



CONSERVATION COMMISSION

PUBLIC MEETING

2 Bathing Beach Road
Nantucket, Massachusetts 02554

www.nantucket-ma.gov

Wednesday, January 9, 2019

4 Fairgrounds Road, Training Room – 5:00 p.m.

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

Called to order at 5:00 p.m.

Staff in attendance: Jeff Carlson, Natural Resources Coordinator; Joanne Dodd, Natural Resources Office Administrator

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

Absent Members: Golding,

Late Arrivals:

Earlier Departure:

Agenda adopted by unanimous consent

*Matter has not been heard

I. PUBLIC MEETING

A. Announcements

B. Public Comment –

Cormac Collier – Emily Molden, Nantucket Land Council asked him if there would be follow up on the removal of pipes going into the harbor from Consue Springs

II. PUBLIC HEARING

A. Notice of Intent

1. Mary D. Starr – 19 East Creek Road (55-60) SE48-2985 **(Cont. 1/23/19)**
2. Gregory Reyes – 19 East Creek Road (55-60) SE48-3065 **(Cont. 1/23/19)**
3. Hither Creek Boatyard – 20 North Cambridge Street (59.4-s, 38-14, 38-15, 60-17) SE48-3136 **(Cont. 2/6/19)**
4. LAZ Family N.T. – 20 Waquoit Road (90-5) SE48-3131 **(Cont. 1/23/19)**
5. Town of Nantucket – 4 Bathing Beach Road (29-1) SE48-_____ **(Cont. 2/6/19)**
6. Waypoint, LLC – 71 Pocomo Road (15-9) SE48-3144

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

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

Representative Art Gasbarro, Nantucket Engineering & Survey

Public None

Discussion (5:02) **Gasbarro** – This is the coastal stabilization project, which is an extension of the Pocomo Neighbors stabilization project. There were questions about the netting to be used. Modified the design to replace the netting with a heavier duty Coir blanket; this has no non-degradable products. There rest is the same with the cables and the anchors. The stainless-steel tags will be attached to the logs rather than the fabric.

Staff Have everything needed to close.

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

Vote Carried unanimously

7. BSS Hummock Pond, LLC – 289 Hummock Pond (83-4) SE48-3140 **(Cont. 1/23/19)**
8. Hegenbart – 6 Walsh Street (42.4.1-84) SE48-3145 **(Cont. 1/23/19)**
9. Clarkfork Partners Nominee Trust – 17 Kimball Avenue (30-30) SE48-3154

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

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

Representative Paul Santos, Nantucket Surveyors

Public Cormac Collier, Nantucket Land Council

Discussion (5:06) **Santos** – This is a fully developed residential lot with frontage along Nantucket Sound; this is for 128 linear feet sand-drift zig-zag fence along the northern perimeter. This falls within Massachusetts Natural Heritage (MNH) jurisdiction. To be located at the intersection of the Coastal Bank and Coastal Dune. Massachusetts Endangered Species Protection (MESP) asked for a minimum of 4X4 or 4”-diameter piles. Access proposed along the beach above mean-high water from Jetties Beach; no work between April 1 to August 31, with regards to Piping Plover. No access will be allowed until such time as notice is provided. Sand nourishment notice must be provided through the Nantucket Natural Resources Department prior to placement. Division of Fisheries and Wildlife (DFW) said must be conditioned to avoid adverse impact and sent construction condition, which have been included in the file; reviewed the conditions.

Erisman – Confirmed that sand nourishment would have to be trucked down the beach. She believes they had a robust sand-drift fencing at one point that was installed without a permit; there seems to be no evidence of that now.

Santos – Farther along the beach there is fencing.

Topham – This has the most conditions he has ever seen on a sand-drift fence.

Santos – The DFW was very specific about the predator perches, pile sizes, and the slope of the sand fill.

Collier – He has no problems with the application. He got a call once about the Hinkley Lane coastal stabilization project past Kimball; the question was how they had gotten permission from ConCom to cross his private land. From the Jetties to Hinkley, all that land is private; that relates to access for this and future projects. He suggested the property owner call Mr. Carlson. Asked how permission is attained from the Town.

Topham – Under the Building Code downtown, you can stand on someone else’s property to work on your house; doesn’t know how that works here.

Santos – Any nourishment would occur in the winter.

