

**CONSERVATION COMMISSION
MINUTES OF APRIL 27, 2006**

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 Betsy Rickards, Walt Haug, Mark Klopfer, Neal Mizner, Miller Shropshire and Fred Sullivan (representing a quorum).

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

40-877 HARBOR AVENUE/FLINT STREET M'HD WATER & SEWER

Resource Area: Land Subject to Coastal Storm Flowage

Interest of WPA and Bylaw: Prevention of Pollution

Appeared: D. Snow, Supt. Water & Sewer and Sean Osborne of Haley & Ward, Inc.

Control Drawing: Harbor Ave. and Flint St. Water Main, Drawings. 1 – 8, with various main dates between October 2004 and January 2005 and with a latest revision date of 2/24/2006, prepared by Haley and Ward, Inc.

This is the replacement of an existing water main, located entirely under an existing paved road and within a buffer zone. Per the accompanying Storm Water Management Form, silt fence, hay bales and filter socks will be used to prevent any erosion of excavate into the resource waters. After discussion, the commission 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.

During construction:

3. 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.).

4. All excavate, except that used to backfill the trench dug on each day, will be removed daily from the site.
5. All construction material will be stored outside the resource area and its buffer zone or as far back from the resource areas as possible.

40-868 13 GOODWINS'S COURT OUELLETTE

Resource Area: Coastal Bank

Interest of WPA and Bylaw: Storm damage prevention and Flood Control

Appeared: Mr. Bill Kelley of Kelley Marine Resources, Paul Lynch, atty., and Jim Ouellette

Control Drawing: Topographic Plan, # 13 Goodwin's Court, prepared for James Ouellette by Hancock Associates, dated 12/05/05, revised 12/14/05.

This was a continuance from 1/02/06, 2/23/06, 3/09/06 and 3/23/06. The minutes from 3/23/06 pertaining to this NOI were read. The first item of discussion was the Enforcement Order dated 12/01/05. Based on previous testimony, both from the applicant and from witnesses and from a site visit, the commission concluded that the applicant knowingly ignored the standard, publicized permitting procedures both for the Conservation Commission and the Marblehead Building Department. In addition, the un-permitted work was performed in a resource area and was of a very large and invasive nature. Therefore, the commission decided a monetary fine was in order. With reference to the Marblehead Wetlands Protection Bylaw Regulations, Section 10.1, a fine of not more than \$300 per day per violation may be levied. Per witness testimony as documented in the minutes of January 12, 2006 and per a letter dated February 13, 2006 signed by nine residents of Goodwin's Court, the work at 13 Goodwin's Court was started in July 2005. The Enforcement Order was issued December 1, 2005 and an NOI, dated December 20, 2005 was submitted by the applicant in response to the E.O. Therefore, the period during which the un-permitted work existed was calculated from July 15, 2005 to December 20, 2005. This totals 159 days, inclusive.

Note that Lynch questioned the length of the violation period saying the initial work was started inside the building and that the wall construction started in November, 2005. The commission referred to the letter of February 13, 2006 from the nine neighbors, wherein it is stated, "During the month of July, ...a large concrete truck arrived, pouring a significant amount of concrete in the basement and patio area, ...". Witness testimony thus dates outside work as having started in July. Further, the commission pointed out that the fine is due to a violation of the permitting process, regardless of whether the un-permitted work was performed in a buffer zone or a resource area. The dollar amount of the fine, however, will be based, in part, on where the work was performed.

Note that it was suggested that the period of violation could possibly be measured up to the date when the OOC would be issued. However, this was not applied since it was

recognized that some of this period resulted from the time taken up by the hearings and this would not be reasonable toward the applicant.

Due to the aforementioned infractions, viz., knowingly ignoring the permitting processes and performing substantial un-permitted work in a resource area, the commission decided to apply the maximum monetary fine of \$300 per day for one violation. The fine is therefore \$47,700.00. The commission voted five “for” and one “opposed” to levy the fine.

At this time, it was discussed as to whether or not the un-permitted seawall and turret should be removed. The commission asked the following question: Would the commission have permitted the wall if a permit had been properly filed? This question, in turn, prompts the following questions. Are the interests of the WPA and the Bylaw impaired? Will there be any impact on neighboring properties? Was the wall properly constructed?

