

**Marblehead Conservation Commission**  
**Minutes June 11, 2020**

Meeting was held remotely in accordance with Governor Baker's March 12, 2020 Order Superseding Certain Provisions of the Open Meeting Law, G.L. c.30A, section 18 and the Governor's March 15, 2020 Order imposing strict limitation on the number of people that may gather in one place.

Meeting was called to order at 7:10 PM

Present were: Commission Members Brian LeClair, Jesse Alderman, David Depew, Michael Smith, Lindsey Serafin, William Colehower, 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 May 14, 2020, was made and minutes were approved.

**DISCUSSIONS:**

- **146 Lafayette Street** –Enforcement order issued to Forest River Estates Condominium Trust III – Patricia Hart Tr. for violation of 310 CMR 10.00 making alteration in the resource area without filing a notice of intent. Tyler Ferrick of DeRosa Environmental appeared to discuss mitigation. It was noted that the enforcement order would be addressed after the NOI is submitted for the July meeting.
- **10 Surf Street** – Enforcement order issued to Lynn Nadeau for violation of 310 CMR 10.00 alteration in the resource area without filing a notice of intent. It was noted that NOI 40-1441 was filed.
- **11 Susan Road** –Enforcement order issued to Stevie G Browning for violation of 310 CMR 10.00 making alteration in the resource area without filing a notice of intent. The enforcement order was continued to the July meeting after the NOI is submitted.
- **17 Haley Road** – A letter was sent to Brian Joyce for dumping yard waste on town land. Brian Joyce appeared and noted the removal of the material was in progress. The issue was continued to the July meeting.
- **Moorings that bottom out** – A presentation was made regarding the issue. It was noted that the Commission needs to publish proposed regulations in the paper with certain dates. It was recommended that a copy be sent to the Harbors and Waters Board and the Parks and Recreation. A motion was made, seconded, and approved by unanimous vote to move forward with the proposed regulations.

- **Doak's Lane Seawall** – A failed seawall was identified that needs to be addressed. It was noted that there is also a sewer in the vicinity on Doak's Lane. The Commission voted to issue an enforcement order to the confirmed property owner.
- **Steer Swamp** – Declan Golden presented on his proposal to replace a bridge and perform stream bank restoration as part of his Eagle Scout project. The Commission voted to approve by unanimous vote.
- **Sunset Road** – Minor activity permit request for concrete and structural repair to a pier. No one appeared, but the Commission agreed that the work cannot proceed as a minor activity and requires an NOI.

#### Order of Conditions Extension Requests

- **40-1270 – 10 Mooring Road** – Lan Se De Hai LLC – Demolish and construct new house. The Commission voted to approve by unanimous vote.
- **40-12754– 21 Harbor Ave** – Stephen D Peabody et al – house addition, new driveway. The Commission voted to approve by unanimous vote.

#### Certificate of Compliance Request

- **40-1252 – 9 Bartlett St** – Continued to July meeting
- **40-656 – 63 Naugus Ave** – Lynda M. Cutrell – dock, pier & ramp. Continued to July meeting.
- **40-1277 – 65 Naugus Ave** – Edward M. Breed et ux – additions sitework. The Commission voted to approve by unanimous vote.

#### Minor Modification Request

- **40-1391, 3-5 Gilbert Heights Road** – Judith Schmid et ux – deck. Heather Souza with Flavin Architects appeared and presented the revised Plan to Accompany NOI for #3 & #5 Gilbert Heights Road dated May 26, 2020. The minor modification request was approved by the Commission.

### **HEARINGS:**

#### **NOI 40-1434, 27-29 Clifton Heights Lane – Laurence & Lori Groipen.**

Appeared: Scott Patrowicz, Patrowicz Land Development Engineering

Proposed: Existing house demolition, new house, sitework and landscaping.

Control Drawing: Site Plan Proposed Scope of Work, #27-29 Clifton Heights Lane, dated May 23, 2020 by Patrowicz Land Development Engineering.

This hearing was continued from the May meeting. See meeting minutes. Revised plan was presented and it was discussed to add a water quality swale south and east of the proposed driveway and regrading of the driveway to reduce runoff in the direction of the street.

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.).

34. To the maximum extent possible, all driveways, terraces, patios or similar ground-level surfaces shall be constructed as permeable surfaces to allow water to infiltrate through their surfaces into the ground on site.

