



# CONSERVATION COMMISSION

## PUBLIC MEETING

2 Bathing Beach Road  
Nantucket, Massachusetts 02554

[www.nantucket-ma.gov](http://www.nantucket-ma.gov)

Wednesday, January 23, 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 5:03 p.m.

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

Agenda adopted by unanimous consent

\*Matter has not been heard

### **I. PUBLIC MEETING**

- A. Announcements**
- B. Public Comment – None**

### **II. PUBLIC HEARING**

#### **A. Notice of Intent**

1. Mary D. Starr – 19 East Creek Road (55-60) SE48-2985 (**Cont. 02/20/2019**)
2. Gregory Reyes – 19 East Creek Road (55-60) SE48-3065 (**Cont. 02/20/2019**)
3. LAZ Family N.T. – 20 Waquoit Road (90-5) SE48-3131 (**Cont. 02/20/2019**)
4. BSS Hummock Pond, LLC – 289 Hummock Pond (83-4) SE48-3140 (**Cont. 02/20/2019**)
5. \*Town of Nantucket – F Street (60.1.2-2) SE48-3152 (**Cont. 02/06/2019**)
6. \*Eel Point Nominee Trust – 189 Eel Point Road (33-20) SE48-3161

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

Discussion (5:04) **Santos** – The current owner was unaware there were two outstanding orders of condition on the property. They are looking to close them out. The site since 1990 has had improvements made without the benefit of permits. This filing is for mitigation work to bring the property more into compliance and validate work done then close out the orders of condition issued in 1987. Reviewed changes to the site that differ from the original orders of conditions. Current resource areas include: saltmarsh, vegetated wetland, coastal dune, land subject to coastal storm flowage, and coastal bank. The bocce court will be removed, and the no-disturb area restored. The deck today projects further than on the original proposal. He wants to know if the commission wants other areas of remediation. The structure is on piles in accordance with pre-2004 flood code requirements.

**Golding** – Asked when it was put on piles.

**Santos** – It was constructed on piles. It was permitted in 1987, co issued in 1990, foreclosure in 1991 when the current owners picked it up; they made changes about 2004 without permits.

**Erisman** – Would like the deck pulled out of the 25-foot buffer.

Discussion about the paper road that ran through the property and taken by the Town for the purpose of the Yard Sale program.

**Champoux** – He'd like to see the original orders of condition and to take a site visit.

**Santos** – Asked for a two-week continuance to provide a remediation plan.

Staff None  
 Motion Continued to February 6, 2019 by unanimous consent.  
 Vote N/A

