

Marblehead Conservation Commission
Minutes March 13, 2014

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 Fred Sullivan, Brian LeClair, David VanHoven, Ken Fisher and Don Tritschler. Also present was Willy Lanphear, Conservation Administrator.

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

Note: The commission currently has six 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.

Approve Minutes: A motion was made and seconded "to approve the minutes of 9 January 2014." All members voted in the affirmative.

Old Business: 40-1123, 15 Spary Ave, letter to David Groom, A motion was made and seconded to send the letter requiring completion of the conditions and warning of fines. All members voted in the affirmative.

New Business:

- 7 Brown St, Michael & Corine Cognata, Informal request for Minor Activity Permit. Request to add window and door on existing structure. A motion was made and seconded "to approve as minor activity." All members voted in the affirmative. Condition to cleanup all debris.
- 19 Sargent Rd, The 19 Sargent Road Realty Trust, Informal request for Minor Activity Permit. Request to do exploratory excavation on beach. The Commission will require the filing of an RDA.
- Gatchell Field, Marblehead Recreation & Park Dept, Informal request for Minor Activity Permit. Temporary shed on block in grassed area between fields. A motion was made and seconded "to approve as minor activity." All members voted in the affirmative. Condition to cleanup all debris.

RDA 3 Beacon Street - Marblehead Trading Company

Resource Areas: Coastal Beach, Coastal Bank and Land Subject to Coastal Storm Flowage

Interests of the WPA and Bylaw: Storm Damage Prevention and Prevention of Pollution

Control Drawing: Plan to Accompany RDA, #3 Beacon St, dated January 7, 2014

Reference: Letter from Walter Haug, dated 8/5/13

Appeared: Paul Mazonson, Ralph Anderson

Plans were discussed for a proposed new gangway and float for exclusive use of the Marblehead Rowing Club. Letter from Harbormaster to be sent to Commission. No eelgrass in this location.

No questions from the audience

After discussion, all members voted to close this hearing. All members voted to issue a negative determination with the following special conditions:

Pre-construction:

31. Prior to commencement of construction activities, the Applicant shall obtain all federal, state and local permits (in addition to this OOC) that may be required for the proposed project.

Post-construction/in perpetuity:

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.

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.

48. All floats/docks will be so constructed so as not to bottom out (rest) on the ocean floor at low tides.

XX. This gangway & float shall be for the exclusive use of the Marblehead Rowing Club.

40-1163 75 Naugus Avenue

Resource Area: Coastal Bank, Coastal Beach

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

Control Drawing: Proposed Site Plan to Accompany NOI, #75 Naugus Avenue, dated January 26, 2014 prepared by Patrowicz Land Development Engineering

Reference: Revised plan dated March 8, 2014

Appeared: S. Patrowicz of Patrowicz Land Development Engineering, Todd J Barbera and Heidi C. Herlihy

This was a continuance from 2/20/2014. There was a site visit on 3/8/14.

All members voted to continue this hearing to the April 10, 2014 meeting.

40-1164 22 Crowninshield Road

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

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

Control Drawing: Plan to Accompany NOI, #22 Crowninshield Road, dated December 23, 2013, prepared by Williams & Sparages.

Appeared: Richard Williams of Williams & Sparages, Gerardo Raffaele of Raffaele Construction Corp.

Plans were presented for proposed driveway improvements including the installation of drainage structures, and the rebuilding of existing stone walls and a patio. The Commission requested the applicant add other buffer zones and work on steps to a revised plan. Discussion of some work may be on abutting property. Legal opinion included in application.

Paul Lynch, representing Kathleen Murphy and Steven Solomon of 20 Crowninshield Rd., argued that the Commission cannot issue an order of conditions on a third party property.

Commission stated that an order of conditions will only be issued for work on the applicant's property.

All members voted to continue this hearing to the April 10, 2014 meeting.

40-1165 6 Corn Point Road

Resource Area: Coastal Beach, Coastal Bank

Interests of the WPA and Bylaw: Prevention of Pollution, Flood Control and Storm Drainage Prevention

Control Drawing: Plan to Accompany NOI, #6 Corn Point Road, dated February 24, 2014, prepared by Patrowicz Land Development Engineering.

