

CONSERVATION COMMISSION MINUTES OF JULY 13, 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 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.

Approve Minutes: The minutes of 06/22/06 were approved by three members. One member arrived after this vote was taken.

John VanDusen: John donated his "ConCom" hat to Klopfer as the newest member.

RFD 9 SPRAY AVENUE ZOFNASS

Resource Area: Coastal Bank

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

Appeared: Joan Zofnass and Bob Zarelli, architect.

Before discussions, the commission pointed out certain discrepancies in the RDOA by Hayes Engineering, Inc. (a) The work description (page 2/4 of the RDOA) did not match the work as described in the Project Narrative. New siding, roofing and windows are included in the work. (b) The Narrative also uses the phrase "...not result in the substantial enlargement of the house". Zarelli stated there will be no expansion or enlargement of the house or the decks. (c) The NOI did not specify which sections in the WPA regulations are applicable to allow this project to be permitted. (d) The Narrative did not adequately address the storm water issue. A suggested statement to address this would be: The project will not result in new point source discharges and will not alter the pre-construction peak discharge rates and annual ground water recharge. (e) The Plan does not show the No Disturb Zone or the No Build Zone. The resource area is Top of Coastal Bank and is concurrent with the seawall. This seawall follows an irregular contour shape and yet the 100 foot buffer zone line is a well defined curve. Zarelli agreed

to have these deficiencies corrected and submitted to the commission before any work is started. He also explained that all excavation and cement mixing will be done by hand. The cement work applies only to new sono-tubes to support the new deck and a bottom step for the stairs.

Bill Rogalski, an abutter, supports the project. As a former member of the ConCom he saw no environmental issues. All members voted to close this hearing. All members voted to issue a negative determination 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.
3. Before any work is started, the following corrections in documentation will be submitted to the commission.

(a) The work description (page 2/4 of the NOI) did not match the work as described in the Project Narrative. New siding, roofing and windows are included in the work. (b) The Narrative also uses the phrase "...not result in the substantial enlargement of the house". Zarelli stated there will be no expansion or enlargement of the house or the decks. (c) The NOI did not specify which sections in the WPA regulations are applicable to allow this project to be permitted. (d) The Narrative did not adequately address the storm water issue. A suggested statement to address this would be: The project will not result in new point source discharges and will not alter the pre-construction peak discharge rates and annual ground water recharge. (e) The Plan does not show the No Disturb Zone or the No Build Zone. The resource area is Top of Coastal Bank and is concurrent with the seawall. This seawall follows an irregular contour shape and yet the 100 foot buffer zone line is a well defined curve.

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. Any pressure-treated wood used in the construction shall be arsenic-free.

Post-construction/in perpetuity:

8. 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 6 PIG ROCK LANE SHULITZ

Resource Area: Coastal Bank

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

Appeared: Paul Lynch, atty., representing the applicant

Control Drawing: SK -2, Repair of Seawall & Bank, Catherine Shulitz, dated 2 November 1995, prepared by Jaquith & Siemasko, Inc. Note that the control drawing is the same as that submitted with NOI 40-483. See also drawing "Wall and Coastal Bank at #6 Pig Rock Lane.

An Enforcement Order had been issued on May 30, 2006 against the applicant for work started on May 25, 2006 without filing an NOI. An NOI was filed by the violator on June 20, 2006. The commission explained that the basic E.O. was issued due to failure to obtain a permit. The amount of the fine, if any, is determined by the area (buffer zone vs. resource area) in which the work was performed; the purpose, extent and type of the work and prior commission experience, if any, with the violator.

An E.O. had been issued against the same party in 1995 for a similar violation. The same contractor was involved in the earlier and current violations. The work was performed in the coastal bank. The resource area was determined by referencing the guidelines issued by DEP regarding banks and their slopes. See Coastal Banks: Definition and Delineation Criteria for Coastal Banks (DWW Policy 92-1 issued March 3, 1992). Specifically, figures 2 and/or 6 of the guidelines applied. The commission decided a fine was in order. In determining the amount of the fine, various possibilities were discussed for defining the number of days to be applied. All agreed the start date should be the date

on which the work was started. Regarding the end date, the commission decided not to use the date on which the OOC would be issued. It was felt that the violator should not be held accountable for the time consumed in hearings (especially if there were multiple hearings). Another possibility for the end date is to use the date on which the NOI was filed by the violator. Using the dates of May 25 and June 20, the number of days is 27. At \$300 per day, this would amount to \$8,100. Mitigating factors which the commission entertained included the fact that the work did contribute to the stability of the bank, that the work was similar to that previously permitted in 1995 and that the work was not in pursuit of enlarging a dwelling, lawn area, etc. It did recognize this was a repeat offender. By placing major emphasis on the mitigating factors, however, the commission decided to levy a fine of only \$1,500 [using the time period 25 May (start date of work) through 30 May (date E.O. issued) at \$300 per day].

A similar E.O. against Mr. Federman was withdrawn by unanimous vote of the commission. It was determined Mr. Federman had no involvement in this matter.

