



CONSERVATION COMMISSION

PUBLIC MEETING

2 Bathing Beach Road
Nantucket, Massachusetts 02554

www.nantucket-ma.gov

Wednesday, February 6, 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 5:05 p.m. by Ms. Erisman

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: Bennett, 5:25 p.m.
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. Hither Creek Boatyard – 20 North Cambridge Street (59.4-2, 38-14, 38-15, 60-17) SE48-3136

Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux, Golding
Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
Representative Paul Santos, Nantucket Surveyors
Stan Humphries, LEC Environmental
Catherine Slattery, Hither Creek Boatyard
Sarah Alger, Sarah F. Alger P.C.
Cloe Coggins, Environmental Specialist Hither Creek Boatyard

Public Jason Campisi, 9A Macy Lane
Dan Bailey, Pierce Atwood LLP, for Peter Bordes and Beverly Hall and David Billings
Beverly Hall and David Billings, 44 Tennessee Avenue
Peter Bordes, 12 Oakland Street
Larry Buchanan

Discussion (5:27) **Santos** – Reviewed the last hearing discussion. Received the Division of Marine Fisheries (DMF) letter; no word from the harbormaster. A Hither Creek Boatyard benthic survey is included in the packet.
Humphries – Reviewed his supplemental information regarding: foremost is quantification of impact to the resource area, land under the ocean; DMF recommendation to keep floats 25 feet from wetlands versus 15 feet as proposed; believe floats will attenuate waves hitting the saltmarsh; comply with 5 of the 18 performance standards under the State and 3 of 5 under local standards; and no recreational impact.
Erisman – Asked how close the float is to the saltmarsh.
Humphries – The closest float is 8 to 9 feet from the saltmarsh with props being 15 feet from the saltmarsh.
Champoux – Confirmed that the float accommodates one boat and it can't pull up on the saltmarsh side of the float.
Humphries – That would be an enforcement issue for the Marina.
Santos – Would also provide a current location of the edge of the saltmarsh with a yearly survey of the actual edge so ConCom can track any movement.
Humphries – The floats would be in the water between May 15 to September 30.
Santos – Chapter 91 will look at navigation part of the component. There has been no letter for or against from the Harbormaster.
Erisman – She would want that letter to be part of the file. The previous plan kept activities concentrated to the end of the creek; this extends it down the creek. The wetland scenic view and pristine wetlands will be damaged.
Santos – With the project for the 11 slips, we were well into the Chapter 91 process when the abutters voiced concerns.
Champoux – Asked if any more moorings are allowed for Hither Creek.
Humphries – No.
Champoux – Asked if there is evidence that the floats disrupt the flow of the creek with the possibility of silting.

Humphries – That is why he calculated the cubic feet of displacement. This is far superior to a clustered group of piles in that respect. He'd like to see something included to bear out the wakes being mitigated by the floats.

Golding – He would like assurance from the Harbormaster that there is no safety issue with this location of the floats.

Steinauer – Boat safety and traffic is not within ConCom purview.

Golding – Possible collisions with the saltmarsh is part of our purview.

Bennett – He questions during the peak season how pristine the creek is.

Campisi – Asked how long the boats would be and where's the proof about the impact on the environment. He sees no models or studies; he wants to see that.

Bailey – The issue of boat traffic, traditionally the commission has no role in boat traffic and safety; by your bylaws, you have an obligation to protect recreation within resource areas. Mr. Santos mentioned pursuing a Chapter 91 license; he believes they will not because floats can be licensed under local authority. The cumulative impact is from the vessels going up and down the creek and docking at these locations. The saltmarsh, DMF provided a letter to this project recommending a 25-foot setback; he believes that is based on a good ecological reason. We just found out the floats will be only 11 feet back. At 341 Madaket Road, there was case for a set of beach stairs over the bank and short of the saltmarsh; we lost that case because by stopping the landing before the saltmarsh, people walking through the saltmarsh would have a negative impact. If a family walking through a saltmarsh impacts it, what about boats.

Billings – About the ConCom December site visit, the placement of the boat and dock was misleading; it is not in a location detailed in the proposal. The real measurement is that this is 540 feet going down this fragile and thin creek; the old one was only 211 feet. The DMF 25-foot setback is more appropriate because these boats are hugely powerful.

