



CONSERVATION COMMISSION

PUBLIC MEETING

2 Bathing Beach Road
Nantucket, Massachusetts 02554

www.nantucket-ma.gov

Wednesday, August 10, 2016 4:00 P.M.
4 Fairgrounds Road, Training Room

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

Called to order at 4:01 p.m.

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

Agenda adopted by unanimous consent

*Matter has not been heard

I. PUBLIC MEETING

A. Public Comment

1. **Rachel Freeman**, Nantucket Islands Land Bank – Update on the Long Pond pilot project for phragmites eradication in the vicinity of Massasoit Bridge. Steinauer – Asked for a stem count so that the success of the program can be used to help evaluate the success of other phragmites eradication programs.

II. PUBLIC HEARING

A. Notice of Intent

1. Edwin Snider RT – 1 Brock’s Court (42.3.4-84) SE48-2834 **Cont (09/21/16)**
2. Edwin Snider RT – 1 Brock’s Court (42.3.4-84) SE48-2835 **Cont (09/21/16)**
3. Laz Family NT – 20 Waquoit Road (90-5) SE48-2901

Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux

Recused None

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

Representative Arthur D. Gasbarro, Nantucket Engineering & Survey

Public None

Discussion (4:15) **Gasbarro** – This is the 2nd hearing for a set of seasonal beach stairs and grass walking path, swimming pool, other landscaping, and additional work on the structure. We were waiting for Massachusetts Natural Heritage sign off, which was received. Reviewed the revised plan.
Steinauer – Asked if the area between the shore and bank is beach.
Erisman – Concerned about brush cutting within the 25- and 50-foot zones.
Gasbarro – Could propose no root disturbance in that zone.

Staff Have everything needed to close.

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

Vote Carried unanimously

4. Third Time Trust – 41A Cliff Road (42.4.4-2) SE48-2904

Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux

Recused None

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

Representative Paul Santos, Nantucket Surveyors

Public None

Discussion(4:20) **Santos** – Continuation of a hearing for renovation, addition, and relocation of a structure onto a new foundation. Was continued for Department of Environmental Protection file number and information on invasive species along the top of a coastal bank. His client has agreed to the removal of Japanese Knotweed along the back side of the fence at the top of the coastal bank. Waivers are requested.
Champoux – Asked that whoever is doing removal has a license for removal and follows protocol.

Staff Have everything needed to close.

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

Vote Carried unanimously

5. 102 Wauwinet Road NT - 102 Wauwinet Road (11-24.2) SE48-2902

Sitting Bennett, Erisman, Steinauer, LaFleur
 Recused Champoux
 Documentation Site plans, topographical maps, photos, MNH sign off letter, departmental reports, and correspondence.
 Representative Don Bracken, Bracken Engineering, Inc.
 Public None
 Discussion (4:23) **Bracken** – This is for stairs on a coastal bank and a foot path. Reviewed resource areas.
 Staff Have everything needed to close.
 Motion **Motion to Close.** (made by: LaFleur) (seconded by: Steinauer)
 Vote Carried 4-0

6. Four Quaise Pasture Road NT – 4 Quaise Pasture Road (26-29) SE48-2903

Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux
 Recused None
 Documentation Site plans, topographical maps, photos, MNH sign off letter, departmental reports, and correspondence.
 Representative Don Bracken, Bracken Engineering, Inc.
 Public None
 Discussion (4:25) **Bracken** – Continued for minor changes; reviewed those changes. All proposed work is within existing lawn area.
 Staff Were also waiting for Massachusetts Natural Heritage, which was received. Have everything needed to close.
 Motion **Motion to Close.** (made by: LaFleur) (seconded by: Champoux)
 Vote Carried unanimously

