

Marblehead Conservation Commission Minutes February 11, 2016

Present were: Commission Members Fred Sullivan, Michael Smith, Chairman Brian LeClair, David VanHoven, David Depew and Barbara Collins Rosenberg. Also present was Willy Lanphear, Conservation Administrator.

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

Prior to Meeting

Approve Minutes: All members voted to approve minutes of December 10, 2015 and January 14, 2016.

New Business: All members voted to authorize the Conservation Commission Administrator, to sign for invoices up to \$500 (five hundred dollars).

Discussion Items: Amy McHugh, Superintendent, Marblehead Water & Sewer Commission reported on proposed maintenance work on existing water main in Forest River Conservation area, which is exempt under DEP Wetlands regulations 310 CMR 10.02 (2) (a)2.

The work consists of cleaning and line maintenance, not increasing size of 1450', and against a stone wall. Regulations allow for work in a resource area, just in the buffer zone.

Meeting was held in the lower conference room at the Mary A. Alley Building, 7 Widger Road. Meeting was called to order at 7:15 PM.

Hearings:

RDA 263-269 Pleasant Street

Project Description: Proposed Assisted Living Facility, continued from 1/14/16

Appearing: Applicant: Lisa Mancuso; Frank McElroy, Attorney; Curtis Young, President Wetlands Preservation, Inc.

Young presented via letter and oral testimony evidence that lands surrounding the proposed Assisted Living Facility may fall under the Massachusetts Wetlands Protection Regulations and/or the Marblehead Wetlands Protection ordinance, land specifically surveyed was a depression area located immediately at the edge of the subject property on Higgins Road.

Commissioner Brian LeClair asked, "Are you able to state any part of the proposed project comes into the 100' buffer zone?"

Curtis Young stated that nothing structural would sit in the zone, there would be rip rap, wall and parking. Attorney McElroy added that there would be infiltration systems and catch basins, but not buildings.

Commissioner Brian LeClair asked “Is any work in the 25’ or 50’ zones.” The answer was unknown.

Also submitted, via letter, evidence from VHB Environmental Scientists stating that there were no wetlands present on the 4.5 acre parcel of the proposed Assisted Living Facility.

Jeff Peterson, CPSS, of VHB appeared to give oral testimony that on February 10, 2016, he had observed the surrounding lands that had been surveyed by Young. Given the lack of notice and time, and physical conditions present (snow cover) he could not perform an in depth analysis, but did concur that there were areas consistent with wetlands characteristics based upon soil analysis. Peterson also stated that there is a saddle in back of 4 Higgins that divides the drainage into three pits: two are most likely hydric; one of the top of the saddle has a lot of decomposed bedrock which is a gray matrix. His opinion is that not one solid unit follows the wall, that the flow goes into two direction.

Commission LeClair asked what effect the saddle would have on the square footage of the “proposed” Wetlands, Peterson stated that he hadn’t had the time to do a thorough examination. When asked if the saddle is of a sufficient size to reduce the resource area, Peterson said that was outside his area of expertise, but thought it would reduce the area by half of the 2,000 square feet cited by Young.

Chris Novak, Civil Engineer for the Mariner Project remarked that the value of the resource area, the land subject to inundation, is not defined in the by-law and does not come close to the State standard.

It was noted by Chairman LeClair and other commission members, that almost all soil in Marblehead, if tested, would show hydric, and, in fact, the entire Back Bay of Boston is built upon hydric soil.

Corey D. Rhoades, attorney for George MacDonald, abutter and owner of the property at 4 Higgins Road, appeared. Rhoades had submitted a letter to the Commission at 5:20 p.m. on February 11, too late for members to read, but copies were distributed, stating that “the RDA has not been properly noticed or prepared and should therefore be dismissed.”

Mancuso states that letters were sent to all abutters and that the legal notice was properly filed.

Mancuso states that she spoke with Mr. MacDonald and received his permission to have soil analysis performed on his property. She states that his tone changed when he learned that the analysis was performed in an attempt to determine a Wetlands designation.

Commissioner LeClair stated that to find this area as a protected Wetland under Town by-laws will visit horrible consequences to three houses and their owners.

The matter was continued to the meeting of March 10. Applicant must submit a detailed analysis under to Town by-law proving that the surrounding area is a wetland, and further, notice must be sent to all parties (including the homeowners/residents of the land in question); all filing the RDA; the Mariner project principals (Michael Lafayette of the Mariner offered correct mailing address); and the Conservation Commission by February 24, 2016 for the March, 10, 2016 meeting.

NOI 40-1226, 37 Bradlee Road

Applicant: Jack and Deborah Tatelman

Appearing: Robert McCann, Attorney for Applicant; and David Smith, Project Manager for GZA Geoenvironmental, Inc.

Proposed: New pier, gangway and float, continued from December 10, 2015 (LeClair, Smith, Depew, Sullivan, VanHoven and Rosenberg)

Massachusetts Division of Marine Fisheries, in a letter dated December 2, 2015, and comments from the Conservation Commission public hearing on December 10, 2015, had voiced concerns about the float and its positioning over a substantial bed of eel grass.

Smith proposed a new float constructed of Thru-Flow Decking, that would lessen the negative environmental impact to the eel grass. The Commission was not convinced that this alternative would allow for enough light and suggested either: moving the float further out beyond the eel grass; or, look into floats with grow lighting.

