

**Marblehead Conservation Commission
Minutes November 8, 2012**

Meeting was held in the lower conference room at the Mary A. Alley Building, 7 Widger Road

Meeting was called to order at 7:00 PM

Present were: Commission Members 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.

Executive Session: The commission voted to go into executive session to discuss legal matters with Town Counsel, Lisa Mead. After said discussions, the commission voted to exit executive session and commence with the hearings. Separate minutes are available for the executive session.

Approve Minutes: see below

Discussion Items: Minor Activity Permit: see below

40-1094 5 WOODFIN TERRACE TOWN LANDFILL/TRANSFER STATION

Resource Area: Stream Bank, BVW, IVW and LUW

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

Control Drawing: Landfill Closure and New Transfer Station Construction Project, dated September 2012, prepared by Kleinfelder

Reference: Memo from Amy Green Environmental Consulting dated October 29, 2012
Letter from Eggleston Environmental dated October 30, 2012
Letter from Kleinfelder dated November 8, 2012

Appeared: A. Petty of M'hd Board of Health, L. Mead, ass't Town Counsel and S. Wright and R. Kennealy of Kleinfelder

This was a continuance from 10/11/2012. Wright and Kennealy gave an overview of the wetland and drainage issues on the site and the manner in which these issues are being addressed. The referenced Kleinfelder letter responds to the questions with regard to these issues as raised in the referenced letters from Green and Eggleston. These individuals remain in contact and have set a

date of November 21, 2012 to resolve these questions in preparation for the December meeting of the commission.

Wright and Kennealy met with a representative of the Army Corps of Engineers (ACE) on site on 10/31/2012. A report from this representative is expected within the next few days and will be incorporated in addressing the aforementioned questions from Green and Eggleston. The matter of "enhancement" of wetlands was raised by the commission. Wright said Kleinfelder has discussed enhancement with Rachel Freed of DEP and with the ACE representative and they expressed agreement that enhancement of wetlands can be considered in determining restitution of destroyed wetlands. For this application, enhancement will entail the removal of invasive plant species in an area of wetlands and done in such a manner as to prevent the return of said plant species. All members voted to continue this hearing to December 13, 2012.

Discussion: 40-1095 RIVERHEAD /DEVEREUX BEACHES M'HD REC. & PARK

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

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

Control Drawing: Plan of Proposed Activity Areas at Riverhead Beach and Devereux Beach, dated September 19, 2012

Appeared: B. Egan of M'hd Rec. & Park

Egan requested that some (8-10) small boats be allowed to be stored in a designated area at Devereux Beach. This had been included in the discussions from the previous hearing on 10/11/2012 but was inadvertently omitted from the special conditions. All members voted to review this as a "minor design change" (not an amendment) and include this with the special conditions along with some other minor changes to the special conditions. The changed special conditions should now read:

Except to the extent necessary for the hauling/launching of the floats, there shall be no driving on the beach except as follows: (1) contracted firms for launching and hauling of floats, spring and fall only, and (2) the Marblehead Recreation & Parks Commission for cleaning the beach and for re-distributing sand. Floats are to be hauled/launched using only the ramp.

No cleaning, scraping, painting, maintenance of boats is allowed. During the boating season, only short term (2-3 days) parking of boats is permitted in the immediate vicinity to the boat ramp immediately before/after launching/hauling is allowed. Winter storage (storage only) of non-commercial boats is allowed on a "space available" basis and only within the designated storage area.

Any scraping of portions of floats (example: float logs) with bottom paint shall be done only over tarps, scraping is to be done only by hand in the designated areas and the scraped material shall be cleaned off the tarps daily and the scrapings disposed of in a proper manner for materials which include bottom paint.

RDA 100 OCEAN AVENUE RESNICK

Resource Area: Land Subject to Coastal Storm Flowage

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

Control Drawing: Plan for Proposed Fence, 100 Ocean Avenue, dated July 23, 2012

Appeared: Ms. Resnick

Reference: Haug email to Resnick 23 July 2012

This was a continuance from 08/09/2012, 09/13/2012 and 10/11/2012. The commission reiterated its concern about the fence becoming a flying object during severe ocean storm events. Ms. Resnick said the length of the proposed fence along Ocean Avenue will be removable, the length at the end facing the beach will be chain link and the length in between these ends will be a wooden fence about six feet tall with a separation of 6-8 inches between the ground and the fence along this entire length. Based on this design, all members voted to close this hearing and voted to issue a negative determination with no special conditions.

