land Retaining Wall Repair, 16 West Orchard Street, dated April 28, 2010, prepared by Hayes Engineering and Site Plan for 16 West Orchard Street prepared by McKenzie Engineering Group, dated 04/27/2010.

DEP comments say this application is under review. Ogren said he has talked with Rachel Freed of DEP and she indicated the work will be approved. A letter from McKenzie Engineering Group dated April 27, 2010 is entered into the file. After a discussion of the project, the commission informed the applicant it had reviewed the history of this site and found a number of OOC violations. Specifically, the following applies.

40-498 for house renovations

OOO issued 4/25/1996 (not recorded). No COC requested or issued.

40-568 for construction of Stormwater system (catch basins, Stormceptor and outlet through sea wall)

OOO issued 9/25/1997. OOC recorded 4/20/2010 (12+ years later. After wall collapse)

COC issued 8/7/2003. COC recorded 4/20/2010 (6+ years later)

OOO condition 22 requires an annual report to be filed for 5 years. No reports were filed with Town Engineering Dept.

The commission finally arrived at a fine of \$1,200. It considered each of the four violations regardless of the length of the violation and applied a fine of \$300 for each violation. All members voted to close this hearing. All members voted to issue an OOC with the following special conditions.

Special Conditions:

20. In accordance with General Condition No. 9 contained in this Order of Conditions, the applicant shall record this Order at the Registry of Deeds and shall submit the recording information to the Conservation Commission on the form for said information found at the end of the Order. Failure to submit said recording information may result in a fine of up to \$300 per day issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E.

21. Prior to any work authorized by this Order, a sign (1'x 2') shall be displayed in a conspicuous place at the site with the words "DEP File 40-999"

22. This Order of Conditions is issued under the Wetlands Protection Act and its Regulations (MGL Chapter 131, Section 40 and 310 CMR 10.00 et. seq.), and under the Town of Marblehead Wetlands Protection Bylaw (Marblehead Bylaws Chapter 194) and its Regulations (Wetlands Protection Bylaw Regulations for Administering Marblehead Bylaws Chapter 194, Sections 194-1 through 194-14). As such this Order constitutes a wetlands permit both under the Act and under the Bylaw.

23. The project shall be performed in accordance with the final approved plans and other documents referenced in Attachment A to this Order of Conditions, except as the project may be altered or amended by these Special Conditions. Any deviation from this Order of Conditions and the approved construction plan/s and documents requires authorization from the Conservation Commission prior to implementation. Any deviation from the approved construction plans and documents commenced prior to authorization is subject to a fine of up to \$300 per day, issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E.

24. The project shall be performed in accordance with the representations made by the applicant and his/her representative(s) and in accordance with the requirements of the Marblehead Conservation Commission, all as reflected in the public hearing record as documented in the minutes of the Marblehead Conservation Commission referenced in Attachment A to this Order of Conditions, except as the project may be specifically altered or amended by these Special Conditions.

25. These Special Conditions relate equally to both the Wetlands Protection Act and the Marblehead Wetlands Protection Bylaw unless herein indicated otherwise.

26. 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.

Pre-construction:

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

28. 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:

29. 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.).

30. All demolition debris will be removed from the site ASAP and not stored within a resource area or a buffer zone. If a dumpster is used to contain the debris, the dumpster shall be covered. The debris shall be properly disposed of in accordance with applicable federal, state and local regulations.

31. All construction material will be stored outside the resource area and its buffer zone or as far back from the resource areas as possible.

32. 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.

33. A copy of this Order of Conditions as well as the final approved plans shall be available for inspection on site while activities regulated by the Order are underway.

Post-construction/in perpetuity:

34. 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.

35. 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. 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.

36. 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.

37. Upon completion of the work allowed under this Order of Conditions, the applicant shall within 30 days apply for a Certificate of Compliance (COC) and, if required by the commission,

submit 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 said application within 30 days may result in a fine up to \$300 per day issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E.

Old/New Business:

Approve Minutes: see above

Request for Extension: see above

Request of COC: see above

Sign Documents: see above

Other Matters:

40-915 90 Naugus Avenue: Appeared Lawrence Lessard (applicant) and Paul Lindholm, Engineer. See letter dated April 23, 2010 from Paul Lindholm. The applicant was told to request a COC for 40-915 and file a RDA with an updated drawing to complete his landscape work.

See above for 9 Sparhawk Terrace and 50 Naugus Avenue.

Meeting was adjourned at 10:15 PM.