7. Dworetzky/Banse Family Trust – 8 Shawkemo Road (43-90) SE48-3157  
 Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux, Golding  
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.  
 Representative Jeff Blackwell, Blackwell & Assoc.  
 Public None  
 Discussion (5:25) **Blackwell** – This was continued for a response from Massachusetts Natural Heritage (MNH). He added pepperbush to the planting plan.  
**Bennett** – Asked if they are going forward with moving the fence. Split-rail is the preferred fence type.  
**Blackwell** – He hasn’t heard from the owner on that.  
 Staff Could be conditioned for a split-rail fence; they can come back for a minor modification.  
 Have everything needed to close.  
 Motion **Motion to Close.** (made by: LaFleur) (seconded by: Champoux)  
 Vote Carried unanimously
8. \*S/P Norwell, LLC – 104 & 111 Washington Street (55.1.4-38 & 71) SE48-3158 (**Cont. 02/06/2019**)
9. \*Starbuck Realty, LLC – 44 Warrens Landing Road (38-23) SE48-3159  
 Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux, Golding  
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.  
 Representative Brian Madden, LEC Environmental  
 Public Judith Drake, 32 Warrens Landing Road, for owners of 34 Warrens Landing Road  
 Comac Collier, Executive Director Nantucket Land Council (NLC)  
 Discussion (5:29) **Madden** – This is for site development. Resource areas are two bordering vegetated wetland and potential isolated vegetated wetland on abutting property. The existing structure will not change; work includes: construction of a new single-family dwelling (SFD) outside the 100-foot buffer, pool, attached garage, pervious driveway, and septic outside 100-foot buffer. The bottom of pool will be at elevation 5 with groundwater at 2.7. The new driveway will be outside the 25-foot buffer. No waivers are required. There is no coastal bank out there.  
**Drake** – She is concerned about the driveway coming off Blue Heron Way; that is a one-way dirt road and concerned about traffic on that road. The area is very wet.  
**Erisman** – The proposed driveway off Blue Heron Way should not be used for construction access.  
**Madden** – A portion of the property is within the travelled way.  
**Collier** – This is at the apex of the two inland saltmarshes that go into Madaket Harbor. Asked if Madaket Harbor would include the estuaries or if it’s just the harbor itself. There is a Board of Health (BOH) regulation requiring I/A septic systems within 300 feet of Madaket Harbor. Due to the sensitivity of the area, ConCom should require that they go beyond following best management practices in terms of landscaping; records should be submitted to ConCom in use of fertilizers. Noted there is also an Indian burial ground on the Haffenreffer property; there are artifacts all over the place.  
**Golding** – Asked who has jurisdiction over the 300 feet abutting Madaket Harbor.  
**Collier** – The BOH; but ConCom permits the septic.  
**Bennett** – We can’t dictate the septic based upon BOH regulations; it meets our standards.  
**Champoux** – Recommended conditions on when construction can be done.  
**Collier** – This is a bordering vegetated wetland to a saltmarsh leading open water.  
 Staff Can condition construction access off Warren’s Landing Road.  
 He can follow up with the BOH; they must their own criteria. This septic meets our performance standards.  
 Have everything needed to close.  
 Motion **Motion to Close.** (made by: Steinauer) (seconded by: LaFleur)  
 Vote Carried unanimously
10. \*NAC Conservation, Inc – 204 Cliff Road (40-57) SE48-3160  
 Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux, Golding  
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.  
 Representative Brian Madden, LEC Environmental  
 Kevin Dale, Vaughan, Dale, Hunter and Beaudette P.C.  
 Public Steven L. Cohen, Cohen & Cohen Law P.C., for 3 abutters  
 Discussion (5:45) **Dale** – This is for residential development of 13 acres abutting Maxi Pond. NAC is dedicated to conservation purposes and is an adjunct of the Nantucket Anglers Club. Part of the intention is for NAC to establish the fair-market value of this parcel so that the property can be sold to ultimately benefit the Anglers Club.  
**Madden** – This abuts Maxi Pond with an inland bank and bordering vegetated wetland. The proposed structures are a dwelling, a pervious patio, a pool, a cabana, and a garage with most work is outside the 100-foot buffer. The slope will be stabilized by a bio-degradable erosion-control blanket and planted with native species. The septic is shown outside the 100-foot buffer. The pool is separated from the pond by 200 feet. There would be temporary irrigation to establish the vegetation.  
**Champoux** – Looks like they should incorporate a concrete retaining wall to support the pool.  
**Madden** – For this purpose it is shown as a continuous slope.  
**Golding** – Asked what TOF 34 on the house means.  
**Madden** – Top of Foundation.

**Bennett** – Asked if the septic could be put under the pre-existing cart path.  
**Dale** – He doesn't think the path is an impediment on locating the septic.  
**Erisman** – She's concerned about the grading toward the pond and the amount of runoff going down that slope.  
**Champoux** – He shares that concern about the slope; it should be terraced beyond the 50-foot buffer. A 3:1 slope is really very extreme.  
**Bennett** – He would also like to ensure the planting plan will help stabilize the slope and that it's native to the area.  
**Golding** – The MNH shows the habitat of rare wildlife going right up the pool. Asked what rare wildlife is being referred to.  
**Madden** – He's not sure; there might be some rare plants and maybe insects or invertebrates. The pool is outside the estimated habitat.  
**Golding** – Asked if priority habitat is the same.  
**Madden** – We had to file a separate MESP review because it is within priority habitat.  
**Erisman** – She'd prefer seeing the plan for a retaining wall and not conditioning it.  
**Cohen** – This property shouldn't be developed. The Commission should have a third-party review of the hydric soils and ask the applicant to do more test pits. Because this is an exercise to prove marketability, the ConCom should review this with the wetland scenic view in mind, based on the proximity of the pond. This is the highest point over the pond.  
**Bennett** – He shares the wetland scenic view concerns. He can't see a location for the house that would be any less visual.  
**Collier** – ConCom is not only the permitting authority but has the role of looking at conservation as a whole on the Island. This is frustrating because this property has been and is considered conservation land because it was gifted to Nantucket Anglers Club Inc. for that purpose. If NAC Conservation, Inc. is to live up to its name and goals, this property should be treated as protected. ConCom should be concerned about this. He does not believe that if this is sold, NAC will be able to buy an equally valuable conservation area.  
**Golding** – Expressed his frustration sometimes because the board is bound by the legislation.  
**Collier** – ConCom is more than a regulatory board; suggested rereading the enabling legislation. ConCom can create the Open and Recreation plan.  
**Dale** – NAC would be happy to sell this at the right price to a conservation group to keep it open; as a practical matter they wouldn't be able to purchase new property for a new clubhouse. ConCom is a regulatory commission, not a planning control commission. There is language in the original deed that says it should be used for conservation, but that language doesn't prohibit the construction of a clubhouse.  
**Bennett** – Asked if this lot can be subdivided.  
**Dale** – That would be highly unlikely; if that's a concern, the property could be restricted against subdividing.  
**Cohen** – There are concerns within the ConCom area of jurisdiction that can restrict this property.  
**Bennett** – He wouldn't feel comfortable restricting the dwelling without seeing a drawing.  
**Steinauer** – We would be permitting a house and pool without a plan and it could impact the scenic view. We could approve the building envelope. Asked if it could be conditioned that no construction can take place until ConCom reviews and approves the plans.  
**Dale** – We're still waiting to hear from Massachusetts Endangered Species Protection (MESP).

