

**CONSERVATION COMMISSION
MINUTES OF APRIL 9, 2009**

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, Deb Payson, Craig Smith, Brian LeClair, Ken Fisher and Don Tritschler. Also was Doug Saal, 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: WESX Property at Naugus Avenue

Appeared: Mr. Bob McCann representing the owners of the WESX property. The current owners are Principal Broadcasting. Article 44 of the Town Warrant for May 2009 requests that the Town purchase this property. McCann was assured that the Conservation Commission supports this purchase.

375 OCEAN AVENUE GIANATASIO

Appeared: Mr. Gianatasio and Bobbie Oakley, architect

An enforcement order had been issued against Mr. Gianatasio since work at 375 Ocean Avenue was being performed within a buffer zone to a coastal bank and no permit had been requested. The underlying reason for this oversight was due to a misinterpretation by the Marblehead Building Commissioner. Therefore, no fine was levied and notice was given to all parties as to permit requirements for the future.

40-970 COVE LANE BEACH SHEA SMITH III REALTY TRUST

Resource Area: Coastal Bank

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

Appeared: P. Smith, D. Smith of Vine Associates and R. McCann

Control Drawing: Cove Lane Beach (sheets 1 & 2), dated February 2009, and revised April 2009, prepared by Vine Associates, Inc.

This was a continuation from 03/12/09. The DEP file number was received with comments. A letter from Vine Associates dated April 9, 2009 addressed to the Conservation Commission (cc to DEP) was entered into the files. This letter addressed the comments raised in the DEP file number letter. The commission informed the applicant that it wished to contact DEP for further information and would not close the hearing until said information was received. Since the proposed work is in a resource area and the commission still had some questions about slope angle, it requested a site visit. This visit was scheduled for Saturday, May 2 at 9:30 AM. The commission stated it is open to both soft and hard solutions and wanted to explore both alternatives further. All members voted to continue this hearing to May 14, 2009

40-973 7 FORT BEACH WAY McGuire

Resource Area: Coastal Bank

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

Appeared: No one

Control Drawing: Plan of Land Prepared for: Lawrence G. & Georgine Sampson McGuire, 7 Fort Beach Way, dated September 24, 2008, prepared by Reid Land Surveyors

This was a continuance from 03/12/09. The DEP file number was received. All members voted to close this hearing. All members voted to issue an OOC with the following special conditions.

Pre-construction:

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

During construction:

2. 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.).
3. 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.

4. 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:

5. 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

40-974 AUDUBON WILDLIFE SANCTUARY MA AUDUBON SOCIETY

Resource Area: BVW, Pond, Land Under Water

Interests of the WPA and Bylaw: Prevention of Pollution, Protection of Wildlife Habitat, Flood Control, Storm Damage Prevention and Groundwater Supply

Appeared: Carol Decker and Lou Wagner of Mass. Audubon Society

Control Drawing: Sketch revised 04/09/09, initialed and signed by Carol Decker on 04/09/09.

310 CMR 10.53(4) supports this application. Two items were questioned by the commission. (1) The term "elevation" of the pipe and (2) the crushed stone bed. Regarding (1), the term "elevation" means the same as "invert" and is the elevation of each section of the pipe at its lowest point. Regarding (2), the crushed stone will act as a "French" drain and as originally proposed, would lower the water level in the pond. To eliminate this problem and to insure the long-term integrity of the crushed stone bed, weed mat fabric will encompass the entire perimeter of the crushed stone (bottom, top and both sides) and the first two feet of the stone at the input side of the pipe will be replaced with Lynn-Pack to act as a dam. All members voted to close this hearing. All members voted to issue an OOC with the following special conditions.

Pre-construction:

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

During construction:

No conditions.

Post-construction/in perpetuity:

2. 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.

40-975 27 TICEHURST LANE HAMMOND

Resource Area: BVW, Pond, Land Under Water

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

Appeared: H. Hammond, Scott Patrowicz of Patrowicz Land Development Engineering and Craig Bosworth, architect

Control Drawing: Site of Plan, 27 Ticehurst Lane, Henry Hammond dated February 26, 2009, prepared by North Shore Survey Corporation.

The work proposed can be allowed per 310 CMR 10.53 (4) and 10.56 (4). A 1:1 replication can be accepted. (Note: The local bylaw stipulates a 2:1 replication only for BVW's). The control drawing was not adequate in detail and since the work is in a resource area, a site visit was scheduled for Saturday, May 2 and 10:30 AM. The areas to be used for replication, the details of the replication, the type of plantings and the drain pipe are items to be reviewed. The proposed deck will have the same footprint as the existing deck except the side facing west will be reduced so it lies within the plot line of the property under discussion.

Mr. Michaud, an abutter, was concerned about the existing overlap of the deck onto his property, the drain pipe into the pond and the time frame/schedule for completing the project. All members voted to continue this hearing to May 14, 2009.

40-976 25 MARION ROAD SOLOMON

Resource Area: BVW, Pond, Land Under Water

Interests of the WPA and Bylaw: Prevention of Pollution, Protection of Wildlife Habitat, Flood Control, Storm Damage Prevention, Groundwater Supply

Appeared: M/M Solomon and Scott Patrowicz of Patrowicz Land Development Engineering

Control Drawing: Site Plan, 25 Marion Road, dated March 24, 2009, prepared by Patrowicz Land Development Engineering

The commission, after visual observation, pointed out the area within the No Disturb and No Build Zones is covered, in part, with moss and a grass surface which does not appear to be maintained. In order to keep this area free of a manicured lawn and fertilizers, the commission suggested that the existing bank, which will abut the proposed pool retaining wall, be planted with shrubs and other vegetation. This will act as a natural barrier to achieve the aforementioned “free” area. The entire patio area and the proposed pool are outside the No Build Zone. All members voted to close this hearing. All members voted to issue an OOC with the following special conditions.

Pre-construction:

1. All special conditions are to be included in the construction contracts between the applicant and his/her contractor.
2. 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.
3. A landscape plan showing the re-planted bank abutting the proposed pool will be submitted for approval before any work is started.
4. A construction plan showing the design of the proposed pool retaining wall will be submitted before any work is started.

During construction:

5. 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.).
6. 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.
7. All construction material will be stored outside the resource area and its buffer zone or as far back from the resource areas as possible.
8. 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:

9. 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.
10. 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.
11. 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.
12. 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.

Old/New Business:

Approve Minutes: The minutes of March 12, 2009 were approved by all members.

Minor Activity Permits: D. Saal explained the permits he issued per the agenda.

Sign Documents: All documents per the agenda were signed.

Enforcement Order for 375 Ocean Avenue: See above.

The meeting was adjourned at 9:00 PM.

