



# CONSERVATION COMMISSION

## PUBLIC MEETING

2 Bathing Beach Road  
Nantucket, Massachusetts 02554

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

Wednesday, June 15, 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 4:04 p.m.

Staff in attendance: Jeff Carlson, Natural Resources Coordinator  
 Attending Members: Steinauer, Bennett, Erisman, LaFleur, Champoux, Topham  
 Absent Members: Golding  
 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. Haulover – 165 Wauwinet Road (7-1.1) SE48-2894

Sitting: Steinauer, Bennett, Erisman, LaFleur, Champoux, Topham  
 Recused: None  
 Documentation: Site plans, topographical maps, photos, MNH sign off letter, departmental reports, and correspondence.  
 Representative: **Jeff Blackwell**, Blackwell & Associates – Questions were raised about the ramp obstructing sand flow; after careful study of the situation, he does not believe that will happen.  
 Public: None  
 Discussion (4:05): **Champoux** – Confirmed that the skirt to the ramp will be no lower than the framing.  
 Staff: Have everything needed to close.  
 Motion: **Motion to Close.** (made by: LaFleur) (seconded by: Champoux)  
 Vote: Carried unanimously

2. Edell & Alderson – 8 High Brush Path (56-370) SE48-2891

Sitting: Steinauer, Bennett, Erisman, LaFleur, Champoux, Topham  
 Recused: None  
 Documentation: Site plans, topographical maps, photos, MNH sign off letter, departmental reports, and correspondence.  
 Representative: **Brian Madden**, LEC Environmental – Revised plans show changes to the hardscaping: pool and patio shifting away from the resource area; no change to the existing driveway. Proposes to replant the disturbed buffer area with high-brush blueberry.  
 Public: None  
 Discussion (4:08): None  
 Staff: Have everything needed to close.  
 Motion: **Motion to Close.** (made by: Champoux) (seconded by: Bennett)  
 Vote: Carried unanimously

3. Beach Nut LLC – 1A Crow’s Nest Way (12-24) SE48-2895

Sitting: Steinauer, Bennett, Erisman, LaFleur, Champoux, Topham  
 Recused: None  
 Documentation: Site plans, topographical maps, photos, MNH sign off letter, departmental reports, and correspondence.  
 Representative: **Dhruv Patel**, Nantucket Surveyors – Reviewed the project.  
**David M. Haines**, Haines Hydrogeologic Consulting – Resource areas: ocean, coastal beach and coastal dune; all new work will be outside the 50-foot buffer. Asking for waiver to remove existing structure.  
 Public: None  
 Discussion (4:10): **Erisman** – Asked what will be the change in the percentage of developed area. The amount of proposed construction will require stripping all vegetation off the lot and that will impact water flow.  
**Steinauer** – Could grant a waiver under long-term net benefit.  
 Staff: The percentage change is only relative to the 25-50 buffer zone; the only structural work within that area is to remove a structure, that work is in keeping with the regulations. In his opinion, removal of a structure is a project, not construction.  
 Have everything needed to close.  
 Motion: **Motion to Close.** (made by: Bennett) (seconded by: Champoux)  
 Vote: Carried unanimously

