



CONSERVATION COMMISSION

PUBLIC MEETING

2 Bathing Beach Road
Nantucket, Massachusetts 02554

www.nantucket-ma.gov

Wednesday, September 21, 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 4:04 p.m.

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

Agenda adopted by unanimous consent

*Matter has not been heard

I. PUBLIC MEETING

A. Public Comment –

1. Lucy Dillon, 37 Liberty Street – She will be manning table at Farmers Market Saturday, September 24, 2016, and at the Scalloping Ball with information on water quality management practices.
2. Steve Bender, 72 Orange Street – This is a report on pollution of Nantucket harbor on a massive scale by the dumping of grey water at the boat basin. Since August 2015, he has spoken to several captains and crewmembers of large vessels who told him that at night they dump the grey water into the harbor because they say the pumping facilities at the boat basin being inadequate. The Bylaw banning dumping of grey water into the harbor was passed in 1983. Several lawyers advised him that if he sees nothing being done to enforce the grey water bylaw, he should present it to the Board of Selectmen. Noted that this amounts to 10s of thousands of gallons of what the State determines to be sewage. Black water is pumped into connections to sewer. Read 137-11 of the bylaws. **Staff** – He will request if the Division of Waterways can do an inspection of the pump-out facilities and to ascertain whether or not they are adequate to the volume of traffic. He wants to ensure discharge of grey water into a protected area is covered in the Wetlands Protection Act before issuing an enforcement.

II. PUBLIC HEARING

A. Notice of Intent

1. Edwin Snider R.T. – 2 Brock’s Court (42.3.4-84) SE48-2834

Sitting	Bennett, Erisman, Steinauer, LaFleur
Recused	Golding
Documentation	Site plans, topographical maps, photos, MNH sign off letter, departmental reports, and correspondence.
Representative	Mark Rits , Site Design Engineering – Have submitted additional information that addresses issues brought up at the last hearing. A structure has been removed and landscaped over; the chicken coop will be removed from jurisdictional areas. Other issues have to do with the house move: there was a wetland resource boundary delineated on the abutting property with the lines shown on the plans; these were valid until April 2013; at that time, the house move to outside that delineated 50-foot buffer was started prior to the expiration of that line; they did not seek a permit at that time and the current owner is seeking to rectify that. Reviewed elements that are now outside those older lines.
Public	Steven Cohen, Cohen & Cohen Law PC Paul Feldman, counsel for the abutters Greg Elder, 42 Liberty Street Emily Molden, Nantucket Land Council
Discussion (4:23)	Erisman – Asked about possible fill. Rits – He did not become involved until after the house move so does not have the topography prior to that work; at the best he can tell, the fill was one to two feet. The overall square footage for the structure is within the 100-foot buffer has increased and about 30 to 40 square feet (SF) of the retaining wall is within the buffer. Bennett – Without the topography of the abutting property, it is hard to tell where the water running onto this property might be coming from. Discussion about a pre-existing catch basin. Feldman – Contends the boundaries used start with a false premise. First is the claim there is less disturbance within the buffer zone; the 2006 plan expired in 2006 but was extended to 2013 under the Permit Extension Act and that is the line used for the move; that delineation was not set for this subject property. The Permit Extension Act pertained to the applicant who filed for work on the abutting property.

It is a dangerous precedent for ConCom to rely on wetland delineation for another property for work on this property. Recognizing that the line expired in 2013, the argument that the project was started prior to that expiration is false because there was no Order of Conditions for that work. The retaining wall, wall, and deck were done by the current owner well after the permit expired. The lines on the plans are based upon the Schofield delineation of 2015, which is not a proper delineation. Evidence has been submitted in regards to locations of hydric soils and that the area was filled well after the Wetlands Protection Act was instituted in 1983 and there is no order of conditions to fill this area. If a delineation were done today, the whole lawn would be within the resource area; the 25-foot buffer goes into half the house and the entire house is within the 50-foot buffer. If those buffers aren't delineated properly, he wants to ensure the elements of the withdrawn NOI don't show up once this NOI is resolved. The commission should entertain having the retaining wall and patio removed. Asked for an opportunity to work through these issues with the applicant's attorney for the purposes of making a determination that will produce an outcome satisfactory to everyone.

