

**CONSERVATION COMMISSION
MINUTES OF MAY 11, 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 and Fred Sullivan (representing a quorum – see below Note). Also present were Doug Saal, 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 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 four members.

40-868 13 GOODWINS COURT

Paul Lynch appeared and asked that the commission insert the phrase "on April 27, 2006" in the first special condition of the OOC. The first special condition will read: The fine of \$47,700.00 levied on April 27, 2006 as a result of the Enforcement Order dated 1 December 2005 ...". Lynch also requested a formal written document from the commission stating that the fine of \$47,700.00 is due from/as a result of the E.O. issued 1 December 2005. He stated he felt such a document is warranted because the commission took two separate votes, one for levying the fine and one for issuing the OOC. He also wanted this document because of possible appeals. At the suggestion of the commission he will submit a draft of the wording for this document for review by the commission.

40-881 309 OCEAN AVENUE LEDERMAN

Resource Area: Coastal Bank, Land Subject to Coastal Storm Flowage

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

Appeared: D. Lederman and P. Ogren of Hayes Engineering, Inc.

Control Drawing: Map N-13, Lot 9, #309 Ocean Avenue, dated March 29, 2006 prepared by Hayes Engineering, Inc.

Although this application is in a resource area, the DEP form did not contain any comments. For reference, the previous NOI dealing with this site is 40-613. Ogren estimates the current wall is about 70 years old and, although, only one section is in danger of collapsing, he suggested it makes sense to repair the entire wall. The damaged

section is at the southwesterly side of the house in back of a small area of phragmites. The new wall will not be tied into the old wall but the new wall will be constructed using 4,000 psi concrete with 60,000 psi steel reinforcement and will be tied to the ledge. Such strengths were not available years ago and, therefore, Ogren feels the new wall will be more than adequate to support the old wall for many years without the need for further repair. There will not be any demolition of the old wall. Sections 10.30 (6) and (7) of 310 CMR allow for this repair. In response to a comment from M. Shropshire from the audience, referring to section 5.5 of the Bylaw regulations, the commission agreed that the interests of the WPA will be better served by allowing this repair method rather than tearing down the old wall and replacing it with a new wall. Tearing down the old wall would entail the removal of another landward wall and terrace and disturbing the existing earth banks. Note that the new wall is immediately adjacent to the old wall, extending out from the old wall only by the depth of the new wall, i.e., one foot. There will be no increase in yard area. 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. All precautions will be taken to insure no construction debris/material enters the resource waters. No unsecured materials or equipment will be allowed seaward of the new wall construction overnight or at any time the site is not being worked on.

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 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.
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.

Post-construction/in perpetuity:

6. 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.

40-000 MOORING ROAD PIER FLUEN POINT ASSOCIATES

Resource Area: Coastal Beach, Land Under the Ocean

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

Appeared: R. Smith, representing the Fluen Point Associates

Control Drawing: See Affidavit of Service for description of work to be performed

Neither the DEP File No. nor the DEP form had been received. The commission advised the applicant discussions would be conducted but the hearing could not be closed until the aforementioned information was received from DEP. The commission questioned license no. 7380 due to a note on the license referring to "unlicensed existing pier". Saal suggested this might have resulted from the amnesty program conducted by DEP years ago. Smith assured the commission the entire current pier is licensed. For reference, the previous hearing for this site was 40-740. The only description of work to be performed is contained in the Affidavit of Service and this was not sufficient. The commission advised the applicant to engage a licensed contractor with sufficient experience in projects of this nature. Before any work is started this contractor is to submit to the commission for review a detailed description of the work processes to be used/followed. All members voted to continue this hearing to May 25. In the event an OOC is issued, the following special conditions may apply.

Pre-construction:

1. All special conditions are to be included in the construction contracts between the applicant and his/her contractor.
2. All precautions will be taken to insure no construction debris/material enters the resource waters.
3. Before any work is started the contractor is to submit to the commission for review a detailed description of the work processes to be used/followed.

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. No unsecured materials or equipment will be allowed in the resource area overnight or at any time the site is not being worked on.

Post-construction/in perpetuity:

8. Minor maintenance repairs to the superstructure only of the pier are allowed. Minor maintenance repairs are, typically, replacement of occasional deck boards, sections of handrails, etc. Complete new decking, complete new handrails 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.