Steinauer – Asked about 30-foot boats with 150 horse-power engines.

Santos – Hither Creek Boatyard can enforce who can use the floats. ConCom can also condition that.

Bordes – Asked ConCom to think carefully what he's about to present. The docks make the creek unnavigable; that's a safety issue that impacts the creek. The boat traffic will double on one side of the creek creating more impact; puts significant impact on wildlife; don't know the impact from light getting blocked into the creek; adversely impacts recreational life on the creek. Referenced satellite photos indicating significant erosion occurring from wakes along the creek. A quote from a meeting Hither Creek Boatyard had with neighbors indicated that the reason is to allow Hither Creek Boatyard to handle larger boats. This last summer, there were hundreds of dead striped bass floating around in the creek and we don't know why. Little Neck is some of the most beautiful untouched property on Nantucket and it would be a shame to lose that.

Buchanan – Asked how people will access those boats.

Slattery – The intent is people will use dinghies.

Erismann – If the rowboat is tying up on the bank side, that is now even closer to the saltmarsh.

Golding – He'd like to know where the 25-foot setback DMF recommended would actually be.

Champoux – Asked if Hither Creek Boatyard expects the west side to be navigable in an east wind.

Slattery – Yes; we are confident there will be no issues. The floats are better than moorings because there is no mooring scour.

Erismann – She would like some of the aerial photos Ms. Slattery referenced be included in the file.

Bennett – He'd like more clarification on the possibility this is a Chapter 91 loophole.

Bordes – When there is a heavy wind, there is no way a boat can get up the creek without hitting the docks.

Santos – This commission knows the dock was put out to show what it looked like and didn't represent what the project would look like. Regarding navigation, whether Chapter 91 is required or not, under section 10 of Army Corps of Engineers (ACE), they will look at navigation; the question becomes does the commission feel more qualified to review navigation than Chapter 91 or ACE. Putting the floats on the west side of the creek keeps boats off the saltmarsh bank; right now they can get right up to the bank.

Bennett – We're looking for more information: aerials, harbormaster opinion, wind direction.

Santos – Asked for a two-week continuance.

Staff Any project taking place in waterways has to file with DMF; they apply their standards to make recommendations.

He will confirm with Harbormaster Sheila Lucey that she has no concerns.

Motion Continued to February 20 by unanimous consent.

Vote N/A

2. Town of Nantucket – 4 Bathing Beach Road (29-1) SE48-3163 (**Cont. 02/20/2019**)
3. S/P Norwell, LLC – 104 & 111 Washington Street (55.1.4-38 & 71) SE48-3158 (**Cont. 02/20/2019**)
4. Town of Nantucket – F Street (60.1.2-2) SE48-3152 (**Cont. 02/20/2019**)
5. *Vineyard Wind, LLC – Nantucket Waters SE48-_____

