

CONSERVATION COMMISSION MINUTES OF JULY 12, 2007

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, Betsy Rickards, Mark Klopfer, Fred Sullivan and Craig Smith. Also present were Jan Smith, Associate Member, and 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 only five 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 three members.

Discussion: D. Cox asked that his proposal to the commission requesting a reversal of its vote allowing chemical treatment of Black Joe's pond be addressed after the RFD hearing on the same matter. The commission agreed to this change in agenda.

Approve Minutes: The minutes of 06/28/07 were approved by four members. One abstained due to absence from the 06/28/07 meeting.

Minor Activity: D. Saal reviewed the Minor Activity Permit issued for 16 Liberty Road.

RFD BLACK JOE'S POND GINGERBREAD HILL

Resource Area: Land Under Waterbodies and Waterways

Interest of WPA and Bylaw: Protection of Ground Water Supply, Prevention of Pollution, Protection of Fisheries, Protection of Wildlife Habitat, Flood Control

Appeared: Craig Campbell, representing PROMPT

Control Document: PROMPT letter dated June 21, 2007, signed by C. Campbell

C. Campbell reviewed his letter of June 21, 2007. In order to present as complete a picture as possible, the commission then referred to OOC 40-880 and the DEP Superceding Order. The commission stressed it is trying to negotiate an acceptable resolution between the chemical and non-chemical groups. Per the commission, due to the outstanding appeal of the DEP Superceding Order, the Special Condition number 25 of the Superceding Order and the lateness of the season for applying chemicals, it is reasonable to assume that no chemical treatment can be done in 2007. J. Smith pointed

out that in order to satisfy Special Condition No. 25, a full year of pre-testing is necessary. Due to actions by PROMPT members earlier this spring, the testing, which had been started by the Ponds Committee, was halted and has not yet been resumed. If a time period of one year is required for the pre-testing, this would indicate that no chemical treatment can be done until the spring of 2009. The commission pointed out that cooperation between the two groups in proceeding with the testing as proposed by the Pond Committee could benefit both groups and that the question of chemical treatment, while not yet determined, could be addressed during the coming year.

Mitch Wondolowski, a member of the Lobster Conservancy, stated this group has been monitoring lobster nurseries from Canada to Boston (24 sites in all) for the past seven years. An area off Gerry Island in Marblehead is designated as one of the most important of these nurseries. (Note: Outfall from Black Joe's pond empties into the ocean near Gerry Island and the question of possible chemical pollution is of import.)

L. Fox questioned ownership of the pond. The commission pointed out that Town legal counsel had earlier advised the commission that all direct abutters of the pond are owners of the pond.

Brad Hubeny of Salem State College (he had started the testing this spring) said he can re-start the testing if he receives written permission from the abutters before Thursday, July 19. He said Dr. Doug Allen can also re-start his studies. B. Warren of Salem Sound Coastal Watch confirmed her ability to also re-start her efforts. D. Cox thanked C. Campbell for his contributions thus far and asked if he (Campbell) could arrange for the written permission. Campbell said he will contact D. Saal by Tuesday, July 17 with an answer and, if it is positive, with the written permission from each abutter.

The commission asked Campbell to review the Superseding Order with all members of PROMPT to insure they understand the full implications and responsibilities of Special Condition Nos. 25 and 26. Campbell said PROMPT might not have to fulfill condition no. 26 or they could ignore it. This caused the commission to remind Campbell that all conditions of the Superseding Order must be fulfilled.

The commission then returned to the RFD and referred to its discussion at the meeting on 06/28/07 (see minutes from this meeting). After a further brief discussion, all members voted to close this hearing. All members voted to issue a negative determination (in essence, voting no RFD or NOI is required) under both the Wetlands Protection Act and the local Bylaw. Campbell noted that a conflict of interest could be interpreted since ConCom members are also members of the Pond Committee. The commission reiterated that its sole interest is in protecting the ponds, using whatever correct process is determined, acting in good faith and a professional manner.

