

Marblehead Conservation Commission
Minutes November 8, 2018

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

Meeting was called to order at 7:10 PM

Present were: Commission Members Brian LeClair, Jesse Alderman, David Depew, and David VanHoven. Also present was Conservation Administrator and Town Engineer, Charles Quigley.

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

Note: The commission currently has seven 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.

Approval of Minutes:

Motion to approve minutes of meeting held on October 11, 2018, was made and minutes were approved.

DISCUSSIONS:

- **11 Goldthwait Rd** – Wetland Protection Act violations. A meeting was held with neighbors and Conservation Administrator on 11/7. A forthcoming NOI is expected to address the violations.
- **19 Neptune Ave** – Alteration to resource area/buffer zone without a permit. Discussion was postponed to the December meeting pending an expected NOI submission.
- **22 Foster St** – expired OOC (40-1192) and tolling question. A certificate of vote was signed stating the following: "On November 8, 2018, the Marblehead Conservation Commission voted, by a vote of 4 in favor and 0 opposed: Voted to recognize an equitable tolling of the deadline to complete the work with respect to OOC 40-1192 due to pending litigation, through the date of July 6, 2018."

Request for Certificate of Compliance

- **40-1281**, 6 Bradlees End – Eidsen – The CoC request was postponed to December meeting.
- **40-1261**, 133 Front St – Rosenberg – Pool, landscaping, sitework. The work failed inspection for unapproved changes. The Commission voted to issue an enforcement order by unanimous vote.
- **40-1231**, 133 Front St – Rosenberg – Additions, driveway. The work failed inspection for unapproved changes. The Commission voted to issue an enforcement order by unanimous vote.
- **40-1284**, 158 Front St – Rosenberg – Pool, landscaping, sitework. The Commission voted to approve by unanimous vote.

- **40-1159**, 232 Ocean Ave – David Weldon Ring Tr – additions, porches. The Commission voted to approve by unanimous vote.

HEARINGS:

NOI 40-1367, 37 Bradlee Rd – Jack G Tatelman et ux.

Appeared: Scott Patrowicz, Patrowicz Land Development Engineering

Proposed: Construct new shared pier, gangway float and sitework.

All members voted to continue the hearing without opening.

NOI 40-1369, 15 Goodwins Ct – Lowell Blitt et ux.

Appeared: Scott Patrowicz, Patrowicz Land Development Engineering

Proposed: Seawall maintenance, new landing, steps, gangway, float and sitework

Control Drawing: S1, S2 and S3 for Lowell Blitt, 15 Goodwins Court dated 8/28/18 by Allan W. Dennis, registered Structural Engineer.

Applicant presented plans as provided in application.

Michael Berman of 17 Goodwins Ct spoke in favor of the project.

All members voted to close the hearing. All members voted to issue an OOC with the following special conditions:

33. 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.).

35. All demolition debris shall be removed from the site as soon as possible and not stored within a resource area or a buffer zone. If a dumpster is used to contain debris, the dumpster shall be covered after each work day. The debris shall be properly disposed of in accordance with applicable federal, state and local regulations.

36. All construction material shall be stored outside the resource area and its buffer zone or as far back from the resource areas as possible.

37. The construction of the pier/dock and any structure over the water permanently secured to the earth shall withstand a 100-year storm without damage to the integrity of the structure. All piers/docks shall conform to the requirements of Chapter 91.

38. Any pressure-treated wood proposed to be used in the construction of a structure for land - based use shall be arsenic-free. Any pressure-treated wood proposed to be used in the construction of a structure for salt water contact shall be treated with Chromated Copper Arsenate (CCA) or other preservative approved by the EPA and/or the MADEP which is less polluting and harmful to the salt water and its environment.

39. All piers, docks and floats must follow the guidelines established in the document, “Small Docks and Piers – A Guide to Permitting Small Pile-Supported Docks and Piers” dated November 2003. Float stops are permitted provided they meet the aforementioned guidelines.