4. 3 Beacon Lane NT – 3 Beacon Lane (21-26.9) SE48-2892
- Sitting Steinauer, Bennett, Erisman, LaFleur, Champoux, Topham
- Recused None
- Documentation Site plans, topographical maps, photos, MNH sign off letter, departmental reports, and correspondence.
- Representative **Arthur D. Gasbarro**, Nantucket Engineering & Survey – (4:18) Waiting for Massachusetts Natural Heritage signoff. Asked for a 2-week continuance.  
(4:25) Reviewed the project: residential redevelopment on Sesachacha Pond. The waiver is related to footings separation from high ground water. Explained dewatering. The site is served by well and septic. No disturbance is intended within the 25-foot buffer.
- Public None
- Discussion (4:25) ((4:18) Initially this was held pending the MNH sign off.)  
**Steinauer** – Disclosed that Massachusetts Audubon has a deed restriction on the abutting property but there is no financial impact.
- Staff The Massachusetts Natural Heritage sign off was just received; this can be reopened as part of the open public hearing.  
Have everything needed to close.
- Motion **Motion to Close.** (made by: Champoux) (seconded by: Bennett)
- Vote Carried unanimously
5. \*Leary Family Realty Co LLC – 7 Massachusetts Avenue (60-92) SE48-2896
- Sitting Steinauer, Bennett, Erisman, LaFleur, Champoux, Topham
- Recused None
- Documentation Site plans, topographical maps, photos, MNH sign off letter, departmental reports, and correspondence.
- Representative **David M. Haines**, Haines Hydrogeologic Consulting – This is for replacement of a well and installation of a tight tank. Resource areas are a saltmarsh and land subject to coastal storm flowage. The well failed and they received and installation the new well ordered by the Health Department; that has been done. The existing septic will be pumped and left in place to minimize disturbance. Dewatering will be necessary so the plans show the dewatering area.
- Public None
- Discussion (4:20) None
- Staff Have everything needed to close.
- Motion **Motion to Close.** (made by: Topham) (seconded by: Bennett)
- Vote Carried unanimously

**B. Amended Orders of Conditions**

1. Monomoy Creek RT – 12 Monomoy Creek Road (54-54.1) SE48-2665

- Sitting Steinauer, Bennett, Erisman, LaFleur, Champoux, Topham
- Recused None
- Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
- Representative **Brian Madden**, LEC Environmental – Noted he will be calling responsible parties in regards to clean up noted as necessary during the site visit. Changes include: pool, patio, fence, and boathouse have all been reconfigured to all be outside the 50-foot buffer; adding a window well to the foundation; reducing the size of the parking area; replacing a shed with a garage. No changes to the limit of work but this results in a net decrease of encroachment into the buffer zones.
- Public **Emily Molden**, Nantucket Land Council – Hearing about the erosion control issues, she reminded the board that this was the site she noted had unpermitted dewatering taking place into adjacent wetlands. Suggested the board hold off issuing the amended order until the site is cleaned up. Asked for a continuance.
- Discussion (4:30) **Steinauer** – Suggested moving the garage back a little bit more.  
**Madden** – That would move either the driveway or the parking into the 25-foot buffer.  
**Erisman** – Wants to ensure all the debris and equipment and material is cleaned out of the 25-foot buffer.
- Staff Noted the board can require photo monitoring. The siltation measures need to be brought back into repair.
- Motion Continued to June 29 without objection.
- Vote N/A