Rits – Confirmed that the buffer lines on the plan are based upon the Schofield line.

Feldman – Hydric soils were identified on the Fader property; hydric soils was found in three locations by Bruce Griffin, NEE Senior Scientist, on other properties. The scientist who reviewed the Schofield line didn't have Mr. Griffin's information. We have on-site information establishing hydric soil in areas disturbed after 1983. It is the applicant's obligation to delineate resources and buffers on their property.

Elder – There were two events, referenced his letter. First in 1998 the forest was clear cut and a catch basin installed that goes nowhere as far as he knows; the water level at 42 Liberty Street clearly increased. Second the regrading of the property and the installation of the retaining wall caused water that flowed south to north to pool instead. There is standing water even during a routine rain. Trees and vegetation has not survived on that corner because of the standing water. He stated in his letter that the retaining wall should be removed or creation of an engineered design to mediate the standing water.

Cohen – He appreciates the concerns of the neighbors about the water issue. He is confused how this wall created this problem when standing water that killed the trees and a depression are a generational issues. Willing to look at a ways to mitigate the situation. Refuted allegations against his client. The work they did was based upon their understanding a permit wasn't needed for the move. The move was a contentious issue that went through HDC so it was not done "secretly." He suggests that delineation of these wetlands doesn't need to be considered for this application because they are not asking for confirmation of delineations. Noted that the pond on the Fader property has never shown up on any applications for properties along Brock's Court. Asked for an Order of Conditions that approves the work that's been done and expressly states that they are not issuing a delineation and that the applicant can't rely on that. His client is looking at a Conservation Restriction on portions of this property.

Erismann – She isn't comfortable with a plan of records showing buffers based on old information when there is something more recent.

Discussion about a 1940 aerial of the subject property showing the pond and wetland.

Feldman – Asked again for time to work with the applicant's counsel to come up with a solution agreeable to everyone.

Molden – Hearing the discussion and commissioners wanting the most recent buffers delineated, the board shouldn't want buffers shown on a plan that memorialize incorrect delineations. Suggested that if it is continued the board should get guidance from Town Counsel about doing it with old information.

Steinauer – Agrees with the discomfort of going forward with an inaccurate line. He's not so sure about allowing them to keep the wall and fill; he doesn't believe that would have been permitted. He would like to see what should be planted here to suck up some of the water rather than digging trenches.

Elder – This is standing water and even Red Maple won't live in standing water. The board needs to be aware of that.

Rits – Understands the commission not memorializing incorrect lines but he's seen it before. They are willing to work out wording to put on each line to ensure it is not used for further applications.

Cohen – Requested a 2-week continuance.

Staff

According to a letter, 1150 SF of the structural components were within jurisdiction; current structure and wall place 1813 SF within jurisdiction.

When Mr. Griffin reviewed the submitted line, he agreed with the Schofield line. Some of the hydric information is off locus on abutting properties. There are a significant number of test holes on this property as well as on abutting properties. If a wetland resource is off site but impacts the applicant property, there needs to be an accurate plan of record showing the buffer lines.

The plan of records needs to reflect buffers the board bases its decision on.

He has already engaged Town Counsel to look at this. This area is very complicated and all residents should understand the impact of resource areas and potential resource areas and know to review that before applications are submitted.

Motion
Vote

Continued for two weeks without objection.

N/A

2. Edwin Snider R.T. – 2 Brock’s Court (42.3.4-84) SE48-2835 **Withdrawn**

Sitting Bennett, Erisman, Steinauer, LaFleur
 Recused Golding
 Staff The applicant has requested that this NOI for a pool and second structure be withdrawn.
 Motion **Motion to Accept the withdrawal.** (made by: LaFleur) (seconded by: Steinauer)
 Vote Carried 4-0

3. Nantucket Islands Land Bank – 17 Commercial Wharf & Unnumbered Lot New Whale Street (42.2.4-7 & 8) SE48-2885 (**Cont 11/02/2016**)

