

**CONSERVATION COMMISSION  
MINUTES OF AUGUST 13, 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, Brian LeClair, Deb Payson and Ken Fisher. 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.

**Enforcement Order:** An Enforcement Order was issued against 40-952 at 216 Ocean Avenue for illegal off-site draining. The violation was immediately stopped. A representative for the owner, Mr. Erling Falk, appeared before the commission to insure such activities will be avoided in the future.

**Approve Minutes:** The minutes of 07/21/09 were approved by all members.

**Requests for COC:** The COC's for 21 Cheever Avenue and 322 Ocean Avenue were signed.

**40-982 10 WEST ORCHARD STREET, IAN & SARAH HART**

Resource Area: 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, T. Siemasko of Siemasko + Verbridge, R. McCann, atty., and S. Hart

Control Drawings:

1. Plan entitled: "Site plan, Existing Conditions for the demolition of an existing house and the Construction of a New House at #10 West Orchard Street" dated July 28, 2009, prepared by: Patrowicz Land Development Engineering and North Shore Survey Corporation.
2. Plan entitled: "Proposed New Residence for Sarah and Ian Hart, Proposed Site Plan" Dated July 28, 2009 prepared by: Siemasko + Verbridge.
3. Plan entitled: "Proposed New Residence for Sarah and Ian Hart, Planting Plan" Dated July 28, 2009 and revised August 13, 2009 prepared by: Siemasko + Verbridge.

Patrowicz pointed out that the total impervious surface on the site will be reduced from ca. 3,500 sq. ft. down to ca. 2,500 sq. ft. This included the reduced amount of impervious surface in the No Build Zone. The proposed fence along the top of coastal bank will be made of iron with the posts inserted into ledge and grouted. This will cause minimum disturbance to the top of bank. All members voted to close this hearing.

All members voted to issue an OOC with the following 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. 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.

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. To the maximum extent possible, all driveways, terraces, patios or similar ground-level surfaces will be constructed as permeable surfaces to allow water to infiltrate through their surfaces into the ground on site

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.

**Post-construction/in perpetuity:**

32. 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. 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](http://www.mnla.com) or [www.newfs.org](http://www.newfs.org).

34. 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.

**RFD 89 FRONT STREET, KENNETH GOLDING**

Resource Area: Coastal Bank

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

Appeared: J. Emmanuel of James K. Emmanuel Associates

Control Drawing: Site Plan, 89 Front Street, dated July 29, 2009, prepared by James K. Emmanuel Associates

After a discussion of the proposed work and its location, the matter of a possible oil tank in the vicinity was raised. This will be investigated by W. Lanphaer. The commission voted to close this hearing. The commission voted to issue a negative determination but with the following conditions.

1. This Determination of Applicability 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 Determination constitutes a wetlands permit both under the Act and under the Bylaw.
2. The project shall be performed in accordance with the Final Approved Plans and Other Documents referenced in the Determination, except as the project may be altered or amended by these Special Conditions.
3. 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, except as the project may be specifically altered or amended by these Special Conditions.
4. These Special Conditions relate equally to both the Wetlands Protection Act and the Marblehead Wetlands Protection Bylaw unless herein indicated otherwise.
5. Before any work is started, the commission will investigate the possible presence of an oil tank (below or above ground) to determine if a tank exists and if it requires any action.
6. All special conditions are to be included in the construction contracts between the applicant and his/her contractor.
7. 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.).
8. 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.
9. All construction material will be stored outside the resource area and its buffer zone or as far back from the resource areas as possible.

## **RFD 8 MARINERS LANE, NANCY SERETTA**

Resource Area: Coastal Bank

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

Appeared: Nancy Seretta

Control Drawing: "Plan for Proposed Decks at 8 Mariners Lane", dated July 7, 2009, prepared by Lynch Engineers. "Seretta Residence 8 Mariners Lane" dated July 21, 2009, prepared by Taproot Design, Inc.

The work site will be approached via the next door neighbor's property, not from the water side of the house. After discussion of the project, all members voted to close this hearing. All members voted to issue a negative determination without conditions.

### **Other Matters:**

#### **40-880 Black Joe's Pond:**

Craig Campbell, representing four abutters to the pond (a group called PROMPT), requested that the Marblehead Conservation Commission re-instate its approval for the ACT program. The commission asked Campbell for an update on the state of litigation. It was his opinion and hope that the litigation will soon be resolved and that the DEP SOC will finally prevail. The commission said it was especially interested in the SOC and its eventual approval. If the SOC prevails, then the condition that the ConCom had originally requested, i.e., the study of the pond and a long term management program be conducted, will now be mandated by DEP. The commission pointed out that the reasons for its withdrawal of approval for the ACT program was due to (1) the lack of written approval by the PROMPT abutters and (2) the uncertainty of the lengthy litigation process. A letter from Campbell dated July 27, 2009 enclosed the signed approval of the PROMPT abutters, thereby eliminating the first obstacle for the commission.

With regard to the status of the DEP SOC, it was agreed that there is a very reasonable probability that the SOC will prevail and, most probably, without amendments. In the event the SOC does not prevail, the whole matter will have to be addressed anew, starting again with a new NOI, if the applicant wishes to proceed. The commission agreed with this appraisal and thereby the second obstacle for the commission was removed. At this point, the commission asked Campbell if he and the PROMPT members intended to fulfill the conditions of the SOC since these mandate monitoring of the pond and developing a long term pond management plan. Campbell said they intend to fulfill all conditions of the SOC.

Members of the audience offered the following comments:

D. Cox: Beyond any legal requirements it behooves the town and the abutters to establish a legal body to manage the pond so grants, etc. could be requested and committed, continuing efforts can be made to save the pond.

S. Howe: Delays have been detrimental to the pond and no further delays can be tolerated.

D. Morgan: In audible to the recorder.

McCue: Only chemicals or dredging are possible.

Based on the above described rationale regarding the PROMPT approval and the SOC status, the commission voted as a land owner to re-instate its approval for a one time application of chemicals per the ACT program. The one year time period for application will start from the date of issuance of a final SOC from DEP.

**Request for COC:** 40-901 16 Kimball Street McCarthy: In reviewing the site, the commission discovered the as-built conditions included three features not covered by the control drawing. M/M McCarthy appeared to explain and presented letters from Robert Zarelli (August 13, 2009), architect and Gail Smith of North Shore Survey (August 11, 2009). The commission stated it was disappointed and rejected the rationale used for the omissions. Each aforementioned violation can be subject to a fine of \$300 per day. The commission voted to levy a fine of only \$300. The COC will be issued.

**Old/New Business:** see above

The meeting was adjourned at 9:10 PM.