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

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

Representative	Nate Mayo, Vineyard Wind Holly Carlson-Johnson, Epsilon Associates, Inc. Rachel Pachter, Vineyard Wind Vice President of Permitting Affairs Jack Vaccaro, Epsilon Associates, Inc.
Public	None
Discussion (6:33)	Mayo – Overview about Vineyard Wind, LLC; were award to be the nation’s first off-shore wind PPF. Reviewed permits necessary: local, State, and Federal. Carlson-Johnson – This is for two off-shore export cables to provide 800 megawatts sustainable energy. The 800-meter-wide corridor within State waters has gone through the complete State process and Chapter 91 process. The cables themselves only impact a 1-meter wide area. There are two options for the Muskeget Channel to provide options for the best handling. The cables will be buried. This corridor is the product of intense conversations with State agencies and has been surveyed to minimize impact. A 3.1-mile stretch of the cable corridor will be in Nantucket waters; explained the method of burying the cables 5 to 8 feet below the ocean floor. Proposing post construction geophysical surveys to be performed every year for three years then every two years after that. We don’t want our cable exposed so burying is a priority. We have included a conservative assumption of up to 10% if the cables cannot be buried. There will be temporary anchoring during the burying of the cable; explained the scope of that anchoring. Their survey indicates no large sandwaves in the area where the corridor is planned; if there is one, can cut a notch in the top of the sandwave to lay the cable. There is shellfish habitat identified but the impact is only 1 meter wide. The area is mapped for foraging birds; they have completed the Massachusetts Natural Heritage (MNH) checklist; that letter has not been received Nantucket ConCom. Looking to install the cable in Spring 2021 and it will take about three days. Cable installation is a 24-hour operation. Golding – Most of this is beyond the three-mile limit from Nantucket. Carlson-Johnson – Two types of proposed monitoring: post construction geophysical study and a benthic habitat monitoring plan. The Federal and State governments are very involved in the monitoring plan. Pachter – Not all cables will come to Nantucket. We have to plug into substations where the grid is robust enough to take this kind of power. We are using the largest available cable, which reduces the number of cables needed. Staff – The target burial is 5 or 8 feet; asked if there is any concern about the velocity of speed through that Muskeget Channel; the substrate moves a lot. Pachter – We have a couple of years of survey data and have a good sense of the mobility; another survey will be done before installation and after installation. We have a team of people who have worked on projects across the world so have someone who has experience with this. Golding – Some species will be sensitive to magnetic field given off by the cables. Mayo – Studies done on existing turbine cables indicate no adverse impact on marine life. Carlson-Johnson – The magnetic field on this will be 42.75. Requested a two-week continuance.
Staff	The ConCom interest is land under the ocean and the impact to the environment and marine life. We need a Department of Environmental Protection file number and a determination from MNH.
Motion	Continued to February 20 by unanimous consent.
Vote	N/A
	6. *The Nantucket Yacht Club – 1 South Beach Street (42.4.2-10) SE48-3162
Sitting	Bennett, Erisman, Steinauer, LaFleur, Champoux, Golding
Documentation	Site and topographical plans, photos, requisite departmental reports and correspondence.
Representative	Leo Asadoorian, Blackwell & Associates
Public	None
Discussion (7:12)	Asadoorian – This is to repair and replace a licensed bulkhead. This bulkhead was built circa 1954. The new bulkhead will be one foot seaward of the existing. Explained the construction protocol and material to be used. There is a lot of wind-blown sand; vegetation that is removed will be replaced. Also replacing an existing chain-link fence. Would like to start work as soon as possible. When they did the floats, it was determined there are no shellfish or eel grass in that area.
Staff	The bulkhead area is outside MNH area of concern. Have everything needed to close.
Motion	Motion to Close. (made by: LaFleur) (seconded by: Champoux)
Vote	Carried unanimously
	7. 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 (7:19) **Santos** – There are two outstanding orders of condition from 1987; the Certificate of Occupancy issued in 1990. Proposing to do remediation work to obtain a Certificate of Compliance from ConCom and the State. Reviewed the restoration plan. The portion of the deck within the 50-foot buffer; leaving it makes more sense since shrubs have grown all around it.
Champoux – Looking at the deck, ripping it off would disturb a very mature shrub layer.
Erismann – They have to give us back that area of the deck somewhere else.
Santos – The 25-foot buffer will be marked with a permanent plaque.
Champoux – Likes the idea that the square footage of the encroaching deck will be used as restoration area.
 Discussion about plants to be used in the restoration areas.
Santos – Asked for a two-week continuance.
 Staff We’re trying to gain maximum compliance back to what was there.
 Motion Continued to February 20 by unanimous consent.
 Vote N/A

B. Amended Orders of Conditions

1. Kimball-Sherburne, LLC – 9 Kimball Avenue (30-31) SE48-3054

Sitting Erismann (acting chair), Steinauer, LaFleur, Champoux, Golding
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Paul Santos, Nantucket Surveyors
 Public None
 Discussion (5:11) **Santos** – The NOI was for a permanent zigzag, sand-drift fencing on Nantucket Harbor. The letter from Division of Fisheries and Wildlife has been issued and is the same as for 17 Kimball Avenue regarding size of piling; spacing between fencing and anti-predator perch on the posts.
 Staff None
 Motion **Motion to Approve as amended.** (made by: Champoux) (seconded by: Steinauer)
 Vote Carried unanimously

