

Marblehead Conservation Commission
Minutes October 14, 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, Deb Payson, Don Tritschler and Craig Smith. 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: A motion was made and seconded to approve the minutes of 09/09/2010. All voted in the affirmative.

Sign Documents: All documents per the agenda were signed.

Discussion Items:

40-984 Crocker Park: The commission agreed that the containment system to be used by the Marblehead Recreation & Park Department at Crocker Park in repairing the landing on the harbor will be reviewed by W. Lanphear for his approval.

40-930 485 Lafayette Street (Lead Mills): The commission was asked to review the following drawings/documents. (1) Wyman Woods Existing Planting Plan by Woodard & Curran, dated October 2010, (2) Wyman Woods Restoration Plan by Woodard & Curran, dated October 2010 and (3) Wyman Woods Tree Inventory by Woodard & Curran, dated October 2010. All members voted to approve these plans.

40-1010 100 HARBOR AVENUE - DOHERTY, III (Pessolano)

Resource Area: Coastal Bank and Beach

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

Appeared: Scott Patrowicz of Patrowicz Land Development Engineering and Kevin Pessalano of Groom Construction Co. Inc.

Control Drawing: Site Plan, Repair and Maintenance of an Existing Seawall, 100 Harbor Avenue, prepared by Patrowicz Land Development Engineering, dated August 24, 2010. See

also a hand-drawn sketch of the proposed capping of the seawall and a hand-written note by Groom Construction, Inc., both dated 08/23/10, entitled: Doherty Seawall Repairs.

This was a continuance from 09/09/10. DEP had “No Comments”. Patrowicz submitted a revision of the above mentioned hand-drawn sketch (revised 10/05/10) showing the manner in which the repaired seawall will be waterproofed. This sketch will be further revised with a revision date of 10/19/10 to show the tops of the galvanized threaded rods hidden under the granite cap. This will add to the waterproofing of the wall. Patrowicz will provide this revised sketch to the ConCom during the week of 10/18/10. In addition, the applicant has agreed to confer with Mr. Corbino regarding her letter of complaint. All members voted to close this hearing. All members voted to issue an OOC with the following special conditions.

Pre-construction:

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

Before any work is started, the applicant will submit further information as to how the capping of the seawall will be implemented to prevent moisture from penetrating the seawall after the capping.

A tarp will be laid down at the base of the seawall during all repair work to capture all construction debris. The tarp will be on the seaward side of the seawall. The tarp will be rolled up and dumped into a disposal trailer as required throughout the work day and will be removed at the end of each work day.

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:

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.).

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.

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 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.

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.

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.

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 OOC, whichever 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".

40-1014 8 FOUNTAIN INN LANE - ARNOLD

Resource Area: Coastal Bank

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

Appeared: William Kelley of Kelley Marine Resources and Mr. Arnold

Control Drawing: Footing Repairs, 8 Fountain Inn Lane, dated September 13, 2010 as submitted with the NOI.

No DEP File No. had been received but the application was discussed. The applicant is required to submit a revised control drawing to identify the Top of Coastal Bank and the buffer zones.

After discussion, all members voted to continue this hearing to November 18, 2010. In the event an OOC is issued, it will contain the following special conditions.

Pre-construction:

The applicant is required to submit a revised control drawing to identify the Top of Coastal Bank and the buffer zones before any work is started.

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

A containment system to prevent any removed mortar or other debris from entering the resource waters shall be approved by the commission prior to the start of any work.

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:

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.).

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.

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 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.

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.

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 OOC, whichever 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".

40-1012 8 CORN POINT ROAD - HARKINS

Resource Area: Coastal Bank

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

Appeared: Rich Kirby of LEC Environmental Consultants, Inc.

Control Drawing: Coastal Bank Stabilization Plan, dated 09/22/10, latest revision 10/14/10, prepared by Keith LeBlanc Landscape Architecture, Inc.

(Note: The latest revision was issued to show a new shed which had not been included or approved in any earlier OOC's.)

The commission noted that the DEP File No. form indicates this application is under review. Since this application involves work in a resource area, the commission informed Kirby the hearing will proceed but cannot be closed until DEP issues its comments.

The following error in the NOI was noted: Page 2 of 8, section "B", "2" should have been checked. It was noted that the following earlier NOI's apply to this site: 40-390, 40-470, 40-668 and 40-927. The commission asked how the earlier approved Slope Stabilization Plan, dated 06/26/07, compares with the Coastal Bank Stabilization Plan, dated 09/22/10. Kirby said the latest proposed plan includes only native grasses and vines while the earlier plan included saplings and shrubs. He said grasses and vines will offer a better overall root system and thus make the bank more stable and less susceptible to erosion. All work will be done by hand.

Regarding the elimination and management of the invasive species, Kirby said a licensed herbicide applicator will be employed to apply Glyphosate. This herbicide will be applied only to the tips of the cut invasives, it will not be sprayed. Glyphosate is approved by the DEP. The commission noted this herbicide is currently being used on Black Joe's Pond. The commission told Kirby the applicant must supply it with a copy of the applicator's license, the DEP permit for the application and a notification for any and all future applications under this DEP permit.

