

MARBLEHEAD CONSERVATION COMMISSION
MINUTES OF DECEMBER 10, 2009

Meeting was held in the lower level conference room at the Mary Alley Building, 7 Widger Rd

Meeting was called to order at 7:00 PM

Present were: Commission Members Walt Haug, Fred Sullivan, Brian LeClair, Don Tritschler, Deb Payson and Ken Fisher. Also present were Willy Lanphear, Conservation Administrator and Jan Smith.

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 11/12/09 were approved by five members, one abstaining due to prior absence.

Old/New Business: Turner Woods: The commission voted unanimously to name the newly acquired conservation property off Litchman Terrace as "Turner Woods". The property is map 136, parcel 129 on the Town GIS map. The naming of this parcel is in honor and memory of Mr. Edmund Turner who had bequeathed his family farm, which included this property, to the town in 1919. In 1941 the town created Turner Road and subdivided the majority of the farm into house lots which were later sold to veterans after World War II. The Coffin School site was also part of the original Turner Farm.

Appeared: Don Morgan of the Marblehead Conservancy to present plans to establish walking paths in this new conservation area. See "Litchman Conservation Area, Phase I Trail & Forestry Plan", dated November 2009. The plan was approved and the commission expressed its sincere thanks for all the work done by the conservancy on conservation lands.

40-975 27 Ticehurst Lane: Henry Hammond

Resource Area: BVW, Pond, Land Under Water

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

Appeared: M. Neuman, applicant, S. Patrowicz of Patrowicz Land Development Engineering and C. Bosworth, architect.

Control Drawing: Site of Plan, 27 Ticehurst Lane, Henry Hammond dated February 26, 2009, prepared by North Shore Survey Corporation.

This was a continuance from 04/19/09, 05/14/09, 07/09/09, 09/10/09 and 10/08/09. A new proposed draft site plan was introduced. This application involved two separate, contiguous lots owned by the same person. The proposed work involves both lots and, most importantly, the altering and replication of a wetland. Since the altering is on one lot and the replication on the other, it was agreed by the applicant to withdraw the current NOI, 40-975, without prejudice and replace it with a new NOI covering both lots. A motion was made and seconded “to accept the withdrawal of 40-975 without prejudice”. All members voted in the affirmative.

40-986 2 & 4 EUSTIS ROAD: Cornelia Stutz

Resource Areas: Coastal Beach and Coastal Bank

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

Appeared: Cornelia Stutz, Dave Peach, Dr. Peter Rosen of Geo/Plan Associates and Peter Ogren of Hayes Engineering, Inc.

Control Drawing: “Plan to accompany Notice of Intent in Marblehead Mass”, “Eustis Road, Showing Proposed Conditions”, dated October 9, 2009, revised December 7, 2009, prepared by Hayes Engineering, Inc.

See the letter report from Dr. Rosen, dated December 4, 2009. Based on this report, the proposed work is now per the December 7, 2009 drawing. Dr. Rosen stipulated 310 CMR 10.24 (7b) and 10.24 (7c1) as allowing the work to proceed. Haug had spoken with Nancy White of DEP and was informed that, since no actual roadway exists (paper road only), 10.24 (7c1) would not apply. However, 10.24 (7b) is applicable for protecting utilities. Further, the commission refuted the assertion of Dr. Rosen that a lowered coastal bank or LSCSF ceases to be a resource area (see page 4 of his report).

The report of Dr. Rosen basically confirmed the hard structure solution (rip-rap) and did not recommend a soft approach via beach nourishment.

Dana Snow, Superintendent of the Marblehead Water & Sewer Commission, stated the importance of protecting the existing sewer line and manholes located partially in the eroding bank. This sewer line serves ca. 25 houses. Any possible future leakage due to a break in the line would flow directly into the ocean and BVW in the immediate area. He was not receptive to the idea of re-locating the line.

