



# CONSERVATION COMMISSION

## PUBLIC MEETING

2 Bathing Beach Road  
Nantucket, Massachusetts 02554

[www.nantucket-ma.gov](http://www.nantucket-ma.gov)

Wednesday, January 13, 2016 4:00 P.M.  
4 Fairgrounds Road, Training Room

**Commissioners:** Ernie Steinauer (Chair), Andrew Bennett (Vice Chair), Ashley Erisman, David LaFleur, Ben Champoux, Ian Golding, Joe Topham

Called to order at 4:03 p.m.

Staff in attendance: Jeff Carlson, Natural Resources Coordinator  
Attending Members: Bennett (acting chair), Erisman, LaFleur, Champoux, Golding, Topham  
Absent Members: Steinauer  
Late Arrivals: None  
Earlier Departure: None

Agenda adopted by unanimous consent

\*Matter has not been heard

### **I. PUBLIC MEETING**

**A. Public Comment** – None

### **II. PUBLIC HEARING**

**A. Notice of Intent**

1. Edwin Snider RT – 1 Brock’s Court (42.3.4-84) SE48-2834

Sitting Bennett, Erisman, LaFleur, Champoux, Topham  
Recused Golding

Documentation Site plans, topographical maps, photos, MNH sign off letter, departmental reports, and correspondence.

Representative **Mark Rits**, Site Design Engineering – Prior to the site visit, dug test pits and deep-holes to address ground water questions: that letter was submitted Jan.5. One concern was the type of foundation and the 2-foot to groundwater separation issue: a deep hole dug center of the foundation revealed standing water weeping at about 36” below grade and mottling at about 32”. Bottom of footings will be at the top of the high ground water and do not anticipate significant dewatering. Three small test pits and auger holes upland of the wetland boundary found the wetland that were delineated on the property to the west is accurately delineated and consistent with fill and upland area. The site has been modified over time with the area that is lawn going back to the 1990s. Not currently anticipating dewatering; any dewatering would be through the stormwater system.

Steven Cohen, Cohen & Cohen Law PC

Public **Kendra Kinschert**, for Marsh Fader – Pond created in early 1900s and was an extension of a previously wet area and was never lined; it does have a connection to ground water and does meet the requirements of a pond. The hydric soils are a good indication of wetland hydrology. Soil samples did have features indicating there is a valid hydric system in place. Have submitted letters addressing these concerns and that the delineation indicated on the plans is not accurate. Even if the delineation is correct; this project doesn’t meet the regulations in regards to 2-foot separation from high ground water. The pervious driveway and patio are in excess of 50% of the buffers and a waiver has not been requested for that.

**Cormac Collier**, Executive Director Nantucket Land Council – He will reserve his comments to see the information to be presented. Asked if there is any dewatering plan, significant or not.

Discussion (4:04) **Bennett** – Test Pit Eight indicated no water other than in the driveway.

**Rits** – That test pit showed standing water at about 75" after being open about an hour.

**Champoux** – Asked what the protocol is for going from the fill point to the groundwater as opposed to an unfilled point to groundwater. He thinks that should be considered.

**Rits** – Don’t have a good handle on when and how much the lawn area was graded and build; it goes back 15 to 20 years. The pond on the abutting property edge is greater than 50 feet from the proposed work. Reviewed the history of disturbance of the pond and surrounding area dating back about 100 years. Hydric soil conditions extend roughly 50 feet from the pond much of which has been maintained as lawn. Our consultant doesn’t feel this qualifies as a functioning wetland resource area. The water causing the hydric soils is moving into a deeper aquifer as shown by a couple of the pits.

**Bennett** – Asked the size of the pool.

**Rits** – The pool will be 5.5 to 6-foot deep; the base will be sitting at groundwater level. Noted that the deep hole pits were done after a day of rain but not high level of rain. Working on revised waiver requests. Addressing the 50% of the 25 to 50, this lawn is a pre-existing alteration.

**Erisman** – The current disturbed area would function better than a compacted driveway.

**Rits** – Part of the NOI is to improve conditions in the buffers.

**Kinschert** – The application for the permit with the Building Department indicates the pool will be 7 feet deep; that needs to be addressed especially within the area of groundwater.

