



CONSERVATION COMMISSION

PUBLIC MEETING

2 Bathing Beach Road
Nantucket, Massachusetts 02554

www.nantucket-ma.gov

Wednesday, March 15, 2017

4 Fairgrounds Road, Training Room – 4:00 p.m.

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; Joanne Dodd, Natural Resources Office Administrator; Terry Norton, Town Minutes Taker

Attending Members: Bennett, Erisman, Steinauer, LaFleur, Champoux, Golding, Topham

Absent Members: None

Late Arrivals: Topham, 4:02 p.m.

Earlier Departure: None

Agenda adopted by unanimous consent

*Matter has not been heard

I. PUBLIC MEETING

A. Public Comment

1. Edie Ray – Concerned about an illegal road through the dunes on Smith’s Point; a resident made a road through the dunes to his house, which has become THE road to Smith’s Point. She reported it to Mr. Carlson and now wants to know what action will be taken to block that road. Staff – This is part of an enforcement action issued to a property on Esther Island; punitive action was taken up by the Massachusetts Environmental Police; the Massachusetts Department of Environmental Protection (DEP) is reviewing the situation to present a plan to close the road off yet provide access for the three homes. Hopefully it will be resolved in April.
2. Edie Ray – On Sayles Beach there is an enormous amount of construction debris and equipment staged for work on the new in-Town Bike Path. A huge pile of dirt abuts the wetland with no silt fencing; this allows the dirt to flow into the wetland and the harbor. She was directed to make a call to Mark Bartell DEP. Staff – He will be speaking with DEP and the Department of Transportation about this; the bike path is their project.

II. PUBLIC HEARING

A. Notice of Intent

1. Edwin Snider RT – 1 Brock’s Court (42.3.4-84) SE48-2834 (**Cont. 04/12/2017**)
2. Zarella – 125 Wauwinet Road (12-8) SE48-2856 **Withdrawn**
3. Zarella – 129 Wauwinet Road (12-4) SE48-2857 **Withdrawn**

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

Staff Need to accept these; can vote on them as one.

Discussion No discussion.

Motion **Motion to Accept the withdrawals of SE48-2856 and SE48-2857.** (made by: Golding) (seconded by: LaFleur)

Vote Carried unanimously

4. Nantucket Islands Land Bank – 17 Commercial Wharf & Unnumbered Lot New Whale Street (42.2.4-7&8) SE48-2885 (**Cont. 04/12/2017**)
5. Sunset House, LLC – 15 Hallowell Lane (30-10) SE48-2924

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

Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.

Representative **Art Gasbarro**, Nantucket Engineering & Survey – There is an existing timber bulkhead and groins; they want to install anchored, coconut-fiber rolls behind and above the bulkhead. They don’t need to have equipment on the beach; the rolls can be carried by two men and the anchors installed using hammers. They have Massachusetts Natural Heritage (MNH) sign-off on this revised design.

Public None

Discussion (4:12) **Steinauer** – The sand covering of the tubes should replicate the sand contribution.

Gasbarro – This area doesn’t contribute a lot of sand but there will be regular monitoring. The trigger for nourishment will be that the tubes are exposed.

Golding – He appreciates this design.

Bennett – Asked about the returns.

Gasbarro – The ends aren’t regularly acted upon by the waves; there are neighboring bulkhead is high. We’re just trying to stabilize the bank and plant it.

Golding – There is considerable erosion on the end but isn’t on this property. The groins on the west, there some erosion is starting; asked if the commission wants some mitigation there.