Staff The DFW letter will be attached to the Order of Conditions with references.
That property owner called him. They would have to get permission from property owners.
Have everything needed to close.

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

Vote Carried unanimously

10. *Town of Nantucket – F Street (60.1.2-2) SE48-3152

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

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

Representative David Smith, GZA Geoenvironmental, Inc.
Chuck Larson, Nantucket Project Manager

Public Billy Cassidy
William Grieder, 10 F Street
Cormac Collier, Nantucket Land Council

Discussion (5:19) **Smith** – This is for bulkhead replacement at the northern end of F Street about 20-feet wide and 90-feet long on the east and 78-feet long on the west side. The site is used by both recreational and commercial users. He found a plan from 1946 but doesn’t know when the pier was initially built. He estimates that about 50 years ago, the wood bulkhead was replaced with steel-sheet bulkhead. Explained the construction process of the bulkhead, pier and boat romp. A DFW concern was concern about the drainage; the 6-inch diameter pipe will be extended farther out so it will drain the catch basin properly.

Topham – His concern about fuel and oil spillage getting into the harbor; there needs to some type of filtering.

Cassidy – Asked if they considered a Mass Habitat basin.
Discussion about drainage of the catch basin and preventing petroleum products from entering the harbor.

Cassidy – Asked if the work will be done from the bulkhead or from the water.

Smith – There’s not enough depth of water to work from a barge; most work will be from land. There will be a boom around the entire work section. They did two borings 45-feet below the water surface; they will stagger the depth of the sheets.

Grieder – There was a notification glitch; it was sent to a mainland address. The description of the pier is incorrect in that it states the pier is used by commercial vehicles transporting to the Island. Its main use is recreational, especially throughout the Summer. He’s pleased at GZA doing an inspection and ascertaining there have been spills and leakage. His concern is that unless commercial boats tying up for longer than just to load or off-load there will be at some point a catastrophic spill. When there is a spill, the Town is general not notified. Asked about maintaining the light pole; there is less than savory night activities and it is a safety issue. Reviewed damage caused by inattentive boaters to the marsh.

Bennett – He understands the concerns about the lighting but ConCom discourages lighting especially near wetlands.

LaFleur – The lighting should be downward and not intrude on the marsh. He’d prefer light not be projected onto the resource areas.

Erisman – Suggested a camera. The Town should have clear posting of hours with the pier shut at night.

Bennett – The marsh doesn’t get much protection from the two posts. Anything else would have an adverse effect.

Collier – His thoughts are to the run-off; this is an opportunity to increase trap such as on Straight Wharf. Suggested a way to bring the water back toward the landside of the bulkhead. Most run-off is coming down the street. This an Millie’s Bridge are the two remaining places where drainage enters the harbor.

Erisman – Wants more information on the lighting.

Smith – Asked for a two-weeks continuance.

Staff None

Motion Continued to January 23 by unanimous consent.

