

**CONSERVATION COMMISSION
MINUTES OF JUNE 11, 2009**

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, Craig Smith and Don Tritschler. 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 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 05/14/09 were approved by all members.

Discussion: 40-969 396 & 400 OCEAN AVENUE TERMEER

Appeared R. McCann and S. Patrowicz, representing the applicant, to submit a final, complete landscaping plan for both lots: Site Plan & Landscaping Plan, 396/400 Ocean Avenue, dated May 8, 2009, prepared by Leahy Landscaping, Inc. The plan was accepted by all members of the commission.

RFD FORT SEWALL FT. SEWALL LANE M'HD SELECTMEN

Resource Area: Coastal Bank

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

Appeared: Larry Sands, chair of Ft. Sewall Oversight Committee

Control Drawings: Ft. Sewall – Demolition Plan (D-1); Layout and Materials Plan (L-1) and Site Details (L-2), all dated April 2009 and prepared by the Cecil Group

It was noted that all work will be done by hand. All work lies outside the No Disturb Zone and generally sits within the "bowl" formed by the breastworks of the fort. For this reason, no erosion control fence is necessary. 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). As such this Determination constitutes a wetlands permit both under the Act and under the Bylaw.
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.
5. 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.
6. All special conditions are to be included in the construction contracts between the applicant and his/her contractor.
7. All work will be done by hand.
8. 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.).
9. 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.
10. 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.
11. The Conservation Commission will be informed when all work is completed to insure

compliance with this Determination of Applicability (DOA).

40-979 12 GOLDTHWAIT ROAD BURKE

Resource Area: Coastal Bank, Salt Marsh

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

Appeared: Mr. Burke, R. McCann, atty., and S. Patrowicz of Patrowicz Land Development Engineering

Control Drawing: Proposed Site Plan, 12 Goldthwait Road, dated April 29, 2009, last revised June 11, 2009, prepared by North Shore Survey Corporation

The DEP File No. was received. The revised control drawing removed the rain garden (which would not function due a high ground water table) and replaced it with a raised planting strip. Other changes as required by the commission at the 05/14/09 hearing are incorporated in the revised control drawing. 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.

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 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. A landscaping plan will be submitted to the commission for approval before any landscaping is started.

During construction:

28. 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.).

29. 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.

30. 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:

31. 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.

32. 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.

33. 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:

Sign Documents: All documents per the agenda were signed.

Other Matters:

MACC Membership: All members voted to continue our membership and pay current dues.

Falk 40-933: Various progress reports from Wetlands Preservation, Inc. were submitted.

Black Joe’s Pond 40-880: A letter dated June 10, 2009 was received from Craig Campbell requesting a three year extension of 40-880 under the local Bylaw and the WPA. Note that the OOC under the local Bylaw had not been appealed. The local Bylaw allows for one year extensions, not three. OOC 40-880 will expire on June 22, 2009 under the local Bylaw. Therefore, the date of the Campbell letter is pertinent in determining as to whether the request for extension was filed within the proper time frame. This concerns a possible thirty (30) day period prior to expiration of the OOC. The current wording in the local Bylaw, regarding extensions (194-7 C), as published does not agree with the original wording as submitted to and approved by Town Meeting in May 2004. This discrepancy will be investigated and addressed by the commission. The response to Mr. Campbell will adhere to the wording as approved by the Town Meeting and the state Attorney General. With regard to the WPA, since this OOC is still under appeal to DEP, the commission believes the expiration date under the WPA continues to be extended as long as the appeal continues

The meeting was adjourned at 8:15 PM.