

**Marblehead Conservation Commission  
Minutes April 15, 2010**

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, Brian LeClair (arrived at 8:00 PM), Craig Smith, Don Tritschler and Deb Payson . Also present was Willy Lanphear, Conservation Administrator and Jan Smith, Assoc. Member.

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:** The minutes of 03/11/2010 were approved by the four present members at this time of the meeting.

**Old/New Business:**

**40-888 Glover Landing:** Appeared Charlotte Garber, Manager of The Glover Landing Condominium Trust. She requested in her letter dated March 31, 2010 an extension of their current OOC to August 10, 2011. This letter included a list of all work projects conducted by the Trust in the years 2007-2008, 2008-2009 and 2009-2010 thus fulfilling the requirement of the original OOC. Garber also submitted a list of all proposed work for 2010-2011. **All members voted to extend the OOC to August 10, 2011.** Since the work lists had not been submitted for the years 2007-2010 per the original conditions of the OOC, a fine was levied for each delinquent list as a violation of the OOC. The fine was \$300 per violation for a total of \$900.

**40-923 12 Crowninshield Road:** Appeared Katherine Bradford. Bradford requested a one year extension to this OOC to June 14, 2011. **All members voted to extend this OOC to June 14, 2011.** Bradford will appear again before the commission with a final, consolidated landscape plan for this site (40-903 and 40-923).

**40-990 75 WEST SHORE DRIVE, TOWER SCHOOL AND MARBLEHEAD WATER & SEWER DEPT.**

Resource Area: BVW, Land Under Water Body, Riverfront

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

Appeared: Peter Ogren of Hayes Engineering, Inc.

Control Drawing: Brook Channel Maintenance, Tower School/Marblehead

This was a continuance from 02/11/2010 and 03/11/2010. Ogren said his firm was still working to provide the information required by the state and the commission and asked for a continuance to May 13, 2010. **All members voted to continue this hearing to May 13, 2010.** The commission asked Ogren to provide documented evidence (1) that the premise of the Tower School is correct, I.e, the ground water level is rising [include measurable data] and (2) that the abutting neighbor through whose property the stream also courses has been notified of this application. Further, the commission said that, based on its contacts with the Marblehead Water & Sewer Department, the only interest of this department is to clean the three conduits through which the stream flows. Finally, the commission reminded Ogren that any work on the stream must not alter the BVW through which the stream flows.

**Requests for COC:**

**40-611 1 Little Harbor Way National Grid:** All members voted to approve this COC.

**40-726 1 Little Harbor Way National Grid:** All members voted to approve this COC.

**40-971 21 Sargent Road Stephenson:** All members voted to approve this COC.

**40-991 27 NAUGUS AVENUE, SYMES ASSOCIATES, INC.**

Resource Area: BVW

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

Appeared: Peter Ogren of Hayes Engineering, Inc.

Control Drawing: Intervale Road & Naugus Avenue, dated February 17, 2010, prepared by Hayes Engineering, Inc.

This NOI for phase I was submitted concurrently with the application for a Land Disturbance Permit (LDP) for the same phase I site. This submission is for phase I of the project with phase II to follow immediately. A final permit for phase I, if issued, will be in the form of a single Order of Conditions and will cover both permits for the Wetlands Protection Act and the LDP.

The commission pointed out that lot number 3 requires a fee of \$50 with it. Even though no work is planned on the section of this lot which is in the 100 ft. buffer zone, an RFD would have been performed on this lot if it were presented to the commission as a “stand alone” lot. The applicant will pay this \$50 fee.

The commission then turned to the “Erosion and Sedimentation Control - Intervale Road” section contained in the NOI. Page 4: Part 4 A. *Workers will avoid foot traffic in the No Disturb Zone and no vegetation will be disturbed in this zone.* This will become one of the

special conditions.

Page 4: Part 4 C 1. *On sediment producing areas in the buffer zone, where the expected period of exposure will be more than 30 days, these areas will immediately be covered with annual rye after initial exposure.* This will become one of the special conditions.

Page 5: Part 4 C 2. *In the No Disturb Zone, no permanent type cover will be applied since this area will not be disturbed.* This will become one of the special conditions.

Another special condition will be that landscape plans for lots 1, 2 and 3 are required for approval by the commission before any landscaping work is started.

