

Marblehead Conservation Commission
Minutes January 15, 2015

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

Meeting was called to order at 7:10 PM

Present were: Commission Members Fred Sullivan, Brian LeClair, David VanHoven, Ken Fisher and David Depew. Also present was Willy Lanphear, Conservation Administrator.

The hearings were conducted under the Massachusetts Wetlands Protection Act and the Marblehead Wetlands Protection Bylaw.

Executive Session: Executive session to discuss strategy with respect to litigation, namely Rosenthal, et al v. Lieberman, et al., Essex County Superior Court Docket No. ESCV2014-01864, where an open meeting may have detrimental effect on the litigating position of the Town. See minutes for Executive Session.

Approve Minutes: A motion was made and seconded “to approve the minutes of 11 December 2014.” All members voted in the affirmative.

Discussion Item: 40-930, Former Chadwick Lead Mill site, Annual Wetland Monitoring Report. Walter Haug presented on the provided report given his experience with the project and the history. Discussion was had regarding the partial certificate of completion and the date that reports are required per the order of conditions. Partial COC was June 2011 so the 5th annual report would be 2016. It was noted that this date appears in multiple documents in the file. Tom Devine, Salem Conservation Agent, was present and inquired about the different grass types. A motion was made and seconded to send a memo to Woodard & Curran that the commission will not make a differentiation between high and low grasses. The Commission will also include that two (2) more reports are expected per the OOC. All members voted in the affirmative.

Request for changes in project scope:

- 40-1094, 5 Woodfin Tr., Landfill capping project, Town of Marblehead. Steve Wright, Kleinfelder, and Andrew Petty, Director of Public Health, requested minor design change. A motion was made and seconded to approve the change. All members voted in the affirmative.

40-1178 26 Harbor Avenue

Control Drawing: Seawall Repairs/Upgrades, 26 Harbor Avenue, dated June 13, 2014 prepared by Stephens Associates Consulting Engineers, Sheets 1-4.

A request was made to continue to the 2/12/15 meeting. A motion was made and seconded to continue the application. All members voted in the affirmative.

(Local Bylaw Only) 13R Green St (Joel W. Reynolds Playground) off Lime St

Control Drawing: Plans (4) to Accompany NOI, Reynolds Playground, prepared by Haley and Ward, Inc. dated August 26, 2014.

An email dated January 13, 2015 was received requesting a continuance of this hearing to the February meeting date. A motion was made and seconded to continue the application to the 2/12/15 hearing. All members voted in the affirmative.

40-1187 44C Cloutman's Lane

Appeared: Milton Fistel, PE of Fistel & Associates, and William Kaul representing Cole's Pier Association

Proposed: Repairs / reconstruction of existing wood stairway and existing timber pier, including the removal and replacement of eight existing piles and the installation of four new piles for a new gangway lifting mechanism.

Control Drawing: Plan prepared by Fistel & Associates (November 20, 2014)

DEP license is amended to include the requirement for a lifting mechanism. Marine Fisheries Department had no comment.

All members voted to close the hearing. All members voted to issue an OOC with the following special conditions:

During construction:

33. 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.).

35. All demolition debris shall be removed from the site as soon as possible and not stored within a resource area or a buffer zone. If a dumpster is used to contain debris, the dumpster shall be covered after each work day. The debris shall be properly disposed of in accordance with applicable federal, state and local regulations.

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

37. 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 shall conform to the requirements of Chapter 91.

38. 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.

39. 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. Float stops are permitted provided they meet the aforementioned guidelines.

Post-construction/in perpetuity:

40. 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.**

46. All gangways, docks or other items not permanently secured to the earth shall be stored during the “off season” (late fall, winter, early spring) so as to prevent them from causing any damage to other structures or resource area. **This condition shall survive this order.**

47. All gangways, docks or other items not permanently secured to the earth shall be properly secured and/or removed in the event of a major storm so as to prevent them from causing any damage to other structures or to the resource area. **This condition shall survive this order.**

48. All floats/docks will be so constructed so as not to bottom out (rest) on the ocean floor at low tides. **This condition shall survive this order.**

51. Minor maintenance repairs to the superstructure only of the pier 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.**

52. If the pilings supporting a pier have not been painted or treated with a chemical substance, the pilings may be hand scraped to remove barnacles and other marine growth. The scraped material may remain on the beach/tidal flat. However, if the state declares a state of contamination (such as Red Tide) in an area wherein the pilings have been resident, tarps or a similar containment method must be located in the work area so as to cover the entire work area where scraping is performed. Tarps are to be cleaned of scraped material at the end of each day when scraping is performed and the scrapings disposed of in a proper manner for such contaminated materials.

If the pilings supporting a pier have been painted or treated with a chemical substance, the pilings may be hand scraped to remove barnacles and other marine growth. Tarps or a similar containment method must be located in the work area so as to cover the entire work area where scraping is performed. Tarps are to be cleaned of scraped material at the end of each day when

scraping is performed and the scrapings disposed of in a proper manner for materials which include paint or treatment.

