



CONSERVATION COMMISSION

PUBLIC MEETING

2 Bathing Beach Road
Nantucket, Massachusetts 02554

www.nantucket-ma.gov

Wednesday, October 5, 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 4:05 p.m.

Staff in attendance: Jeff Carlson, Natural Resources Coordinator; Terry Norton, Town Minutes Taker

Attending Members: Bennett, Erisman, Steinauer, Champoux

Absent Members: LaFleur, Golding, Topham

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 (**Cont 10/19/2016**)
2. Larusso – 316 Polpis Road (25-7) SE48-2922

Sitting Bennett, Erisman, Steinauer, Champoux

Recused None

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

Representative **David M. Haines**, Haines Hydrogeologic Consulting – This will need to continue due to Massachusetts Natural Heritage; they want more of a buffer with a management plan; reviewed what he’s proposing for that buffer. Will need a waiver to maintain a meadow area within the buffer.

Public None

Discussion (4:06) **Erisman** – Would prefer there be no mowing within the 25-foot buffer.

Champoux – Agrees with holding the 25-foot line as a no-disturb area.

Haines – Agreed to no mowing but asked to be allowed to extend management into the 25-foot buffer.

Staff None

Motion Continued to October 19 by unanimous consent.

Vote N/A

3. *Sunset House, LLC – 15 Hallowell Lane (30-10) SE48-2924

Sitting Bennett, Erisman, Steinauer, Champoux

Recused None

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

Representative **Arthur D. Gasbarro**, Nantucket Engineering & Survey – Requested a continuance.

Public None

Discussion (4:17) None

Staff None

Motion Continued to October 19 by unanimous consent.

Vote N/A

4. Steven L. Cohen Trustee – 53 Walsh Street (29-60) SE48-2927

Sitting Bennett, Erisman, Steinauer, Champoux

Recused None

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

Representative **Paul Santos**, Nantucket Surveyors – This is within land subject to coastal storm flowage for the in-fill of two areas of a structure and removal of a small portion. All work is within the existing foot print.

Public None

Discussion (4:17) None

Staff This was continued for a DEP number Have everything needed to close.

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

Vote Carried unanimously

6. *BGWFT II, LLC – 16 Brant Point Road (29-151) SE48-2926
 Sitting Bennett, Erisman, Steinauer, Champoux
 Recused None
 Documentation Site plans, topographical maps, photos, MNH sign off letter, departmental reports, and correspondence.
 Representative **Ryan Maxwell**, Bracken Engineering, Inc. – Within flood zone for an addition in the existing lawn area and lift the structure out of the flood zone. The foundation is a crawl space with flood vents.
 Public None
 Discussion (4:18) **Erisman** – Asked about the depth of the groundwater.
Maxwell – That is unknown.
 Staff The building has to be brought into compliance when it’s lifted. Have everything needed to close.
 Motion **Motion to Close.** (made by: Steinauer) (seconded by: Champoux)
 Vote Carried unanimously

7. *White – 47A West Chester Street (41-227.1) SE48-2925
 Sitting Bennett, Erisman, Steinauer, Champoux
 Recused None
 Documentation Site plans, topographical maps, photos, MNH sign off letter, departmental reports, and correspondence.
 Representative **Brian Madden**, LEC Environmental – For the installation of a pool, equipment, and fence and reconfiguration of decking within the buffer to wetlands. Mitigation planting is to start this fall. The previously approved retaining wall has been shortened and are proposing additional perimeter landscaping. The pool, deck, fence, pool equipment, and shower are outside 50-foot buffer. Explained the pool is only six-feet deep to avoid intrusion into the high groundwater; do not anticipate dewatering. Explained the silt fence, which will be installed within a week.
 David White, owner
 Public **Emily Molden**, Nantucket Land Council – Because this is so close to groundwater, asked if there is a back-up plan for dewatering.
 Discussion (4:20) **Champoux** – Asked if the pool could be moved to the north side of the house.
White – We would lose the existing arborvitae if it moves to there.
Erisman – Asked where the pool would be discharged to.
Madden – Discharge would have to be trucked off the site. Excavation is scheduled for late October/early November so they don’t anticipate a need for dewatering.
 Staff Have everything needed to close.
 Motion **Motion to Close.** (made by: Champoux) (seconded by: Steinauer)
 Vote Carried unanimously