4. Town of Nantucket – Shimmo Creek (adjacent to 43-1) SE48- 2913

Sitting Bennett, Erisman, Steinauer, LaFleur, Golding
 Recused None
 Documentation Site plans, topographical maps, photos, MNH sign off letter, departmental reports, and correspondence.
 Representative Leah Cabral, Assistant Biologist Natural Resources Department
 Public None
 Discussion (5:35) None
 Staff This is the oyster bed project continued for Massachusetts Natural Heritage comments; Massachusetts Natural Heritage commented there is no adverse impact under the Wetland Protection Act because it is a habitat restoration project for a protected species; read the Massachusetts Natural Heritage comments. Have everything needed to close.
 Motion **Motion to Close.** (made by: LaFleur) (seconded by: Steinauer)
 Vote Carried unanimously

5. Colson – 9 Hallowell Road (30-14,15,257) SE48-2916

Sitting Bennett, Erisman, Steinauer, LaFleur, Golding
 Recused None
 Documentation Site plans, topographical maps, photos, MNH sign off letter, departmental reports, and correspondence.
 Representative **Bob Emack** – Reviewed scope of project. There was a question about the decks when the house is lifted; those will be dismantled and rebuilt once the building is back in place.
 Public None
 Discussion (5:38) None
 Staff Have everything needed to close.
 Motion **Motion to Close.** (made by: Steinauer) (seconded by: LaFleur)
 Vote Carried unanimously

6. 96 West Chester NT – 96 West Chester Street (41-483) SE48-2918

Sitting Bennett, Erisman, Steinauer, LaFleur, Golding
 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 installation of a pool and was held for questions; submitted information that addressed those issues. Looked into resource areas on abutting properties; there is a depression but it is not dominated by hydric soil or wetland vegetation. Did two test pits which established the water table at 5-feet below grade so they will be doing temporary dewatering. The concern about the pool floating is addressed by a letter from an engineer stating concrete anchors would hold the pool in place. For discharge from the pool and the filtration system, he is now proposing use of an ozone filter and discharge would be into the ground under the driveway but a backwash system eliminates the need for discharge. If the pool needs to be drained, it can sit two weeks then be pumped through a de-chlorination system so there is no danger to the wetlands.
 Public Steven Cohen, Cohen & Cohen Law PC
 Martin McKerrow, 106 West Chester Street
 Discussion (5:40) **Golding** – A main concern of the McKerrows is chlorine entering into the wetlands should the pool flood. Also, they see a cause and effect in the development of this lot and the flooding of their basement. It was pointed out to him that the application for construction of 96 West Chester main house included 2,300 yards of fill.
Steinauer – The last two winters have been very wet and thinks with this year’s dry weather, the water table has dropped back to a normal level. He doesn’t know how that would affect the perc table.
Haines – Ground water acts like surface water flowing downhill and equalizes. Nothing is being done that would impede the flow of water. The pool is well above the 100-year flood and he believes it is above the 500-year flood level. That with the containment system will prevent any flooding of the pool.
Erisman – Confirmed that part of the existing lawn goes up to the wetland. She would be more comfortable granting a waiver if there were something to prevent further encroachment to the wetland.
Haines – Explained how the filter systems eliminate discharge; stated he can’t promise a non-chlorinated filter system. Even the ozone filter uses a small amount of chlorine.
Steinauer – The issue is that there is no place outside the 100-foot buffer to discharge the pool.
Cohen – At a minimum the water level of the pool has to be dropped below the frost line at the end of the season; that’s 100s of gallons of chlorinated water. When talking about a significant amount of chlorinated water in an area surrounded by wetlands, the applicant should present a means to protect the wetlands.

Further discussion about the filter system and how and where to discharge the pool.

Erisman – Would like to receive regular maintenance reports on the pool to ensure the water is being properly discharged.

Steinauer – Suggested the pool water be pumped out and shipped off site.

Bennett – We need more information on the filter system and de-chlorination system.

Haines – The project can be conditioned that the water is shipped off site and they must use a cartridge to eliminate backwash.

Golding – Pools increase the resale of properties and this board has no way to ensure new owners will comply with the order of conditions.