Appeared: S. Patrowicz of Patrowicz Land Development Engineering

Plans were discussed for proposed repair and re-construction of the existing damaged seawall , cap and steps. Application is still under review by DEP.

All members voted to continue this hearing to the April 10, 2014 meeting.

40-1166 44B Cloutman's Lane

Resource Area: Coastal Bank & Coastal Beach

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

Control Drawing: Site Plan to Accompany Notice of Intent, 44B Cloutman's Lane, dated February 25, 2014, prepared by Griffin Engineering Group, LLC.

Appeared: Bob Griffin of Griffin Engineering Group, LLC

Plans were discussed for proposed repair of an existing deck and porch and new siding on the existing house. Application is still under review by DEP.

Robert Hansen 40 Cloutman's Lane, asked about painting the siding. Mr. Griffin responded that it will be pre-painted siding.

Issue raised by Willy of previous seawall repair work being done without a permit (see note end of this hearing).

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

Special Conditions:

20. In accordance with General Condition No. 9 contained in this Order of Conditions, the applicant shall record this original Order of Conditions and any subsequent amendments thereto at the Registry of Deeds in Salem and shall submit the recording information to the Conservation Commission on the form for said information found at the end of the Order of Conditions prior to the commencement of any work authorized by this Order of Conditions or any amendments thereto. Failure to submit said recording information prior to the commencement of work may result in a fine issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E. **See Attachment "C" for "Schedule of Fines"**.

21. Prior to any work authorized by this Order, a sign (1' x 2') shall be displayed in a conspicuous place at the site with the words "**DEP File 40-1166**"

22. **Prior to any demolition, construction or earth moving activities on the site, the applicant shall make an appointment for a site inspection by the Conservation Administrator to review the proposed work and the conditions contained in this Order.**

23. A copy of the Order of Conditions as well as the final approved plan/s shall be available for inspection on site while activities regulated by the Order are underway.

24. 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.

25. The project shall be performed in accordance with the final approved plans and other documents referenced in Attachment A to this Order of Conditions, except as the project may be altered or amended by these Special Conditions. Any deviation from this Order of Conditions and the approved construction plan/s and documents requires authorization from the Conservation Commission prior to implementation. Any deviation from the approved construction plans and documents commenced prior to authorization is subject to a fine of up to \$300 per day, issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E. **See Attachment "C" for "Schedule of Fines"**.

26. The project shall be performed in accordance with the representations made by the applicant and his/her representative(s) and in accordance with the requirements of the Marblehead Conservation Commission, all as reflected in the public hearing record as documented in the minutes of the Marblehead Conservation Commission referenced in Attachment A to this Order of Conditions, except as the project may be specifically altered or amended by these Special Conditions.

27. These Special Conditions relate equally to both the Wetlands Protection Act and the Marblehead Wetlands Protection Bylaw unless herein indicated otherwise.

Pre-construction:

29. All special conditions are to be included in the construction contracts between the applicant and his/her contractor.

30. 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. **The erosion control must be in place, erected per the drawing, before any work is started on the site.**

31. Prior to commencement of construction activities, the Applicant shall obtain all federal, state and local permits (in addition to this OOC) that may be required for the proposed project.

During construction:

32. This project shall not cause an increase in run-off onto adjacent properties or streets, either during construction or after completion. Appropriate measures shall be taken to prevent the movement of silt or debris onto adjacent properties, streets and Resource Areas.

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.

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.

Post-construction/in perpetuity:

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".**

*Vote was taken to issue an enforcement order after the hearing for seawall repair work.

40-1167 75 West Shore Drive (Tower School)

Resource Area: Bordering Vegetated Wetland

Interests of the WPA and Bylaw: Prevention of Pollution, Protection of Wildlife Habitat, Flood Control

Control Drawings:

Site plan, Tower School, Sheet C1 dated February 25, 2014, Prepared by Hayes Engineering, Inc.

Site plan, Tower School, Sheet C1 dated February 25, 2014, Prepared by Hayes Engineering, Inc.