**Rits** – The pool plans have been revised. Asked for a continuance.

Staff There was a site visit at the adjacent lot with the third-party consultant and applicant; still waiting for some of that information to come in. Department of Environmental Protection (DEP) guidance on sites filled recommends going from the top of native material, down; the disturbance here is very old and the area has been heavily disturbed. It is difficult to determine when it would be considered no longer a disturbance but the condition of the site. Feels it is important to get all the information in and then discuss it; for example, the abutting property has a man-made pond that is over 100 years old. Suggested the neighbor submit a Request for Determination of Applicability on the pond boundaries.

Motion Continued to Jan. 27 without objection

Vote N/A

2. Edwin Snider RT – 1 Brock’s Court (42.3.4-84) SE48-2835

Sitting Bennett, Erisman, LaFleur, Champoux, Topham

Recused Golding

Documentation Site plans, topographical maps, photos, MNH sign off letter, departmental reports, and correspondence.

Representative **Mark Rits**, Site Design Engineering – Asked this be continued.

Public None

Discussion None

Staff None at this time.

Motion Continued to Jan. 27 without objection

Vote N/A

3. Cigarran – 25 East Tristam Avenue (31-1) SE48-2840

Sitting Bennett, Erisman, LaFleur, Champoux, Golding, Topham

Recused None

Documentation Site plans, topographical maps, photos, MNH sign off letter, departmental reports, and correspondence.

Representative **Arthur D. Gasbarro**, Blackwell and Associates Inc. – Asked this be closed

Public None

Discussion (4:41) None at this time.

Staff This was left open due to the meeting schedule and a possible quorum issue.

Motion **Motion to Close.** (made by: LaFleur) (seconded by: Topham)

Vote Carried unanimously

4. The Maggie Westchester TR – 20 West Chester Street (42.4.3-58.1) SE48-2846

Sitting Bennett, Erisman, LaFleur, Golding, Topham

Recused Champoux

Documentation Site plans, topographical maps, photos, MNH sign off letter, departmental reports, and correspondence.

Representative **Brian Madden**, LEC Environmental – Submitted supplemental information based upon request at the last hearing; reviewed that information. Reviewed the planting plan for the enhancement area. Reviewed the dewatering details. Increase within the 50 feet is 390 square feet and a 77 square feet reduction in the 25-foot.

**Don Bracken**, Bracken Engineering, Inc. – Explained the stormwater run-off mitigation to decrease the overall runoff.

Public None

Discussion (4:43) None at this time.

Staff Have everything needed to close.

Motion **Motion to Close.** (made by: Topham) (seconded by: LaFleur)

Vote Carried unanimously

5. Wingspread 86 RT – 8 Wingspread Lane (27-173) SE48-2848

Sitting Bennett, Erisman, LaFleur, Champoux, Golding, Topham

Recused None

Documentation Site plans, topographical maps, photos, MNH sign off letter, departmental reports, and correspondence.

Representative **Don Bracken**, Bracken Engineering, Inc. – Continued waiting for Massachusetts Natural Heritage letter which has been received. Recapped the resource area.

Public None

Discussion (4:49) None at this time.

Staff Have everything needed to close.

Motion **Motion to Close.** (made by: Topham) (seconded by: LaFleur)

Vote Carried unanimously

6. Halsell – 10C Crow’s Nest Way (12-44.4) SE48-2851  
 Sitting Bennett, Erisman, LaFleur, Champoux, Golding, Topham  
 Recused None  
 Documentation Site plans, topographical maps, photos, MNH sign off letter, departmental reports, and correspondence.  
 Representative **Mike Connolly** of Michael Connolly & Associates, INC. for David M. Haines, Haines Hydrogeologic Consulting – Bedroom count is not changing. Noted other tight tanks in the area.  
 Public None  
 Discussion (4:52) None at this time.  
 Staff Construction of addition and deck and outdoor shower outside the 50-foot on an existing structure. The closest work to wetland is about 80 feet from the wetland. Noted that the septic, which is outside the ConCom jurisdiction, is being replaced with a tight tank. No waivers are required. Have everything needed to close.  
 Motion **Motion to Close.** (made by: LaFleur) (seconded by: Champoux)  
 Vote Carried unanimously