Vote N/A

11. *The Estate of Lee Rand Burne – 55 Grove Lane (41-419) SE48-3155
 Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux, Topham
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Art Gasbarro, Nantucket Engineering & Survey
 Public None
 Discussion (5:45) **Gasbarro** – For residential redevelopment within the buffer zone to a bordering vegetated wetland. The only waiver is for separation of structures from groundwater and temporary dewatering to outside the 100-foot buffer. The septic will be removed, and property tied to Town sewer. Location of the silt fence is shown on the plans.
Erisman – The driveway is very close to the 25-foot buffer.
Gasbarro – The dirt driveway would be removed, and the area allowed to grow back in or be replanted if necessary. We have no driveway design at this time but the proposed driveway, which isn’t shown, would be within the limit of work. There is no proposed steel edge but would be stabilized. He hopes the final design for the driveway would be a minor modification. The sewer line would be low-pressure, 1.5-inch diameter, force main down the driveway in a three-foot trench where water service comes in; they can agree to additional silt fencing along the driveway on the wetland side to Grove Lane.
Bennett – Asked about the current driveway.
Gasbarro – The legal way is 16-feet wide; that allows access by a fire truck.
Erisman – A silt fence would be important to help prevent the driveway from getting wider.
 Staff A letter of concerns about the work came in just this afternoon; there were questions about the sewer line. Have everything needed to close.
 Motion **Motion to Close.** (made by: Topham) (seconded by: Steinauer)
 Vote Carried unanimously
12. *Eel Point Nominee Trust – 189 Eel Point Road (33-20) SE48-____ (Cont. 1/23/19)
 13. *Dworetsky/Banse Family Trust – 8 Shawkemo Road (43-90) SE48-3157
 Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux, Topham
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative David M. Haines, Haines Hydrogeologic Consulting
 Public Cormac Collier, Nantucket Land Council
 Discussion (5:54) **Haines** – This is restoration of the designated buffer. Part of the original 2002 Order of Conditions was to restore the 25-foot buffer; that wasn’t done, and the order expired. The bordering vegetated wetland has been re-delineated higher than original; walking paths were allowed to reestablish themselves. The coastal bank by policy was found and its buffer within existing lawn will be replanted. The split-rail fence will be removed from within the buffer. A portion of the work area is within MNH habitat; the activity, lawn, is exempt from MESA. He will be asking for a continuance to hear from MNH. Reviewed the replanting plan.
Erisman – Would prefer plugs go in between shrubs. Confirmed there is grape growing over the existing fence. Asked that clethera be added to the planting plans.
Collier – He’s coming up with ways to incorporate fertilizer regulations into policy and permitting decisions and education awareness. He requests that for the life of the permit, the landscaper would have to apply all fertilizer regulations up to 100 feet, not just the restoration area. If you zoom out on the locus map, this is the terminal end of the valley and where the oyster restoration site is located; this is a point of pollution entry into the harbor.
Haines – Asked for a two-week continuance.
 Staff None
 Motion Continued to January 23 by unanimous consent.
 Vote N/A
14. *S/P Norvell, LLC – 104 & 111 Washington Street (55.1.4-38 & 71) SE48-3158 (Cont. 1/23/19)
 15. *KAMADIF, LLC – 32 Dukes Road (56-188) SE48-3156
 Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux, Topham
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Art Gasbarro, Nantucket Engineering & Survey for Jeff Blackwell
 Public None
 Discussion (6:04) **Gasbarro** – This is residential development of an empty lot within the borders for two vegetated wetlands. The property will be served by Town sewer; a well within the buffer is also proposed. The house is outside the 50-foot buffer; requested a waiver for separation from groundwater. Asking for stone retaining walls within the 50-foot buffer because the driveway is within 10-feet of the wetland. A portion of the property is outside the buffer zone where dewatering or the pool could be pumped.
Topham – A neighbor across the way has serious water issues; the wetland overflowed a lot this past year and it keeps coming up. Asked about grade changes.
Gasbarro – There would be no discharge within the buffer zone. Mr. Blackwell has the data on the fill to keep the house footings outside of the high water. Standard pool conditions are acceptable.
Erisman – Her concern with the waivers related to ground water separation and wonders if the commission should continue granting them. 10 inches is not very high and the height of ground water will continue to rise.
 Staff Have everything needed to close.

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

B. Amended Orders of Conditions

- 1. Grell – 21 Field Avenue (80-41) SE48-2999

Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux, Topham
Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
Representative Paul Santos, Nantucket Surveyors
Public None

Discussion (6:13) **Santos** – This is to relocate the driveway and install a small pool with landscaping, and utilities. They will be tying into to Town sewer and the septic system will be eliminated. The pool has an auto cover so there will be no new fencing; there is an existing post and rail fence. The pool will be about eight feet in the deep end that would be within two feet of ground water so requesting a waiver. The entire site is within the 100-foot buffer, except for a small sliver.

Erisman – From the photos of lawn and landscaping, asked how they will ensure there will be no damage to trees in the buffer. Trees are important to establishing habitat.

Santos – Mr. Grell is fully aware of complaints and would like to do some cleaning along the Folger side but won't do work without an amendment.

Erisman – Wants the buffers restored before the resource areas are destroyed. The aerial photos versus the drone photos show very drastic incursion into the 25-foot buffer.

Discussion about the alterations made within the 25-foot buffer and the need to restore that.

Santos – He agrees with Staff; the split-rail fence is the best indication of the 25-foot buffer limit.

Bennett – Suggesting coming back with a restoration schedule.

Erisman – A site visit would be useful. If this has been changing little by little over time, we should all have a visual of it on the ground now.

Champoux – Would also like a site visit.