Staff

If a retaining wall were to come in, that would be an amended order.  
 The wetland boundaries have been reviewed and he's confident they are correct.  
 When the house plans are developed, they have to come back and that is when the house is conditioned.  
 Have everything needed to close.

Motion

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

Vote

Carried unanimously

11. Hegenbart – 6 Walsh Street (42.4.1-84) SE48-3145

Sitting

Bennett, Erisman, Steinauer, LaFleur, Champoux, Golding

Documentation

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

Representative

Jeff Blackwell, Blackwell & Assoc.

Public

None

Discussion (6:24)

**Blackwell** – Submitted revised drawing for expansion of the deck and the spa element. Reviewed the scope of work.

Staff

Have everything needed to close.

Motion

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

Vote

Carried unanimously

**B. Amended Orders of Conditions**

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

Sitting

Bennett, Erisman, Steinauer, LaFleur, Champoux, Golding

Documentation

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

Representative

Paul Santos, Nantucket Surveyors

Public

Gretchen Callahan, 4 Morgan Square

Discussion (6:27) **Santos** – This is for the relocation of an existing driveway and construction of a pool outside the 50-foot buffer. The entire property is within 100 feet of a pond. There was pruning within the 25-foot buffer. There are areas where trees were removed but that was prior to the Grell’s ownership. There is an on-site septic, but the property will tie into the Town sewer system when the pipe is laid. Asked for a waiver based on groundwater separation of the deep-end of the pool. There is an open order for expansion of the deck on the south side.

**Steinauer** – Could condition this that the 25-foot buffer is allowed to grow; it looks like the soil is still in place.

**Erismann** – The privet should be replaced with a native species, no cultivars. The wire fence should not be near the pond.

**Santos** – The pool is going to have an autocover precluding the need for a pool fence.

**Callahan** – This property has been denuded; she would like that repaired.

Staff We could require photo monitoring reports from the beginning and end of the growing season during the life of the permit.

There is an issue with sediment from the road getting into the pond; would like to get a consensus from the abutters to improve the road to mitigate that problem. Construction vehicles should come in from Field Avenue.

Could condition this that no further cutting is allowed.

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

Vote Carried unanimously

2. Kimball-Sherburne, LLC – 9 Kimball Avenue (3031) SE48-3054

Sitting Bennett, Erismann, Steinauer, LaFleur, Champoux, Golding

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

Representative Paul Santos, Nantucket Surveyors

Public None

Discussion (6:41) **Santos** – This is to add sand-drift fencing to the order of conditions for beach stairs; the fencing will mimic 17 Kimball Avenue. There were very specific requirements from the Department of Wildlife and Fisheries (DWF) regarding the size and angle of the fence posts for 17 Kimball Avenue; those have been incorporated here. We have no MESP letter so will ask for a continuance.

**Erismann** – Asked about the paddle-board storage in the middle of the dune field.

**Santos** – That was approved under a minor modification. Explained why the angle was required

Staff The DWF’s heart is in a good place but he doesn’t see how this would work when there are no such requirements on other posts.

Motion Continued to February 6 by unanimous consent.