40-874 40B CLOUTMAN'S LANE COLLINS

Resource Area: Coastal Beach, Coastal Bank, Land Under the Ocean, Land Containing Shellfish

Interest of WPA and Bylaw: Protection of Fisheries and Wildlife Habitat, Prevention of Pollution, Flood Control, Storm Damage Prevention

Appeared: No one

Control Drawing: Collins Residence Pier Layout, Pier Elevation and Pier Sections

This was a continuance from 4/13/06. A fax memo from Joshua Singer dated 5/10/06 requested an indefinite continuance. All members voted to approve an indefinite continuance with the requirement that the applicant advertise and notify abutters per the original NOI.

40-880 BLACK JOE'S POND GINGERBREAD HILL

Resource Area: Land Under Water bodies 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 the neighbors

Control Document: As submitted with the NOI

The intent of this NOI is to control the growth of vegetation and algae, which are contributing to the eutrophication of the pond. The control would be done by the application of specific state-approved chemicals and by the implementation of Best Management Practices. Haug pointed out this should also include the removal of the purple loosestrife. Campbell is meeting Tuesday, May 16 with the Organic Pest Management Advisory Committee to review this matter. Aquatic Control Technology (ACT) will also be present as will be Wayne Attridge, Director of Board of Health and W. Haug of the ConCom. The commission suggested further discussion with the ConCom be postponed until after this meeting and that ACT be present. Campbell agreed to this suggestion. Mizner stated he thought the Board of Health pest management regulations might not be pertinent or applicable with regard to ponds, which are the jurisdiction of the ConCom. Doug Perkins, who works with the Marblehead Conservancy Trails Committee and who is directly engaged in the trails work, said there is a drain coming off Barry Road, which enters into the pond.

At this point, the matter of water level was introduced into the discussions. Water level is controlled via a spillway on the property of Mr. Barry. Per Campbell, the neighbors have attempted to work with Barry to include the subject of water level in the total review of the pond. Per Campbell, this has not been successful and he will be sending the ConCom a letter documenting the alleged lowering of the pond water level by Barry. Dan Wiggin, who lives across the street from the pond where the spillway is located, stated he saw Mr. Barry removing material from the spillway "two nights ago" (which would have been Tuesday evening, May 9) apparently to try to lower the water level during the heavy rains, which occurred at that time. Per Saal, he had spoken with Barry on this same Tuesday and informed him about the need to file an NOI before he did anything if he wanted to adjust the water level. Wiggin said he has lived at his address for the past 23 years and the water level has been lowered over the past three years by manipulation of the spillway. Steve Howe, an abutter to the pond, also testified the water level has been lowered. It was suggested a permanent one-level spillway be constructed to insure the water level is not intentionally lowered by human action below the most optimum level available for this pond. This could possibly require a separate NOI. If so, this will be done in addition to the current NOI for chemical treatment.

In order to see if all parties can be brought to cooperate in the effort to save this pond, Campbell will try to set up an on-site meeting with neighbors, Barry, Saal and Haug during the week of May 14. All members voted to continue this hearing to May 25.

40-XXXX TOWER SCHOOL 75 WEST SHORE DRIVE SIDELL

Resource Area: BVW

Interest of WPA and Bylaw: Protection of Ground Water Supply, Prevention of

Pollution, Protection of Wildlife Habitat, Flood Control

Appeared: Dean Sidell, Business Manager, Tower School

Control Document: As submitted with the NOI

Referring to the Project Description on WPA Form 1, 1.b, the correct description of the work does not entail any trench being dug on or along the path. A new pole will be installed on the school side of the path and the existing pole on the wetland side of the path will be removed. A trench will be dug on the school property for the electrical conduit. Sidell was instructed to provide a revised sketch showing the erosion control barrier and identifying the trench. Considering the work and the area, the commission voted all in favor of issuing a negative determination with the one condition that the excavate from the trench be covered to prevent any migration of excavate into the wetland in the event the project is not completed within one or two days.

Old/New Business:

Approve Minutes: All members approved the minutes of 4/13/06 as changed. All members approved the minutes of 4/27/06 as changed.

Sign Documents: All documents per the agenda were signed.

Other Matters:

Chatham court case: briefly discussed.

Enforcement Order, Blackler, 37 Puritan Road: All members voted to confirm the issuance of this Enforcement Order.

Bylaw Regulations, section 5.5: Mizner will generate appropriate change for review by the commission.

Meeting was adjourned at 9:35 PM.