(Note: Whereas each and every application on a body of water (aquatic) requires a new DEP permit, applications on land (terrestrial) are permitted under one permit good for multiple applications.) Kirby said it is the intent of the applicant to repeat the application as required. He will supply the commission with a copy of the Glyphosate specification sheet.

The matter of NOI/OOC violations from the various NOI's was then raised.

A list prepared by Lanphear is as follows.

- 8 Corn Point Road, Applicant: David & Sheryll Harkins

40-390 Second floor addition to house and new attached garage
OOC issued 10/20/1992 recorded book 11705 page 588
COC issued 9/14/1994 (not recorded)

40-470 Reconstruction of stone patio and wood steps to beach
OOC issued 7/3/1995 recorded book 13094 page 499
No COC request in file

40-668 Proposed wood pier, gangway and float
OOC issued 6/21/2000 (not recorded)
No COC request in file

40-927 Proposal to demolish exiting house and build new house with site work.
OOC issued 7/26/2007 recorded book 27097 page 514
Project amended to save and renovate existing house with associated site work
Amended OOC issued 12/16/2008 recorded book 28920 page 434
COC request submitted 9/24/2010.

The unpermitted shed was also noted as a violation.

Kirby was then informed about the applicable fines and was given the following list of the fine guidelines used by commission.

FINES

Administrative: Failure to apply for OOC/RDA
Failure to record OOC
Failure to apply for Amendment
Failure to record Amendment
Failure to comply with OOC/RDA
Failure to apply for COC
Failure to record COC

1st violation for applicant: \$300.00 per year

2nd violation for applicant on same or different site: \$600 per year

plus the following fines

Buffer Zone Violation:

No Disturb Zone: \$600.00 per year

No Build Zone: \$450.00 per year

50-100 ft. Zone: \$300.00 per year

plus possible restoration

Resource Area Violation:

\$300.00 per day each violation exists

plus possible restoration

1st violation for applicant: as above for Buffer Zones and Resource Area.

2nd violation for applicant on same or different site: double fine for 1st violation.

Kirby questioned the applicability of all fines, especially for the early NOI's. The commission then read from the town Wetlands Bylaw, section 194-11 (E) and pointed out its authority to levy fines on a daily basis. The commission then explained its attempt to be less draconian, more objective and more consistent in levying fines, said attempt resulting in the above document of fine guidelines. Further, the commission said it is not aware of any statute of limitation regarding fines.

The commission then pointed out that it did not always have the facilities to effectively research past NOI violations nor did it have the current online access to the files of the state Registry of Deeds. These avenues are now available and are used for all new applications.

The commission suggested to Kirby that his client review the violations list and advise the commission as to his findings. This matter will be addressed again on November 18, 2010. All members voted to continue this hearing to November 18, 2010.

In the event an OOC is issued for 40-1012, it will contain the following special conditions.

Pre-construction:

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.

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

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:

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.

Post-construction/in perpetuity:

By voluntary agreement with the applicant, only organic fertilizers are to be used on the lawn 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.

No fertilizers or other chemicals will be applied on the coastal bank. This is a surviving condition.

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.

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 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 89 FRONT STREET - GOLDING

Resource Area: Coastal Bank

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

Appeared: R. Zarelli and J. Emmanuel

Control Drawing: Site Plan, 89 Front Street, dated 09/23/10, prepared by James K. Emmanuel Associates.

The location of the proposed work is such that the work will not have any effect on the resource area. The Fire Department must monitor and approve the removal of the oil tank. All members voted to close this hearing. All members voted to issue a negative determination.

40-1013 6 NONANTUM ROAD - PHELAN

Resource Area: Coastal Bank

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

Appeared: R. Zarelli and J. Emmanuel

Control Drawing: Proposed Plan, 6 Nonantum Road, dated 09/15/10, prepared by James K. Emmanuel Associates.

The commission noted that the DEP File No. form indicates this application is under review. Since this application involves work in a resource area, the commission informed the representatives the hearing will proceed but cannot be closed until DEP issues its comments. A letter from Bessom Associates, Inc. dated 08/06/10 approved the work. A proper containment system for debris must be approved by the commission. All members voted to close this hearing. All members voted to issue an OOC with the following special conditions.

Pre-construction:

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.

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

A containment system to prevent any debris or construction materials from entering the resource waters must be approved by the commission before any work is started.

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:

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.

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.).

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.

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:

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 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".

Old/New Business:

Approved Minutes: See above

Requests for Extensions:

40-714 3 Brown Street - Noyes

40-942 81 Naugus Avenue - Carlton

Both requests will be reviewed on November 18, 2010 in light of the recent state automatic permit extension law and as interpreted by DEP. Both requests are recognized as being filed before expiration of their OOC's.

Requests for COC:

40-835 310 West Shore Drive - West Shore Drive, LLC Appeared attorney Thomas Beatrice to answer questions regarding this site. The OOC expired 05/19/08 and the COC request was filed 10/14/10. Beatrice was informed a fine of \$300 applies.

40-927 8 Corn Point Road - Harkins See above hearing

Sign Documents: All documents per the agenda were signed.

The meeting was adjourned at 9:10 PM.