Vote N/A

**III. PUBLIC MEETING**

**A. Minor Modifications**

1. Moran – 72 Millbrook Road (57-4) SE48-3128

Sitting Bennett, Erismann, Steinauer, LaFleur, Champoux, Golding

Staff Recommend Issue as minor modification.

Discussion (6:48) **Paul Santos**, Nantucket Surveyors – This is to reduce the size of the pool and eliminate the spa attached to the pool and shift the program within the permitted area. This also incorporates a new well within the 100-foot buffer.

Motion **Motion to Approve as minor modification.** (made by: Golding) (seconded by: LaFleur)

Vote Carried unanimously

2. 36 Lily Street, LLC – 36 & 36B Lily Street (42.4.3-93 & 94) SE48-3005

Sitting Bennett, Erismann, Steinauer, LaFleur, Champoux, Golding

Staff None

Discussion (6:50) **Brian Madden**, LEC Environmental – This is to reduce the structural footprint and scope of work within the 100-foot buffer and land subject to coastal storm flowage.

Motion **Motion to Approve the minor modification.** (made by: Champoux) (seconded by: Steinauer)

Vote Carried unanimously

**B. Orders of Condition**

1. Hegenbart – 6 Walsh Street (42.4.1-84) SE48-3145

Sitting Bennett, Erismann, Steinauer, LaFleur, Champoux, Golding

Staff Didn’t require any waivers. For some of the work abutting the phragmites, Condition 19 outlines requirements for phragmites mitigation.

Discussion (6:54) None

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

Vote Carried unanimously

2. Dworetzky/Banse Family Trust – 8 Shawkemo Road (43-90) SE48-3157

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

Staff Will add Condition 21 about marking the 25-foot buffer.

Discussion (6:57) None

Motion **Motion to Issue as modified.** (made by: Golding) (seconded by: Champoux)

Vote Carried unanimously

3. Starbuck Realty, LLC – 44 Warrens Landing Road (38-23) SE48-3159

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

Staff Will add Condition 24 requiring construction access from Warrens Land Road. Condition 22 will include no cultivars. Will add Cond 25 about proof the fertilizer/herbicide applicator is licensed. The proposed leach-field tanks are outside our jurisdiction.

Discussion (6:58) **Erisman** – No cultivars and need to regulate fertilizer.

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

Vote Carried unanimously

4. NAC Conservation, Inc – 204 Cliff Road (40-57) SE48-3160

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

Staff Will add Condition 24 requiring applying for an amended order of condition prior to work. Will add Finding 2 to address the applicant’s representation this is for the purpose of determining fair-market value only.

Discussion (7:04) **Champoux** – No work should be permitted or approved until they come before the ConCom again.

Motion **Motion to Issue as amended.** (made by: LaFleur) (seconded by: Golding)

Vote Carried unanimously

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

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

Staff Condition 19 addresses the split-rail fencing location and no cutting in the no-disturb area. Condition 20 will require photo monitoring of the no-disturb area. Condition 21 requires native species. Condition 22 will address construction access.

Discussion (7:15) Discussion about the conditions on the current order of conditions.

Motion No action at this time.

Vote N/A

**C. Other Business**

1. Approval of Minutes 1/9/2019: adopted by unanimous consent.

2. Monitoring Report: None

3. Enforcement Actions:

a. Discharge on Polpis Avenue

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

Discussion (7:22) **Carlson** – The tank with the pipe is still in place but nothing is connected to the tank.

**Erisman** – Asked if he was able to meet with the owners about removal of the trees

**Carlson** – He met with them to go over what happened to the trees. He explained that a permit was still required to remove dead trees.

Motion No action

Vote N/A

4. Reports:

a. CPC, Golding

5. Commissioners Comment

a. None

6. Administrator/Staff Reports

a. He will send a copy of the ConCom enabling legislation to the members in regards to an open-space conservation plan.

b. Reuse of the old fire station: it was proposed to co-locate Natural Resources and Health Department into the building with meeting space in the garage. He would also would like Shellfish Advisory Board, Fertilizer Advisory Committee, and other associated committees so all our files would be together. A Meeting room would allow fertilizer training to take place as needed. Cited conveniences associated with the location. Affordable Housing has 90 days to come up with a housing plan. He’s looking to get support from the Commission and the BOH in the form of a letter asking the fire station be repurposed for that use.

Adjourned at 7:33 p.m. by unanimous consent.

Submitted by:

Terry L. Norton