- Gasbarro** – They could add additional sand right there while nourishing; there’s only three to five feet. They would report that volume.
- LaFleur** – Asked if the walkway would be raised.
- Gasbarro** – The tubes will go right under it; the bottom of the strainers are the height of the tops of the tubes.
- Staff Have everything needed to close.
- Motion **Motion to Close.** (made by: Champoux) (seconded by: Steinauer)
- Vote Carried unanimously
6. The Adam P. Kocoloski Living Trust – 57 Polpis Road (54-25) SE48-2949
- Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux, Golding, Topham
- Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
- Representative **Brian Madden**, LEC Environmental – This is for a pool, cabana and appurtenances outside the 50-foot buffer to wetlands. Reviewed information requested at the prior hearing. An existing 4-inch PVC pipe connects to downspouts and gutters; it will be lengthened to terminate about 40 feet above the wetland boundary as approved by Laurentide. The area to be revegetated will receive about 1 foot of fill and planted with high-bush blueberry.
- Public None
- Discussion (4:26) **Erisman** – She’s skeptical about the depression not being necessary when there is a severe rain event. Also, extending the pipe further toward the wetlands and pushes water toward the wetland.
Bennett – His concern is the slope of the land and direction of water flow from the pipe to the depression.
Madden – Contends the flow of the roof runoff will redirect back to the lawn area.
Golding – Asked where the pool will be emptied.
Madden – They expect the typical condition to empty it outside the buffer; they will accept any condition the commission requires.
- Staff Staff checked the depression area that holds water; it hasn’t formed hydric soil; when they did an inspection a few days later, there was no standing water. It doesn’t fit the definition for a bordering vegetated wetland. It also doesn’t fit the definition for land subject to isolated flooding.
Have everything needed to close.
- Motion **Motion to Close.** (made by: LaFleur) (seconded by: Topham)
- Vote Carried unanimously
7. Holland Jr. – 66 West Chester Street (41-371) SE48-2950
- Sitting Bennett, Erisman, Steinauer, LaFleur, Golding
- Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
- Representative **Mark Rits**, Site Design Engineering – Asked if all members had read back in.
Dan Malloy – Requested a continuance to allow commissioners time to read back in so that this will have a full board.
Sarah Alger, Sarah F. Alger P.C.
- Public **Dan Bailey**, for Mr. Blackman at 64 West Chester Street – He encouraged commission to go forward with the hearing at this time. If they don’t, he has a statement from Mr. Blackman to read into the record.
- Discussion (4:34) Champoux and Topham had not had time to read back in.
- Staff If we take testimony, the members who missed won’t be able to read back in. We can take written testimony from Mr. Blackman.
- Motion **Motion to Continue two weeks.** (made by: Golding) (seconded by: Steinauer)
- Vote Carried unanimously
8. Nantucket Community Sailing – 2 Bathing Beach Road (29-2) SE48-2953 (**Cont. 03/29/2017**)
9. *Monomoy, LLC – 20 Monomoy Road (54-1145) SE48-2952
- Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux, Golding, Topham
- Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
- Representative **Art Gasbarro**, Nantucket Engineering & Survey – Resource areas are a vegetated wetland and coastal bank. Work is to remove all existing structures and redevelop. Believe there is a strong overall net benefit; the new structures are mostly outside the 50-foot buffer, except for a portion of the house, and the driveway will be relocated outside the 25-foot buffer and the area restored. The property is served by Town water and sewer.
- Public None
- Discussion (4:40) Discussion about the species of trees and bushes being native to Nantucket.
Steinauer – We can condition that all plant species by native to Nantucket. He would prefer the existing retaining wall be left; its removal could create excessive disturbance.
Gasbarro – The wall is falling apart and this seemed the right time to remove it. His sense is to remove it and follow the proposed grading and planting plans. Clarified the 100-foot buffer line.
- Staff Have everything needed to close.
- Motion **Motion to Close.** (made by: Golding) (seconded by: Champoux)
- Vote Carried unanimously

