

Marblehead Conservation Commission
Minutes March 11, 2021

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 7:05 PM

Present were: Commission Members Brian LeClair, Jessie 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 the February 11, 2021 minutes was made and minutes were approved.

DISCUSSION:

Marblehead Conservancy presentation from November 2020 – Chair restated that the commission had agreed that the plan presented by the Conservancy at that time was akin to gardening and there was support for giving the Conservancy permission to proceed forward with the generic description of the work they will undertake (15,000 sf per year). Motion was made to ratify the wild flower planting work that was presented to the Commission in November 12, 2021. The Commission voted unanimously to approve.

Amendment of the Regulations – agreed that there will be further discussion with the Chair and Administrator to formalize language on amending regulations to address electronic distribution of materials and a vote on this change will be presented for a vote in the April 2021 meeting.

ENFORCEMENT ORDER:

40-1053 151 Green Street – Green St Realty Tr.- expired order of conditions. The Commission voted unanimously to ratify the enforcement order. A notice of intent will be submitted at the April 2021 meeting.

ORDER OF CONDITIONS EXTENSION REQUEST:

40-1268 80-90 Hood's Ln - Lime St. Realty Ltd. Partnership - Order of Resource Area Determination [ORAD] - The Commission voted unanimously to approve the extension request.

40-1307 8 Roydon Rd- Ann-Marie Jordon et ux- patio landscaping. The Commission voted unanimously to approve the extension request.

40-1308 9 Goodwin's Ct-Rick Fishkin et al tr's.- seawall repairs, sitework, building maintenance. The Commission voted unanimously to approve the extension request.

40-1305 45 Beacon St-Jonathan Putnum et ux - sitework seawall repairs pool repairs. The Commission voted unanimously to approve the extension request.

40-1304 7 Redstone Ln- Lawrence Clark et ux- house, addition, sitework. The Commission voted unanimously to approve the extension request.

40-1303 9 Edgemere Rd- Lindsey Almeida et al- house addition, sitework. The Commission voted unanimously to approve the extension request.

40-1318 45 Beacon St-Jonathan Putnum et ux - sitework seawall repairs. The Commission voted unanimously to approve the extension request.

40-977 Redd' s Pond- Town of Marblehead - [Benjamin Martin] - Herbicide application. The Commission voted unanimously to approve the extension request.

40-1317 22 Harbor Ave - David Curtis et ux- seawall repairs, sitework. The Commission voted unanimously to approve the extension request.

MINOR MODIFICATION REQUEST:

40-1436 **115 Front St-** George A Abatjoglou-[Patrowicz]- leaching basin replacement w/landscaping. The Commission voted unanimously to approve the minor modification request.

40-1439 **11 Kimball St-** Patrick Duffy (Conlin Residence) et ux-[Patrowicz]- changes in hardscape. The Commission voted unanimously to approve the minor modification request.

CERTIFICATE OF COMPLIANCE REQUEST

MINOR ACTIVITY REQUEST

- **2 Manataug Tr** - Jeff Freedman et ux - tree removal. The Commission did not discuss this item.
- **228 West Shore Dr** - Carlos Gusmao- deck, patio, spa.- The Commission agreed to postpone a decision subject to additional documentation delineating the setback lines on the property.
- **12 Hathaway Rd-** Elene Arthur et ux - renew minor activity permit with minor

changes. The Commission voted unanimously to approve the minor activity request.

CONTINUED HEARINGS:

40-1471 **24 Lee St - Leslie Management Harborside Condo**

Appeared: David Smith, GZA and Jeff Tucker, Tucker Architecture.

Proposed: deck and stair replacement.

Control Drawing: See plans accompanying application.

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.

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.

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".**

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. In addition – tarps will be placed under overhangs during construction so that no debris falls into the sea.

HEARINGS:

NOI 40-1472 Leslie Cove - Leslie Cove Assoc.

Appeared: Scott Partowicz, Partowicz Land Development.

Proposed: seawall repairs sitework and landscaping.

Control Drawing: See plans accompanying application.

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.

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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.

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 40-1473 115 Front St- George A. Abatjoglou-

Appeared: Scott Partowicz, Partowicz Land Development.

Proposed: seawall repairs sitework and landscaping.

Control Drawing: See plans accompanying application.

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.).

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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.

40-1474 Sitework and landscaping Whittier Pond Rd -

Appeared: Scott Partowicz, Partowicz Land Development.

Proposed: invasive species management, trail improvements.

Control Drawing: See plans accompanying application.

Applicant presented plans as provided in application.

Chair LeClair – what does ongoing maintenance look like? (response – report specifies the maintenance plan – in year 2 and 3 there will be spring and fall maintenance to address re-growth on invasive); what is the function of the filter fabric – (response – to create a stable base); what is the reason for the mud (response - water coming down off the lawn and puddling); is the wet area adjacent to a pond (response - yes); the conservancy try's to interrupt sheet flow with diverter logs (response the railroad ties their today, that will be replaced, have been functioning as diverters); the conservancy would not use stone unless they are installing a French drain – they use mulch which makes the trail dry. Chair LeClair proposed that consider building a floating bridge structure above the wet area. Mr. VanHoven – said the preference is to use stone over wood chips is best in this application.

