

**Marblehead Conservation Commission
Minutes 12 September 2013**

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

Present were: Commission Members Don Tritschler, Brian Leclair, David Vanhoven, Ken Fisher, Fred Sullivan and Walter Haug. 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 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.

Approve Minutes: All members voted to approve the minutes of 8 August 2013 without corrections.

40-1146 446 ATLANTIC AVENUE KAPSALIS

Resource Area: Coastal Bank

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

Control Drawing: Revetment Repair Plan, 446 & 450 Atlantic Avenue, dated August 2013, prepared by GZA, GeoEnvironmental, Inc.

Reference: GZA letter dated 21 August 2013

Appeared: Peter Williams of GZA

The commission referred to the referenced letter regarding "... permission to perform on going repair...". Due to the magnitude and variability of such repair work, the commission will not grant a surviving condition to allow future repairs of this nature. Williams defined "bedding stones" as stones measuring 2-8 inches in diameter. Concrete will be delivered using a pump and/or chutes from the upland or by driving a front loader with small loads of concrete via the beach. Extra care and containment will be given to insure no concrete is allowed to flow onto the beach. The commission stated the repairs must maintain the jagged, irregular surface of the rip-rap with cavities as currently present within the rip-rap. This is to insure the capability of the rip-rap to dissipate and deflect wave energy. All members voted to close this hearing. All members voted to issue an OOC with the following special conditions.

Pre-construction:

28. Any land disturbance of an area less than 40,000 square feet requires that Section II.C of the regulations pertaining to the Stormwater Management and Erosion Control Bylaw, Chapter 195 of the Marblehead Code must be followed and implemented.

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

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:

The contractor shall not leave equipment, material debris or construction material or any other item within the resource area that will be affected by rising water.

Work areas shall be daily left in a condition so that the rising water shall not cause any damage or pollution of the resource areas.

The contractor shall daily remove and properly dispose of any debris or other materials from the resource areas.

In the event of a severe storm, the contractor will secure the site and remove all equipment to an upland area.

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.).

If equipment is brought onto the beach, the contractor responsible for the work will insure the equipment does not leak any oil, chemicals or other hazardous materials onto the resource areas. If any leaks do occur they will be immediately contained, removed and reported to the Conservation Administrator at 781 631-1529. Remedial action on the resource area by the contractor may be required depending on the type, location and scope of the leak.

All resource areas disturbed by the work will be restored to pre-construction conditions.

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.**

43. The back-filling of small areas of erosion landward of a seawall is allowed as a surviving condition provided the erosion is not on a coastal bank. This back-filling applies to areas defined primarily as Land Subject to Coastal Storm Flowage. Any work on a coastal bank requires an NOI. The back-fill material must be clean and compatible with the eroded material. Prior to any back-filling, the scope of the proposed back-filling must be approved by the Conservation Commission. **This condition shall survive this order.**

53. The control drawing/s for this project were prepared by a licensed Professional Engineer. The construction of this project shall be regularly inspected by said licensed professional to insure that the project complies with the control drawing/s. 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.

54. 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"**.

40-1147 450 ATLANTIC AVENUE KAPSALIS

Resource Area: Coastal Bank

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

Control Drawing: Revetment Repair Project, 446 & 450 Atlantic Avenue, dated August 2013, prepared by GZA, GeoEnvironmental, Inc.

Reference: GZA letter dated 21 August 2013

Appeared: Peter Williams of GZA

This application is identical to 40-1146. All members voted to close this hearing. All members voted to issue an OOC with the identical special conditions as for 40-1146.

RDA 66 EVANS ROAD GEROLIUM

Resource Area: BVW

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

Control Drawing: 66 Evans Road, dated 13 August 2013

Appeared: L. Spagnoli of Apex Carpentry

After review by Spagnoli, all members voted to close this hearing. All members voted to issue a negative determination with no special conditions.