With regard to the WPA permit, the commission stated it has no issues with lots 1 and 2. Per the control drawing, all structures are outside the 50 ft. No Build Zone. Note: the commission considers the below ground "Cultec" infiltration basin on lot 1 located outside the NDZ but within the NBZ to be acceptable for purposes of the local bylaw.

The commission noted from the control drawing that there is proposed a shallow lawn swale directing overland water flow from lots 2, 3 and 4 into the BVW at spot elevation 34x8. The commission requested some sort of BMP to minimize/eliminate the introduction of nutrients/lawn chemicals into the BVW.

With regard to the LDP, the commission required that a peer review be made of the Storm Water and Erosion Control plans. This will be a single review incorporating phases I and II. In addition, an independent delineation of the wetland boundaries will be made. Costs for both reviews will be borne by the applicant. An initial joint meeting will be held among the consultant, the applicant and the commission representative to define the review process and contents. The commission will solicit a minimum of three bids.

From the audience, Owen McKenna presented a letter dated April 15, 2010 signed by multiple residents on Edgemere Road.

Gerald Michaud wanted confirmation that the wetlands had been flagged by an independent wetlands specialist. (The flagging was done by Seekamp Environmental Consulting, Inc. in December, 2009.)

Edward Harvey requested a second, independent flagging of the wetlands.

S. Klocker asked if the antenna and its foundation will be removed (it will) and if the copper ground plane for the antenna will be removed (to be determined).

A possible set of special conditions for an OOC might include the following.

**Pre-construction:**

25. This project involves the disturbance of 40,000 square feet or more of land and as such

requires a Land Disturbance Permit under the Town of Marblehead Stormwater Management and Erosion Control Bylaw, Chapter 195 of the Marblehead Code. This OOC, therefore, constitutes said Land Disturbance Permit as well as the necessary permit under the Massachusetts Wetlands Protection Act and the Marblehead Wetlands Protection Bylaw.

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

27. 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.

28. 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:**

*Workers will avoid foot traffic in the No Disturb Zone and no vegetation will be disturbed in this zone.*

*On sediment producing areas in the buffer zone, where the expected period of exposure will be more than 30 days, these areas will immediately be covered with annual rye after initial exposure.*

*In the No Disturb Zone, no permanent type cover will be applied since this area will not be disturbed.*

29. 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.).

30. 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

31. All demolition debris will be removed from the site ASAP and not stored within a resource area or a buffer zone. If a dumpster is used to contain the debris, the dumpster shall be covered. The debris shall be properly disposed of in accordance with applicable federal, state and local regulations.

32. All construction material will be stored outside the resource area and its buffer zone or as far back from the resource areas as possible.

34. Any pressure-treated wood proposed to be used in the construction of a structure for land - based use shall be arsenic-free.

Landscape plans for lots 1,2 and 3 are required for approval by the commission before any landscaping work is started.

**Post-construction/in perpetuity:**

36. 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 Lawncare 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.

42. The No Disturb Zone will be permanently marked in an appropriate manner on site to insure no inadvertent encroachment into this zone. The current owner of the property is required to maintain the permanent marking. This condition shall survive this order.

43. 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).

46. Upon completion of the work allowed under this Order of Conditions, the applicant shall within 30 days apply for a Certificate of Compliance (COC) and, if required by the commission, submit an "as built" drawing (signed and stamped by a Registered Professional Engineer) with the application for the COC. Failure to submit said application within 30 days may result in a fine issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E

**With the consent of the applicant, all members voted to continue this hearing for the WPA and the LDP to May 13, 2010.**

**RDF 425/429 OCEAN AVENUE PETER & CAROLYN LYNCH**

Resource Area: Coastal Bank

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

Appeared: Attorney Robert McCann, H. Kokinos and John Dick of Hancock Associates

Control Drawing: As submitted with the RFD.

This is for the temporary set up of tents for a wedding. A similar application for the same site was made July 13, 2006. The same conditions will apply, in particular,

**Pre-construction:**

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

28. 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. 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:**

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 Lawncare 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.

Neither the work nor the areas will impact the resource areas. **All members voted to issue a negative determination.**

**40-982 425/429 OCEAN AVENUE, PETER & CAROLYN LYNCH**

This NOI was withdrawn by Attorney Robert McCann since the RFD above was voted as negative.