Discussion about how this might be conditioned to protect the wetland from pool water.

Steinauer – He is more concerned about use of fertilizer on the lawn. In the past this board has allowed pools with waivers for 2-feet of separation and conditioned that the water is shipped off the property.

Haines – He has offered up conditions for the pool and can accept on-going reporting on the pumping out of pool water. He will accept a condition that there be no fertilizer used on the lawn.

Golding – From what the McKerrows said and what they’ve seen, he’s concerned about setting a bad precedent. His concern is for high water when the pool is full and he doesn’t know the actual height of the pool in relation to the wetland.

Erisman – Her concern is all the grandfathered areas close to the wetlands.

McKerrow – Explained where he has had flooding issues on his property that required hip waders. Stated that the flooding is getting worse every year.

Haines – Explained the topography and natural flow of water. If the commission would like more information, he is willing to provide it.

Staff

Could condition a requirement for a log from the pump truck to monitor the discharge.

Standards can only be applied to this application at this time; we can’t hold an applicant’s old projects to new standards.

The discussion is going in circles; if there is no specific information, suggested closing and deliberating. Have everything needed to close.

Motion

Motion to Close. (made by: Steinauer) (seconded by: LaFleur)

Vote

Carried unanimously

7. *Walsh Street, LLC – 64 Walsh Street Lot 1 (29-94) SE48-2921

Sitting

Bennett, Erisman, Steinauer, LaFleur, Golding

Recused

None

Documentation

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

Representative

Mark Rits, Site Design Engineering – The resource is land subject to coastal storm flowage; proposing a single-family dwelling, pool, patio, decking, and secondary dwelling with associated landscaping. The entire lot is landscaped and altered. The foundations will be flood compliant to allow water to flow through. No significant grading is proposed that would require retaining walls. Explained the filtration system for roof runoff.

Public

None

Discussion (6:37)

Erisman – The two structures on the subdivided lots are impacting water will flow through here; asked who should be looking at that more closely before allowing a property to be subdivided.

Staff

Land subject to coastal storm flowage is the least regulated resource area.

Planning would be the board that should look at water flow before approving a subdivision but that is the reason for the State building code requirement for flood panels.

Have everything needed to close.

Motion

Motion to Close. (made by: Golding) (seconded by: Steinauer)

Vote

Carried unanimously

8. *Larusso – 316 Polpis Road (25-7) SE48-2922

Sitting

Bennett, Erisman, Steinauer, LaFleur, Golding

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 a pool and cabana, new septic, and second dwelling on a developed lot and is subject Massachusetts Natural Heritage endangered species review so it will require a two-week continuance. A portion of the existing structure’s porch is within the 50-foot buffer. There is lawn within the 25-foot buffer mowed to within 10 feet of the wetland; it is not fertilized or irrigated. Asked for a 2-week continuance.

Public

None

Discussion (6:45)

Steinauer – It would be interesting to know the best management of this plant.

Staff

Before talking about buffer zones or edges of lawn, Massachusetts Natural Heritage comments are important because the plant under consideration is good about colonizing lawn areas and reacts well to being treated like a lawn.

Motion

Continued for two weeks without objection.

Vote

N/A

9. *Sunset House, LLC – 15 Hallowell Lane (30-10) SE48-2924
 Sitting Bennett, Erisman, Steinauer, LaFleur, Golding
 Recused None
 Documentation Site plans, topographical maps, photos, MNH sign off letter, departmental reports, and correspondence.
 Representative **Arthur D. Gasbarro**, Nantucket Engineering & Survey – Asked for a 2-week continuance.
 Public None
 Discussion (6:53) None
 Staff None
 Motion Continued for two weeks without objection.
 Vote N/A

10. *Steven L. Cohen Trustee – 53 Walsh Street (29-60) SE48-____
 Sitting Bennett, Erisman, Steinauer, LaFleur, Golding
 Recused None
 Documentation Site plans, topographical maps, photos, MNH sign off letter, departmental reports, and correspondence.
 Representative **Paul Santos**, Nantucket Surveyors – The work is within land subject to coastal storm flowage and is for infill of 2nd-floor overhang, placement of a chimney, removal of a small section of 1st-floor structure, and small addition with deck. No waivers are required. Asked for a 2-week continuance for the DEP number.
 Public None
 Discussion (6:54) None
 Staff None
 Motion Continued for two weeks without objection.
 Vote N/A