The request of D. Cox was deferred until the next meeting on July 26, 2007.

RFD 11 ROLLESTON ROAD KANTER

Resource Area: Coastal Bank

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

Appeared: R. Griffin of Griffin Engineering Group, LLC

Control Document: Site Plan to Accompany RDA, Todd Kanter, 11 Rolleston Road, dated 06/28/07, prepared by Griffin Engineering Group, LLC

All work is landward of the No Build Zone and the work itself is minimal in scope and properly contained. There will be no impacts on the resource area. All members voted to close the hearing. All members voted to issue a negative determination with no special conditions other than the standard ones.

40-926 7 REDSTONE LANE SMITH

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: Mr. Smith, Trustee

Control Documents: Plan Accompanying Petition of Deborah J. Smith, 7 Redstone Lane, no date, signed and stamped by Daniel J. Lynch (sheets 1/2 and 2/2); photographs of the seawall and Chap.91 License No. 3223

This was a continuance from 06/28/07. The DEP File No. was received and the applicant fulfilled the requirements of the commission as delineated in the minutes from 06/28/07. 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. This project will be reviewed with DEP (Chapter 91 license) regarding the extension of the wall out into the harbor. A written confirmation of the DEP decision will be submitted to the commission before any work is started.

During construction:

3. All construction material will be stored outside the resource area and its buffer zone or as far back from the resource areas as possible.
4. Geotextile fabric will be installed along the landward face of the wall.

Post-construction/in perpetuity:

5. 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.

6. 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.

7. Upon completion of the work allowed under this OOC, the applicant shall within 30 days apply for a Certificate of Compliance (COC) and, if required by the commission, submit an "as built" drawing with the application for the COC.

40-927 8 CORN POINT ROAD HARKINS

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: W. Quigley, atty., R. Kirby of LEC Environmental Consultants, Inc. and B. Montejunas of Meridian Associates

Control Documents: Permit Site Plan of Land, 8 Corn Point Road, David & Sheryl Harkins, dated June 28, 2007, prepared by Meridian Associates, Inc. and Slope Stabilization Plan, Harkins Residence, dated June 26, 2007, prepared by Sudbury Design Group

The proposed house will essentially sit over the footprint of the house to be razed. The house itself will not be closer to the bank. However, the proposed covered deck does project further seaward but it will be constructed on sono tubes, not on a full foundation. None of the construction will impact the resource area. In lieu of hay bales, the erosion control fence will be made using filter socks in conjunction with a silt fence. The proposed landscaping will improve on the coastal bank stability. All members voted to close this hearing. All members voted to issue an OOC with the following special conditions.

Pre-construction:

1. The DEP File No. Form was not received. If this form contains any special conditions, said conditions will be incorporated into this OOC.
2. All special conditions are to be included in the construction contracts between the applicant and his/her contractor.
3. A drawing of the erosion control techniques (filter socks with silt fence) to be used on site shall be included in the construction contracts between the applicant and his/her contractor. The control drawing "Permit Site Plan of Land, 8 Corn Point Road, David & Sheryl Harkins, dated June 28, 2007, prepared by Meridian Associates, Inc." will be revised to reflect this erosion control method and be submitted to the ConCom before any work is started.

During construction:

4. 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.).
5. 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.
6. 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:

7. 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.

8. 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.

9. 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.

10. Upon completion of the work allowed under this OOC, the applicant shall within 30 days apply for a Certificate of Compliance (COC) and, if required by the commission, submit an "as built" drawing with the application for the COC.

Old/New Business:

Approve Minutes: See above.

Minor Activity Permit: See above.

Sign Documents: All documents per the agenda were signed.

Other Matters: Each members was given a copy of the drawings "Green Street Condominiums, owner John Muldoon" and asked to individually visit the site in preparation for discussions at the meeting on July 26, 2007.

Meeting was adjourned at 9:15 PM.

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