**III. PUBLIC MEETING**

**A. Minor Modifications**

1. Dannheim – 97 Low Beach Road (75-31.2) NAN-119 **(WITHDRAWN)**

**B. Certificates of Compliance**

1. Four Saratoga LLC – 14 Tennessee Avenue (60.1.2-6) SE48-2506 **(Cont 06/29/2016)**

2. Marsillo – 271 Hummock Pond Road (83 Portion of 42 ) SE48-936 **Reissue**  
 Sitting Steinauer, Bennett, Erisman, LaFleur, Champoux, Topham  
 Staff This is to clear the title; work is in compliance; need recordable Certificate of Compliance. Recommend this be reissued.  
 Discussion (4:42) None  
 Motion **Motion to Reissue.** (made by: LaFleur) (seconded by: Champoux)  
 Vote Carried unanimously
3. Bartlett – 271 Hummock Pond Road (83-8 & 42 ) SE48-816 **Reissue.**  
 Sitting Steinauer, Bennett, Erisman, LaFleur, Champoux, Topham  
 Staff This is to clear the title; work is in compliance; need recordable Certificate of Compliance. Recommend this be reissued.  
 Discussion None  
 Motion **Motion to Reissue.** (made by: Champoux) (seconded by: Bennett)  
 Vote Carried unanimously
4. Vero Ventures - 18 Cherry Street (55-913) SE48- 2434  
 Sitting Steinauer, Bennett, Erisman, LaFleur, Champoux, Topham  
 Staff The site is in compliance and all work completed. Recommend issued with no on-going conditions.  
 Discussion None  
 Motion **Motion to Issue.** (made by: Bennett) (seconded by: LaFleur)  
 Vote Carried unanimously
5. Zaverucha – 45 Easton Street (42.4.1-58) SE48-2720  
 Sitting Steinauer, Bennett, Erisman, LaFleur, Champoux, Topham  
 Staff Raised to flood elevation and porch extensions. Recommends this be issued.  
 Discussion None  
 Motion **Motion to Issue.** (made by: Bennett) (seconded by: Champoux)  
 Vote Carried unanimously
6. Goldberg – 156 Orange Street (55-61) SE48-2623
7. Goldberg – 156 & 158 Orange Street (55-61; 61.1)SE48-2739  
 Sitting Steinauer, Bennett, Erisman, LaFleur, Champoux, Topham  
 Staff These were to first shift the dock off 156 Orange Street and second reconfigure the stairway. Both are in compliance.  
 Discussion None  
 Motion **Motion to Issue SE48-2623 and SE48-2739.** (made by: Champoux) (seconded by: Topham)  
 Vote Carried unanimously
8. Sohn – West Miacomet Road (86-2) SE48-345 **Reissue**  
 Sitting Steinauer, Bennett, Erisman, LaFleur, Champoux, Topham  
 Staff This is to clear the title; work is in compliance; need recordable Certificate of Compliance. Recommend this be reissued.  
 Discussion None  
 Motion **Motion to Reissue.** (made by: Champoux) (seconded by: Topham)  
 Vote Carried unanimously

**C. Orders of Condition**

1. Pocomo Neighbours – 47,53,55,57,61,63 & 69 Pocomo Road (Multiple) SE48-2874  
 Sitting Steinauer, Bennett, Erisman, LaFleur, Champoux, Topham  
 Staff What he drafted is similar to the Order of Condition issued for Shimmo. Condition 30: pre-construction beach invertebrate study. Condition 31: memorializes that if there is a large amount of replacement work, they have to reapply. Condition 32: staking of the mean high water line.  
 Representative Arthur D. Gasbarro, Nantucket Engineering & Survey  
 Discussion (4:48) **Steinauer** – Asked if there is a requirement to report the amount of replacement sand provided.  
**Carlson** – That is covered in Condition 22 and 23; he'll add to Condition 23 that the yearly report include sand quantities installed. He needs to clarify Condition 31 about what is project materials.  
**Erisman** – She has thought a lot about what constitutes failure; they are trying to establish a dune; we would want 60% survival rate of plants.  
**Carlson** – Condition 29 requires 75% plant success rate or they come back to the commission. Also this is project conditioned for yearly face to face between the board and applicant to ensure commission satisfaction with what's happening and to evaluate the functionality of the project and if any changes are needed.  
**Steinauer** – Suggested issuing a partial certificate upon completion of construction and hold the final until the end of three years to determine whether or not this is working.  
**Erisman** – “Working” is a broad term for bioengineering a dune that will not impact the system. Within three years the plants should have taken a hold; there have been large percentages of loss in three years and the habitat could not be established. There are three options: 1) do nothing, 2) move the structures, and 3) build a coastal erosion structure; we are jumping to the third option.

**Champoux** – If they are adding tubes every couple of years, this is no longer a bioengineered structure. We need to be able to ascertain at what point a living bank has taken over and there is no need for the structure. Would like to suggested something that allows the board to see how the it does without the replacement of tubes.

**Erisman** – Within 5 to 7 years, the plants should have taken hold; if they are replacing a lot of beach grass then the new dune is not being created.

