



# CONSERVATION COMMISSION

## PUBLIC MEETING

2 Bathing Beach Road  
Nantucket, Massachusetts 02554

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

Wednesday, February 20, 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 5:04 p.m.

Staff in attendance: Jeff Carlson, Natural Resources Coordinator; Joanne Dodd, Administrative Specialist; 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. 03/20/2019**)
2. Gregory Reyes – 19 East Creek Road (55-60) SE48-3065 (**Cont. 03/20/2019**)
3. 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

Catherine Slattery, Hither Creek Boatyard

Chris Shannon, Hither Creek Boatyard

Cloe Coggins, Environmental Specialist Hither Creek Boatyard

Sarah Alger, Sarah F. Alger P.C.

Public Dan Bailey, Pierce Atwood LLP, for Peter Bordes and Beverly Hall and David Billings

Emily Molden, Nantucket Land Council

Discussion (5:06) **Santos** – Recapped the application. Reviewed supplemental information, which was filed: read letter from Harbormaster Sheila Lucey into the record indicating no concerns; reviewed three points made by Department of Marine, Fisheries, and Wildlife (DMFW) - two points address and the third to maintain 25 feet from the salt marsh; Tom Mleczko letter regarding navigation in the creek; submitted into the record a letter of support from John Metcalf in regards to navigation within the creek. Reviewed two options submitted at the table: Option 1 eliminates four seasonal floats in area north of K Street and one mooring; Option 2 tweaks the previous approval with seasonal slip docks 10 feet off the edge of marsh with all boats bow in and no cleats on the north side of the dock.

**Golding** – On Option 2, asked if Madaket Marine would lose some existing moorings.

**Santos** – Yes, three moorings would be impacted. He doesn't know if those could be reallocated elsewhere. On Option 2, there would be only 8 boats within the slips with none on the north or exterior. They would have to access the dock via dinghy.

**Golding** – Asked if there is more depth beneath the props to the creek bottom with Option 2.

**Shannon** – The props would be more toward the center of the creek putting them about 35 feet off the marsh. The creek is 5-6 feet mean water almost to the edge of the marsh. Option 2 would be mostly within the footprint of the original permanent slip application.

**Erisman** – Prefers Option 2.

**Steinauer** – He feels Option 2 is better; it doesn't spread the boats out.

**Bennett** – Agrees that Option 2 is preferable.

**Champoux** – He was concerned about the 25-foot buffer requested by DMFW and impact on navigation.

**Shannon** – Explained what would happen to the three moorings.

**Bailey** – Option 2 is an improvement and responds to some of our concerns; we appreciate the effort. He will review the proposal with his clients.

**Coggins** – The Massachusetts Estuary Project stated Hither Creek in 1951 had a plethora of eelgrass beds the 2001 eel grass survey found none in Hither Creek. The biggest factor is nitrogen loading coming from septic systems; controlling that is being addressed through Board of Health regulation. There's an big issue with