Appeared: Peter Ogren of Hayes Engineering.

Commission requested ending the proposed fence along the former Railroad ROW north at the 50 foot buffer limit and to limit sod replacement to outside of 50 foot buffer.

Plan is to crown the new field toward the catch basin at the school and towards the wetland.

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

Special Conditions:

XX. A revised site plan shall be submitted prior to construction showing a reduction in the length of the proposed fence along the former Rail Road R.O.W. and a reduction in the limit of new sod to a line outside of the 50' buffer Zone.

20. In accordance with General Condition No. 9 contained in this Order of Conditions, the applicant shall record this original Order of Conditions and any subsequent amendments thereto at the Registry of Deeds in Salem and shall submit the recording information to the Conservation Commission on the form for said information found at the end of the Order of Conditions prior to the commencement of any work authorized by this Order of Conditions or any amendments thereto. Failure to submit said recording information prior to the commencement of work may result in a fine issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E. **See Attachment "C" for "Schedule of Fines".**

21. Prior to any work authorized by this Order, a sign (1' x 2') shall be displayed in a conspicuous place at the site with the words "**DEP File 40-1167**"

22. **Prior to any demolition, construction or earth moving activities on the site, the applicant shall make an appointment for a site inspection by the Conservation Administrator to review the proposed work and the conditions contained in this Order.**

23. A copy of the Order of Conditions as well as the final approved plan/s shall be available for inspection on site while activities regulated by the Order are underway.

24. 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.

25. The project shall be performed in accordance with the final approved plans and other documents referenced in Attachment A to this Order of Conditions, except as the project may be altered or amended by these Special Conditions. Any deviation from this Order of Conditions and the approved construction plan/s and documents requires authorization from the Conservation Commission prior to implementation. Any deviation from the approved construction plans and documents commenced prior to authorization is subject to a fine of up to \$300 per day, issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E. **See Attachment "C" for "Schedule of Fines"**.

26. The project shall be performed in accordance with the representations made by the applicant and his/her representative(s) and in accordance with the requirements of the Marblehead Conservation Commission, all as reflected in the public hearing record as documented in the minutes of the Marblehead Conservation Commission referenced in Attachment A to this Order of Conditions, except as the project may be specifically altered or amended by these Special Conditions.

27. These Special Conditions relate equally to both the Wetlands Protection Act and the Marblehead Wetlands Protection Bylaw unless herein indicated otherwise.

Pre-construction:

29. All special conditions are to be included in the construction contracts between the applicant and his/her contractor.

30. 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. **The erosion control must be in place, erected per the drawing, before any work is started on the site.**

31. Prior to commencement of construction activities, the Applicant shall obtain all federal, state and local permits (in addition to this OOC) that may be required for the proposed project.

During construction:

32. This project shall not cause an increase in run-off onto adjacent properties or streets, either during construction or after completion. Appropriate measures shall be taken to prevent the movement of silt or debris onto adjacent properties, streets and Resource Areas.

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.

Post-construction/in perpetuity:

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.**

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Request for Changes in Project Scope:

40-1160 10 CORN POINT ROAD

Resource Area: Coastal Beach, Coastal Bank

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

Control Drawing: Revision 2 of Site Plan for NOI dated February 10, 2014, stamped by S. Patrowicz

Reference: Letter from Patrowicz Land Development Engineering dated February 26, 2014

Appeared: S. Patrowicz of Patrowicz Land Development Engineering

Patrowicz reviewed the various proposed changes.

All members voted to approve this as a minor design change.

40-1064 212 HUMPHREY ST

Resource Area: Bordering Vegetated Wetland

Interests of the WPA and Bylaw: Prevention of Pollution

Appeared: S. Patrowicz of Patrowicz Land Development Engineering

Patrowicz reviewed the change of adding pavement removal limits. Commission requested reports. Scott noted that they will be provided.

All members voted to approve this as a minor design change subject to submittal of the final plan for review by Willy Lanphear.

Request for COC:

None.

Sign Documents: All documents per the agenda were signed.

The meeting adjourned at 9.25 PM.