RDA 24 LEE STREET BUILDING D, UNIT 6 THIBODEAU

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

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

Control Drawing: Site Plan for Request for Determination, 24 Lee Street, Building "D", Unit 6

Appeared: S. Thibodeau

The location of the proposed work lies behind the Top of Coastal Bank and is in LSCSF. All members voted to close this hearing. All voted to issue a negative determination with no special conditions.

40-1098 28 FOSTER STREET KATE/KELLOG

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

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

Control Drawing: Site Plan for NOI, 28 Foster Street, dated 10/14/2012, prepared by Patrowicz Land Development Engineering

Appeared: S. Patrowicz, R. McCann, atty., and Kate Kellog

Only the proposed deck is within the 100 ft. buffer zone. All members voted to close this hearing. All members voted to issue an OOC with the following special conditions.

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.

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.**

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. **This condition shall survive this order.**

50. 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.

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"**.

RDA 40 BARTLETT STREET ROSENTHAL

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

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

Control Drawing: Site Plan, Locus 40 Bartlett St., dated 10/12/2012, prepared by Patrowicz Land Development Engineering

Appeared: S. Patrowicz

Patrowicz withdrew this RDA application in favor of the NOI.

40-1099 40 BARTLETT STREET ROSENTHAL

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

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

Control Drawing: Site Plan, 40 Bartlett St., and dated 10/12/2012, prepared by Patrowicz Land Development Engineering

Appeared: S. Patrowicz

A dustless sander will be used to sand the existing deck, thereby containing any possible toxic material from entering the atmosphere or the resource waters. All members voted to close this hearing. All members voted to issue an OOC with the following special conditions.

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.

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.**

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".**

RDA 54 EVANS ROAD PETTY

Resource Area: BVW

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

Control Drawing: Plot Plan of Land, 54 Evans Road, dated 09/08/2010, prepared by North Shore Survey Corp.

Appeared: Andrew Petty

A discussion ensued regarding the fence and a ground separation for small animal migration. One side of the property already has a stockade fence without any such separation. This existing fence, in essence, acts as a barrier for such migration along that side of the property. Therefore, the requirement for a separation under the proposed fence did not seem appropriate. All members voted to close this hearing. All members voted to issue a negative determination without any special conditions.

40-1100 81 FRONT STREET TOWN WHARF REATLY TRUST

Resource Area: Coastal Bank and Coastal Beach

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

Control Drawing: Proposed Work by North Shore Marine, dated 10/15/2012 and Existing Conditions, 81 Front Street, dated 10/11/2012, prepared by North Shore Survey Corp.

Reference: Email from N. Tay Evans of MA Division of Marine Fisheries, dated 11/06/2012

Appeared: B. Grader and Jeff Tucker of Walter Jacobs Architecture

The Evans letter had no resource concerns. The commission had questions regarding the description of the proposed work as regards the pilings. Grader said he would provide the required description. All members voted to close this hearing. All members voted to issue an OOC with the following special conditions.

Pre-construction:

Prior to the start of any work, the applicant will submit a drawing to the commission showing the details of the new pilings construction.

During construction:

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.

37. The construction of the pier/dock and any structure over the water permanently secured to the earth shall withstand a 100-year storm without damage to the integrity of the structure. All piers/docks shall conform to the requirements of Chapter 91.

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:

50. 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.

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"**.

Approve Minutes: All members voted to approve the minutes of October 11, 2012 as originally written and to add the corrections/changes as requested by the chair.

Old/New Business:

91 Naugus Avenue Beach: Appeared L. Lesard and G. Riskin of the Naugus Head Association. Haug had earlier met with them at the beach to discuss the concerns of the commission about boat/float storage, etc. They were told to submit an NOI.

Request for changes in project scope:

40-1074 12 Coolidge Road: C. Young of Wetlands Preservation Inc. submitted his memo dated 11/01/2012 and the drawing, Riccio Residence, 12 Coolidge Rd., Landscape Plan, latest revision 10/30/2012. Per this revised drawing, the house will be moved two feet closer to 10 Coolidge Road, maintaining the same separation to the street (the house will not be closer to the coastal bank). The location of the pool and gazebo will not change. Except for the landscaping directly abutting terrace no. 1 (which is partially within the 25 ft. No Disturb Zone), there will be no change to the landscaping in the rest of the 25 ft. NDZ or on the coastal bank. All members voted to review this as a minor design change, not requiring an amendment.

40-1095 Riverhead/Devereux Beaches: see above

RDA Boston Yacht Club: An RDA was issued to the BYC in April 2012. P. Lausier of the BYC requested that the replacement of roof gutters be included under this RDA. All members voted to include the replacement of roof gutters under the current RDA.

Request for COC:

40-897 26 Nonantum Road: This request was not addressed.

The meeting adjourned at 10:15 PM.