

**CONSERVATION COMMISSION
MINUTES OF JUNE 8, 2006**

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

Meeting was called to order at 7:05 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 three members.

13 GOODWIN'S COURT (40-868): Paul Lynch, representing the applicant, asked if the commission would review the time period used to calculate the dollar amount of the fine issued with the OOC for NOI 40-868 as a result of the Enforcement Order. He stated that no appeal had been made to DEP. The commission reminded Lynch the hearing was already closed and no new information could be introduced at this time. Lynch indicated his client may appeal to Superior Court.

In response to a comment made by Lynch, the commission reminded Lynch it had not levied the maximum fine, which would be allowed under the Bylaw. The commission had used the end date of December 20, 2006 (the date the NOI was signed) instead of the date of issuance of the OOC, which was May 11, 2006. Klopfer pointed out that the commission did not require the new seawall be torn down and replaced with new, re-enforced support columns for the deck as an alternative to the new seawall.

40-0000 37 PURITAN ROAD BLACKLER

Resource Area: BVW

Interest of the WPA and Bylaw: Protection of Groundwater, Prevention of Pollution, Protection of Wildlife Habitat. Flood Control

Appeared: R. Collins, representing the applicant (Mr. Blackler)

Control Drawing: As submitted with the NOI

Before discussing the NOI, the Enforcement Order was discussed. The basic violation was performing un-permitted work in a buffer zone. The work was the extending and

heightening of a stone wall within the No Build Zone. The work was outside the No Disturb Zone and was not in violation of the No Build Zone since the structure (a dry laid stone wall) does not exceed four feet in height, thereby not requiring a building permit. The applicant had placed an erosion control barrier along the BVW. He stated he thought the OOC he had received in 1997 to build his house still applied for this yard work and he agreed to plant native vegetation within the NDZ. Due to the nature of the work and the foregoing circumstances, all commission members voted not to levy a dollar fine.

The applicant was informed that since no DEP File Number had been received, the hearing would be discussed but no OOC could be issued at this meeting. All members voted to continue this hearing to June 22, 2006. In the event an OOC is issued, the following special conditions will apply.

Pre-construction:

1. All special conditions are to be included in the construction contracts between the applicant and his/her contractor.
2. Submit a planting plan for the No Disturb Zone before any work is re-started.

Post-construction/in perpetuity:

3. 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.

4. 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. This condition shall survive this order.

Resource Area: Coastal Bank

Interest of the WPA and Bylaw: Storm Damage Prevention and Flood Control.

Appeared: Mark Philben, contractor, and Carl King, atty., representing the applicants

Control Drawing: As submitted with the NOI and showing the resource area and the buffer zones

Due to the topography of the land and the nature of the work no erosion control barrier is necessary. The commission voted all in favor of issuing a negative Determination of Applicability with the following special conditions.

During Construction:

1. 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.
2. 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:

3. 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.
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Minutes: The minutes of 05/25/06 were approved by all members.

Amend OOC: A letter dated 26 May 2006 from Hawk Design, Inc. requested an

amendment to OOC 40-824 for 14 Corinthian Lane. Upon review of the proposed landscape plan dated 4/24/06 submitted by Hawk Design, Inc. with the letter, all commission members voted to regard this as an amendment.

40-883 21 SUNSET ROAD McMAHON

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

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

Appeared: Paul Lynch, representing the applicant and Mr. Emmanuel, landscape architect

Control Drawing: Site Plan of Land, 21 Sunset Road, Teresa McMahon & Edward McMahon, Jr., dated April 5, 2006, prepared by North Shore Survey Corporation

This was a continuance from 05/25/06. No DEP form had been received. The applicant was informed the hearing will be continued. In compliance with requests made at the hearing on May 25, a Landscape Plan dated April, 2006, prepared by James K. Emmanuel Associates was submitted. This plan shows a cross section of the topography for the pool location, the plantings for the five foot wide buffer strip at the top of coastal bank and the draining schedule for the pool.

Various possibilities for allowing the applicant to proceed with the work without the issuance on an OOC were discussed. The commission decided it must abide by its established rules/guidelines requiring the DEP form for work in a resource area and could not grant the applicant any relief. With the concurrence of the applicant, the hearing was continued to June 22, 2006.

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: No one

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

This was a continuance from 05/11/06 and 05/25/06. No DEP file number of form had been received. All members voted to continue this hearing to June 22, 2006.

Enforcement Order: 6 Pig Rock Lane, Shulits: Work was being done on a coastal bank without permit. In 1995 a similar violation caused an E.O. to be issued to the same parties (owners and contractor). Subsequently, OOC 40-483 was issued. Per information

provided to Saal, Felderman is not involved with this current violation. All members voted to ratify the issuance of the Enforcement Orders.

40-880 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 the neighbors and Gerry Smith of Aquatic Control Technology, Inc.

Control Document: NOI for the Aquatic Management Program at Black Joe's Pond, dated March 2006, prepared by Aquatic Control Technology, Inc.

This was a continuance from 05/11/06 and 05/25/06.

