

Town and County of Nantucket
ROADS AND RIGHT OF WAY COMMITTEE

Meeting of 15 March 2016
Conference Room of 2 Fairgrounds Road

FINAL AND APPROVED MINUTES

1. Call to Order, Approval of the Agenda, Approval of Minutes, and Public Comments.

A. Chair Allen Reinhard called the meeting to order at 4:06 pm. In attendance were Dave Fredericks, Leslie Forbes, Nat Lowell (left at 5:15 pm), Allen Reinhard, Bert Ryder (arrived 4:16 pm), Lee Saperstein, and John Stackpole; there was a quorum at all times.

Absent were D. Anne Atherton and Joe Marcklinger.

Guests: Mike Burns, Transportation Planner, Kara Buzanoski, Director, DPW, and Jeff Carlson, Coordinator, Natural Resources.

The agenda as distributed was accepted.

B. Public Comment. There was no public comment.

C. Minutes. The minutes of the meeting of January 19, 2016, were moved for approval by John Stackpole, seconded by Dave Fredericks, and approved unanimously.

2. Chapter 91 License Review: project goals and a process to reach them.

Allen Reinhard introduced Jeff Carlson, Natural Resources Coordinator to describe the Chapter 91 License program on Nantucket including recent changes and improvements. Allen Reinhard told the committee that at an earlier meeting of the Board of Selectmen, a Selectman suggested that we become more active in the Chapter 91 process for providing access to the water. In addition, Leslie Forbes and Lee Saperstein have each spoken with Jeff Carlson about record keeping.

Jeff Carlson began with a brief historical summary. In 1641, there was published a series of colonial ordinances, which were rewritten in 1647. These contained the first reference to public access to the water for the purposes of “fishing, fowling, and navigation.” In 1866, these provisions were written into statute and added “strolling” to the activities allowed on the wetted sands (between low and high-water tidal levels). Eventually, this statute was codified as Chapter 91 of the Massachusetts General Laws, “Waterways” (91MGL1-63). Administrative implementation of this statute is found in Chapter 310 of the Code of Massachusetts Regulations, “Department of Environmental Protection,” (310CMR), particularly Section 9, “Waterways” (310CMR9). All of these provisions are directed to citizens’ ability to enjoy the water. The

regulations include some land-use provisions, such as steps over piers, and, for filled tidal lands, “facilities for public accommodation.”

He then talked about Nantucket activities and said that authority for enforcement resides in the State Department of Environmental Policy (DEP), Waterways Division, thus our office cannot do any real enforcement but can alert landowners to issues of non-compliance that might bring a State inspector onto Nantucket. In terms of identifying all of the Chapter 91 Licenses on Nantucket, there is a substantial challenge. All paperwork is filed in Boston and access to these paper files is very difficult. A project to digitize the files has been underway for five years but nothing has been reported on line. Our office does keep a file of Licenses that we know about and we bring it up to date at least once a year. To find licenses, we are solely dependent upon our Registry of Deeds to find records of licenses that are attached to deeds. We are most interested in the public-access component of licenses. Any building project that must go before the Conservation Commission will trigger a review of the need for a License.

In April, after shellfish season is finished, our inspectors go out to inspect License compliance. If there is a substantial number of non-compliant properties, we ask Town Administration if we should proceed. Generally, they say yes. A significant issue for enforcement is the number of un-recorded licenses as well as properties that should be but are not licensed. The latter represent a better target for obtaining compliance. Filled tidal lands are where many of the un-licensed properties sit. Dave Fredericks added that the DEP published a report on where the line of filled lands exists. The name of Water Street is an indication that it once lay against the water. Jeff Carlson went on to say that many of the wharf buildings do not have a license. Chapter 91 provides for mitigation of lack of access to the water with its sections on “Facilities for Public Accommodation.” An example of this is the provision in the newly rebuilt Dreamland Theater, which provides open restrooms to the public. Licenses need to be renewed and not everyone knows their renewal dates; the time period for renewal is specified on the License and they are not uniform. The Town renews its Licenses every five years.

Nat Lowell asked, what triggers the need for a license when you’re working on a property and Jeff Carlson replied that the only way we know is if the Conservation Commission is involved. Dave Fredericks added that it should not be difficult to put a line on a GIS map that delineates the boundary of filled tidal lands. Any project on tidal lands would need a License. Kara Buzanoski said that creation of that element on GIS maps would be a good project for our committee.

To illustrate its complexity, Jeff Carlson brought an example of a license application package. After pages of introductions and instructions, there are 13 pages of application. It also requires signature assent from local-jurisdiction officials: the choice of which varies by application. Dave Fredericks said that our committee could help establish a process for working with the Town to complete an application. We could identify a single point of contact in the Town for Chapter 91 License applications who could then circulate them to the correct committees and officials. There are not that many applications in a year that we could not do this. Moreover, we could advise the Town on who should be involved in the official review. Dave Fredericks also said that education of the public would be very useful.