RDA 7 MOORING ROAD GREENE

Resource Area: Coastal Bank and Beach

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

Control Drawing: Plan Showing Points Set, 7 Mooring Road, N. Greene, dated 18 May 2013, prepared by North Shore Survey Corporation

Appeared: L. Greene

The shed will be placed on sono tubes, not on a slab. After discussion, all members voted to close this hearing. All members voted to issue a negative determination with no special conditions.

Old/New Business:

Henry's Way (School Department land): Appeared Sally Byors. Reference emails: Kimberly Atkins (attorney for Byors) to Adam Costa (Town Counsel) dated 3 September 2013; Adam Costa to Kimberly Atkins dated 4 September 2013 and Kimberly Atkins to Adam Costa dated 4 September 2013. Three members of the commission and the ConCom Administrator had visited Henry's Way to observe the remediation performed by Byors per the email Atkins/Costa of 3 September 2013. These members were satisfied the remediation was adequate (the boulders removed, the dumped fill material removed or smoothed, and a silt fence erected - all this at the end of the cul-de-sac). The area which had been previously bulldozed and leveled, incorporating the 25 foot buffer zone to a BVW, had not been remediated but was protected by the aforementioned silt fence. The commission decided to leave this area as is since natural wild vegetation will re-populate this area and any new plantings, etc. would be overwhelmed by the wild vegetation. The commission did not require an RDA or NOI since no remediation work will be required.

The commission then addressed the matter of fines since no permit had been requested to work in a jurisdictional area and work had been done in a buffer zone. Per the guidelines for fines, the commission voted to issue a fine of \$900.00 (\$300.00 for failure to obtain a permit and \$600.00

for work in a No Disturb Zone to a BVW [\$300.00 for each 6 month period or portion thereof]). Ms. Byors denied any responsibility for anything even though the Byors agreed to perform the remediation as described above. The commission told Ms. Byors to pay the fine (made out to the Town of Marblehead, if by check) within one week from the date of this meeting and deliver it to the office of the Town Engineer or the matter will be referred to Town Counsel.

40-1064 212 Humphrey Street: Appeared Barbara Alex, representing Oliver's Pond Condominium Trust. Reference the letter from the Trust, dated 12 September 2013. The commission recognized the OOC issued in response to the Enforcement Order of 30 November 2011 did not specify any time period for installing the final systems shorter than the three years of the OOC. Therefore, it focused its attention to the current state of temporary measures to protect the wetland. To this end, a meeting will be held Monday, 16 September 2013 at 11:00 AM to review and define/improve those temporary measures which must be in place before the end of September or the middle of October 2013 at the latest. Maintenance and inspection schedules will be defined. Oil absorbing pads, catch basin hood, filter socks, etc. will be considered. Available members of the commission will meet on site with S. Patrowicz (consultant to the Trust) for this review. The commission advised Ms. Alex a further Enforcement Order could be issued if these temporary measures are not in place by the middle of October 2013.

Request for changes in project scope:

40-1004 1 Beacon Street McHugh: Reference letter from GZA GeoEnvironmental, Inc. dated 6 August 2013 and drawing, "McHugh Residence, 1 Beacon Street, Gallows Frame Revision, dated July 2013. David Smith appeared with Mr. McHugh to explain the requested changes. After discussions, the commission voted to consider the requested changes as minor design changes, not requiring an amendment. The commission did require a letter from the Marblehead Harbormaster confirming his agreement with the changes. Also, the commission requires a stamped (by licensed professional engineer) copy of the above referenced drawing.

40-1076 191A Green Street: Lanphear had reviewed this change and defined it as a minor design change, not requiring an amendment. The commission agreed.

Requests for COC:

40-1059 11 Calumet Lane: All members voted to approve this COC.

40-1096 75 Nanepashemet Street: All members voted to approve this COC.

40-1114 Crowninshield Road: All members voted to approve this COC.

40-1001 24 Norman Street: All members voted to approve this COC.

40-1125 291B Ocean Avenue: All members voted to approve this COC.

40-1133 307 Ocean Avenue: All members voted to approve this COC.

Sign Documents: All documents per the agenda were signed.

The meeting adjourned at 8:45 PM.