11. *Theresa Fortgang – 2 Wanoma Way (92.4-118) SE48-2923
 Sitting Bennett, Erisman, Steinauer, LaFleur, Golding
 Recused None
 Documentation Site plans, topographical maps, photos, MNH sign off letter, departmental reports, and correspondence.
 Representative **Paul Santos**, Nantucket Surveyors – This is a developed property with the resource area of a coastal bank. This is a stable coastal bank. The work is for placement of a new 375 SF foundation under a new addition, the addition, and placement of a shed There are no changes to the footprint within the 50-foot no-build zone. All work is within the developed portion of the lot and outside the 50-foot no-build.
 Public None
 Discussion (6:57) None
 Staff Have everything needed to close.
 Motion **Motion to Close.** (made by: Steinauer) (seconded by: LaFleur)
 Vote Carried unanimously

B. Amended Orders of Conditions

1. MAK Daddy Trust – 68/72 Monomoy Road (43-119,115) SE48-2803
 Sitting Bennett, Erisman, Steinauer, LaFleur, Golding
 Recused None
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Steven Cohen, Cohen & Cohen Law PC – Asked for a continuance for 2 weeks.
 Public None
 Discussion (6:57) None
 Staff None
 Motion Continued for two weeks without objection.
 Vote N/A

III. PUBLIC MEETING

A. Certificates of Compliance

1. Windy Point Trust – 5 Hulbert Avenue (29.2.3-5) SE48-1522
 Sitting Bennett, Erisman, Steinauer, LaFleur, Golding
 Staff Site is in compliance; recommends approval.
 Discussion (7:01) None
 Motion **Motion to Issue.** (made by: LaFleur) (seconded by: Steinauer)
 Vote Carried unanimously

2. Four Saratoga LLC – 14 Tennessee Avenue (60.1.2-6) SE48-2506 (**Cont 10/05/2016**)
 3. Thompson – 14 Fargo Way (14-17) SE48-2645 (**Cont 12/14/2016**)
 4. Ceylon Elves, LLC – 286 Polpis Road (25-33) SE48-2761
 Sitting Bennett, Erisman, Steinauer, LaFleur, Golding
 Staff This was for property redevelopment to include a bridge. This is in compliance with the original order of conditions. Recommends approval.
 Discussion (7:02) None
 Motion **Motion to Issue.** (made by: Steinauer) (seconded by: LaFleur)
 Vote Carried unanimously

5. Fargo Way RT – 10 Fargo Way (14-15 & 61) SE48- 2647

Sitting Bennett, Erisman, Steinauer, LaFleur, Golding
 Staff For installation of sand-drift fencing on a coastal beach with nourishment and plantings. It is in compliance and current on monitoring. Would like to continue Condition 20 for monitoring reports.
 Discussion (7:05) None
 Motion **Motion to Issue with on-going Condition 20.** (made by: LaFleur) (seconded by: Erisman)
 Vote Carried unanimously

B. Orders of Condition

1. Town of Nantucket – Shimmo Creek (adjacent to 43-1) SE48- 2913

Sitting Bennett, Erisman, Steinauer, LaFleur, Golding
 Staff Protocol is solid. Condition 19 addresses the marine fishery comment about no silt. Condition 20 is for yearly report showing form and function of the reef.
 Discussion (7:06) None
 Motion **Motion to Issue as drafted.** (made by: Steinauer) (seconded by: LaFleur)
 Vote Carried unanimously

2. Colson – 9 Hallowell Road (30-14,15,257) SE48-2916

Sitting Bennett, Erisman, Steinauer, LaFleur, Golding
 Staff This lot contains land subject to coastal storm flowage away from the area of work so included a finding to that effect. No additional conditions
 Discussion (7:08) None
 Motion **Motion to Issue as drafted.** (made by: LaFleur) (seconded by: Erisman)
 Vote Carried unanimously