Comments from the Audience

Mark Brown – 60 Cloutmans Lane. Property abuts Whittier road – wants to make sure there is no impact to the east side of the “east water body”. His land is in a low point and does not want the proposed work to affect his property. (response – the proposed work will not impact the grading and thereby not impacting drainage in this area).

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

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Appeared: Peter Ogren, Hayes Engineering

Proposed: Approval of seawall modification sitework, retaining wall, landscaping.

Control Drawing: See plans accompanying application.

Applicant presented plans as provided in application.

Mr. VanHoven – asked if the DEP issued any comments about raising the height of the seawall/adding a new wall within the 25’ buffer zone. Town Engineer Quigley confirmed there were no comments from DEP.

Mr. Aures (property owner) – stated that the intent of the wall was to provide a safe play area for children and reduce erosion of the bank.

Mr. Alderman suggested that there are alternative erosion control measures for this location that would not involve constructing a new wall.

Mr. Ogren suggested that the request the height of the sea wall to match the height of the abutters property is a reasonable request. Mr. Alderman suggested that construction of a new wall (as proposed by the property owner) is much different than raising the height of an existing seawall. Mr. Ogren asked if the proposed wall were moved outside the 25’ buffer zone if that would be approved.

Chair LeClair made a motion to continue the hearing to the April meeting. All members voted to continue the hearing.

40-1475 8 May Street – Gene Bershstein

Appeared: Bill Manuell, Wetlands and Land Management; Jeff Tucker, Tucker Architecture

Proposed: Approval of deck, grading and site work.

Control Drawing: See plans accompanying application.

Applicant presented plans as provided in application.

Chair LeClair asked what would be planted in the yard (response grass/lawn will be planted).

Mr. VanHoven asked if the regrading would impact drainage to the neighboring property.
(response – there will be no impact to drainage)

Mr. VanHoven asked if the plan could include a swale in the area being filled. (response – yes)

Mr. VanHoven asked for an explanation of the removal of “feature” identified in the plan.
(response – concrete pad that once supported some type of sculpture will be removed).

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

A revised plan will be submitted showing a swale area to be added in the area where the applicant has proposed to add fill.

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.

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40-1476 6 Arrowhead Rd- Edward Piver

Appeared: Bill Manuell, Wetlands and Land Management; Jeff Tucker, Tucker Architecture
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Proposed: Approval of House addition, driveway addition, site work.

Control Drawing: See plans accompanying application.

Applicant presented plans as provided in application.

Mr. VanHoven – asked if a swale could be added in the plan to minimize the impact on increased impervious surface and to add a dry well on the back of the property to collect runoff from the roof.

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

A revised plan will be submitted showing a dry well in the area adjacent to the additional roof on the southeast corner of the building.

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.).

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DISCUSSIONS:

- **Black Joe's Pond signage –**

There was discussion of removing the offensive reference/name that has been used for Conservation Commission property "Black Joe's Pond" to "Joseph Brown Pond."

All members voted unanimously to remove all references, signage that says "Black Joe's Pond" for the property in question.

All members voted unanimously to replace any and all signage or materials that reference "Black Joe's Pond" for property owned by the Conservation Commission to now read "Joseph Brown's Pond."

All members voted unanimously to support Article 36 Joseph Brown Conservation area on the 2021 Marblehead Town Meeting Warrant.

- **Bike Marblehead - Bike Jumps**

There was a discussion of proposed language to address enforcement needs outside of regular meetings.

All members voted unanimously to adopt the following procedures related to enforcement orders.

Enforcement orders for Wetlands violations shall generally be issued and signed by the Conservation Agent or Town Engineer. If that person is unavailable, the Commission Chair may issue the order. If both are unavailable, the next commissioner available may issue the order. Enforcement orders shall be voted on for ratification at a subsequent meeting of the Commission by the full commission.

If it is found that town conservation land is being damaged or altered without permission

of the Commission, such damage or alteration may be ordered to be stopped by the same sequence of persons as responsible for the issuance of enforcement orders. If the persons responsible for such alterations or damage refuse to cease, the Police Department may be called and asked for assistance in stopping the damage or alteration.

Signage may be posted at any location where such damage or alterations are discovered stating that such damage or alteration is illegal and that fines may be imposed for such damage or alterations.

If any tools or other property are left at the location of damage or alteration of conservation land, they may be collected and taken to the Police Department.

The conservation officer or Town Engineer, or the Chair in their absence, shall determine the promptness with which alterations or damage shall be repaired, based on such considerations as safety, erosion and interference with use of the area by the general public and may proceed to direct such work. If such considerations do not indicate that repairs should be made before the next meeting of the Commission, the Commission shall determine the promptness with which repairs are undertaken.

Persons responsible for any damage or alterations to conservation land shall remain liable for the repairs or cost of repairs undertaken by the Town, based on the proceedings before the commission or such civil court actions as the Commission may initiate to require repairs or to recover such costs.

The Marblehead Conservancy may be requested to assist the Commission with the posting of signs, the repair of conservation land and the prevention of erosion and the elimination of unsafe conditions.

- **Moorings and Floats in Sensitive Environmental Areas**

There were discussions about what the appropriate next steps are to address moorings, floats and docks that may bottom out in sensitive environmental areas. Proposal was to discuss unpermitted floats at the April meeting.

Meeting adjourned – 10:25PM