Copies of the minutes relating to this NOI and the letter report from Dr. Rosen will be sent to Nancy White, MA DEP, 205 B Lowell Street, Wilmington, MA 01887. The commission voted to close this hearing. The commission voted all in favor of issuing 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. 8 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. 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:

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

26. A drawing of the erosion control techniques to be used on site shall be included in the construction contracts between the applicant and his/her contractor. The erosion control will be primarily to protect the BVW and it will serve as a limit of work delineation.

27. 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:

28. The applicant remains responsible for any damage done to the sewer line and will pay all costs to repair any damage.

Post-construction/in perpetuity:

29. 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.

30. The beach and any disturbed upland will be restored to its pre-construction condition.

31. Future maintenance of the rip-rap, but not expansion, and replenishing of the gavel dune is allowed. Any such work must be reviewed and approved by the commission before any such work is undertaken. This condition shall survive this order.

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 up to \$300 per day issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E.

40-987 11 KENNETH ROAD: Peter J. Dragonas

Resource: Coastal Bank

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

Appeared: David Smith of Vine Associates, Inc. and Peter Dragonas

Control Drawing: Plan titled "Proposed Site Plan and Sections, Dragonas/Hyman Residence, 11 Kenneth Road" sheets 1 and 2, dated October 2009, revised November 25, 2009 prepared by Vine Associates, Inc.

See the memorandum from Vine Associates, Inc., dated December 3, 2009 Re: Revised Drawing Submittal. The commission required that the location of the vegetated buffer strip be moved to lie landward of the stone retaining walls in the coastal bank and to extend across the entire width of the property facing the ocean. New retaining walls will be constructed to provide a level horizontal surface for the buffer strip. The final landscape plan 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.

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. 8 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. 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:

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

26. 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.

27. 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.

28. The location of the vegetated buffer strip will be moved to lie landward of the existing stone retaining wall(s) in the coastal bank and will extend across the entire width of the property facing the ocean.

29. Prior to the start of any landscape work, a drawing showing the new retaining wall(s) and the plantings in the vegetated buffer strip will be submitted to the commission for approval.

During construction:

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 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.

33. 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 will conform to the requirements of Chapter 91.

34. 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/in perpetuity:

35. 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.

36. All gangways, docks or other items not permanently secured to the earth shall be stored during the "off season" (late fall, winter, early spring) so as to prevent them from causing any damage to other structures or resource area. This condition shall survive this order.

37. All gangways, docks or other items not permanently secured to the earth shall be properly secured and/or removed in the event of a major storm so as to prevent them from causing any damage to other structures or to the resource area. This condition shall survive this order.

38. All piers, docks and floats must follow the guidelines established in the document, "Small Docks and Piers – A Guide to Permitting Small Pile-Supported Docks and Piers" dated November 2003 issued by DEP. Float stops are permitted provided they meet the aforementioned guidelines. All floats/docks will be so constructed so as not to bottom out (rest) on the ocean floor at low tides. This condition shall survive this order.

39. 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.

40. Minor maintenance repairs to the superstructure only of the pier are allowed as a surviving condition of this order. Minor maintenance repairs are, typically, replacement of occasional deck boards, sections of hand rails, etc. Complete new decking, complete new hand rails or other such large repairs require an NOI. Minor maintenance repairs do not apply to the main support structure (stringers, bents, etc.) and do require an NOI. This condition shall survive this order.

41. This OOC specifies a vegetated buffer strip be planted along and abutting the coastal bank and/or the BVW. After the vegetated buffer strip has 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.

42. 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 up to \$300 per day issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E.

Old/New Business:

Approve Minutes: see above

Requests for COC: 40-980 and 40-861 were signed.

Sign Documents: all documents per the agenda were signed

Other Matters:

Turner Woods: see above

Trail Map for Turner Woods: see above

Black Joe’s Pond: Consultations and negotiations have been resurrected.

Conflict of Interest: Lanphear distributed copies of the “Summary of the Conflict of Interest Law for Municipal Employees” to all attending members. He informed them about taking the test on-line and submitting confirmation of such as directed on the web site.

The meeting adjourned at 9:00 PM.