B. Request for Determination of Applicability

1. Swain’s Point Nominee Trust – 260&262 Polpis Road (25-1)
 Sitting Bennett, Erisman, Steinauer, Champoux
 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 septic upgrade with expansion on lot with two houses. The existing septic will be replaced with an I/A and raised leech field trenches; this is just within the 100-foot buffer. A second septic is outside the buffer and meets Title V; there is no change to that septic.
 Public None
 Discussion (4:29) **Erisman** – Asked if the replacement septic can be moved to higher ground.
 Staff This is the first to come in where the septic is Title V compliant but due to groundwater separation it is in technical failure. The Board of Health has signed off on this plan. Recommends this be issued as a Negative 3 for work within the buffer zone
 Motion **Motion to Issue as recommended.** (made by: Champoux) (seconded by: Erisman)
 Vote Carried unanimously

C. Amended Orders of Conditions

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

Sitting	Bennett, Erisman, Steinauer, Champoux
Recused	None
Documentation	Site plans, topographical maps, photos, MNH sign off letter, departmental reports, and correspondence.
Representative	Arthur D. Gasbarro , Nantucket Engineering & Survey – This is the second hearing for residential redevelopment within the resources areas for coastal bank, coastal dune, and land subject to coastal storm flowage. Reviewed the revised proposal, which presents a very large reduction of structural area within the buffer zone; feels this has a very strong net benefit element. Included is the landscape plan, which was requested by the commissioners. The amendment also includes ensuring the structures meet flood-zone requirements. The project as proposed will not impact the bank. Steven Cohen, Cohen & Cohen Law PC
Public	Sarah Alger , Sarah F. Alger P.C., for 74 Monomoy Road – Presented a 2001 NOI survey at the table. Reviewed the chronology of the project; 2013 NOI identified the toe of the bank still in effect in 2015. Asked the commission, when making a net benefit analysis, they should recall that the garage wasn't part of the waiver request because it wasn't within the buffer; now it is. The paved driveway is being replaced with a gravel driveway that over time will become impacted and thus impervious and should be considered a structure.
Discussion (4:35)	Gasbarro – The slope of the toe of the bank wasn't definable because it was defined as an intersection with the flood zone. Where there is a definable toe slope, he noted that. Erisman – Asked if the plant list is available. Gasbarro – Beach grass and bayberry will be down near the bank; they can accept a condition to use only native species. The project as proposed is not going to impact the function of the bank. Steinauer – Asked if Ms Alger if her clients prefer the original NOI over what is proposed here. Alger – The original approval was issued under misinformation; noted that her client could ask that under 136.4.e., that NOI be revoked. There are no concerns with the house itself; the garage however seems unnecessary. In the landscape plan, there are significant areas covered by antique granite risers and pavers; she believes those haven't been considered as structures; they should be. Gasbarro – The Emack plan doesn't define toe of bank, just the top of bank. The shape is exactly the same as previously approved. The waiver is based upon the overall project. The driveway is being reduced 4,600 square feet. The stone risers are a landscape feature; they wouldn't tip the scale of net benefit if they were. This meets the performance standards and meets the net-benefit requirements. Cohen – The owner is flexible on the driveway material. Believes the request to rescind the original approval is not appropriate as this is an application for an amended order on an existing approval. Alger – Feels removal of the garage is a simple solution; that or require it be outside the 25-foot buffer. Cohen – Would like to close and move forward; will continue if the board has any questions. Champoux – Thinks a pervious driveway is a big benefit. This work should not affect the performance of the resource area. Agrees about the garage being outside the 25-foot buffer and would approve this project based on the over-all net benefit. Steinauer – He is inclined to approve the project. Erisman – Thinks construction will have an impact on the harbor. Also, she has concerns about the landscape plan, which shows disturbance of almost all the land. Gasbarro – The only way there would be an impact on the harbor is if the erosion and sedimentation controls fail. The silt fencing could be improved. He is happy to do reporting during construction.
Staff	The coastal bank line wasn't included on the original approval. Asked why the slope of the toe of the coastal bank wasn't defined. Reviewed the performance standards associated with coastal banks and noted that here the bank is a storm-damage bank, not a sediment-source bank. The waiver is associated with the flood zone, not the coastal bank.
Motion	Motion to Close. (made by: Steinauer) (seconded by: Champoux)
Vote	Carried 3-1//Erisman opposed
Deliberation on the OIC (5:28)	Bennett – Questions if moving the garage deeper into the property would make a difference. Steinauer – Feels the overall net benefit warrants approval. Erisman – Plants that go in must be native; wants to look at amount of the fertilizer the comes with plants from off-island nurseries. Would like the lawn to be native grasses. Champoux – Regulations are in place and it is upon the owner to comply. It can be conditioned with no fertilizer use within the 25-foot buffer.
Staff	In regards to the fertilizer in nursery plants, no new information may be requested during this discussion. Condition 22: no fertilizer within the 25-foot buffer. Condition 23: no cultivars in the areas of native plantings. Condition 24: silt fence with hay bales be installed adjacent to Nantucket Harbor. Condition 25: requires bi-weekly construction logs. Finding 2: resource area approve. Finding 3: resource area approval superseded by areas shown on the amended order of conditions. Can add no in-fill foundation on these structures.
Motion	Motion to Issue as amended. (made by: Champoux) (seconded by: Steinauer)
Vote	Carried unanimously