7. The Nantucket Land Bank – 4 Polpis Harbor Road (54-187) SE48-2905 **Cont (08/24/16)**

8. *Haulover LLC - 165 Wauwinet Road (7-1.1) SE48-2907

Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux
 Recused None
 Documentation Site plans, topographical maps, photos, MNH sign off letter, departmental reports, and correspondence.
 Representative Don Bracken, Bracken Engineering, Inc.
 Public None
 Discussion (4:27) **Bracken** – This is a septic system upgrade located at elevation 9 which is in the flood zone. Propose to revegetate disturbed areas with American beachgrass. The silt fence will be on the downhill side. The area is all coastal dune. Reviewed vegetation in the area.
Steinauer – Asked about the shrubs.
Bracken – There’s a lot of rosa rugosa but he didn’t take a close look; he has photographs of the area. At this point they’ve only have specified American beachgrass. He will provide the vegetation information.
 Asked for a 2-week continuance
 Staff None
 Motion Continued to 8/24 without objection
 Vote N/A

9. *Nantucket Pond Coalition – White Goose Cove within Long Pond (594-30,31) SE48-2908

Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux
 Recused None
 Documentation Site plans, topographical maps, photos, MNH sign off letter, departmental reports, and correspondence.
 Representative Robert Williams, Nantucket Pond Coalition
 Public Robert Rezendes, 11 Columbus Avenue
 Hennie Rezendes, 11 Columbus Avenue
 Ronald Zibelli, 8 Long Pond Drive
 Jocelyn Gemis, 12 Long Pond Drive
 Discussion (4:31) **Williams** – With the success of the pilot program, this NOI is for phragmites removal for White Goose Cove; the process will be over a 5-7 year period. Reviewed photos of Madaket land trust public dock which is an example of the conditions in the area. In this case, propose to use a Marsh Master, which is a high amphibious vehicle, for spreading of the herbicide. Do not yet have Massachusetts Natural Heritage signoff but foresee no problems. Solitude Lake Management will be doing the work.
Champoux – Would like to see a presentation of the application process.
Williams – Noted he has concern about leaving the stalk though that is what is recommended. Asked if there are objections to removing the phragmites stalks.
Erisman – Leave them for protection of the ecosystem and habitat.
Champoux – There is also the removal of the seed head component; cut them off and bag them.
Williams – It would be hard to cut and bag the seed head in this case due to the size of the area treated.
Williams – He had hoped the company representative could call in. Stated he will forward a link of a video of the Marsh Master in operation to the commissioners.
Erisman – She would like to see the 5- to 7-year plan to reestablish and manage the area.
Williams – Grants and sponsors of the program assure about \$5000 a year over the next five years.

Steinauer – Long-term control has a lot to do with doing it right in the first place. One concern is the phragmites coming back; that will require monitoring the revegetation.

Discussion about the revitalization of the pond with the removal of the phragmites.

Steinauer – He'd like to see detailed information on the application process: spray nozzle, what kind of drop and drift. The drift should be monitored again due to the use of a new piece of equipment.

R. Rezendes – Watched the phragmites increase in the four years he's lived on Long Pond. It takes a fair amount of effort to organize the community; it is now paying attention.

H. Rezendes – It's not just aesthetics; phragmites obstruct water activities on the pond. If action doesn't take place soon, it will become impossible to handle.

Zibelli – This has been discussed since 1995; it shouldn't be stalled too much longer.

Gemis – Asked if anyone looked at the affect the phragmites have on fish.

Williams – As phragmites move out into the water, they reduce the opportunity for life cycles to operate properly; it is unhealthy on the entire ecology of the pond.

Erisman – Suggested that all the abutters should stop fertilizing their lawns to assist the health of the pond.

Williams – They are putting out a brochure to that effect. Asked for a 2-week continuance.

Staff Noted that the ConCom remote participation policy only allows for commissioners to remotely participate.

Motion Continued to 8/24 without objection

Vote N/A

10. *Pate – 5 Francis Street (42.2.3-26) SE48- 2906

Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux

Recused None

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

Representative None

Public None

Discussion (5:07) No questions or comments.

Staff This is within land subject to coastal storm flowage; proposing an addition to rear of house with run off into drywell located on the lot; no new construction. There is no grade increase. existing. The house was recently raised to be flood-zone compliant. Have everything needed to close.