10. *Compana Nominee Trust – 7 Cabot Lane (29-45) SE48-2954

- Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux, Golding, Topham
- Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
- Representative **Art Gasbarro**, Nantucket Engineering & Survey – This is for landscaping and removal/replacement of a pool within the 100-foot buffer to a stable coastal bank. The retaining wall will be removed and a sheet wall installed to support the pool. Work will start after the end of the summer season.
- Public **Arthur Reade**, Reade, Gullicksen, Hanley, & Gifford LLP for Ms Burnell at 9 Cabot Lane – The engineering that needs to be done should be addressed; there is a very steep slope down to the wetland and the work to be done could have an effect on the stability of the slope. His client would like the access conditioned to be entirely from this property. They would like the opportunity for an engineer of their choosing to review the engineering plan and to make comments; work isn't starting until next fall.
Margaret McHenry – Asked the required distance a pool must be from a wetland.
- Discussion (4:55) **Bennett** – His concern is roof runoff from the patio; because all runoff seems to head toward the bank.
Golding – Asked why there isn't an engineering plan for the sheet wall.
Gasbarro – The engineering plan isn't pertinent at this stage of the process; that would be issued for construction. There is a silt fence at the 25-foot buffer to the wetlands to keep any debris falling down the slope out of the wetland. The crane for the installation of the steel sheet would be staged outside ConCom jurisdiction. Pointed out that the protected interest is storm damage prevention in terms of habitat.
Golding – He, like the abutter, would like to see the engineering plan to ensure the work won't compromise the stability of the bank.
 Discussion about whether or not the commission needs to review the engineering plans prior to issuing the Order of Conditions.
Steinauer – Asked if the commission should be reviewing other areas of interest.
Champoux – To him the project doesn't really influence the areas this commission protects.
Gasbarro – Pointed out that the slope isn't the actual coastal bank; that is at the bottom in the flat area. The bordering vegetated wetland is more than 75 feet away from the sheet wall.
Erisman – Asked what the 1500 gallon surge tank is for and if it is part of the pool.
Gasbarro – It is under the patio.
LaFleur – Suggested using a zero-moment hammer to install the sheet wall; it won't cause disturbance.
- Staff There is a bordering vegetated wetland within 100 feet but way below the property.
 When stamping engineering plan, a licensed engineer assumes the legal risk of guaranteeing they meet the legal standards.
 Reminded the commission that they are evaluating the plan to be able to tie conditions to areas of interest. Providing sediment and storm-damage prevention falls within the interpretation of the State Act. This resource area clearly does not act as a sediment source; so only looking at it for storm-damage prevention. The interests we are trying to protect here include: flood control, erosion control, storm damage prevention, wetland scenic views, and wildlife.
 Explained that a pool must be outside the 50-foot buffer to a resource area.
 Have everything needed to close.
- Motion **Motion to Close.** (made by: Steinauer) (seconded by: Champoux)
- Vote Carried unanimously
- B. Amended Orders of Conditions**
1. 3 Beacon Land Nominee Trust – 3 Beacon Lane (21-26.9) SE48-2892
- Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux, Golding, Topham
- Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
- Representative **Art Gasbarro**, Nantucket Engineering & Survey – This is the refinement of the landscape plan within the 50-foot buffer zone: grading outside the 25-foot buffer; change the beach access through the 25-foot buffer; and a complete planting plan.
- Public None
- Discussion (5:29) **Erisman** – Her concern is the plant list; there are a lot of cultivars proposed within the buffer to include a plant native to the mid-west that spreads rapidly.
Gasbarro – The current condition of no cultivars and using only native species will hold; he will provide a revised plant list.
Bennett – Asked about construction details for the boardwalk.
Gasbarro – It's at grade with no railing; it's not in a resource area.
- Staff Even if the amendment is granted, they must meet the existing conditions.
 Recommend close and issue
- Motion **Motion to Close and Issue with revised planting list.** (made by: Golding) (seconded by: LaFleur)
- Vote Carried unanimously
2. Nantucket 62 Walsh, LLC – 62 Walsh Street (29-85) SE48-2933 (Cont. 03/29/2017)
3. 64 Walsh Street, LLC – 64 Walsh Street (Lot 2) (29-94) SE48-2847 (Cont. 03/29/2017)

III. PUBLIC MEETING

A. Certificates of Compliance

1. Cliff Delaney Trust – 14 Cliff Road (30-632) SE48-2600

Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux, Golding, Topham
 Staff This was originally under Desert Island LLC; it's constructed in compliance and mitigation plans are in. Recommends it be issued.
 Discussion (5:36) None
 Motion **Motion to Issue.** (made by: Steinauer) (seconded by: Champoux)
 Vote Carried unanimously

B. Orders of Condition

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

Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux, Golding, Topham
 Staff Hadn't drafted this yet. MNH conditions are required to be included; and the applicant must provide the information through monitoring. Can require them to document activity and also report damage to the fiber array and amount of sand used.
 Discussion (5:37) **Champoux** – There were some recommendations from MNH; read those conditions.
Erisman – Asked who would be required to provide the form the monitoring report.
 Motion N/A
 Vote N/A

2. The Adam P. Kocoloski Living Trust – 57 Polpis Road (54-25) SE48-2949

Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux, Golding, Topham
 Staff Change Condition 19 to include the pool being drained by truck to an area off site. Condition 23 will address infiltration of the PVC pipe discharge. The cessation of chemical treatment before draining is now a standard condition.
 Discussion (5:42) **Erisman** – In the permit overview, asked about the extension of the PVC pipe.
Champoux – Asked Mr. Madden about the pipe's extension.
Madden – There was question about contribution of water toward the wetland; they had considered a dry well.
 Discussion about what to do about the PVC pipe and its discharge.
Erisman – She's not comfortable allowing a pool on a property with that much standing water without knowing fully what's causing it.
 Motion **Motion to Approve as amended.** (made by: Steinauer) (seconded by: Champoux)
 Vote Carried 6-1//Erisman opposed