40. 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 Lawn care 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.**

46. All gangways, docks or other items not permanently secured to the earth shall be stored during the “off season” (late fall, winter, early spring) so as to prevent them from causing any damage to other structures or resource area. **This condition shall survive this order.**

47. All gangways, docks or other items not permanently secured to the earth shall be properly secured and/or removed in the event of a major storm so as to prevent them from causing any damage to other structures or to the resource area. **This condition shall survive this order.**

48. All floats/docks will be so constructed so as not to bottom out (rest) on the ocean floor at low tides. **This condition shall survive this order.**

50. 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.**

51. Minor maintenance repairs to the superstructure only of the pier are allowed as a surviving condition of this order. Minor maintenance repairs are, typically, replacement of occasional deck boards, sections of hand rails, etc. Complete new decking, complete new hand rails 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.**

54. The control drawing/s for this project were prepared by a licensed Professional. The construction of this project shall be regularly inspected by said licensed professional to insure that the project complies with the control drawing/s. Progress reports shall be submitted by said professional at regular intervals while work is progressing on the project. The reporting interval shall be determined by the Conservation Administrator based on the scope and anticipated duration of the project. Upon completion of the work authorized by this OOC, said licensed professional shall submit a written statement to the Conservation Commission certifying that the completed work is in substantial compliance with the control drawing and setting forth any deviations that may exist between the completed work and the plan approved by the Conservation Commission.

55. Upon completion of the work allowed under this Order of Conditions the applicant shall apply for a Certificate of Compliance (COC) (a) within 30 days after completion of the work or (b) thirty (30) days prior to the expiration date of the original or extended OOC, whichever time comes sooner. If no work was started under the OOC or if some of the work will not be performed, the applicant must still apply for a Certificate of Compliance at least 30 days prior to the expiration of the OOC. The Conservation Commission may require the submission of an "as built" drawing (signed and stamped by a licensed Professional Engineer or licensed Professional Land Surveyor) with the application for the COC. Failure to submit an application for a COC shall result in a fine issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E. **See Attachment "C" for "Schedule of Fines".**

NOI 40-1370, 42 Gallison Ave – Joanne and Karl Mayer

Appeared: Owner and Curt Young, Wetlands Preservation Inc.

Proposed: Cleanup storm damage.

Control Drawing: Site Plan for 42 Gallison Ave dated 10/28/18 by Kane Land Surveyors.

Applicant presented plans as provided in application.

All members voted to close the hearing. All members voted to issue an OOC with the following special conditions:

40. 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 Lawn care 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.**

50. 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.**

55. Upon completion of the work allowed under this Order of Conditions the applicant shall apply for a Certificate of Compliance (COC) (a) within 30 days after completion of the work or (b) thirty (30) days prior to the expiration date of the original or extended OOC, whichever time comes sooner. If no work was started under the OOC or if some of the work will not be performed, the applicant must still apply for a Certificate of Compliance at least 30 days prior to the expiration of the OOC. The Conservation Commission may require the submission of an "as built" drawing (signed and stamped by a licensed Professional Engineer or licensed Professional Land Surveyor) with the application for the COC. Failure to submit an application for a COC shall result in a fine issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E. **See Attachment "C" for "Schedule of Fines".**

108. Stones, coarse sand and rock deposited by wave action may be relocated to the beach following review and authorization by the Marblehead Conservation Commission administrator or an authorized member of the Marblehead Conservation Commission.

Relocated material will be clean of soil and other debris such as organic plant material, metal, tires, plastic, trash or other debris that may result in a hazard in the resource area or a navigational hazard if refloated. All unsuitable material shall be removed and properly disposed of off-site. Hand loading of mechanical equipment may be required to avoid the indiscriminant placement of unsuitable material in the resource area.

No soil or plant material will be allowed to be placed on the beach.

Any resulting invasive or other plant material which grows from replaced material is the responsibility of the property owner to control and remove following review and approval of the Marblehead Conservation Commission administrator.

Material must be placed on the lot from which it was removed or in a location approved by the Marblehead Conservation Commission administrator.

Property owners will be required to provide photo documentation of preexisting beach conditions and restore the dune areas to the preexisting conditions which is expected to be a relatively gradual slope to the high water line.