2. Hummock Pond Realty Trust – 86 Hummock Pond Road (56-117) NAN-079
- Sitting Bennett, Erisman, Steinauer, Champoux
 Recused None
 Documentation Site plans, topographical maps, photos, MNH sign off letter, departmental reports, and correspondence.
 Representative **Brian Madden**, LEC Environmental – Wetland resource areas have been confirmed. Reviewed the history of this project: two OICs were approved in 2007; the septic portion of the NOI was denied as well as a later amendment requesting a septic. All work is outside the 50-foot buffer; sewer lines to be installed out to the road; foundation is above the ground high water; there is a proposal for drywell.
- Public **Emily Molden**, Nantucket Land Council – Asked about the proposed lawn area within the 25-foot buffer; she has general questions what plants are proposed there. Feels it is important to have detailed information about the construction of the drywells.
- Discussion (5:41) **Steinauer** – Asked how the drywells would be built to prevent draining the ground water table.
Madden – The way they’ve been engineered, he doesn’t think the two drywells will draw down the water levels; they were part of the original approval.
Bennett – There is a cleared area on the plan within the 25-foot buffer that looks like lawn; it should be allowed to revegetate.
 Discussion about ways the drywells should be constructed and other alternatives.
Bennett – Asked for the information on the drywell and what will happen within the 25-foot buffer.
- Staff The OIC approved the work but denied the septic. The delineation in place is still valid, due to the extension act of 2007, though it is ten years old. The original plans didn’t provide details on the drywells.
- Motion Continued to October 19 without objection
 Vote N/A
3. Cliff Delaney Trust – 64 Cliff Road (30-362) SE48-2600
- Sitting Bennett, Erisman, Steinauer, Champoux
 Recused None
 Documentation Site plans, topographical maps, photos, MNH sign off letter, departmental reports, and correspondence.
 Representative **Ryan Maxwell**, Bracken Engineering, Inc. – This request is for a well, sewer connection, and to re-orient the house.
- Public None
 Discussion (6:00) Discussion about the previous approval as it compares to this application.
 Staff Reviewed the previous approval on the location of the pool and fence. There is a 15-foot buffer between the vegetated wetland and the mowing.
- Motion **Motion to Close and Issue.** (made by: Champoux) (seconded by: Steinauer)
 Vote Carried 3-1//Erisman opposed

I. PUBLIC MEETING

A. Minor Modifications

1. Kimball-Sherburne, LLC – 9 Kimball Avenue (30-31) SE48-2802
- Sitting Bennett, Erisman, Steinauer, Champoux
 Recused None
 Documentation Site plans, topographical maps, photos, MNH sign off letter, departmental reports, and correspondence.
 Representative **Paul Santos**, Nantucket Surveyors – The modification is to insert into the file a more detailed site plan than was submitted under the NOI. Reviewed the revised site plan.
- Public None
 Discussion (6:09) None
 Staff Recommend approval.
 Motion **Motion to Issue.** (made by: Champoux) (seconded by: Steinauer)
 Vote Carried unanimously
2. Murphy and Foundyller – 9 Massachusetts Avenue (60-89) SE48-2406
- Sitting Bennett, Erisman, Steinauer, Champoux
 Recused None
 Documentation Site plans, topographical maps, photos, MNH sign off letter, departmental reports, and correspondence.
 Representative None
 Public None
 Discussion (6:12) None
 Staff This is for a switch from an I/A system to a tight tank. Recommend approval.
 Motion **Motion to Approve.** (made by: Erisman) (seconded by: Champoux)
 Vote Carried unanimously

3. Fayette Street Partners, LLC – 13 Fayette Street (Lot C) (42.3.2-28.1) SE48-2792

Sitting Bennett, Erisman, Steinauer, Champoux
 Recused None
 Documentation Site plans, topographical maps, photos, MNH sign off letter, departmental reports, and correspondence.
 Representative **Ryan Maxwell**, Bracken Engineering, Inc. – This is for the final landscape design. Reviewed the plan.
 Public None
 Discussion (6:14) None
 Staff Recommend approval.
 Motion **Motion to Approve.** (made by: Steinauer) (seconded by: Champoux)
 Vote Carried unanimously