Abutters Richard and Elaine Spencereley, 6 Broadmere Way, expressed concern that even with the newly designed float, the eel grass will still be depleted and cites NOAA statistics that the Thru-Flow grated decking will not allow for the amount of light claimed in its advertising. Commission member Sullivan also expressed concern that the underpinnings needed to hold the decking in place will also add a lot of shade.

Further, in the December 10, 2015 meeting, the commission expressed concern about the applicant's ability to remove the gangway from the float in a storm condition, and asked that engineer add a lifting mechanism. Applicant does not want to add the mechanism for aesthetic reasons, but has been advised, via his attorney and project manager, that some such mechanism must be added.

Commissioner LeClair gave Attorney McCann the option for the Commission to take a vote to close the hearing and vote on the project, or to continue to the next meeting to remedy concerns. The matter was tabled to the March 10, 2016 meeting.

RDA 2 Shorewood Road

Applicant: Christopher Leake, appearing

Proposed: Removal of an existing wood deck to be replaced with new stone patio. **Continued from December 10, 2015** (LeClair, Smith, Depew, Sullivan, VanHoven, Rosenberg)

Applicant received permission from town.

Moved to close hearing; voted negative determination pursuant to the following conditions:

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.).

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.**

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.**

NOI 40-1232, Goldthwait Reservation (off Phillips St.) No Comments from DEP

Applicant: The Goldthwait Reservation, Inc.

Appearing: Mike DeRosa, DeRosa Environmental

Proposed: Salt Marsh & Freshwater Wetland Restoration; reclamation of drainage ditches, removal of fill and control and elimination of invasive plants. Continued from January 14, 2016, (LeClair, Depew, Sullivan, VanHoven and Rosenberg)

At the meeting on January 14, 2016, the Commission asked for information regarding the herbicides that would be used on the phragmites and pepperweed.

Nature's Avenger will be manually sprayed onto the phragmites' common reed shoots once

they're cut to knee height, by Emily, a properly licensed contractor, under the auspice of Mary F. Duggan Executive Director of the State Reclamation Board, Northeast Massachusetts Mosquito Control and Wetlands Management District (**appearing**).

Jeffrey Lubbock, resident of Goldthwait Reservation, appeared, to state that he hand cuts the phragmites, often alone, and that while the hand cutting has done much to lessen their impact on the area, to finally eradicate them, herbicide must be used.

Escort will be hand applied to the pepperweed at the time of flowering and will be applied only to the rosette. Application will be done early in the a.m., and at low tide; pepperweed flowers mid-summer.

Jack Attridge, Goldthwait resident, again expressed concerned about the possibly toxicity of these two herbicides, and produced documentation from the EPA that neither herbicide is to be used near water.

Bill Blake, President of Goldthwait Reservation, stated that to finally get this Salt Marsh and Freshwater Wetland fully restored, these herbicides were necessary.

The Commission moved to close the hearing. The Commission voted five in favor and one opposed to issue an Order of Conditions with the following conditions:

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 all applicable federal, state and local regulations.

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.**

53. At the end of each year a report on the progress of the work and health of the marsh shall be submitted to the Conservation Commission while this OOC is in effect.

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"**.

XX. Additionally, Goldwaith Reservation shall have the ongoing ability to clean culvert at Phillips.

XX. Escort is to be back sprayed only to flowers and stems of pepperweed plants.

XX. Nature's Avenger only to be hand sprayed to stems of plants above mean high water mark.

RDA 5R Woodfin Terrace (Parcel ID 160-10A) Electric Generator Parcel

Applicant: Marblehead Municipal Light Department

Appearing: Timothy K. Kucab, Tighe & Bond, Consulting Engineers, Environmental Specialists

Project description: Replacement of various existing mechanical apparatus to upgrade the existing electric generator facility.

Per EPA rules, add pollution control onto the peaking plant, and two oxidation catalysts.

Motion to issue negative determination with the following conditions:

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.

Request for changes in scope

- RDA 24 Lee St, Harborside Condominiums (Building B) (issued June 12, 2014) –

approved as a minor design change

Requests for a Certificate of Compliance

- 40-664, 279 Ocean Avenue, Carol Noble appearing (OOC not recorded prior to work and unauthorized work)

Visual inspection performed by Willy Lanphear, fined \$300 (three hundred) for not filing timely.

Additional \$300 fine for a football shaped wall that was installed when rotted out railroad ties were removed from the 25' no disturb zone.

Motion to issue certificate of compliance subject to payment of fine.

- 40-1098, and 40-1145 28 Foster St, All members voted to issue these COC's
- 40-1057, 2 Coolidge Road, Kleiman Macklen Beaver Enterprises, Inc. (Structural questions) Voted to Continue to March 10, 2016.

Appearing Sara Lubek and Abby Rousch, Realtors

Certificate of Compliance was never requested on retaining wall built in 2012, upon inspection of wall, there are questions regarding its structural integrity, and, upon inspection of original plans, questions regarding whether it was built to approved specs. Willy Lanphear and Allan Dennis will inspect the wall on site.

Sign Documents

Meeting called to an end at 9:55 p.m.