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

Vote Carried unanimously

B. Amended Orders of Conditions

1. *MAK Daddy Trust – 68/72 Monomoy Road (43-119,115) SE48-2803 **Cont (08/24/16)**

III. PUBLIC MEETING

A. Request for Determination of Applicability

1. *Udelson – 94 Tom Nevers Road (91-41)

Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux

Recused None

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

Representative Mark Rits, Site Design Engineering

Public None

Discussion (5:09) **Rits** – This is to delineate the top of a coastal bank and associated buffer zones and brush cutting outside the 50-foot buffer. The face of the bank and upper dune are well vegetated.

Erisman – Asked about the vegetation.

Rits – Bayberry and scrub oak and huckleberry; normal scrub growth.

Staff Recommend this be issued as a Positive 2 and Negative 3.

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

Vote Carried unanimously

B. Minor Modifications

1. Nantucket Conservation Foundation – 183,185, 187 Eel Point Road (33-1-3) SE48-2319

Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux

Recused None

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

Representative None

Public None

Discussion (At 5:11, was held to allow the representative a chance to arrive)

The consensus was comfortable with ruling on this at this time.

Staff (5:50) This is an invasive species management project; been trying to treat grey willow and are asking to use Imazapyr injection. This would be the third year of treatment. Reviewed the reporting requirements. Can issue as a minor modification or hold for the representative.

Motion **Motion to Issue.** (made by: Erisman) (seconded by: LaFleur)

Vote Carried unanimously

2. Eleven Crooked Lane, LLC – 10 Hickory Meadow Lane (41-904) SE48-2682

Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux
 Recused None
 Documentation Site plans, topographical maps, photos, MNH sign off letter, departmental reports, and correspondence.
 Representative Don Bracken, Bracken Engineering, Inc.
 Public None
 Discussion (5:12) **Bracken** – Reviewed the plan from the existing Order of Conditions, which is from 2014. This modification is for the loci of structures to be reconfigured.
 Staff There is very little work within ConCom jurisdiction. The locations are being changed with no change in area. Recommend issue this be issued as a minor modification.
 Motion **Motion to Issue as minor modification.** (made by: Champoux) (seconded by: LaFleur)
 Vote Carried unanimously

3. Nantucket Electrical Co – 1 Candle St (42.3.1-93) SE48-2731

Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux
 Recused None
 Documentation Site plans, topographical maps, photos, MNH sign off letter, departmental reports, and correspondence.
 Representative None
 Public None
 Discussion (5:16) No questions or comments.
 Staff The modification is asking to change the large sand bags to smaller sand bags. Recommend this be issued as a minor modification.
 Motion **Motion to Issue as minor modification.** (made by: Champoux) (seconded by: LaFleur)
 Vote Carried unanimously

C. Certificates of Compliance

1. Four Saratoga LLC – 14 Tennessee Avenue (60.1.2-6) SE48-2506 **(Cont 09/21/2016)**

2. Thompson – 14 Fargo Way (14-17) SE48-2645 **(Cont 09/21/2016)**

3. PKG Design Build, LLC - 3 & 3A Pilgrim Road (41-612 & 613) SE48-2382

Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux
 Representative Mark Rits, Site Design Engineering
 Staff Recommend this be issued with no on-going conditions.
 Discussion (5:18) **Rits** – This was for the construction of a subdivision roadway partially within the 100-foot buffer to an offsite isolated vegetated wetland. Work is completed in compliance with original order.
 Motion **Motion to Issue.** (made by: LaFleur) (seconded by: Champoux)
 Vote Carried unanimously

4. 5 Quaise, LLC – 5 Quaise Pastures (26-21) SE48-2488

Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux
 Representative Mark Rits, Site Design Engineering
 Staff Recommend this be issued with no on-going conditions.
 Discussion (5:19) **Rits** – All structural components outside 50-foot buffer of a bordering vegetated wetlands. Work is done per order. Most work outside the 50-foot buffer. A second open order is for a boardwalk still under construction.
 Motion **Motion to Issue.** (made by: Champoux) (seconded by: LaFleur)
 Vote Carried unanimously