4. Fayette Street Partners II, LLC – 11 Fayette Street (Lot D) (42.3.2-28.2) SE48-2799

Sitting Bennett, Erisman, Steinauer, Champoux
 Recused None
 Documentation Site plans, topographical maps, photos, MNH sign off letter, departmental reports, and correspondence.
 Representative **Ryan Maxwell**, Bracken Engineering, Inc. – Adding propane tank and fencing and small patio change.
 Public None
 Discussion (6:16) **Erisman** – Asked if a board fence would impact flowage.
 Staff Board fences in the area are separated from the ground.
 Motion **Motion to Issue with condition the board fence be off the ground six inches.** (made by: Champoux) (seconded by: Steinauer)
 Vote Carried unanimously

5. Union Street Partners, LLC – 42B Union Street (Lot A) (42.3.2-28) SE48-2725

Sitting Bennett, Erisman, Steinauer, Champoux
 Recused None
 Documentation Site plans, topographical maps, photos, MNH sign off letter, departmental reports, and correspondence.
 Representative **Ryan Maxwell**, Bracken Engineering, Inc. – This is for the final landscape plan and a patio change
 Public None
 Discussion (6:19) None
 Staff None
 Motion **Motion to Issue.** (made by: Steinauer) (seconded by: Champoux)
 Vote Carried unanimously

6. Union Street Partners II, LLC – 42A Union Street (Lot B) (42.3.2-28.3) SE48-2793

Sitting Bennett, Erisman, Steinauer, Champoux
 Recused None
 Documentation Site plans, topographical maps, photos, MNH sign off letter, departmental reports, and correspondence.
 Representative **Ryan Maxwell**, Bracken Engineering, Inc. – Adding propane tank and fencing and small patio change.
 Public None
 Discussion (6:20) None
 Staff None
 Motion **Motion to Issue with condition the board fence be off the ground six inches.** (made by: Champoux) (seconded by: Steinauer)
 Vote Carried unanimously

7. Ladybird, LLC – 8 Middle Valley Road (43-160) SE48-2568

Sitting Bennett, Erisman, Steinauer, Champoux
 Recused None
 Documentation Site plans, topographical maps, photos, MNH sign off letter, departmental reports, and correspondence.
 Representative **Arthur D. Gasbarro**, Nantucket Engineering & Survey – To allow placement of septic within the 50- to 100-foot buffer zone to allow for gravity flow from all structures. This property will eventually be connected to Town sewer and the septic abandoned.
 Public None
 Discussion (6:20) None
 Staff None
 Motion **Motion to Issue.** (made by: Steinauer) (seconded by: Champoux)
 Vote Carried unanimously

B. Certificates of Compliance

1. Four Saratoga LLC – 14 Tennessee Avenue (60.1.2-6) SE48-2506

Sitting Bennett, Erisman, Steinauer, Champoux
 Staff For redevelopment of a property. Everything is now in compliance.
 Discussion (6:23) None
 Motion **Motion to Issue.** (made by: Champoux) (seconded by: Steinauer)
 Vote Carried unanimously

2. Jagolta – Atlantic Boulevard/Tom Nevers (92.4-306) SE48-196
 - Sitting Bennett, Erisman, Steinauer, Champoux
 - Staff This was for construction of house; it is in substantial compliance.
 - Discussion (6:23) None
 - Motion **Motion to Issue.** (made by: Champoux) (seconded by: Steinauer)
 - Vote Carried unanimously
3. Almanack Farm Nominee Trust – 25 Almanack Pond Road (25-14) SE48-2383
 - Sitting Bennett, Erisman, Steinauer, Champoux
 - Staff This was to replace a septic; it is in compliance
 - Discussion (6:24) None
 - Motion **Motion to Issue.** (made by: Steinauer) (seconded by: Champoux)
 - Vote Carried unanimously
4. Hulbert Acquisition, LLC – 43 Hulbert Ave (29-17) SE48-2755
 - Sitting Bennett, Erisman, Steinauer, Champoux
 - Staff This was for a redevelopment project within flood zone; it is in compliance
 - Discussion (6:24) None
 - Motion **Motion to Issue.** (made by: Champoux) (seconded by: Steinauer)
 - Vote Carried unanimously
5. Quidnet Properties LLC – 84 Quidnet Road (100 & 101) SE48-2855
 - Sitting Bennett, Erisman, Steinauer, Champoux
 - Staff This was for a septic replacement; it is in compliance
 - Discussion(6:25) None
 - Motion **Motion to Issue.** (made by: Champoux) (seconded by: Steinauer)
 - Vote Carried unanimously
6. Carroll – 19 Wanoma Way (92.4-303) SE48-2077
7. Carroll – 19 Wanoma Way (92.4-303) SE48-2104
 - Sitting Bennett, Erisman, Steinauer, Champoux
 - Staff Both are in compliance with no on-going conditions
 - Discussion(6:26) None
 - Motion **Motion to Issue SE48-2077 and SE48-2104.** (made by: Champoux) (seconded by: Steinauer)
 - Vote Carried unanimously