**III. PUBLIC MEETING**

**A. Minor Modifications**

1. Oakhill Investments LLC, 341A Madaket Road (60.2.4-64.5) SE48-2828 (Cont . 02/10/2015)

**B. Certificates of Compliance**

1. Knise – 17 Ames Street (60.2.4-17) SE48-2794

Sitting Bennett, Erisman, LaFleur, Champoux, Golding, Topham  
 Staff For const of alternative system. Provided as-built and sign off. Recommend issue with on-going Condition 20: testing to be submitted to the Board of Health.  
 Discussion (4:56) None  
 Motion **Motion to Approve as recommended.** (made by: Champoux) (seconded by: LaFleur)  
 Vote Carried unanimously

2. Desert Island, LLC – 15 Delaney Road Lot 4 (30-635) SE48-2601

Sitting Bennett, Erisman, LaFleur, Champoux, Golding, Topham  
 Staff Have completed all jurisdictional site work with exception of carrying forward Condition 19: continued monitoring of restored area.  
 Discussion (4:58) None  
 Motion **Motion to Approve as recommended.** (made by: Champoux) (seconded by: LaFleur)  
 Vote Carried unanimously

3. Desert island, LLC – 17 Delaney Road Lot 5 (30-66) SE48-2602

Sitting Bennett, Erisman, LaFleur, Champoux, Golding, Topham  
 Staff Have completed all jurisdictional site work with exception of carrying forward Condition 19: continued monitoring of restored area.  
 Discussion (4:58) None  
 Motion **Motion to Approve as recommended.** (made by: Champoux) (seconded by: LaFleur)  
 Vote Carried unanimously

**C. Orders of Condition** (4:59)

1. Cigarran – 25 East Tristam Avenue (31-1) SE48-2840

Sitting Bennett, Erisman, LaFleur, Champoux, Golding, Topham  
 Staff Had instructions to draft a positive order for placement of 2 timbers on top of existing timber bulkhead. Included Finding 2 about permitting work on the existing bulkhead. Aske3d for photos of planted area for beach grass and Condition 20 a report demonstrating condition of structure and quantifying sand put in replaced behind timbers when washed out.  
 Discussion None  
 Motion **Motion to Issue a positive order.** (made by: Champoux) (seconded by: Topham)  
 Vote Carried 4-2//Erisman & Golding opposed

2. Forty-Seven Monomoy Rd TR – 47 Monomoy Road (54-295) SE48-2843

Sitting Bennett, Erisman, LaFleur, Champoux, Golding, Topham  
 Staff For construction of shed, hot tub and retaining wall with grading and landscaping within the buffer to a wetland. No waivers required. Only condition is that hot tub can't be drained or discharged in an area of ConCom jurisdiction.  
 Discussion None  
 Motion **Motion to Approve as drafted.** (made by: Golding) (seconded by: none)  
 Vote Carried unanimously

3. Daniel Counihan – 11 Swain Street (42.4.11-77) SE48-2849

Sitting Bennett, Erisman, LaFleur, Champoux, Golding, Topham  
 Staff For the relocation and elevation of an existing house with a small addition within land subject to coastal storm flowage. No conditions.  
 Discussion None  
 Motion **Motion to Approve.** (made by: Topham) (seconded by: Golding)  
 Vote Carried unanimously

4. 64 Walsh St, LLC – 64 Walsh Street (29-94) SE48-2847

Sitting Bennett, Erisman, LaFleur, Champoux, Golding, Topham  
 Staff There had been a concern raised about pools win the flood zone; suggested a general discussion at the end of this meeting about that to establish ways to address them. No grade changes proposed.  
 Discussion None  
 Motion **Motion to Approve.** (made by: Champoux) (seconded by: Topham)  
 Vote Carried 5-1//Erisman opposed

5. Flannery – 62 Wanoma Way (92-16) SE48-2850

Sitting Bennett, Erisman, LaFleur, Champoux, Golding, Topham  
 Staff Removal of an existing driveway and construction of a pool house, pool, pool fence, split-rail fence, and pool patio within the buffer zone to a bordering vegetated wetland. No waivers required; work is outside 50 feet. Condition added about pool drainage with an area under ConCom jurisdiction.  
 Discussion **Golding** – Work is at 50 feet.  
 Motion Motion to Approve. (made by: Champoux) (seconded by: none)  
 Vote Carried 5-1//Erisman opposed