**RFD 2 LIBERTY LANE, LAWRENCE SORGI**

Resource Area: Coastal Bank

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

Appeared: Lawrence Sorgi and Bruce Poole of SP Engineering

Control Drawing: 2 Liberty Lane, Site Plan, dated 03/29/2010, prepared by SP Engineering -

Technology dated March 29, 2010.

The RFD application stated in error that the commission will review the delineation of the resource area. The area proposed for the deck is already disturbed (lawn). The deck will be constructed with open planking and will sit on Sonotube supports. The ground under the deck will be leveled and a bed of crushed stone will be deposited under the deck thus preventing any erosion from under the deck. **All members voted to issue a negative determination with the following special conditions.**

Special Conditions:

1. This Determination of Applicability is issued under the Wetlands Protection Act and its Regulations (MGL Chapter 131, Section 40 and 310 CMR 10.00 et. seq.), and under the Town of Marblehead Wetlands Protection Bylaw (Marblehead Bylaws Chapter 194) and its Regulations (Wetlands Protection Bylaw Regulations for Administering Marblehead Bylaws Chapter 194, Sections 194-1 through 194-14).
2. The project shall be performed in accordance with the Final Approved Plans and Other Documents referenced in the Determination, except as the project may be altered or amended by these Special Conditions.
3. The project shall be performed in accordance with the representations made by the applicant and his/her representative(s) and in accordance with the requirements of the Marblehead Conservation Commission, all as reflected in the public hearing record as documented in the minutes of the Marblehead Conservation Commission, except as the project may be specifically altered or amended by these Special Conditions.
4. These Special Conditions relate equally to both the Wetlands Protection Act and the Marblehead Wetlands Protection Bylaw unless herein indicated otherwise.

Pre-construction:

5. A revised control drawing will be submitted for approval before any work is started. The revision will show a bed of crushed stone under the deck.
6. All special conditions are to be included in the construction contracts between the applicant and his/her contractor.
7. 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.
8. 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:**

9. 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.).
10. 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
11. All demolition debris will be removed from the site ASAP and not stored within a resource area or a buffer zone. If a dumpster is used to contain the debris, the dumpster shall be covered. The debris shall be properly disposed of in accordance with applicable federal, state and local regulations.
12. All construction material will be stored outside the resource area and its buffer zone or as far back from the resource areas as possible.
13. Any pressure-treated wood proposed to be used in the construction of a structure for land - based use shall be arsenic-free.
14. 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).

### **40-997 33 CLIFTON HEIGHTS LANE, JOHN PAYNE**

Resource Area: Coastal Bank

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

Appeared: Scott Patrowicz of Patrowicz Land Development Engineering

Control Drawing: Existing Conditions Plan, 33 Clifton Heights Lane, Property of Robert & Gail Dale, dated April 5, 2010, prepared by North Shore Survey Corporation. Site Layout Plan, Payne Residence, latest revision 04/14/2010, prepared by Hutker Architects.

No discussion was held at this time. A site visit is planned for Saturday, May 8 at 1:00 PM. **All members voted to continue this hearing to May 13, 2010.**



## **40-995 VILLAGE SCHOOL, MARBLEHEAD SCHOOL COMMITTEE**

Resource Area: BVW

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

Appeared: Elizabeth Galloway and Jamie Warren of SMMA

Control Drawing: Marblehead Village School, Site Plan, sheets C1.1, C1.2 and C2.0, no date, prepared by Symmes, Maini & McKee Associates, Inc.

The main concern with this application is storm water control. The commission review focused on the Stormwater Management Plan (Section Three of the NOI).

Standard 1: The DEP wetland regulations refer only to “new” storm water conveyances. The Marblehead wetland regulations (Chapter 194 section 5.7) refer to “no” storm water conveyances, existing or new. This current NOI was preceded by 40-968 and, in conjunction with 40-995, all storm water conveyances satisfy section 5.7.

Standard 2: ok

Standard 3: ok

Standard 4 (a): ok

Standard 4 (b): ok

Standard 4 (c): SMMA has specified a TSS removal efficiency of 77% for subcatchment 1. However, by cleaning the existing deep hooded catch basins within this subcatchment, and with the already proposed Stormceptor treatment unit, the TSS 80% requirement can be met.

Standards 5, 6, 7, 8, 9, and 10: All ok.