For all types of pilings (painted or unpainted/treated or untreated), a protocol must be submitted to the Conservation Commission for approval in advance of the scraping. The protocol must contain: whether the pilings are painted or unpainted/treated or untreated; whether the pilings have been contaminated; if painted or treated, the exact type of paint being scraped/if treated, the exact type of treatment; the dates and times of intended scraping (start and finish); the exact location of the intended scraping; a description of the containment method; a description of the scraping method; the final location for disposal of the paint scrapings or, if applicable, contaminated scrapings. If the pilings are to be repainted/re-treated, the exact type of paint/treatment must be identified and must be approved per the latest state and federal guidelines for such applications. The person ordering the scraping/painting/treatment must sign and date the protocol and submit it to the Marblehead Conservation Commission before any work is started. **This condition shall survive this order.**

54. The control drawing/s for this project were prepared by a licensed Professional Engineer. The construction of this project shall be regularly inspected by said licensed professional to insure that the project complies with the control drawing/s. Progress reports shall be submitted by said professional at regular intervals while work is progressing on the project. The reporting interval shall be determined by the Commission based on the scope and anticipated duration of the project. Upon completion of the work authorized by this OOC, said licensed professional shall submit a written statement to the Conservation Commission certifying that the completed work is in substantial compliance with the control drawing and setting forth any deviations that may exist between the completed work and the plan approved by the Conservation Commission.

55. Upon completion of the work allowed under this Order of Conditions the applicant shall apply for a Certificate of Compliance (COC) (a) within 30 days after completion of the work or (b) thirty (30) days prior to the expiration date of the original or extended OOC, whichever time comes sooner. If no work was started under the OOC or if some of the work will not be performed, the applicant must still apply for a Certificate of Compliance at least 30 days prior to the expiration of the OOC. The Conservation Commission may require the submission of 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 an application for a COC shall result in a fine issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E. **See Attachment "C" for "Schedule of Fines".**

RDA 21 Prince Street

Control Drawing: Site Plan to Accompany RDA for #21 Prince Street, dated November 17, 2014 prepared by Reid Land Surveyors.

Appeared: Attorney Paul Lynch representing the applicant, John Hyland.

Plans were presented for construction of a new single family dwelling. It was noted by the commission that the 1998 wetland boundary from the Town GIS does not appear to match the existing standing water conditions at the site. Norm Blanchard, of 25 Prince Street, noted that there are drainage pipes behind the properties on that side of the street and that maybe DPW has

plans showing them. He also noted that his sump pump is running frequently and the property is very wet. Tom Martin, 0 Edgewood Road, inquired about wetland flagging. Richard Doane, 4 and 6 Edgewood, also noted that the property in question is wet most of the year.

Given the new information about high groundwater on the property and the request of the Commission to have the wetlands flagged and surveyed, a request was made to continue to the 2/12/15 meeting. A motion was made and seconded to continue the application. All members voted in the affirmative.

40-???? 6 Corn Point Road

Control Drawing: Landscape Plans (L-1 and L-2) to Accompany NOI for #6 Corn Point Road, dated December 30, 2014 prepared by HJ Collins & Associates.

Appeared: S. Patrowicz of Patrowicz Land Development Engineering representing Mark and Sandra Pocharski.

Willy Lanphear noted that cutting on the coastal bank was occurring. A site meeting was requested with property owners to discuss.

A planting schedule is proposed to be a condition. It was noted by the Commission that the proposed fence was not included in the description of work and other deficiencies on the plans were noted to require modification. A fence detail would also be required to be submitted. A site visit was scheduled for January 17, 2015 and a request was made to continue to the 2/12/15 meeting. A motion was made and seconded to continue the application. All members voted in the affirmative.

Old Business:

- Proposed letter to Nathaniel Greene, dated January 16, 2015, about open items in their Enforcement Order was discussed. A motion was made and seconded to issue the letter. All members voted in the affirmative.

New Business:

- Discussion held of proposed draft regulations for review and a later voted to send to town counsel for review and comment before holding hearing to adopt.
- Discussion held of the list of believed encroachment sites on conservation land and a form letter to send to each owner. A motion was made and seconded to approve the letter and make contact with owners. All members voted in the affirmative.
- Discussion held for advertising options to fill vacant seats on the Conservation Commission.
- Discussion tabled for proposed trail work on former RR rear of lots on Fox Run Lane.

Emergency Certificates issued:

- None.

Enforcement Orders issued:

- None.

Request for COC:

- 40-1166, 44B Cloutmans Lane. A motion was made and seconded to approve. All members voted in the affirmative.
- 40-1150, 76 Beacon St. A motion was made and seconded to approve. All members voted in the affirmative.
- 40-1123, 15 Spray Avenue. Attorney Paul Lynch appeared representing Groom Construction. A January 15, 2015 letter from Hayes Engineering was received regarding the stability of the boulders relative to their original condition. Commission again requested that the concrete “spillage” on the beach be removed. Discussions were held regarding the timing of the potential fine. January 9, 2014 the enforcement order was ratified. Subsequent letters in the file were referenced and it was noted that the Commission voted to implement a \$300/day fine from January 30, 2014 until the submission of the COC. The Commission received a response letter on April 10, 2014. A motion was made and seconded to issue a fine of \$300 per day from January 30, 2015 to April 10, 2015. All members voted in the affirmative. A motion was made and seconded to approve the COC with conditions of the payment of the \$21,000 fine and the removal of the concrete. All members voted in the affirmative.
- 40-0920, 11 Bradlee Rd. A letter dated January 15, 2015 from Richard Williams, PE of Williams & Sparages was received regarding the compliance of the pier. A motion was made and seconded to approve. All members voted in the affirmative.

Sign Documents: All documents per the agenda were signed.

The meeting adjourned at 9:30 PM.