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.

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.**

45. When a pool/spa/hot tub is to be drained, no chlorine or other chemicals are to be added to the pool water for a period of at least four (4) days prior to draining to allow for the chlorine and other chemicals to dissipate; and there shall be an appropriate sign placed permanently at or immediately adjacent to the pool/spa/hot tub drainage valve or mechanism indicating this requirement. The method of pool drainage shall be such as to prevent any soil erosion by the draining water and to allow the draining water to seep into the ground prior to entering any resource waters. No direct discharge to resource waters is allowed. **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](http://www.mnla.com) or [www.newfs.org](http://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"**.

107. Before any landscape work begins, the applicant shall submit a landscape plan to the Commission for approval. No landscape work may commence until the Commission has approved the landscape plan.

XX. A revised plan shall be submitted showing a water quality swale south and east of the proposed driveway and regrading of the driveway to reduce runoff in the direction of the street as discussed.

**NOI 40-1441, Surf Street at Spray Ave – Lynn Nadeau (potential unclaimed property).**

Appeared: John Dick

Proposed: Site improvements.

Applicant presented plans as provided in application and the Commission noted that the plans lacked the required information.

All members voted to continue the hearing to the July meeting.

**NOI 40-1444, 92 Harbor Ave – Johannes Naerger et ux.**

Appeared: Scott Patrowicz, Patrowicz Land Development Engineering

Proposed: Sitework and Landscaping.

Control Drawing: Site Plan Proposed Scope of Work, #92 Harbor Ave, dated May 24, 2020 by Patrowicz Land Development Engineering.

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:

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.).

34. To the maximum extent possible, all driveways, terraces, patios or similar ground-level surfaces shall be constructed as permeable surfaces to allow water to infiltrate through their surfaces into the ground on site.

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.

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](http://www.mnla.com) or [www.newfs.org](http://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".**

107. Before any landscape work begins, the applicant shall submit a landscape plan to the Commission for approval. No landscape work may commence until the Commission has approved the landscape plan.

**NOI 40-1443, 102 Harbor Ave – Angelo Arena et ux**

Appeared: Scott Patrowicz, Patrowicz Land Development Engineering

Proposed: Pier repairs.

All members voted to continue the hearing to the July meeting without opening.

**NOI 40-1442, 17 Goodwin's Court – Michael Berman et ux**

Appeared: Scott Patrowicz, Patrowicz Land Development Engineering

Proposed: Seawall and house maintenance.

Control Drawing: Site Plan #17 Goodwin's Court, dated May 21, 2020.

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:

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.

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.**

41. Maintenance pointing and repairs of existing stone masonry walls and concrete walls including the replacement of an occasional missing stone or patching cracks and minor defects in a concrete wall are allowed as a surviving condition to this Order of Conditions. **The property owner shall inform the Conservation Commission in writing at least seven days prior to any proposed repointing or repair work on existing walls.** All dislodged and removed mortar/cement will be immediately contained and removed from the work site to prevent any such material from entering the resource waters. Any future razing, rebuilding or enlarging of the subject wall(s) will require the filing of a new Notice of Intent. **This condition shall survive this order.**

42. The repair/replacement of small sections of damaged caps on seawalls is allowed as a surviving condition. All dislodged and removed caps will be immediately contained and removed from the work site to prevent any such material from entering the resource waters. Prior to any work, the scope of the proposed repair/replacement must be approved by the Conservation Commission. If the cap on a major length or on an entire wall needs to be repaired/replaced, this requires an NOI. **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](http://www.mnla.com) or [www.newfs.org](http://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"**.

102. A tarp will be laid down at the base of the seawall during all repair work to capture all construction debris. The tarp will be on the seaward side of the seawall. The tarp will be rolled up and dumped into a disposal trailer as required throughout the work day and will be removed at the end of each work day.

105. Tarps shall be spread and secured over the work area on top of the existing resource area for debris containment and collection during low to medium tides. The tarps and debris will be removed between tides and at the end of workday. At no time are the tarps to be inundated due to rain, tidal or wave action. The tarps are to be removed no less than ½ hour prior to expected inundation. At that time all work is to cease in the area near the resource area.

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

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](http://www.mnla.com) or [www.newfs.org](http://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.