The commission confirmed that Campbell represented all direct abutters to the pond. He stated many other (although not all) neighborhood residents also support this effort. The commission reminded Campbell of the condition in all OOC's that all permits required (federal, state and local) must be obtained before any work is started. The question of pond ownership was raised and a letter from W. Attridge of the Marblehead Board of Health dated June 2, 2006 was read into the file. In this letter, Attridge states that the pond is owned by the Town of Marblehead. The commission stated it cannot, at this time, verify the ownership of the pond. Campbell agreed that ownership was still not sufficiently researched and decided.

Pic Harrison of the O.P.M. Advisory Committee distributed various pamphlets showing a possible method of removing/reducing algae/plant growth in water bodies using aerating products from Solar Bee.

Smith of ACT questioned the adequacy of comparing chemicals treatment of land with that of water and whether the Board of Health had developed sufficient expertise in this particular area. He said chemical treatment alone is not the long term solution but that dredging would also be required in the future. He said a state permit for the application of the chemicals on Black Joe's Pond has been issued by the state and contains their standard conditions of application.

K. Trudel, a resident of the area, said to try non-chemical methods first.

J. Michaud of Ocean Avenue, lobsterman, said he was concerned about chemicals effecting the lobster population. He assumed the outflow from B.J. pond is into Doliber's Cove. He urged caution.

S. Howe, an abutter to the pond, said the outflow is into the beach area behind the house on the water at the junction of Orne Street with Norman/Beacon Street and not into Doliber's Cove.

Smith of ACT said the pond would be dammed up for three days after chemicals are applied and they would be applied only during periods when the weather forecasts predicted no rain storms. This would prevent any overflow from the pond during the time the pond is dammed. He said Dr. Kurt Goetzinger of the Aquatic Plant Research Center will be giving a lecture in Gloucester on Friday, August 14 on how to control Phragmites. Smith will provide more detail for all interested parties to attend. Smith submitted written responses to various questions/comments made during the previous hearing. These also included various reports issued by the Washington State Department of Health, Dr. C. Everett Koop, former Surgeon General of the U.S. and others.

J. Smith, associate member of the commission, said a management plan for each of the ponds in town should be developed.

R. French of the M'hd Conservancy, said his preliminary queries with other towns indicated all are struggling with the matter of pond eutrophication. Some are now using aeration and it is hoped this can reduce the need for some of the chemicals treatments. The commission pointed out aeration and other Best Management Practices have been required of the applicant.

Mrs. Ehrich submitted a letter dated June 8, 2006 from Mr. Ehrich asking for water monitoring of any underground springs identified as coming from the pond. Smith of ACT had said in the previous hearing the chemicals to be used are adsorbed by the sediments and particles in the water column which in turn deposit on the bottom of the pond and there would be no leaching of these chemicals out of the pond into ground water.

Ms. Bohnert, a neighbor, spoke against the use of chemicals.

The topic of water depth and its control was raised and all parties were reminded that a means to control water depth needs to be addressed as part of any solution. It has been stated that the current water depth has been lowered below its historical level. Mr. Barry, who owns the land containing the outflow from the pond, had previously been informed by Saal that water levels cannot be altered.

Haug stated that the commission agrees that chemicals should not be the only and the first remedy for the ponds. This is a dilemma for the commission because the state Wetlands Protection Act allows for chemical treatment specifically for this purpose. Also, there is a wide and strong body of evidence rationalizing the use of these chemicals. Mizner pointed out that the commission has already approved the application of these chemicals on Red's Pond over the past 6-8 years. Anecdotal reports to the commission have indicated no problems. Rickards suggested non-chemical methods be used first. Haug posed the question asking is it balanced to automatically and always to say no chemicals. He asked whether all parties could work together to determine on-

going methods for trying to save all ponds in town. This might involve the initial short term use of chemicals to be replaced with non-chemicals methods. He recognized the strong divergence of opinion among the parties but asked if they could moderate their opinions to achieve solutions that can be realistically implemented considering costs, labor and access.

All members voted to close the hearing. Four members, one against, voted to issue an OOC with the following special conditions.

1. As specified in the standard conditions of the OOC, all federal, state and local permits must be obtained before any work is started. The applicant will submit written proof to the commission that he/she has inquired of the Marblehead Board of Health as to whether or not a permit/waiver is required for treatment.
2. The applicability of this OOC is three years. However, the permission for treatment of Black Joe's pond using the chemicals as listed in the NOI is granted for one year only from the date of this OOC. Treatment in subsequent years under the OOC requires further permission from the Conservation Commission and is dependent on the plan specified below in condition number 3.
3. It is requested of the applicant that he/she work with the Organic Pest Management Advisory Committee and all other interested parties to devise a comprehensive plan during the aforementioned year, said plan detailing specific methods and time schedules to be followed for on-going, long term, sustainable restoration of Black Joe's Pond. The preferred methods should employ primarily non-chemical restoration but may employ chemicals at the outset provided the use of chemicals is being phased out as soon as the non-chemical methods are able to be implemented.
4. A proposal to construct a mechanism to regulate the depth of water in the pond must be submitted within ninety days from the date of this OOC.
5. No chemicals are to be applied immediately prior to forecasted rain so as to insure there is no outflow from the pond for three days after application of the chemicals.

Old/New Business:

Approve Minutes: See above.

Request to amend OOC 40-824: See above.

Sign Documents: All documents per the agenda were signed.

Other Matters: Enforcement Order Shulits: see above.

The meeting was adjourned at 10:30 PM.

