

**CONSERVATION COMMISSION
MINUTES OF JULY 21, 2009**

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

Meeting was called to order at 7:00 PM

Present were: Commission Members Walt Haug, Fred Sullivan, Craig Smith and Don Tritschler. 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 07/09/09 were approved by all members.

40- 321 OCEAN AVENUE ROSENTHAL

Resource Area: Coastal Bank

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

Appeared: P. Ogren of Hayes Engineering, Inc., Jay Connolly, contractor and Dr. Rosenthal

Control Drawings: Plan to Accompany NOI, Rosenthal, 321 Ocean Avenue, prepared by Hayes Engineering, Inc., dated June 29, 2009, latest revision July 16, 2009

No DEP file number had been received. The applicant was informed the commission needed this number before it could issue an OOC. The commission believed it did not have to wait for the DEP comments (although this application is in a resource area) since the replacement seawall is on the same footprint as the collapsed wall, there is no realistic alternative to building a vertical wall and this area does not provide beach nourishment. After reviewing the details of the control drawing and the design of the proposed seawall repair, the commission proposed the following action. It would close the hearing and it would decide the special conditions for the OOC and prepare the OOC but hold it until the DEP number was received. The signing will be done at the Town Clerk's office by the four commissioners present at the hearing. The special conditions are as follows.

Special Conditions:

19. 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.

20. 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.

21. 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.

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

23. In accordance with General Condition No. 8 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 prior to the commencement of any work authorized by this Order. Failure to submit said recording information prior to the commencement of work may result in a fine issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E.

24. 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:

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

26. In lieu of an erosion control fence (which is not practical), the applicant will take appropriate caution to prevent any construction materials/debris from entering the resource waters. All said materials/debris will be removed from the resource area each and every day.

27. 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:

28. 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.).

29. 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.

30. 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:

31. 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.

32. 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.

33. A vegetated buffer strip averaging six (6) feet in width will be planted along and immediately adjacent to the top of seawall. The plantings will be compatible with the ocean environment and will be chosen to maximize chemical adsorption, thus minimizing pollution runoff into the resource waters. Before any work is started on this strip, a planting plan will be submitted to the Conservation Commission for approval. This strip must be planted as soon as all work on the seawall is completed.

34. 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.

35. 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, Sec 11E.

Old/New Business:

Approve Minutes: see above

Sign Documents: All documents per the agenda will be signed in the Town Clerk's office.

Black Joes' Pond: The pond study group originally formed in 2005 for the purpose of evaluating Black Joe's pond under the auspices of the ConCom is no longer in existence and ceased to exist since the study was interrupted in May 2007.

The meeting was adjourned at 8:00 PM.