Stones will not be piled in a manner that obstructs access to the beach from properties or easements.

Failure to comply with these guidelines to the satisfaction of the MCC may result in the revocation of the perpetual condition, the issuance of an enforcement order and the need to refile to reinstate the condition.

The post storm topography of the resource area shall match the pre-storm topography. A topographic survey may be required at the discretion of the Marblehead Conservation Commission.

The Conservation Commission may for any reason require the material to be removed and properly disposed of off-site away from the resource area. **This condition shall survive this order.**

109. Petitioner shall not place stones or other materials on the property of others without the prior written permission of the relevant property owner.

110. The lot corners and lines shall be established by a registered professional land surveyor. Swing ties and ranges to fixed monuments, house corners, walls, etc. shall be documented so the corners and lot lines can easily be retraced and laid out in the field using a tape measure. The swing ties and ranges shall be documented with the Conservation Commission. Prior to the movement of any material, the corners and lines shall be staked out.

111. 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 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. The applicant may act to control any developing invasive plant species by either mechanical or chemical controls following, in the case of herbicide treatment, that applicable application procedures and controls. Only DEP approved chemicals may be used. Only a licensed firm may apply the chemicals.

112. Once the current storm damage and any Enforcement Order issues are satisfactorily resolved, the applicant shall apply for a Certificate of Compliance (“COC”) (a) within 30 days after completion of the work or (b) thirty (30) days prior to the expiration date of the original or extended OOC, whichever time comes sooner. If no work is started under the OOC or if some of the work will not be performed, the applicant must so note on the COC request. The Conservation Commission may require the submission of an “as-built” drawing (signed and stamped by a licensed Professional Land Surveyor) with the application for the COC. Failure to submit an application for a COC shall result in a fine issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11 E.

113. In the future, stones, coarse sand and rock deposited by wave action may be relocated to the beach following review and authorization by the MCC Administrator or an authorized member of the MCC, as a surviving condition. Relocated material will be clean of soil and other debris such as organic plant material, metal, tires, plastic, trash or other debris that may result in a hazard in the resource area or a navigational hazard if refloated. All unsuitable material shall be removed and properly disposed of off-site. Hand loading of mechanical equipment may be required to avoid the indiscriminant placement of unsuitable material in the resource area. No soil or plant material will be allowed to be placed on the dune or beach. All material returned to the dune or beach will be placed on the applicant’s property following establishment of property boundary lines developed in Condition 110 or as agreed to by the MCC Administrator.

114. Any resulting invasive or other plant material that grows from replaced material is the responsibility of the property owner to control and remove following review and approval of the MCC Administrator. Material must be placed on the lot from which it was removed or in a location approved by the MCC Administrator. The property owner shall be required to provide photo documentation of pre-existing beach conditions and restore the dune areas to the pre-existing conditions which is expected to be a relatively gradual slope to the high water line. Stones shall not be piled in a manner that obstructs access to the beach from properties or easements. Failure to comply with these guidelines to the satisfaction of the MCC may result in the revocation of the OOCs, the issuance of an enforcement order, and the need to refile to reinstate the OOC. The post-storm topography of the resource area shall match the pre-storm topography. A topographic survey may be required at the discretion of the MCC. The Conservation Commission may for any reason require the material to be removed and properly disposed of off-site away from the resource area.

NOI 40-1371, Tower School

Appeared: Bob McCann, Dean Seidel, Tim Delehaunty, and Christian Huntress, RLA
Proposed: Playing field improvements.

All members voted to continue the hearing without opening.

NOI 40-13xx, Fort Sewall – Town of Marblehead

Proposed: Revetment repairs from storm damage.

All members voted to continue the hearing without opening.

NOI 40-13xx, Lead Mills – Town of Marblehead

Proposed: Embankment repairs from storm damage.

All members voted to continue the hearing without opening.

Other Matters:

- Conservation Agent requested approval to pay legal fees to town council for equitable tolling research and opinion as well as research for Wilson Road gift to Town/Conservation Commission for \$998. All members voted to approve the payment.