3. 96 West Chester NT – 96 West Chester Street (41-483) SE48-2918

Sitting Bennett, Erisman, Steinauer, LaFleur, Golding
 Staff Drafted a positive order. From tonight’s discussion, he needs to add Condition 21 to address that the pool will only be discharged by pumping and the water transported from the site with monitoring reports tracking that pumping. Suggested a condition that it can’t be chemically treated until May 1 and a condition that it can’t be chemically treated after November 1; that’s within the jurisdiction of this board. He will draft an order with the requested conditions.
 Discussion (7:09) **Golding** – He has flooding concerns. Suggested the pool must be drained before the winter.
Bennett – He’d like to look at the chlorine level.
 Motion Not issued at this time.
 Vote N/A

4. Walsh Street, LLC – 64 Walsh Street Lot 1 (29-94) SE48-2921

Sitting Bennett, Erisman, Steinauer, LaFleur, Golding
 Staff Condition 19 addresses the flood panels; Condition 20 is it won’t be infiltrated.
 Discussion (7:15) None
 Motion **Motion to Issue as drafted.** (made by: Golding) (seconded by: LaFleur)
 Vote Carried unanimously

5. Theresa Fortgang – 2 Wanoma Way (92.4-118) SE48-2923

Sitting Bennett, Erisman, Steinauer, LaFleur, Golding
 Staff No additional conditions.
 Discussion (7:16) None
 Motion **Motion to Issue as drafted.** (made by: Steinauer) (seconded by: LaFleur)
 Vote Carried unanimously

C. Extension Requests

1. Cliff Delaney TR – 64 Cliff Road (30-632) SE48-2600

Sitting Bennett, Erisman, Steinauer, LaFleur, Golding
 Staff Three of the lots are done and the fourth started; the permit expires the end of this October. They are asking for a 1-year extension.
 Discussion (7:17) None
 Motion **Motion to Grant a 1-year extension.** (made by: LaFleur) (seconded by: Steinauer)
 Vote Carried unanimously

D. Other Business

1. Approval of Minutes 09/07/2016: adopted by unanimous consent.
2. Enforcement Actions (7:21)
 - a. North Beach Street update – Record is due. Been in communication with Town Counsel.
 - b. 36 Pocomo Road update – Met with Brian Madden, LEC Environmental; the cutting was much more extensive than visible from the road. Mr. Madden will be in with an NOI for the restoration. Told Mr. Madden we will be looking for a planting plan with the number of trees and shrubs.
 - c. 1 Brock’s Court (address to be confirmed) – Went to get pictures of 2 Brock’s Court the decommissioning of the well and heard running water. He noted that there is a pipe coming from 1 Brock’s Court discharging into the wetlands.
Motion to Issue the enforcement action. (made by: Erisman) (seconded by: Steinauer) Carried unanimously
 - d. 36 Liberty Street – There is now a question on Marsh Fader’s lot about the conversion of the back porch within 100 feet of the wetland. He will research this.
3. Reports:
 - a. CPC, Golding – Have 20 applications requesting a total of \$7 million.
 - b. NP&EDC, Bennett – Currently meeting.
 - c. Mosquito Control Committee, Erisman – Meet next week.
4. Commissioners Comment
 - a. Golding – He was asked about the requirements for 'Sconset Beach Preservation Fund to produce an annual report for moving Baxter Road. Asked if staff has heard anything. Staff – No but he can require that.
 - b. Golding – Asked about the original conditions on the Long Pond phragmites removal reporting. Staff – The first report was overly elaborate; Rachel Freeman is putting the information in a more digestible format and will be back with that.
 - c. Golding – He is trying to track down what the Michigan ban on glyphosate is based on. Steinauer – It is banned for aquatic use and phragmites are not considered an aquatic plant; it is a floating plant.
 - d. Erisman – In regards to 246 Polpis Road, she couldn’t remember the wetland boundaries but it looks like material is being stored in the boundaries. Staff – Will look into that.
5. Administrator/Staff Reports
 - a. None

Adjourned by unanimous consent at 7:43 p.m.

Submitted by:
Terry L. Norton