Addressing the NOI, the applicant was informed that no DEP file number had been received so the hearing would be discussed but would be continued. The NOI includes not only the repairs to the seawall but also a resurfacing of the walkway seaward of the seawall to be repaired. The bank above the new seawall repair will be planted with appropriate, native vegetation. All members voted to continue this hearing to July 27, 2006. If an OOC is issued it will contain 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.
5. Any pressure-treated wood used in the construction shall be arsenic-free.

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.

7. 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.

8. 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.

9. An "as built" drawing showing the final construction will be submitted to the commission once the work is completed.

40-000 8 BASS ROCK LANE ROUSSEAU

Resource Area: Coastal Bank

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

Appeared: Donald Rousseau, atty., representing the owner, John Gibbons

Control Drawing: # 8 Bass Rock Lane Marblehead, June 2006

The applicant was informed that no DEP file number had been received so the application would be discussed but would be continued. The tank to be removed is located landward of the house. H&S Tank Cleaning, Inc. will perform the removal. See their letter dated June 23, 2006 to John Gibbons. After discussion, all members voted to continue this hearing to July 27, 2006. If an OOC is issued, it will contain 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. All excavate will be contained and protected against the weather to prevent erosion into the resource waters until it is removed from the site or back filled.
3. If the excavate is contaminated and/or if there has been seepage from the tank, thus requiring further work, a new NOI must be filed.

Post construction:

4. The site will be returned to its original condition after tank removal.

40-000 NEPTUNE LNG JONES

Resource Area: Land Under the Ocean

Interest of the WPA and Bylaw: Prevention of Pollution, Protection of land containing fisheries and shell fish

Appeared: Doug Jones, Environmental Manager, Neptune and Mark Silver of Neptune

Control Documentation: As submitted with the NOI

The applicant was informed that no DEP file number had been received so the application would be discussed but would be continued. Messrs. Jones and Silver gave an overview of the project. Neptune has submitted a draft of their EIR for this project. The commission tried to focus on the issues applicable to that portion of the gas line in Marblehead waters. Among these are disturbance of the ocean bottom and the benthic communities; how long the bottom will be disrupted; how long for healing; effect on shellfish and ground dwelling fish. The gentlemen acknowledged there will be disruption and some destruction to the marine life but their research indicates the ocean bottom and its inhabitants should recoup within approximately two years. This recovery will be on a natural basis and will be monitored. Further, they presented a list of the federal and state control boards to which they have to report during the entire process and subsequently thereafter. The Massachusetts Division of Marine Fisheries was among these boards.

Jay Michaud, local lobsterman, expressed his concern about the effect this whole operation will have on the harvesting of lobsters. Jones and Silver stated they are working closely with the Massachusetts Lobster Association to address this issue. They said lobstermen will be financially compensated for reductions in their income levels. Michaud said he was worried about noise coming from the pipe as the gas flows through it and this noise disturbing marine life. Jones and Silver explained noise would only be

generated at those areas where the pipe has relatively sharp bends. There will be no such bends in the pipe. They added there will also be no thermal elevations since the pipe is buried a minimum of three feet below the ocean bottom. The commission expressed its concern regarding the accumulative effect of multiple pipelines. Jones and Silver stated that if both the Neptune and Northeast Gateway competing projects are approved, in all likelihood, there would only be one pipe laid.

Michaud recommended that the commission deny the project. It was explained to him that the only area over which the commission had jurisdiction was the 2,000 foot length of pipe in Marblehead waters. Per Jones and Silver, the work in this area will be completed within approximately 3-5 days. Based on the discussions thus far, the concerns Michaud has are the same as those of the commission and which are listed at the beginning of the previous paragraph. The commission accepted the opinion of Jones and Silver that these concerns will be respected and any effects minimized. If the commission denied the project, the denial would be appealed to DEP and Superior Court.

The commission then referred to a previous NOI for a similar project, i.e., the Algonquin Hubline, 40-739, from April 2002. All members voted to continue this hearing to July 27, 2006. If an OOC is issued, the special conditions will be as follows:

1. This Order of Conditions is issued under the Wetlands Protection Act and its Regulations (MGL Chapter 131, Section 40 and 310 CMR 10.00 et. seq.), and under the Town of Marblehead Wetlands Protection Bylaw (Marblehead Bylaws Chapter 194) and its Regulations (Wetlands Protection Bylaw Regulations for Administering Marblehead Bylaws Chapter 194, Sections 194-1 through 194-14). As such this Order constitutes a wetlands permit both under the Act and under the Bylaw.
2. The project shall be performed in accordance with the NOI document, with attachments, referenced in Attachment A to this OOC, except as the project may be altered or amended by the Special Conditions.
3. All required federal and state permits shall be obtained prior to the commencement of construction.

Old/New Business:

Approve minutes: See above.

Request for COC: 40-477: signed

Request for Extension: 40-780: All members voted to grant.

Sign Documents: All documents per the agenda were signed.

Other matters:

Haug will draft a proposal to allow minor activities under the Bylaw.

All members were given a copy of the AUL request for the conservation land (Wyman Woods) adjacent to Lead Mills and asked to read for discussion at the next hearing.

Betsy indicated that she will not be present at the July 27, 2006 meeting.

Meeting was adjourned at 10:25 PM.