SMMA requested permission to replace certain sidewalks but without increasing any impervious surface.

All members voted to close this hearing. **All members voted to issue an OOC with the following special conditions.**

### **Special Conditions:**

19. This Order of Conditions is issued under the Wetlands Protection Act and its Regulations (MGL Chapter 131, Section 40 and 310 CMR 10.00 et. seq.), and under the Town of Marblehead Wetlands Protection Bylaw (Marblehead Bylaws Chapter 194) and its Regulations (Wetlands

Protection Bylaw Regulations for Administering Marblehead Bylaws Chapter 194, Sections 194-1 through 194-14). As such this Order constitutes a wetlands permit both under the Act and under the Bylaw.

20. The project shall be performed in accordance with the final approved plans and other documents referenced in Attachment A to this Order of Conditions, except as the project may be altered or amended by these Special Conditions. Any deviation from this Order of Conditions and the approved construction plan/s and documents requires authorization from the Conservation Commission prior to implementation. Any deviation from the approved construction plans and documents commenced prior to authorization is subject to a fine of up to \$300 per day, issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E.

21. The project shall be performed in accordance with the representations made by the applicant and his/her representative(s) and in accordance with the requirements of the Marblehead Conservation Commission, all as reflected in the public hearing record as documented in the minutes of the Marblehead Conservation Commission referenced in Attachment A to this Order of Conditions, except as the project may be specifically altered or amended by these Special Conditions.

22. These Special Conditions relate equally to both the Wetlands Protection Act and the Marblehead Wetlands Protection Bylaw unless herein indicated otherwise.

23. In accordance with General Condition No. 9 contained in this Order of Conditions, the applicant shall record this Order at the Registry of Deeds and shall submit the recording information to the Conservation Commission on the form for said information found at the end of the Order prior to the commencement of any work authorized by this Order. Failure to submit said recording information prior to the commencement of work may result in a fine of up to \$300 per day issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E.

24. Prior to any work authorized by this Order, a sign (1'x 2') shall be displayed in a conspicuous place at the site with the words **"DEP File 40-995"**

25. 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.

**Pre-construction:**

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

27. 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.

28. 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:**

29. New sidewalks to replace existing sidewalks are approved. There will be no increase in impervious surface by this replacement.

30. 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.).

31. 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:**

32. Upon completion of the work allowed under this Order of Conditions, the applicant shall within 30 days apply for a Certificate of Compliance (COC) and, if required by the commission, submit an “as built” drawing (signed and stamped by a Registered Professional Engineer) with the application for the COC. Failure to submit said application within 30 days may result in a fine issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E.

**Old/New Business:**

**Approve Minutes:** see above

**Requests for Extension:** see above

**Requests for COC:** see above

**Emergency Orders:**

**8 Ferry Lane:** A narrative was received from Charlie Delfarro, Marblehead Harbor Master describing the repairs made on the sink hole in the parking lot. No NOI was filed since the actual work was in the 25 ft. No Disturb Zone and not on the seawall itself.

**Other Matters:**

**40-979 12 Goldthwait Road Burke:** Appeared Attorney Robert McCann, Jeff Whitmore and William (Twig) Burke. See the report from SP Engineering, Inc. dated March 17, 2010. The chair explained he had read the report multiple times and was not sure of the conclusions of the report. After discussion, it was agreed that the applicant would conduct further ground water sampling and submit a report of the results prior to the issuance of a Certificate of

Compliance. The required samples will be taken inside the catch basin located in Phillips Street, of water emanating from the outlet pipe coming from the drain manhole in the driveway. This sampling is to take place over three days at a mid tide level. In addition, the applicant will submit a cross section drawing showing how the drains run from the foundation to the manhole thence to the street catch basin on Phillips Street.

**40-983 7 Mooring Road Nathaniel Greene:** Appeared Attorney Robert McCann, Louisa Greene and John Fitzgerald . The applicant submitted a drawing, "X/SPX, MAIN DRAIN" showing the system for equalizing the hydraulic pressure inside and outside the proposed pool. In the event of ocean flooding, a relief valve in the system opens to allow outside water to enter the pool and thus maintain an equilibrium between water pressures. This system was approved by the commission for the Eastern Yacht Club in 2008. The commission accepted this system as fulfilling special condition no. 28 of OOC 40-983.

The meeting adjourned at 10:35 PM.