

**Marblehead Conservation Commission**  
**Minutes 14 November 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, Fred Sullivan, Ken Fisher (arrived at the beginning of 40-1151) 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.

**Discussion Items:**

**Community Preservation Act:** Kurt James did not appear at this time and this matter was delayed until later in the meeting (see P. 6).

**40-1123 15 Spray Avenue:** The commission voted all in favor of sending the letter dated 15 November 2013 to David Groom. This letter reminded Groom of the requirement to file for a Certificate of Compliance and fulfill the outstanding conditions by 31 December 2013.

At this point in the meeting, L. Solenkow and her attorney, S. Bernstein appeared asking the commission to resolve the issue of the "right of way" restoration. They had been earlier apprised of the above letter. The commission promised to inform them of the response of Groom and of its efforts to bring this matter to a satisfactory conclusion.

**2014 Meeting Schedule:** W. Lanphear distributed this proposed schedule, continuing to meet once a month on the second Thursday of each month.

**Proposed revisions to the Marblehead Wetlands Protection Bylaw regulations:** Regarding section 5.4.4 of the regulations, the chair had proposed the following changes to the first paragraph in this section.

*In addition to the Minor Activities specified in 310 CMR 10.02 (2)(b)1, additional minor activities for an existing dwelling are allowed under these Marblehead regulations when the proposed work is within 100 feet from a resource area or within Land Subject to Coastal Storm Flowage. These additional minor activities are: new siding, replacing windows/doors, new roof shingles, re-painting and repair of existing decks (but not expansion) or similar minor activities. These activities may be permitted under a Minor Activity Permit, not requiring a Request for Determination of Applicability (RDA) or Notice of Intent (NOI).*

*Some minor activities over (not in) a wetland provided the wetland is not affected/altered may also be permitted under a Minor Activity Permit. The location and size of the proposed minor activity and the provisions of the applicant to prevent any impact on the wetland will determine if such work is allowed*

*under a Minor Activity Permit. The type of activity envisioned for activities over (not in) a wetland are: the replacement of decking or railings on a small deck overhanging a coastal bank; the replacement of a window (not multiple windows). If scaffolding or similar structures in a resource area are needed to accomplish the work, an RDA or NOI may be required.*

*The following conditions apply for the foregoing minor activities to proceed without filing a Request for Determination or a Notice of Intent but which can be permitted with a Minor Activity Permit.*

The commission decided to table this change and to form a committee to study other possible changes to the Minor Activity Permit.

**Approve Minutes:** All members voted to approve the minutes of 10 October 2013 with the following change on page 13 of 13: “9 Sargent Road and 7 Sargent Road (40-1135 and 40-1136): See the note in these minutes after NOI 40-1148 (bottom of page 3)”.

#### **40-1151 10 MOORING ROAD PANDAPAS**

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

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

Appeared: S. Patrowicz of Patrowicz Land Development Engineering; P. Lynch, atty., M/M Pandapas

Control Drawings and Documents:

Comparison Pre- and Post- Development, Impervious and Semi-impervious area, #10 Mooring Road, Pandapas, dated 20 October 2013, prepared by Patrowicz Land Development Engineering

Existing Conditions, #10 Mooring Road, Pandapas, dated 18 September 2013, prepared by Patrowicz Land Development Engineering

Site Plan, #10 Mooring Road, Pandapas, dated 18 September 2013, revised 20 October 2013 prepared by Patrowicz Land Development Engineering

Other documents include:

Letter from Geo/Plan Associates (Dr. Rosen)

Soil Survey, Essex County, MA, Northern Part, by US Dept. Of Agriculture, Soil Conservation Service (4 pages including the cover page)

Memo from W. Haug, dated 18 October 2013, subject 10 Mooring Road

Review of Notice of Intent for 10 Mooring Road by L. and N. Greene.

Review of Notice of Intent for 10 Mooring Road (1 page) by the Greene's as commented by Haug (his comments in red).

Memo to file, Subject No Disturb and No Build Zones, dated 15 May 2011 by W. Haug

Comment page from the DEP, specifically referring to 40-1151

Griffin Engineering Group letter, dated 30 October 2013

Note: Later in the meeting, a letter from LEC Environmental Consultants, Inc. (Mr. S. Humphries) dated 14 November 2013 was introduced. However, the commission had already announced during the hearing that it would not accept any further, new information presented during the hearing. Therefore, the LEC letter is not introduced into the file. This decision follows from the standard policy requiring all information to be presented at least two weeks prior to a hearing. All parties had been informed of this requirement at the last hearing on 10 October 2013. Note that the commission did allow information from the Greene's as late as mid-day Wednesday, 13 November 2013.

This first issue discussed was the appropriate FEMA map to use. The chair said, before the hearing, CZM had informed him to use the draft map. However, the commission decided it could not legally use a map not yet defined as final and would use the current approved map. It was pointed out that the DEP had "no comments" on this application as of 7 November 2013. The commission felt this corroborated their decision.

It was then noted that the 20 October 2013 revision of the site plan incorporated all the revisions delineated in the memo from Haug dated 18 October 2013. At this hearing, it was decided to add the following revisions: erosion control fencing will be erected along the entire common lot line with the Halsted property. This additional fencing will also reach around the back corner of the 10 Mooring Road property and continue for 15-20 feet. A construction entrance will be defined. The commission reminded the applicant they must abide by the Storm Water Management and Erosion Control Bylaw, Chapter 195.

The commission clearly stated its main concern is to insure the post run-off of water from the site is no greater than the pre run-off. The Soil Conservation Service (SCS) analysis of the soils on site was reviewed. This indicated good drainage soils. The question of test borings was discussed. The commission noted it did not feel this would provide any further significant information beyond the SCS analysis and it did not require the applicant to conduct any test borings.

The level of the ground water table was also discussed. It is assumed the water table will not be effected by the new construction. Here, the commission reasoned that under present site conditions, all sheet flow and sub-surface flow of water across the site is infiltrated into the soil and/or runs off the site. That water which is infiltrated may reach the water table. By constructing multiple rain gardens, the water flow will now be captured by these gardens, stored and then possibly reach the water table. The commission noted it did not feel determining the water table would provide any further significant information and it did not require the applicant to determine the water table level. Note that the state does not consider run-off from a driveway

polluted. Indeed, single family residences are exempt from the state Storm Water Guidelines. However, Marblehead does consider such driveway run-off as polluted. By directing this run-off into rain gardens, Marblehead considers this as a BMP capable of removing pollutants. All rain gardens must be constructed per the state guidelines (see Specifications for the MA Stormwater Handbook, Structural BMP's – Volume 2/Chapter 2, page 23).

Mr. J. Blanchette of Griffin Engineering, representing Mr. Halsted, reviewed the Griffin letter. Mr. Blanchette had not seen the revised site plan. The major concern of Mr. Halsted is possible increased run-off onto his property. Some of the points in the Griffin letter had been addressed by the revisions to the site plan. The concern regarding buffer zones was addressed by referring to the Haug memo of 15 May 2011. Other concerns are addressed in the foregoing text and/or will be addressed in the special conditions of the permit (assuming issuance at this time).

At various times, the chair recognized N. Greene who referred to his Review of Notice of Intent for 10 Mooring Road. A major concern for him was the FEMA map. He had been inadvertently advised by the chair that the commission would use the draft map. Based on this and other opinions from other sources (see Review of Notice of Intent for 10 Mooring Road by L. and N. Greene), he strongly urged the use of the draft map. As stated above, the commission decided otherwise. He also questioned the soils and had a drawing which showed a pond on the site. The current owner said she has lived there all her life and has no knowledge of a pond. The commission failed to obtain a copy of this drawing. The commission adhered to its position on the soils as explained above. Mr. Humphries, representing the Greene's, contested the definition of coastal bank as used by the applicant. He said the small stone wall used to define the coastal bank and top of bank is not a landform and does not represent the coastal bank. The commission countered it has defined seawalls as coastal banks for years and has had multiple permits issued based on seawalls as coastal banks. It accepted the definition as presented by the applicant.

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.

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.

XX. A revised site plan will be submitted to the commission. On this revision, the erosion control will be erected along the entire common lot line between 10 Mooring Road and 31

Bradlee Road. This control will extend around the rear corner of 10 Mooring Road for 15-20 feet.

XX. A revised site plan will be submitted to the commission. On this revision, the construction entrance/exit will be shown on the site plan and clearly marked on site. The clear passage of Mooring Road will be maintained at all times.

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.

XX. Before any landscape work is started, the applicant will submit to the commission a landscape plan. No landscape work can commence until the commission has approved the landscape plan.

**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. See Chapter 195, section II.C. of the Stormwater Management and Erosion Control Bylaw.

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.

XX. All rain gardens shall be constructed in accordance with the state guidelines (see Specifications for the MA Stormwater Handbook, Structural BMP's – Volume 2/Chapter 2, page 23). A maintenance plan for these gardens will be submitted to the commission for approval and must be recorded with this permit. Per the site plan, all rain gardens will be planted with salt tolerant plants.

**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.**

49. 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.**

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".**

**Community Preservation Act (CPA):** Appeared Kurt James to explain the purpose and goals of the CPA. All members voted to support the CPA.

#### **40-1153 10 CLIFF STREET McCARTHY**

Resource Area: Coastal Bank

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

Appeared: S. Patrowicz of Patrowicz Land Development Engineering; Ms. McCarthy

Control Drawings: Site Plan, 10 Cliff Street, Phyllis McCarthy, dated 10 October 2013, prepared by North Shore Survey Corporation

All work will be accomplished behind the currently existing retaining walls. 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.

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.**

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.**

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".**

#### **40-1135 (9 SARGENT ROAD) and 40-1136 (7 SARGENT ROAD)**

Refernece: email from D. Benoit of Hayes Engineering dated 28 October 2013

Appeared P. Ogren of Hayes Engineering. The commission had voted at its 10 October 2013 meeting to review the requested changes for the previously issued OOC's as amendments. These changes deal with moving existing rip-rap and driving on the beach. A letter from Attardo and Rotman (abutters) dated 13 November 2013 supported the changes. All members voted to close this hearing. All members voted to issue amended OOC's for 40-1135 and 40-1136 with the following special conditions. Note: the conflicting special conditions in the previously issued OOC's will be replaced with the following special conditions.

When the repair of a seawall entails the use of existing rip-rap which was previously located at the toe of the seawall but has been distributed onto the beach seaward of the seawall by wave action, the following applies. The rip-rap lying above the mean high tide line can be re-located to the toe of the seawall. The rip-rap lying at or below the mean high tide line cannot be disturbed. This special condition is not a surviving condition and is not valid for any other work than that specified for this particular permit.



The applicant must obtain permission from all affected property owners to cross their beaches and confirm said permission to the commission in writing before any work is started.

### **Old/New Business:**

**40-1095 Devereux Beach:** Haug sent the following email on 30 October 2013 to Brendan Egan:

Brendan.

Quoting from one of the special conditions of the permit 40-1095 covering the use of Riverhead (and Devereux) Beach: On occasion, organizations apply to the Marblehead Recreation & Parks Commission to stage events on the Riverhead and Devereux beaches. These events are generally of 1-3 day duration. This Order of Conditions will serve as a surviving condition to allow for such events of the aforementioned duration with the proviso that sixty (60) days prior to the event the Marblehead Recreation & Parks Commission reviews with and receives written approval (with special conditions if necessary) from the Marblehead Conservation Commission to conduct said event. The Marblehead Conservation Commission reserves the right to refuse approval for any event if conditions protecting the wetland cannot be fulfilled. If approved, no further permit is required and a written letter of approval referencing this Order of Conditions will suffice

If I understand your description of the work to be performed, the thatch hut will be brought onto the beach using a "condor". The hut will not be constructed on the beach but simply placed and erected there. Even though the 60 day notification period is not being met but because of the immediacy of this request, on behalf of the commission I give approval to proceed with this project with the one condition that the beach be left in the same condition pre- and post work. I will ask the commission at our 14 November meeting to post facto ratify my approval. This email will serve as the written letter of approval. Willy, please put this on the November agenda. Thanks.

The commission voted all in favor to approve this email.

**Marblehead Pipeline replacement:** All interested parties were invited to attend the site visit on 19 November.

**Lead Mills:** The commission voted all in favor to allocate an amount not to exceed \$1,200 for Lead Mills (3 granite posts (\$900), 1 chain with eyebolts (\$100), delivery (\$200). To be paid out of Fund 29, Project 523.

### **Enforcement Order:**

29 Neptune Road Katz: Appeared M/M Katz and J. Goldberg, atty. E.O. issued 27 September 2013. The commission voted 5 in favor, one abstaining of levying a fine of \$600.00 (\$300 for failure to obtain a permit and \$300 for unpermitted work for one day in a resource area).

### **Request for changes:**

**40-1077 174 Jersey Street Lyons:** Reference: Haug memo dated 10 October 2013 and email from C. Lyons dated 19 October 2013 with marked-up Plot Plan, 174 Jersey Street. All members voted to consider this a minor design change, not requiring an amendment.

**40-1140 7 Bradlee Road Trowbridge/O'Malley:** All members voted to ratify the decision of W. Lanphear as a minor design change not requiring an amendment.

**Request for COC:**

<b>40-1040</b>	All members voted to approve this COC.
<b>40-1063</b>	All members voted to approve this COC.
<b>40-1099</b>	All members voted to approve this COC.
<b>40-1071</b>	All members voted to approve this COC.
<b>40-1110</b>	All members voted to approve this COC.
<b>40-1005</b>	All members voted to approve this COC.
<b>40-0354</b>	All members voted to approve this COC.
<b>40-0585</b>	All members voted to approve this COC.
<b>40-0917</b>	All members voted to approve this COC.

The meeting adjourned at 10:10 PM.