**Steinauer** – The naturally vegetated banks out there are not holding up. This is becoming a heavily impacted environment due to changes in the direction of the storms.

**Carlson** – They are allowed to maintain the structure in good repair; however, this is designed to intentionally be impacted so he doesn't know if the board can require them to come in with an amendment for repair but we can require repair work be reported.

**Erisman** – Asked again what failure criteria is being add into this.

**Carlson** – Reviewed how Condition 29 can be amended to establish failure criteria.

**Erisman** – She can't agree to the finding that there is no impact on habitat and wildlife.

Motion to Issue as amended. (made by: LaFleur) (seconded by: Bennett)

NOT Carried 3-3

Motion  
Vote  
Further discussion  
(5:11)

**Carlson** - Will have to schedule a special meeting; this needs to be issued before close of business

Wednesday, June 22. If this board is going to discuss an order in the negative, reasons why it couldn't be conditioned to meet performance standards need to be established.

**Champoux** – He is concerned they won't get the data necessary to ensure this is not having an impact.

**Steinauer** – His concern is that this won't perform as promised.

**Champoux** – He doesn't think this is ready for a positive order because it can be rebuilt in perpetuity.

**Steinauer** – That is what is being pushed, using coir bags that are designed to release sand; they need to be rebuilt.

**Erisman** – The bank has glacial deposits that has contributed to the harbor and that is not being matched.

**Steinauer** – The question of what type of wildlife is supported by the existing bank needs to be answered; beach grass and a couple of other grasses doesn't promote a diverse habitat.

**Steinauer** – Our local regulations don't recognize bioengineered structures as not being structures. He believes this is a structure because the coir logs are hard.

**Bennett** – We have to determine whether or not these are acting as a structure.

**Carlson** – Condition 31 tries to establish at what point the amount of work moves from repair to replace.

**Gasbarro** – Suggested adding to Condition 31: 1/3 of total linear feet.

Discussion about whether or not, due to the size of the project, increasing the number of transects for surveying wildlife will help.

Discussion about how to determine when the area starts acting like a living bank.

**Carlson** – Looking for some way to set a period of time in which to determine whether or not to continue for another three years. If there is an adverse impact, it is subject to enforcement. Noted that since Coastal Zone Management (CZM) and Department of Environmental Protection (DEP) have ruled a bio-engineered project is not a structure, George Pucci of Kopelman & Paige, Town Counsel, tends to agree with that; he noted there has been no court case challenging the CZM/DEP ruling.

**Erisman** – Doesn't believe the board will be able to tell if the project is having an adverse impact. The impact would be on the underlying habitat; something we wouldn't pick up on right away.

**Steinauer** – He thinks it will shed more material than the bank would shed and impact the aquatic environment.

**Champoux** – Asked where the controls on this are. Need control sites that are outside the project area for comparison.

**Gasbarro** – There are seven monitoring transects set every 300 feet to provide invertebrate data. The controls would be the twice-a-year survey. The outside control might be hard to establish; would have to look at the top of bank on other properties.

**Steinauer** – Asked about maintaining a walkable beach.

**Carlson** – That can't be conditioned as this is private property, unlike the 'Sconset Beach project which is on Town property.

**Champoux** – He could support this with beefing up Condition 31 as suggested by Mr. Gasbarro.

**Carlson** – Suggested wording it so that instead of amending the permit, they must file for a new 3-year permit. Reviewed other possible changes to strengthen and clarify the permit. He will write up a fresh draft for commissioner review.

Continued without objection to Monday, June 20, at 4 p.m. location to be determined.