- erosion of the marsh; where the floats would go, there is a large population of mussels and they stabilize the marsh.  
**Santos** – Asked to continue for four weeks.
- Staff None  
 Motion Continued to March 20, 2019 by unanimous consent.  
 Vote N/A
4. LAZ Family N.T. – 20 Waquoit Road (90-5) SE48-3131 (**Cont. 03/20/2019**)
  5. Town of Nantucket – 4 Bathing Beach Road (29-1) SE48-3163 (**Cont. 03/06/2019**)
  6. BSS Hummock Pond, LLC – 289 Hummock Pond (83-4) (**Cont. 03/06/2019**)
  7. \*S/P Norwell, LLC – 104 & 111 Washington Street (55.1.4-38 & 71) SE48-3158 (**Cont. 03/06/2019**)
  8. Town of Nantucket – F Street (60.1.2-2) SE48-3152
- Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux, Golding  
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.  
 Representative David Smith, GZA Geoenvironmental, Inc.  
 Public Corey Gammill, Charter Fisherman  
 Catherine Slattery, Hither Creek Boatyard  
 Chris Shannon, Hither Creek Boatyard
- Discussion (5:34) **Smith** – Recapped the F Street bulkhead replacement project. There’s a catch basin with drain to the east; it would be extended through the new sheet piling; responding to DMFW letter dated January 4 & commission concerns, we reexamined improving run off; we will look to replace the existing manhole and catch basin with a new outline plus install a filter system in the catch basin.  
**Champoux** – His concern is the filter being replaced on a regular basis. Asked who would be responsible for that and if there is a schedule for replacement  
**Smith** – The Department of Public Works (DPW) would be responsible for replacing the filter; the manufacture indicates replacing annual. Regarding lighting, after the January 9<sup>th</sup> meeting, he and DPW Director Rob McNeil drove to the site; they found the existing lighting to be adequate; the only change would be to move the light pole about 10 feet landward, so it won’t impact the sheeting.  
**Champoux** – We were looking at more down-facing lighting for safety that wouldn’t wash over the wetland; an alternative would be lighting similar to that used on the downtown docks.  
**Smith** – Any changes to the lighting could be addressed later.  
**Bennett** – He likes the idea of the filter.  
 Discussion about how to deal with the lighting.  
**Champoux** – Asked Corey Gammill to speak to the lighting on the harbor.  
**Gammill** – As a boater there isn’t a safety issue with the lights; they are a nice reference point.  
**Smith** – He doesn’t see signage and lighting as a wetland issue. The ConCom can work with the Town on that.  
**Slattery** – What is in the purview of ConCom is the frequent use of this pier to change oil and refuel boats with no boom protection.  
**Erisman** – That is a problem; the best way to deal with it is by reporting it.  
**Shannon** – Agrees with the storm filters. Confirmed where the pipe would empty into the creek. At the marine, we replace our filter every six months.  
**Golding** – If Madaket Marine has to report quarterly to EPA, does the Town.
- Staff At the last hearing, William Grieder had urged the Town to install lighting to discourage less than moral behavior on the pier. There could be a finding that the lighting should be directed away from resource area and better lighting in this area encouraged.  
 Could condition against refueling and changing oil.  
 Replacing the filters could be conditioned to require a replacement schedule; it would be an on-going condition.  
 Pointed out that the Madaket Marine permit is much more complicated than it will be for this pier.  
 Have everything needed to close.
- Motion **Motion to Close.** (made by: LaFleur) (seconded by: Champoux)  
 Vote Carried unanimously
9. 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 (5:58) **Santos** – Recapped the proposal, which involves restoration mitigation within the 25- and 50-foot buffers. Reviewed the mitigation plan with proposed plantings. Will have a post and plaque indicating the 25-foot no-disturb zone.  
**Erisman** – Asked the about material of the existing footpath.  
**Santos** – The foot path was Belgium block and led to the bocce court; it can come out
- Staff Reviewed changes in Mr. Santos’ planting plan. The other plants are all found on Nantucket.  
 Have everything needed to close.