Allen Reinhard said that we should consider if the best time for us to be involved would be when there is an application. Present practice seems to be that the trigger of a License application is most often when work is proposed in the navigable waterway. It is very rare for anyone proposing work in filled lands to make an application. Bulkheads and bulkhead repairs are examples of work that should trigger an application but may not have done so in the past. Adding to his thoughts on our committee's role, he said that perhaps we should focus on new applications, particularly those that come through the ConComm. Jeff Carlson said that the point made by Dave Fredericks about improving the GIS and identifying landowners on or near filled tidal lands and giving them educational material about Chapter 91 Licenses is a good one. Dave Fredericks gave an example of a property that is currently up for sale and could well be one that should be licensed. Jeff Carlson added that our file identifies public-access components for each license. Several people asked about Steamboat Wharf and its need for licenses. One person mentioned that the Catboat Basin at Steamboat Wharf is an ideal candidate for public access. Jeff Carlson said that the Steamship Authority did hold Chapter 91 Licenses.

Nat Lowell asked if it is time for us to identify places without access to the water that should have it: for example, private ways that might become public. If we identify goals for public access, particularly with reference to Chapter 91, then we could have a list of components that would encourage public access as well as a positive recommendation from the Town for an application. Jeff Carlson said that if the Town pays attention to Chapter 91, by, for instance, amending the GIS map, then there might be more compliance. He encouraged us to work with the State Waterways Division.

Allen Reinhard encouraged several of us, particularly Lee Saperstein and Leslie Forbes, to meet with Nathan Porter, Town GIS staff member, and also to attend some License inspections. The objective of these steps would be to draft goals for actions by our committee. Lee Saperstein asked if it would be appropriate to advise the Board of Selectmen to ask for rapid completion of the License digitization project and, even, a home-rule petition to obtain delegation of authority for the Licenses. Allen Reinhard suggested that if the Board of Selectmen were to ask for delegation it might have some clout. Several other suggestions arose at this time. In response to one involving the local Environmental Police, Jeff Carlson suggested that they were already overworked. Nat Lowell suggested that we talk to some of the local attorneys who are knowledgeable about public access. John Stackpole said that he had learned that the State was proposing amendments to Chapter 91 Regulations:

<http://www.mass.gov/eea/agencies/massdep/water/regulations/chapter-91-proposed-regulatory-revisions-to-dpa-and-fpa.html>.

In a summary statement, Kara Buzanoski said she saw three major steps and we should consider our role for each of them: application, documentation, and enforcement. Allen Reinhard said that he would add this topic to our next meeting and asked members, in preparation for this agenda item, to consider goals and components for our activity.

3. Mill Hill Path and Bicycle Route Connection: latest plans and recommendations.

Allen Reinhard introduced Kara Buzanoski, Director, DPW, and Mike Burns, Transportation Planner. He told the group that Mike Burns had attended our last scheduled meeting but because

of a lack of a quorum, we could not discuss his plan formally. Allen Reinhard distributed copies of the material that Mike Burns had brought last month. It showed a revision of the bicycle route designed to connect the Prospect Street multi-use path to Hummock Pond Road; it would create a bicycle path alongside North Mill Street through Mill Hill Park to Mill Hill Lane thence through the new subdivision onto Hummock Pond Road. North Mill Street would remain a gravel road but, similar to the path alongside Dionis Beach Road, the bicycle path would be paved and would be separated from the road with a split-rail fence. He asked Mike Burns for the status of this project and the answer was that we are getting ready for design and construction planning bids. When asked what we should do next, Kara Buzanoski said that she would like to bring a correct plan to us for our endorsement in the next meeting

4. Plan for Granite Public Way Monuments for Sconset, Surfside, Brant Point, and Eel Point.

Allen Reinhard said that we need to develop a map of locations for Public Ways marked with monuments. He also said that additional granite monuments were on order. When we get the new posts, he will ask Andrew Vorce for a list of completed takings intended as public ways and then we can put the posts in the ground. At that time, we will go out and stake physical locations for each new post. The goal is to have posts in place by Memorial Day.

5. Old, New, or Other Business.

Mike Burns reported that construction of the new bike path on the old railroad causeway has been re-advertised and should be underway soon.

6. Adjournment

With unanimous consent, adjournment came at 5:33 pm.

Next meeting: April 19, 2016, 4:00 p.m., 2 Fairgrounds Road.

R&ROW Committee Outstanding Projects List:

Projects Under Way:

- Downtown Sidewalk Survey Project,
- In-Town Bike Path from Washington St. Ext. to Rotary,
- Boulevard to Airport road takings, and reconstruction as Public Ways,
- Installation of sidewalk from Prospect St. multi-use path to Upper Vestal Street,
- Bike path linking Surfside, Hummock Pond & Madaket Bike paths via Mill Hill,
- First Way Pedestrian/Bike Access and Road Improvement Safety Project,
- Sconset Footpath install Public Way Monuments.

Projects on hold, or in need of advancement:

- Nantucket Central Railroad Trail Project,
- Nantucket Open Space Plan Update,
- Nantucket Greenway and Footpath System,

- East Creek Road viewing platform and CPC grant,
- Work with DPW on maintenance plan for public way monuments and trails,
- Oversight of maintenance West Chester St. Ext., Crooked Lane,
- Harbor walk.

Completed projects needing implementation and follow up:

- Chapter 91 Public Access License Enforcement: Harbors Plan Implementation

Transcribed by Lee W. Saperstein, Secretary, and edited by Allen Reinhard, Chair