III. PUBLIC MEETING

A. Minor Modifications

1. Delaney Family Nominee Trust – 16 Plover Lane (12-52) SE48-3025

Sitting Erismann (acting chair), Steinauer, LaFleur, Champoux, Golding
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Staff To install a new oil tank on a concrete pad inside the 100 but outside the 50-foot buffer.
 Representative None
 Public None
 Discussion (5:06) None
 Motion **Motion to Issue as a Minor Modification.** (made by: Champoux) (seconded by: LaFleur)
 Vote Carried unanimously

2. Ivanov – 139 Polpis Road (44-7.2) SE48-3082

Sitting Erismann (acting chair), Steinauer, LaFleur, Champoux, Golding
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Staff This is to modify the location of the structures; we approved a building envelop. Two septic tanks being located outside the 100-foot buffer.
 Representative None
 Public None
 Discussion (5:07) None
 Motion **Motion to Issue as a Minor Modification.** (made by: LaFleur) (seconded by: Champoux)
 Vote Carried unanimously

B. Certificates of Compliance

1. Bathon – 9 Main Avenue (60.3.1-425) SE48-2868

Sitting Erismann (acting chair), Steinauer, LaFleur, Champoux, Golding
 Staff Emergency cert to relocate structure outside the eroding bank. It is relocated and in compliance
 Discussion (5:09) None
 Motion **Motion to Issue.** (made by: Champoux) (seconded by: LaFleur)
 Vote Carried unanimously

C. Orders of Condition

1. The Nantucket Yacht Club – 1 South Beach Street (42.4.2-10) SE48-3162

Sitting Bennett, Erismann, Steinauer, LaFleur, Champoux, Golding
 Staff Pretty straight forward
 Discussion (7:30) None
 Motion **Motion to Approve as drafted.** (made by: LaFleur) (seconded by: Steinauer)
 Vote Carried unanimously

2. Delaney Family Nominee Trust – 16 Plover Lane (12-52) SE48-3025 **(Reissue)**

Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux, Golding
Staff This is being reissued because when it was recorded it was with an error.
Discussion (7:32) None
Motion **Motion to Re-Issue.** (made by: Steinauer) (seconded by: LaFleur)
Vote Carried unanimously

D. Extension Requests

1. Shea – 8 Walsh Street (42.4.1—83) SE48-2863

Sitting Erisman (acting chair), Steinauer, LaFleur, Champoux, Golding
Staff This is for construction of a secondary structure; they are looking for a 1-year extension
Discussion (5:10) None
Motion **Motion to Issue the 1-year extension.** (made by: Champoux) (seconded by: LaFleur)
Vote Carried unanimously

E. Other Business

- 1. Approval of Minutes for 1/23/2019: adopted by unanimous consent.
- 2. Monitoring Report: None
- 3. Enforcement Actions:
 - a. 41 South Beach Street

Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux, Golding
Staff There was work on patio to add a knee wall; there was confusion if a filing was necessary. He has all the information he needs but hasn't had a chance to review it all. The patio is within the flood zone.
Discussion (7:33) None
Motion No action taken.
Vote N/A

- 4. Reports: None
- 5. Commissioners Comment
 - a. Erisman – Asked about a Monomoy property she emailed him.
Staff – He got her email.
 - b. Erisman – On Polpis Road there is clearing on the harbor side of the road.
Staff – Polpis Road is DPW work: they are pruning access for a culvert.
 - c. Golding – Asked who's supposed to be clearing the Turtle Pond culvert.
Staff – The sewer is doing some clearing because they have the clamshell. A lot of stormpipe pathway projects will be detailed under the Coastal Resiliency Plan. Looking at using oyster habitat to help protect a section of Polpis Road from wave energy.
 - d. Emily Molden, Nantucket Land Council – Asked about status of the removal of the Consue Spring and Hulbert Avenue culverts.
Staff – We were told it was removed but it wasn't completely removed; the one on Hulbert is complete.
Emily Molden, Nantucket Land Council – There was brushcutting at Washing Pond along the access driveway.
Staff – He'll look into that
- 6. Administrator/Staff Reports
 - a. Monday the 'Sconset Beach Preservation Trust meeting is in the 4 Fairgrounds Road Training Room at 4 p.m.

Adjourned at 7:46 p.m. by unanimous consent.

Submitted by:
Terry L. Norton