3. Monomoy, LLC – 20 Monomoy Road (54-145) SE48-2952

Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux, Golding, Topham
 Staff Will add: Condition 19 about no cultivars; Condition 20 about where the pool will be discharged and chemical treatment; and Condition 21 about photos of graded areas being provided to the commission.
 Discussion (5:49) None
 Motion **Motion to Approve as amended.** (made by: Golding) (seconded by: Champoux)
 Vote Carried unanimously

4. Campana Nominee Trust – 7 Cabot Lane (29-45) SE48-2954

Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux, Golding, Topham
 Staff Will add: Condition 21 requesting the engineering plan be provided; and Condition 22 about pool drainage being removed from the site.
 Discussion (5:54) None
 Motion **Motion to Approve as amended.** (made by: Steinauer) (seconded by: Topham)
 Vote Carried unanimously

C. Other Business

1. Approval of Minutes 3/1/2017: adopted by unanimous consent.
2. Enforcement Actions
 - a. Update: Nantucket Boat Basin visit to be scheduled.
 - b. Thompson – 14 Fargo Way (14-17) SE48-2645

Staff Have had issues with compliance and commission has questions.
 Discussion (6:00) Roy Thompson, owner
Barry Fogel, for Mr. Thompson – The three-year Order of Conditions expires in a couple of weeks; the request for a certificate of compliance was submitted in the fall; but Mr. Thompson decided to wait for spring for the certificate of compliance. In the meantime, Mr. Thompson received a letter date February 15, 2017 raising questions about compliance. Reviewed and responded to ConCom concerns addressed in the letter. This was permitted as a “soft” design; the coir tubes have the sacrificial sand; sacrificial sand was not intended to be the cover sand. Pointed out that the idea was that after the project was constructed the area wouldn't be flooded with too much sand thus creating problems for the harbor and the saltmarsh. The concern here seems to be conditions in perpetuity that match what the commission wants done. Asked for specific questions about the commissioners' concerns.
Champoux – It's his understanding that you can't do a one-shot sand placement; it is an on-going process.

Golding – If the tubes aren't covered, insufficient sand is given up during a storm event.

Fogel – Cited a pending case about what constitutes a "soft structure." This project was permitted within the realm of DEP and ConCom who did not want a hard structure.

Steinauer – These tubes are a compromise. However, he doesn't think ConCom has ascertained that sand leaching from tubes meets the bank's natural contribution of sand.

Erisman – Asked if there are reports on the amount of sand used following storm events of sustained winds of at least 40 MPH.

Staff – Mr. Thompson is current with all monitoring reports.

Fogel – There has been no sharp change in the beach or impact on the saltmarsh. Many of the conditions on this project are similar to those for the 'Sconset Beach Preservation Foundation (SBPF) project. Questions if the same level of surveying and conditions is necessary for a project of this size; stated it could be considered an excessive burden for a private owner.

Staff – Currently the bags have been exposed for a long period of time as we proceeded through the winter storms.

Golding – Read Condition 24 dated April 2, 2014 in regards to mitigation and nourishment. It doesn't appear the ConCom was specific about the nourishment program.

Steinauer – This has the situation where the saltmarsh is on the beach; the question during the hearings was how to maintain it the sand contribution without burying the saltmarsh.

Champoux – We owe it to Mr. Thompson to be clear on the Conditions.

Golding – Read Condition 28 about the sand mix to mimic the bank.

Thompson – The bags have been covered in the spring and the fall; in the winter, one storm takes all the sand so recovering would be a constant process. Wauwinet is starting to fill with sand, which covers the eel grass; we need to consider that. Asked to monitor but not replace sand after every storm to keep from filling the harbor.

Fogel – He will submit, in writing, a proposal of conditions for the commission's review. They'll get a beach profile to submit as well.

Bennett – The order is rather vague; perhaps what we might need is more reporting.

Steinauer – There were also some issues with how the structure was constructed.

Thompson – Noted that a wire fence was put up in error; it has since been removed.

Staff – If they are willing to provide a look from construction to current, they might help make decisions on appropriate steps going forward; it can be carried forward as an agenda item. The commission can request the analysis for review.