2. Haulover – 165 Wauwinet Road (7-1.1) SE48-2894

Sitting Staff Steinauer, Bennett, Erisman, LaFleur, Champoux, Topham

Discussion (5:56) None

Motion

**Motion to Issue as drafted.** (made by: Champoux) (seconded by: LaFleur)

Vote Carried unanimously

3. Edell & Alderson – 8 High Brush Path (56-370) SE48-2891
  - Sitting Steinauer, Bennett, Erisman, LaFleur, Champoux, Topham
  - Staff He needs to add Condition 20: no cultivars.
  - Discussion (5:57) None
  - Motion **Motion to Issue as amended.** (made by: LaFleur) (seconded by: Champoux)
  - Vote Carried unanimously
4. Beach Nut LLC – 1A Crow’s Nest Way (12-24) SE48-2895
  - Sitting Steinauer, Bennett, Erisman, LaFleur, Champoux, Topham
  - Staff He included pool conditions about water discharge and exterior lighting to be directed downward. Didn’t add a waiver; they’re removing the structure from the buffer zone.
  - Discussion (5:59) None
  - Motion **Motion to Issue as drafted.** (made by: Champoux) (seconded by: Bennett)
  - Vote Carried unanimously
5. 3 Beacon Lane NT – 3 Beacon Lane (21-26.9) SE48-289
  - Sitting Steinauer, Bennett, Erisman, LaFleur, Champoux, Topham
  - Staff Will add Condition 20: no cultivars.
  - Discussion (6:00) None
  - Motion **Motion to Issue as amended.** (made by: Champoux) (seconded by: Bennett)
  - Vote Carried unanimously
6. Leary Family Realty Co LLC – 7 Massachusetts Avenue (60-92) SE48-2896
  - Sitting Steinauer, Bennett, Erisman, LaFleur, Champoux, Topham
  - Staff This is for the emergency well and tight tank. No special conditions.
  - Discussion (6:02) None
  - Motion **Motion to Issue as drafted.** (made by: LaFleur) (seconded by: Champoux)
  - Vote Carried unanimously

**D. Monitoring Reports** (6:03)

1. Sisk – 153 & 155 Wauwinet Road (11-3)SE48-2639
2. Salt Marsh Cranes RT – 5 Salt Marsh Road (55-297) SE48-2606

**E. Other Business** (6:05)

1. Approval of Minutes: 06/01/2016 – Approved by unanimous consent.
2. Enforcement Actions
  - a. 36 Pocomo Road: there has been a significant amount of brush cutting within jurisdictional areas to include a potential vernal pool; this will require a restoration plan. Part of the enforcement action should include certification of the vernal pool. **Kevin Dale**, Vaughan, Dale, Hunter and Beaudette, P.C., for direct abutter – Requests a restoration plan require mature trees and bushes and that work take place within a clearly defined timeline.  
**Motion to Ratify Issuance of an Enforcement Order.** (made by: Champoux) (seconded by: Bennett) Carried unanimously
  - b. Charles Maurer, Smith Point: new roads were cut, structures and gates were installed in concrete, installed aluminum beach stairs and ramp, stone in concrete walkways; all work is in jurisdictional area. Most work has happened within the past two weeks. This will require the removal of a lot of these structures; this individual should come before the board.  
**Motion to Ratify Issuance of an Enforcement Order.** (made by: Bennett) (seconded by: Champoux) Carried unanimously
  - c. Holly Farm: enforcement update; restoration plan is forthcoming.
3. Emergency Certification:
  - Leary Family Realty Co LLC – 7 Massachusetts Avenue (60-92)  
**Motion to Issue the Emergency Certification.** (made by: LaFleur) (seconded by: Champoux) Carried unanimously
4. Reports:
  - a. NP&EDC, Bennett: nothing
  - b. Mosquito Control Committee, Erisman: nothing
5. Commissioners Comment
  - a. Champoux – Appreciates the time and care taken in regards to Pocomo Neighbours.
6. Administrator/Staff Reports
  - a. Regulations: Looking for areas commissioners would like to cover as a starting point and whether or not to do the work in the regular meetings or in workshops.
  - b. By-law change addressing enforcement: working up a warrant article for special town meeting.

Motion to Adjourn: 6:31 p.m.

Submitted by:  
Terry L. Norton