- Motion **Motion to Close.** (made by: LaFleur) (seconded by: Champoux)  
 Vote Carried unanimously
10. Vineyard Wind, LLC – Nantucket Waters – SE48-3164  
 Sitting Bennett, Erisman, 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.  
 Public Corey Gammill, Charter Fisherman  
 Discussion (6:05) **Johnson** – We now have a Department of Environmental Protection (DEP) file number and Massachusetts Natural Heritage (MNH) letter, which is now in the record.  
**Steinauer** – Asked if there is any impact on nesting within Nantucket waters.  
**Johnson** – They are working to nail down details of the benthic habitat monitoring plan.  
**Gammill** – Asked if there is another route for the cables going over the sandbars.  
**Johnson** – The western option is entirely within Town waters. The reason two options is to allow for heavy currents and steep slopes.  
**Gammill** – Muskeget Channel is a center point for black sea bass; this area of the path has birds constantly working; he doesn't know how much the cable will affect the floor.  
**Johnson** – Installation is scheduled for spring; it takes 3 to 4days per gable. The impact on the bottom is limited to at most a meter-wide strip.  
 Staff MNH found there would be no adverse affect under the wetland act. The Massachusetts Endangered Species Act process is continuing independently. The area within our waters is foraging habitat, not nesting habitat. Have everything needed to close.  
 Motion **Motion to Close.** (made by: LaFleur) (seconded by: Steinauer)  
 Vote Carried unanimously
11. \*Harborfront Realty Trust – Village Way (14-2) SE48-3166  
 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 (6:13) **Santos** – This is for the removal and like-kind replacement of existing beach stairs. We do not have a response from Massachusetts Endangered Species Protection. Reviewed construction protocol.  
**Erisman** – The bumpout represents a larger impact to the top of the bank.  
**Santos** – There is a bench component on the the Village Way portion of the deck. A gate is on the owner's side of the platform.  
**Champoux** – Nice stairs is one thing but creating a viewing platform is another issue.  
**Golding** – Agrees the platform is a problem.  
**Santos** – Asked for a 2-week continuance  
 Staff None  
 Motion Continued to March 6, 2019 by unanimous consent.  
 Vote N/A
12. \*Cliff ACK Realty Trust – 96 Cliff Road (41-15) SE48-3167  
 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 (6:18) **Santos** – This is to eliminate parking out the back side and move it into a garage, which will be attached to the existing dwelling outside the 50-foot buffer. This moves parking away from the resource areas: wetland and vernal pool. He might need to relocate the I/A system tanks so would like the flexibility to do that.  
**Erisman** – Her concern is the appearance of the grassy slope within buffer to the wetland and vernal pool; it doesn't look like native species.  
 Staff Have everything needed to close.  
 Motion **Motion to Close.** (made by: Steinauer) (seconded by: LaFleur)  
 Vote Carried unanimously
13. \*Perry Family Trust of 2015 – 16 Fulling Mill Road (27-23.3) SE48-3170  
 Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux, Golding  
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.  
 Representative Art Gasbarro, Nantucket Engineering & Survey  
 Public Emily Molden, Nantucket Land Council  
 Discussion (6:25) **Gasbarro** – This is for a septic upgrade to a septi-tech processor with drip resistance leach bed within the buffer to a bordering vegetated wetland. There is no reasonable alternative.  
**Golding** – Asked about the well radius.  
**Gasbarro** – The leach bed is 100 feet from the well. The Board of Health (BOH) granted the permit.  
**Molden** – She's okay with the upgrade. Asked about testing of the system when within proximity to a wetland.

Staff Roberto Santamaria contacted him when this was going through the BOH process; we agreed there is no spot more compliant.  
 Testing can be conditioned  
 Have everything needed to close.

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

Vote Carried unanimously

14. \*Jemison – 195C Hummock Pond Road (65-23.2) SE48-3165

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

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

Representative Dan Malloy, Site Design Engineering

Public None

Discussion (6:30) **Malloy** – Approval for pool and patio and equipment outside the buffer zone. No waivers are requested. Another permit requires restoration plantings but that can't be done until April. Would like to hold off plantings to the edge of pool.  
**Erisman** – Wants the restoration work done before the pool is approved and installed. This land has been uncovered for over 6 months; that impacts the wetland.  
**Champoux** – In his opinion, it's better if the restoration work is completed before the pool goes in.  
**Erisman** – If the patio moved four feet back, it would be out of the 50-foot buffer.  
**Malloy** – Asked for a two-week continuance

Staff This could be handled as 62 West Chester Street that required no new work until the restoration work was put under contract with money set aside for installation and monitoring for the life of the permit; that contract had to be in place before new work started or the permit would be revoked. Or set a hard and fast date for work to commence on the restoration work. Milestones for the restoration work could be conditioned.

Motion Continued to March 6 by unanimous consent.

Vote N/A

15. \*21 Crooked Lane, LLC – 1 West Chester Street Extension (41-480) SE48-3169 **(Cont. 03/06/2019)**

16. \*Abrams Point Realty Trust – 30 Rabbit Run Road (28-6) SE48-3168

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

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

Representative Art Gasbarro, Nantucket Engineering & Survey

Public Emily Molden, Nantucket Land Council

Discussion (6:44) **Gasbarro** – This is for work within coastal beach and coastal bank and land under the ocean to relocate an existing floating dock. Gangways across the beach are seasonal. Waiting for a response from MNH.  
**Erisman** – Asked if the someone walking the shoreline can they cross over the aluminum gangway.  
**Gasbarro** – He will explore ensuring walking the beach. Explained the seasonal pilings.  
**Erisman** – Asked for revegetation of the area from which the existing gangway is removed.  
**Molden** – Land under the ocean does have performance standards regarding shellfish beds; it is important that the applicant address where this will fall in relation to shellfish areas.  
**Gasbarro** – Asked for a two-week continuance

Staff None

Motion Continued to March 6 by unanimous consent.