Fogel – They will submit that analysis; also they can submit a template for the board to review that will match the objectives and Order of Conditions. They can have that in a month.

Discussion about what constitutes maintenance and does not require an amended order.

c. Winthrop Management LP – 2 New Whale Street (42.3.1-87) – no update

d. Nantucket Island Land Bank – 168 Hummock Pond Road (65-13.2)

Staff

Some vegetated management clearing and mowing was done at the Community Farm in preparation for the up-coming season. There are a number of issues that need to be tackled in regards to agricultural exemptions of Wetlands Protection Act and our local bylaws. This property does qualify for the agricultural exemptions. One such exemption is the growing crops for harvest without significant altering of the hydrology of wetlands. There are still jurisdictional wetlands for other activities that require permitting. There are now questions as to the location of the wetlands delineated for activities on adjacent properties and might be subject to regulations and possible enforcement. Another question raised is how Sustainable Nantucket will management habitat associated with the wetlands in order to provide necessary habitat for shorebirds, ducks, song birds, frogs, toads, and other creatures using these wetlands.

Discussion (6:34)

Golding – Recused himself from the discussion.

Rachel Freeman, Nantucket Islands Land Bank – Reviewed the agricultural history of the property and the philosophy behind working with Sustainable Nantucket. The farm area has been approved for expansion. Sustainable Nantucket is aware of the wetland issues and their intention is not to disturb the buffer or standing water; the Land Bank looking at the best way to treat the buffer zones. Sustainable Nantucket is well within their agricultural exemptions and are moving forward.

Steinauer – Asked what the actual definition is of agriculture.

Staff – There is the land-area minimum of 5 acres and income component of a certain dollar amount per acre. DEP agrees that the way this land is being used and its agricultural history qualifies it under the exemption. There are still jurisdictional issues with the wetlands and activities on the property that fall under ConCom's purview.

Freeman – Pointed out that the whole six acres aren't going to be plowed in the next few weeks.

Erisman – Asked if there is a record of fertilizers being used and are they using best management practices.

Freeman – Her understanding is that they are soil testing and using best management practices.

Discussion about the type of compost being used within the Hummock Pond Watershed District.

e. Spears Trust – 81 Squam Road (13-6)

Staff They have received their enforcement action; staff hasn't received a formal response. He did talk to the landscaper and explained that they need to apply for a permit. Fortunately they didn't scrub it and are willing to do what is necessary to make it right.

Discussion (6:51) None

f. Haydock Trust – 64 West Chester Street (41-372)

Staff He hasn't received the certified-mail confirmation of delivery.

Discussion (6:53) None

g. Stancil Trust – 12 North Road (43-82)

Voting Bennett, Erisman, Steinauer, LaFleur, Champoux, Golding, Topham

Staff Received a complaint from a neighbor; there was a sluice trough and in-fill behind a bulkhead. It looks like debris is being dropped there as well as unpermitted terracing on the bank going up to the bulkhead. At the top of the stairs, there are two separate unpermitted wooden decks adjacent to the bank. It's very elaborate. He's not sure what kind of restoration plan this would require; they need to be removed in a responsible manner. Asked for authorization to send out the violation notification.

Discussion (6:53) None

Motion **Motion to Authorize the enforcement action.** (made by: Erisman) (seconded by: Golding)

Vote Carried unanimously

3. Reports:

a. None

4. Commissioners Comment

a. None

5. Administrator/Staff Reports

a. Staff had a site meeting with the Land Bank in regards to 175 Polpis. Freeman – The Land Bank is following up with the enforcement order with a neighbor and hope to get it cleaned up before the growing season starts. They discovered an additional area of encroachment on the other side which will be dealt with as well; not all of that is on Land Bank property. The piles of debris will definitely be removed. Certain areas will have to be replanted with native species. They want to clean up the debris in the buffer zone by April 15, 2017 so are asking for permission to do that; they will then come in with a Notice of Intent.

b. He has rough draft of the Peer Review on the SBPF report; he hopes to have the final version available for review by March 20 at the latest. Before the presentation, there has to be time for comments to be received and responded to and for the commission to have time to read them. All comments from all parties should be submitted, by April 12 and any follow-up comments due by April 19. Presentation will be April 24, 2017, at 4 p.m. in the Conference Room.

Motion to Adjourn: 7:08 p.m.

Submitted by:

Terry L. Norton