5. Schwenk – 17 Dukes Road (41-313) SE48-2811

Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux
 Representative Don Bracken, Bracken Engineering, Inc.
 Staff Recommend this be issued with no on-going conditions.
 Discussion (5:22) **Bracken** – Reviewed project; in compliance
 Motion **Motion to Issue.** (made by: LaFleur) (seconded by: Champoux)
 Vote Carried unanimously

6. Swain Point Nominee Trust – 260 Polpis Road (25-1) SE48-1133

7. Dale/Phelon Swains Point Trust – 260 Polpis Road (25-1) SE48-1652

8. Swains Point N.T – 260 Polpis Road (25-1) SE48-1266

9. Swains Point N.T – 260 Polpis Road (25-1) SE48-2633

Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux
 Representative Jeff Blackwell, Blackwell & Associates
 Staff The project is in compliance with the permit; however, given the history with this lot, suggested an on-going condition to memorialize the maintenance of the resource areas and following fertilizer best management practices (BMP). There are wetlands and an active stream.
 Discussion(5:23) **Blackwell** – Reviewed all four 260 Polpis Road Orders of Conditions.
 Motion **Motion to Issue with the on-going conditions for maintenance and BMP use of fertilizers for life.** (made by: Champoux) (seconded by: LaFleur)
 Vote Carried unanimously

10. Collis – 5 Galen Avenue (29-122) SE48-2815

Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux
 Representative Jeff Blackwell, Blackwell & Associates
 Staff The timber and patio are in previous lawn area. The cleanest way to handle this is to require a plan change to memorialize the work then issue the certificate of compliance. The plan is accurate but doesn't reflect the file plans. There are already waivers issued with this project; no new-scope features are being added.
 Discussion(5:32) **Blackwell** – This was for a new foundation in a flood zone and re-establishment of an area within a now delineated bordering vegetated wetlands. Work on the house and landscape meet the Order of Conditions except: patio, sand-filled timber area, and bluestone pavers all within the buffer to the now-delineated bordering vegetated wetlands. All the elements are landscape features and don't displace flood water.
LaFleur – Suggested this be handled through the request for a minor modification.
 Motion Continued to 8/24 by unanimous consent.
 Vote N/A

11. Eilers – 66 West Chester Street (41-371) SE48-809 **Reissue**

Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux
 Representative None
 Staff In compliance.
 Discussion(5:23) No comments
 Motion **Motion to Reissue.** (made by: LaFleur) (seconded by: Champoux)
 Vote Carried unanimously

D. Orders of Condition

1. Laz Family NT – 20 Waquoit Road (90-5) SE48- 2901

Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux
 Staff Need to add Condition 21 no root disturbance allowed within the 25- & 50-foot buffers. There is a waiver request that all structures be at least 100 feet from the eroding bank.
 Discussion (5:40) No questions or comments.
 Motion **Motion to Issue as amended.** (made by: Champoux) (seconded by: LaFleur)
 Vote Carried unanimously

2. 78 Wauwinet Road LLC – 78 Wauwinet Road (14-18) SE48- 2900

Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux
 Staff Condition 22 states no permanent dewatering is allowed
 Discussion (5:43) No questions or comments.
 Motion **Motion to Issue.** (made by: LaFleur) (seconded by: Champoux)
 Vote Carried unanimously

3. Third Time Trust – 41A Cliff Road (42.4.4-2) SE48-2904

Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux
 Staff Need to add Condition 20: a copy of the applicator's license is to be provided.
 Discussion (5:44) No questions or comments.
 Motion **Motion to Issue as amended.** (made by: Champoux) (seconded by: LaFleur)
 Vote Carried unanimously