Vote N/A

**B. Amended Orders of Conditions**

1. 5 Hulbert Ave, LLC – 5 Hulbert Avenue (29.2.3-5) SE48-2897

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

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

Representative Brian Madden, LEC Environmental

Public None

Discussion (6:51) **Madden** – In 2016, an Order of Conditions was issued for an at-grade boardwalk to an existing bulkhead; that has not been completed and the property has changed hands. This is to modify the boardwalk by shifting it and extending it to provide access to the beach; it will be 12 to 20 inches off the surface. The vacated area will be revegetated with beach plum and bayberry.

Staff Recommend this be closed and issued.

Motion **Motion to Close and Issue.** (made by: Steinauer) (seconded by: Erisman)

Vote Carried unanimously

2. Nantucket Islands Land Bank – 63 Madaket Road formerly 21 Crooked Lane (41-480.1) SE48-3122 **(Cont. 03/06/2019)**

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

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

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

Representative Art Gasbarro, Nantucket Engineering & Survey

Public

Discussion (6:56) **Gasbarro** – This is to submit the layout for the house and continue the sewer line out to the existing system in Crooked Lane and shows the wetland on the opposite side of the driveway. The wetlands are shown along the existing driveway and dirt track. The plan shows silt fencing. We'll be increasing the vegetated buffer for the wetland. The driveway between the wetlands might have some stabilization.

Staff Recommend this be closed and issued.

Motion **Motion to Close and issue.** (made by: Steinauer) (seconded by: LaFleur)

Vote Carried unanimously

**III. PUBLIC MEETING**

**A. Requests for Determination of Applicability**

1. Old Red Gate Limited Partnership – 208 Polpis Road (26-17.2)

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 (7:02) **Blackwell** – This is the upgrade of a conventional septic system to an I/A septi-tech system within the harbor watershed. All work is within previously disturbed area.

Staff Verified the resource boundaries. Recommend this be issued as a Negative 3 allowing work

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

Vote Carried unanimously

2. Michael Kittredge – 72 Pocomo Road (15-37)

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 (7:05) **Blackwell** – Move one air conditioning (A/C) unit out of the zoning setback the south side of the structures where it is 50 feet from the resource area and move two A/C units out of the buffer zone and install a new central well. There were two water supply wells near the house; the central water treatment system was installed and requires an easement.

Staff There are issues on this site being handled under a separate filing.  
Recommend this be issued as a Positive 2A confirm resource areas

Motion **Motion to Issue as recommended.** (made by: Steinauer) (seconded by: LaFleur)

Vote Carried unanimously

**B. Minor Modifications**

1. Thirty-Nine Hulbert, LLC – 39 Hulbert Avenue (29-9) SE48-3035

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

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

Representing Paul Santos, Nantucket Surveyors

Discussion (7:10) **Santos** – This is to change the deck stairs on the northwest side and to include a landscaping plan.  
**Erisman** – Her concern is with the number of ornamental that require fertilizer when planted right on the water; would prefer native species on the harbor side of the property.  
**Santos** – The NOI is conditioned to require a fertilizing document.  
Discussion about the planting plan.

Staff There are easy native-specie choices that are aesthetically pleasing. It can be conditioned that the planting plan is approved at the staff level.

Motion **Motion to Issue as a Minor Modification.** (made by: Champoux) (seconded by: Golding)

Vote Carried unanimously

**C. Certificates of Compliance**

1. Smithburg, Inc – 143 Wauwinet Road (11-8) SE48-2536

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

Staff This is in compliance; has an on-going condition requiring a monitoring report of the coastal beach and dune.

Discussion (7:19) None

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

Vote Carried unanimously

**D. Orders of Condition**

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

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

Staff Will change Condition 20 requiring a quarterly report. Condition 21 conditions replacement of the filter. Condition 22 will prohibit use of petroleum products on the pier. Will add a Finding about the lighting's impact on resource areas and investigating alternative lighting.

Discussion (7:21) **Bennett** – Asked about the Town looking into alternative lighting.

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

Vote Carried unanimously

- 2. Eel Point Nominee Trust – 189 Eel Point Road (33-20) SE48- 3161
  - Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux, Golding
  - Staff Will add Condition 24 addressing removal of existing pavers within restoration area. Condition 25 will require the final planting plan to be submitted and approved by staff.
  - Discussion (7:26) None
  - Motion **Motion to Issue as amended.** (made by: Champoux) (seconded by: Steinauer)
  - