

**Marblehead Conservation Commission
Minutes January 12, 2012**

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 Brian LeClair, Walt Haug, Fred Sullivan, Ken Fisher and David VanHoven. 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 of 12/08/2011: See below.

Discussion Items:

Open Space & Recreation Plan: Appeared R. French to explain the necessity of and procedure to be followed in up-dating the Plan of 1999. F. Sullivan volunteered to be a member of the committee to perform the up-dating.

Policy concerning fines: See below.

Executive Session: Held at 7:15 PM. See separate minutes.

40-1053 151 GREEN STREET MULDOON

Resource Area: BVW

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

Control Drawing: Green Street Condominiums, dated May 3, 2011, latest revision November 21, 2011 prepared by RIM Engineering

Reference: Stormwater Management for Green Street Condominiums, prepared by RIM Engineering, dated August 16, 2011, latest revision November 21, 2011. This document includes the Pre-development to Post-development Comparison (dated November 14, 2011).

Wetland Replication Methodology Report, dated October 10, 2011, prepared by ECR

Construction Phasing for Land Disturbance Permit (sheets 1-6), received October 13, 2011.

Application for a Land Disturbance Permit for Green Street Realty Trust, dated October 11, 2011, stamped by Ralph I. Maloon, RPE, RIM Engineering Co., Inc.

Homeowners Association Agreement (no date) included in RIM Engineering Co. letter to DEP/Gary Bogue dated November 23, 2011.

Appeared: Atty. P. Lynch

This was a continuance from 09/08/2011, 10/13/2011, 11/10/2011 and 12/08/2011. There still remains a question about the fee which will be resolved among W. Lanphear, W. Haug and P. Lynch (see W. Lanphear email to W. Haug, dated 11/07/2011, subject: 151 Green Street, John Muldoon, Land Disturbance Permit). The consultant for the peer review is Eggleston Environmental (Lisa Eggleston) and she is currently performing the review. A site visit with her and W. Lanphear is scheduled for Wednesday, 18 January 2012 at 1:00 PM. A motion was made and seconded "to continue this hearing to 9 February 2012". All members voted in the affirmative.

40-1058 20 CROWNINSHIELD ROAD MURPHY/SOLOMON

Resource Area: Coastal Bank

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

Control Drawing: Site Plan, #20 Crowninshield Road (4 sheets), dated October 28, 2011, latest revision 12/28/2011, prepared by North Shore Survey Corporation and Patrowicz Land Development Engineering.

Appeared: S. Patrowicz of Patrowicz Land Development Engineering and K. Murphy

Reference: Letter from Patrowicz Land Development Engineering, dated October 28, 2011
Letter from Geo/Plan Associates, dated November 18, 2011

This was a continuance from 11/10/2011 and 12/08/2011. The site plan has been revised to eliminate any work or incursion into the No Disturb Zone (NDZ). The silt fence will be used to establish the limit of work at/outside the NDZ. The site plan will be revised to include cross sections of the finally approved rain gardens along the two semi-circular stone walls. All members voted to close this hearing. All members voted to issue an OOC with the following special conditions.

Pre-construction:

The site plan will be revised to include cross sections of the finally approved rain gardens along the two semi-circular stone walls. This will be submitted to the commission for approval before and work is started.

The silt fence will be used to establish the limit of work at/outside the NDZ.

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.

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 or streets.

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 will 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 will 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.

46. The No Disturb Zone will be permanently "marked" using seaside plantings and boulders to insure no inadvertent encroachment into this zone. All owners (current and future) of the property are required to maintain the permanent "marking". This condition shall survive this order.

47. 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.

49. This OOC specifies rain gardens and other plantings to minimize any surface run-off of lawn chemicals, etc. into resource waters. After these have been planted, at the end of the second growing season, the applicant must submit a report to the commission evidencing that the plantings have reached a minimum 75% survival rate. If the 75% rate has not been achieved, the applicant will re-plant/replace all non-surviving plants at the start of the third growing season and verify such replanting by appropriate evidence to the commission. These reports are mandatory even after a COC has been issued. After the third growing season, the maintaining of a 75% survival rate, but not the reporting, is a surviving condition.

50. If the control drawings for this project were prepared and stamped by a licensed Professional Engineer, licensed Professional Land Surveyor, licensed Professional Architect or licensed Professional Landscape Architect, the construction of this project shall be regularly inspected by said licensed professional to insure that the project complies with the control drawings. 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 drawings and setting forth any deviations that may exist between the completed work and the plans approved the Conservation Commission.

51. 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".

40-1060 34 CRESTWOOD ROAD BLANEY

Resource Area: Coastal Bank

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

Control Drawing: Site Plan, #34 Crestwood Road, Blaney, dated December 27, 201, prepared by Kane Land Surveyors

Appeared: W. Manuell of Wetlands Land Management, Inc.

Reference: Memo dated 19 December 2011 as follows: On 19 December 2011 Bill Manuell met with W. Lanphear and W. Haug on the subject site to review the resource areas on this site and general intended reconstruction of the dwelling. We all agreed on the Top of Coastal Bank. It starts with the curved wall around the pool and extends around the tennis court. We told Bill to keep the new, proposed deck out of the No Disturb Zone (NDZ). This applies only to that section of the deck that abuts the pool area. The remainder of the proposed deck and addition is outside the NDZ. ~~The applicant wishes to re-build the pool which is in the NDZ. This area is already disturbed because of the pool and its surrounding cement patio. This area will not be increased.~~ We told Bill there cannot be any clear cutting on the coastal bank. Vista pruning only. *(The pool will not be rebuilt. 01/12/2012).*

Lanphear reminded Manuell of his observations regarding the poor condition of the stone retaining/seawall and suggested this be addressed. 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.

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 or streets.

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 will be constructed as permeable surfaces to allow water to infiltrate through their surfaces into the ground on site.

35. All demolition debris will 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 will 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 of existing stone masonry walls including the replacement of occasional, missing stones in the wall is allowed as a surviving condition to the Order of Conditions. 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. The future razing, any rebuilding of entire wall sections or enlarging of the subject wall(s) will require the filing of a new Notice of Intent. This condition shall survive this order.

42. When a pool/spa/hot tub is to be drained, no chlorine or other chemicals are to be added to the pool water for a period of at least four (4) days prior to draining to allow for the chlorine and other chemicals to dissipate; and there shall be an appropriate sign placed permanently at or immediately adjacent to the pool/spa/hot tub drainage valve or mechanism indicating this requirement. The method of pool drainage shall be such as to prevent any soil erosion by the draining water and to allow the draining water to seep into the ground prior to entering any resource waters. No direct discharge to resource waters is allowed. This condition shall survive this order.

47. 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.

50. If the control drawings for this project were prepared and stamped by a licensed Professional Engineer, licensed Professional Land Surveyor, licensed Professional Architect or licensed Professional Landscape Architect, the construction of this project shall be regularly inspected by said licensed professional to insure that the project complies with the control drawings. 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 drawings and setting forth any deviations that may exist between the completed work and the plans approved the Conservation Commission.

51. 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".

40-1024 1 NAHANT STREET CORINTHIAN YACHT CLUB

Resource Area: Coastal Bank

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

Control Drawing: Corinthian Yacht Club New Pool, 1 Nahant Street, dated 03/15/2010, latest revision 07/27/2011, prepared by Hayes Engineering, Inc. Also, drawing, "Section at Existing Seawall – F/S-200", no date or preparer is listed. Revised Grading Plan, Corinthian Yacht Club, dated December 8, 2011, latest revision December 21, 2011, prepared by Hayes Engineering, Inc.

Reference: Letter from Hayes Engineering dated December 21, 2011
Memo dated 20 December 2011

Appeared: R. McCann, atty., R. Hastings, Mgr. CYC and P. Ogren of Hayes Engineering

Note that the drawing, Revised Grading Plan, supersedes the drawing, Corinthian Yacht Club New Pool. The new drawing reflects a change, viz. an increase in the elevation of the pool surface and seawall (due to an error in bench marks). The change was advertised as an amendment to preclude the necessity of holding a preliminary review with the commission wherein the commission would decide on the magnitude of the change and its potential effect on the resource area – a change versus an amendment versus a new NOI. The referenced letter from Hayes answered the questions posed in the memo dated 12/20/2011 regarding any additional impacts to the resource area. The commission concluded there would be no additional negative impacts. Due to the change regarding the seawall (a resource area), an additional fee is required. This amounts to \$370.00 to the commission. All members voted to close this hearing. All members voted to issue an amended OOC to allow the increased height of the seawall and pool elevation. No new special conditions were imposed and all other original special conditions remain valid.

Old/New Business:

Approve Minutes: All members voted to approve the minutes of 12/08/2011.

Enforcement Order: 210-218 Humphrey Street: Morgan Gager of Crowninshield Management Corp. appeared to discuss the Enforcement Order (E.O.). He was only marginally aware of the violations and was not able to provide any answers or commitments for fulfilling the E.O. He was told to engage a person/firm with knowledge of environmental issues and immediately install the temporary measures delineated in the E.O. and then to address the permanent solutions. The commission told him to impress on the property owners the on-going fines accruing at \$300.00 per violation per day and to inform the owners they or authorized representatives must appear before the commission. This current E.O. represents the second violation at this site. The commission will document this in writing to the owners of the property. All members voted to approve the E.O.

Requests for COC:

40-1012 8 Corn Point Road: The commission voted to approve this COC.

40-789 210-218 Humphrey Street: The owner discovered the lack of a COC and applied. The commission voted to approve this COC without fine.

40-1016 6 Foster Street: The commission voted to approve this COC.

Sign Documents: All documents per the agenda were signed.

Executive Session: See above.

Other:

Gerry Island: At the February meeting, the commission will decide on the amount of fine with regard to the goat Enforcement Order. The commission should also entertain engaging a consultant at the very beginning of any future NOI's dealing with Gerry Island.

40-1049 40 Ticehurst Lane: K. Reily appeared asking how to apply for a fence on top of her new deck. She was told to submit a drawing showing the fence and that the commission, at its next meeting, might review this as a change to 40-1049, not requiring an amendment.

Fines Guidelines: As another attempt to further make the fines more predictable and objective and to help applicants better understand the ramifications of violations, the commission voted to use the following additional guidelines for fines.

Violations in Buffer Zones and Resource Areas

<u>DAY</u>	<u>ACTION</u>
1	Violation is committed
2	Violation is repeated (see Note 3)
5	ConCom becomes aware of violation
8	ConCom issues E.O.
20	Hearing is held, remediation is defined Does violation continue to degrade (damage) a resource area? (a) If degrading continues, a daily fine from day 8 until the E.O. is fulfilled. (b) If degrading does not continue, a fine only on day 8.
30	Violator does not completely fulfill the E.O. and <u>does not</u> request an extension in writing stating reasons. For (a), the daily fine continues until the E.O. is fulfilled. For (b), the daily fine is retroactively applied from day 8 and continues until the E.O. is fulfilled. Violator begins remediation but does not completely fulfill the E.O. and <u>requests</u> an extension in writing stating reasons. For (a), the daily fine continues until the E.O. is fulfilled. For (b), only one extension may be granted for a maximum of 30 days.

Notes:

1. The reference to a day “number” is to show a sequence of time and does not necessarily reflect the actual timing of a certain event.
2. An extension may be granted by the commission at its discretion. For all E.O.’s, only one extension may be granted for a maximum of 30 days.

3. If it can be proven that the violation occurred on more than one day (example: clear cutting over 2 days), the fine will apply for each of these days and this 2-day fine amount will continue to apply until the E.O. is fulfilled.
4. The above guidelines do not take into consideration the seriousness of the violation and the damage it does/may do to the wetlands. Such considerations may increase the amount of the fine.
5. These fines are in addition to the administrative fines.

Definitions/Examples:

No continuing Degradation:

A coastal bank has been clear cut but no erosion has started.

Continuing Degradation:

A seawall has been dismantled allowing foreign matter and/or pollution (lawn chemicals, herbicides, etc.) to flow into a resource water.

The meeting was adjourned at 9:30 PM.