Staff There has been some off-site work unrelated to this property. There are other issues with the Morgan Square area. Without aerial photos, it is hard to compare difference in final work to proposed work. In the last two years, he's been on this site eight times; but it's hard to see any differences.

A simple solution is to memorialize demarcate of the 25-foot buffer then allow the area to revegetate; no more cutting and no more maintenance with monitoring. A path to the float is fair. The fence is a very visible horizontal indicator.

The scheduled day for site visits is January 22 at 3 o'clock.

Motion Continued to January 23 by unanimous consent.

Vote N/A

III. PUBLIC MEETING

A. Minor Modifications

- 1. Henry – 59 Squam Road (13-17.2) SE48-3103

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

Staff Recommend issue as a minor modification.

Discussion (6:34) **Paul Santos**, Nantucket Surveyors – This is for add an 8-foot bumpout on the back side of the porch outside the 50-foot setback in designated lawn area.

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

Vote Carried unanimously

B. Orders of Condition

- 1. Waypoint, LLC – 71 Pocomo Road (15-9) SE48-3144

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

Staff This is for coir logs. The order reflects the change to the coir fabric blanket. Condition 19 addresses the tags but will add the mark is to be unique to the project and, also, add a request for a list of materials installed.

They are obligated to deliver sand to the site in a legal manner.

Discussion (6:36) **Champoux** – Asked for something conditioning the use of the tags on the logs. The tags should have the property address.

Gasbarro – They are marked by address.

Motion **Motion to Issue as amended.** (made by: Champoux) (seconded by: Steinauer)

Vote Carried unanimously

- 2. Clarkfork Partners Nominee Trust – 17 Kimball Avenue (30-30) SE48-3154

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

Staff This has a finding that requires attaching the MNH conditions. The vehicle access can be conditioned requiring permission be attained.

Discussion (6:43) Discussion about access along the beach versus the rights of private property owners.

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

Vote Carried unanimously

3. The Estate of Lee Rand Burne – 55 Grove Lane (41-419) SE48-3155

Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux, Topham
Staff Condition 25 will address installing the silt fence along driveway. The pool is proposed within the envelope; Condition 19 can be changed to require an amended order of conditions be filed for the components. Reviewed the renumbered conditions.

Discussion (6:46) **Champoux** – Asked the silt fence be conditioned as extended along both sides of the driveway to Grove Lane.
Bennett – We’re approving the envelope at this time. They will come back for actual construction.
Champoux – There is language about the pool in the application. It should be conditioned.

Motion **Motion to Issue as amended.** (made by: Topham) (seconded by: Champoux)
Vote Carried unanimously

4. KAMADIF, LLC – 32 Dukes Road (56-188) SE48-3156

Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux, Topham
Staff An auto cover needs to be cleared of water after rain before it will open. Condition 23 will address dewatering. We are currently not permitting a permanent dewatering condition for this property; if they pump out their basement, they are in violation. Suggested it might be an excellent opportunity to look at bio-retention options; you can’t infiltrate due to proximity to ground water.

Discussion (6:53) Discussion about the auto cover.
Bennett – His concern is dewatering to outside the 100-foot buffer.
Erisman – She’d like to see dewatering records indicating when it takes place.
Discussion about issues with dewatering and basement pumpouts Island wide and possible regulation changes in that regard.

Motion **Motion to Issue as amended.** (made by: LaFleur) (seconded by: Steinauer)
Vote Carried unanimously

C. Other Business

1. Approval of Minutes 12/19/2018: Approved as amended by unanimous consent.
2. Monitoring Report: SE48-2829, Diamond – 10 Jefferson Avenue Staff – No apparent negative affect.
3. Enforcement Actions
 - a. Issued several letters out for the two discharges at Consue Springs and Hulbert Avenue.
 - b. A site visit is scheduled with the Polpis Road property owner to review allegations of aggressively taking down trees to ascertain what needs to be done.
4. Reports:
 - a. None
5. Commissioners Comment
 - a. None
6. Administrator/Staff Reports
 - a. ConCom was sued by the owner of 74 & 75 Easton Street claiming the regulation definition of a bordering vegetated wetland and isolated vegetated wetland are unconstitutional; infringes on the 14th Amendment right to due process. It’s been turned over to Town Counsel.

Adjourned at 7:12 p.m. by unanimous consent.

Submitted by:
Terry L. Norton