C. Orders of Condition

1. 96 West Chester NT – 96 West Chester St (41-483) SE48-2918
 - Sitting Bennett, Erisman, Steinauer, Champoux
 - Staff Condition 21: pool discharged to a pump truck with records submitted to the Commission. Condition 22: to use cartridge filters. Condition 23: no chemical treatment between November 1 and May 1.
 - Discussion (6:27) None
 - Motion **Motion to Issue as drafted.** (made by: Steinauer) (seconded by: Champoux)
 - Vote Carried 3-1//Erisman opposed
2. Steven L. Cohen Trustee – 53 Walsh Street (29-60) SE48-2927
 - Sitting Bennett, Erisman, Steinauer, Champoux
 - Staff No conditions.
 - Discussion (6:29) None
 - Motion **Motion to Issue as drafted.** (made by: Champoux) (seconded by: Erisman)
 - Vote Carried unanimously
3. BGWFT II, LLC – 16 Brant Point Road (29-151) SE48-2926
 - Sitting Bennett, Erisman, Steinauer, Champoux
 - Staff No conditions.
 - Discussion (6:30) **Erisman** – We were asking about the crawl space having breakaway panels.
Champoux – Those are required by code.
 - Motion **Motion to Issue as drafted.** (made by: Steinauer) (seconded by: Champoux)
 - Vote Carried unanimously
4. White – 47A West Chester Street (41-227.1) SE48-2925
 - Sitting Bennett, Erisman, Steinauer, Champoux
 - Staff Condition 21: pool discharged to pump truck with records submitted to the Commission. Condition 22: to use cartridge filters. Will add Condition 23: no chemical treatment between November 1 an May 1. Will add Condition 24: add hay bales or equivalent.
 - Discussion (6:31) **Champoux** – Increase the silt fence with haybales.
Discussion about using straw wattles in place of a silt fence.
 - Motion **Motion to Issue as amended.** (made by: Champoux) (seconded by: Steinauer)
 - Vote Carried unanimously

D. Other Business (6:38)

1. Approval of Minutes 09/21/2016: Adopted by unanimous consent.
2. Enforcement Actions
 - a.1 Brocks Court: The discharging pipe has been removed.
 - b. 36 Pocomo Road: This opens as an NOI on October 19; the board has the ability to order start of work. **Brian Madden**, LEC Environmental – He was hired to establish the wetland boundaries and create a restoration plan. The restoration footprint is 23,574 square feet. Explained the survey establishing the wetland boundary areas. All wetlands and 25-foot buffers are to be restored and bring the 25- to 50-foot buffers into compliance. Reviewed the restoration planting plan. **Erisman** – The edge of the lawn is the edge of the unapproved clearing. **Champoux** – In terms of plant density, 200 plants sounds inadequate for that area. **Steinauer** – Noted that red oak is being heavily struck by a blight. Also suggested using huckleberry in the upland area. **Kevin Dale**, Vaughan, Dale, Hunter and Beaudette, P.C., for Bob Wright – His client appreciates efforts being made and likes the plan. Noted that the owner of 36 Pocomo Road ignored the situation for three months and, in his opinion, was negligent. Feels there has to be an affirmative effort now to replicate this area to its historic condition; it is not equitable to wait until Spring. If the board thinks it's prudent, based upon a botanical reason, to wait until spring, very well. **Champoux** – It's better to plant trees and shrubs now; he doesn't want any planting to start until he sees the plant list. **Staff** – This board can require all trees and shrubs be in the ground by November 15, 2016 and the seeding to wait for spring.
3. Reports:
 - a. NP&EDC, Bennett – Nothing to report.
 - b. Mosquito Control Committee, Erisman – Had final meeting.
4. Commissioners Comment
 - a. None
5. Administrator/Staff Reports
 - a. None

Motion to Adjourn: 7:06 p.m.

Submitted by:
Terry L. Norton