The commission referred to the letter report of Vine Associates, Inc. dated March 7, 2006 and its associated documents. Including the author of this report, three independent professional engineers have reviewed the wall. Their opinions and the written documentation of the contractor of the wall indicate that the wall is proper as built for a seawall. Likewise, the documentation indicates the turret is also sufficient. Some members of the commission nonetheless expressed concern about wave reflection from the turret onto the abutting property. One member pointed out that the presumptions of significance for flood control and storm damage prevention include looking at these questions: 1) Does the area contain hollows, depressions, or other areas that flood waters can spread out in, or is the area flat and smooth? 2) Does the area contain topographic features that can serve to contain floodwaters and prevent them from spreading? 3) Does the area contain materials that can erode and dissipate the energy of flood waters, and /or irregular or rough surfaces that may slow down water flow? One Commission member believed the previously existing seawall served these interests, whereas the newly constructed wall did not. This member would therefore not have approved the wall if it was proposed as new. This member thought the turret should be removed, as it was the most obtrusive component of the wall that did not meet the performance standards. The Vine report concluded there would be no adverse effects due to wave reflection on any of the abutting/neighboring properties from either the wall or the turret. One member of the commission offered an amendment to require the turret to be removed. Five members voted against this amendment, one for it.

In so far as the interests of the WPA and the Bylaw are concerned (flood control and storm damage prevention), a majority of the commission felt these interests were not compromised by the new seawall. This is also the conclusion from the Vine report.

A majority of the commission felt that any possible damage to the resource area resulting from the removal of the wall or the turret could be considerable. From this perspective, and considering the foregoing documentation, the commission felt it would be better to leave the wall in place. This notwithstanding, the commission wishes to note that it

concluded that the new wall was not necessary for the protection of the house, that new “free standing” deck support columns could have been constructed to withstand storm actions (see minutes of March 23, 2006, page 7/8, paragraph #4 for testimony from Williams re columns) and that the real intent of the new wall was to allow for the enclosure of the decks (see control drawing showing new, enclosed living area seaward of the house).

The majority consensus of the commission was to allow the new seawall to remain.

E. Falk commented that if the commission levied a monetary fine only, this would set a bad precedent. He said there are two abutters to 13 Goodwin’s Court who have approached him about designing extensions to their properties. He questioned if they would not have the right to violate the regulations.

The NOI was now discussed. The applicant confirmed it is his intent, per the control drawing, to enclose the decks. However, there will be no increase in footprint of the enclosed areas over that of the pre-existing decks. All members voted to close this hearing. Five members supported and one opposed the issuing of an OOC with the following special conditions.

Pre-construction:

1. The fine of \$47,700.00 levied on April 27, 2006 as a result of the Enforcement Order dated 1 December 2005 is to be paid in full prior to the re-start of any construction work and is to be paid to the Town of Marblehead.
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 to be used on site shall be included in the construction contracts between the applicant and his/her contractor.

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.

7. The void in the wall will be filled and the weep holes installed in the wall (see Vine Associates, Inc. letter dated March 7, 2006, page 4 of 4, paragraph 2.). A proper containment system must be approved by the Conservation Administrator prior to the start of this work.

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.

40- 876 6 CORN POINT ROAD WALLACE

Resource Area: Buffer Zone to Coastal Resource Area

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

Appeared: R. McCann

Control Drawing: Existing Conditions/Plan of Land showing Proposed Addition, Corn Point Road, dated January 13, 2006, prepared by Otte & Dwyer, Inc.

This addition is on the landward side of the existing house, outside the 50 foot No Build Zone. After discussion, the commission 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. 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.

40- 882 24 HARBOR AVENUE FITTS

Resource Area: Coastal Bank and Beach

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

Appeared: R. McCann

Control Drawing: Revised drawing without rip-rap to be submitted

Per a letter from McCann & McCann, dated April 27, 2006, the commission agreed to continue this hearing to May 25, 2006.

Old/New Business:

Approve Minutes: Due to a lack of completeness, it was agreed to review the minutes of 4/13/06 at the next meeting.

Sign Documents: No documents were presented or signed.

Other Matters: It was agreed to add the following information to the ConCom page on the town web site.

Marblehead Conservancy

The Marblehead Conservancy is a private 501c (3) organization formed to help take care of open spaces in Marblehead. The conservancy runs programs such as the annual perambulation, trains and organizes trail crews to perform work on conservation lands and sponsors Earth Day and Arbor Day events in town. Find out more at www.marbleheadconservancy.org or call Richard Harrison at 781 631-1667.

The meeting was adjourned at 9:30 PM.