6. Wingspread 86 RT – 8 Wingspread Lane (27-173) SE48-2848

Sitting Bennett, Erisman, LaFleur, Champoux, Golding, Topham  
 Staff For development of a landscaped area. No conditions but given the fact it will be a landscaped area, included the require that a copy of the license of the person who will apply fertilizer be provided and there be a yearly reporting of what was applied. The BMP just covers the application of fertilizer. There are no regulations as far as the application of herbicides and pesticides. He can add Condition 20: herbicides and pesticides must be applied by a licensed applicator and a yearly report supplied of the herbicides or pesticides used.  
 Discussion **Erisman** – Asked if the BMP covered the use of herbicides.  
**Golding** – Suggested this board tackle that issue.  
**Champoux** – Asked if it can be added that any herbicides and pesticides to be done by a licensed applicator. That should be a standard condition.  
 Motion **Motion to Approve as amended.** (made by: Golding) (seconded by: LaFleur)  
 Vote Carried unanimously

7. Halsell – 10C Crow’s Nest Way (12-44.4) SE48-2851

Sitting Bennett, Erisman, LaFleur, Champoux, Golding, Topham  
 Staff For three small additions. No conditions as it seemed straight forward.  
 Discussion None  
 Motion **Motion to Approve.** (made by: Topham) (seconded by: Golding)  
 Vote Carried unanimously

8. The Maggie Westchester TR – 20 West Chester Street (42.4.3-58.1) SE48-2846

Sitting Bennett, Erisman, LaFleur, Champoux, Golding, Topham  
 Staff Will add the same fertilizer/herbicide conditions as for Wingspread 86 RT.  
 Discussion **Golding** – Asked if something could be added about demonstrating that the run-off system during a significant rain event is operating properly.  
**Erisman** – Her concern is that native species be used and not cultivars.

**D. Extension of Order of Conditions**

1. Ryan – 10 Tautemo Way (83-11) SE48-2529

Sitting Bennett, Erisman, LaFleur, Champoux, Golding, Topham  
 Staff There was an enforcement action on this. They have completed the six monitoring report and mitigation for the rest of the site but are still working on some of the construction. He recommends approval of 3 one-year extensions.  
 Discussion (5:12) None  
 Motion Motion to Approve as recommended. (made by: Champoux) (seconded by: LaFleur)  
 Vote Carried unanimously

**E. Other Business** (5:14)

1. Enforcement Actions – 14 Fargo Way: Follow up to an unpermitted drain pipe draining into the wetland and unpermitted work in conjunction with the coastal engineering structure. The posts are installed correctly but the fence would not allow water to interact with the tubes. The property owner is looking for an acknowledgment that the monitoring survey requirement has been satisfactorily met. The pipe has been cut off; staff is keeping an eye on that to ensure it doesn't show up again.
2. Approval of Minutes 12/30/2015: Held
3. Monitoring Reports – 10 Tautemo Way: The final report through an enforcement action.
4. Reports:
  - a. CPC, Golding – Nothing to report
  - b. NP&EDC, Bennett – Nothing to report
  - c. Mosquito Control Committee, Erisman – Nothing to report
5. Commissioners Comment
  - a. Golding – In regards to Brocks Court, Diana Lewis' letter claims the building was moved without a ConCom permit. Staff – That is true. He has talked to the Zoning Enforcement Officer and Building Commissioner about issuing a permit without checking whether or not it needs a ConCom permit and about taking action to ensure a ConCom permit is obtained. Stephen Cohen, Cohen & Cohen LP – Steve Butler, Building Commissioner, has assured that a Certificate of Occupancy would not be issued until that is resolved.
6. Administrator/Staff Reports
  - a. In regards to jurisdiction over flood zones. He is trying to get an expert here to discuss that resource area; it doesn't seem to take into account precipitation causing a flood only water from a pond or ocean. If the standards are taken very literally, the installation of pool actually increases the flood storage capacity of an area if the pool is empty. Flood zones don't address ground water separation and infiltration. The only performance standard is not to significantly alter the flood zone's ability of water to flow during flooding. Would need to post a public hearing regulation changes in relation to flood zones and herbicides/pesticides. Erisman – If a pool is full during flooding, contaminated water is washed back into the system when water recede. Champoux – A pool doesn't affect the flow of the water. The issue seems to have more to do with groundwater flow and some infiltration. Further discussion about the possible affect of a treated, fresh-water pool on flood water.

Motion to Adjourn: 5:43 p.m.

Submitted by:  
Terry L. Norton