4. 102 Wauwinet Road NT - 102 Wauwinet Road (11-24.2) SE48-2902

Sitting Bennett, Erisman, Steinauer, LaFleur
 Staff Pretty straight forward.
 Discussion (5:45) No questions or comments.
 Motion **Motion to Issue as drafted.** (made by: LaFleur) (seconded by: Steinauer)
 Vote Carried 4-0 (Champoux recused)

5. Four Quaise Pasture Road NT – 4 Quaise Pasture Road (26-29) SE48-2903

Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux
 Staff Will add Condition 19 for no draining of the pool in area of ConCom jurisdiction and Condition 20 for no use of cultivars.
 Discussion (5:46) No questions or comments
 Motion **Motion to Issue as amended.** (made by: LaFleur) (seconded by: Champoux)
 Vote Carried unanimously

6. Pate – 5 Francis Street (42.2.3-26) SE48- 2906

Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux
 Staff Pretty straight forward.
 Discussion (5:48) No questions or comments.
 Motion **Motion to Issue as drafted.** (made by: Steinauer) (seconded by: Champoux)
 Vote Carried unanimously

7. Turner & Saum – 1 Francis Street (42.2.3-43) SE48-2702 **Reissue**

Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux
Staff Lost the order so couldn't record it.
Discussion (5:48) No questions or comments.
Motion **Motion to Reissue.** (made by: Champoux) (seconded by: LaFleur)
Vote Carried unanimously

E. Other Business (5:55)

1. Approval of Minutes, 07/27/2016: **Motion to Approve.** (made by: Champoux) (seconded by: LaFleur) Carried unanimously
2. Enforcement Actions
 - a. Esther Island responded to the notice and scheduled a site visit; will have police accompaniment
 - b. 36 Pocomo Road responded and engaged LEC to delineate the wetlands and put together a restoration plan.
 - c. 12 Monomoy Creek Road property manager will meet with ConCom staff on site on August 11, 2016.
 - d. 4 Swain Street cut phragmites in the wetland without a permit; suggested issuing the enforcement action to get them in here to ensure they treat the phragmites properly and get the treatment as part of their existing order.
Motion to Issue the Enforcement Order. (made by: Steinauer) (seconded by: LaFleur) Carried unanimously
 - e. Kureteck family, corner Quidnet and Polpis Roads, continued with clearing of under growth in a wetland. Would like to issue this out and the letter to start them down the permitting path. Been chasing this site 12 years
Motion to Issue the Enforcement Order. (made by: Champoux) (seconded by: LaFleur) Carried unanimously
 - f. 1 Brocks Court have erected a robust chicken pen on the large grass area in the back: 15X25 with 6" posts and chicken wire on the sides and top. They are not in compliance and the resource area is in question. Asked if the board wants to issue an Enforcement Order or encapsulate the work into the permit. There are open applications in place for a number of activities; however, before their NOI is heard again, it has to be re-noticed since it's been so long. Forcing the resource delineation would be part of the Enforcement Order.
Consensus of the board wants to issue an Enforcement Order.
Bruce Griffin, for the abutters – Referred to a letter of concerns; would like to see the site restored to previous conditions; on-going activity has been without regard to ConCom authority to protect wetlands. Reviewed the amount of work the abutters believe to be unpermitted.
Discussion about how the board wishes to proceed: issue Enforcement Order and start them down the punitive path of daily fines.
Mr. Carlson explained the process of enforcement of punitive actions and penalties.
Motion to Issue the Enforcement Order and have it serve as notice to begin punitive actions. (made by: Champoux) (seconded by: Erisman) Carried unanimously
3. Reports:
 - a. NP&EDC, Bennett
 - b. Mosquito Control Committee, Erisman
4. Commissioners Comment
 - a. Champoux – On the phragmites issue, he doesn't want any group that are getting support behind them to feel discouraged about going through proper channels to remove phragmites.
5. Administrator/Staff Reports
 - a. Smith Point is again open for vehicle traffic. Most beaches are open again.

Motion to Adjourn: 6:28 p.m.

Submitted by:
Terry L. Norton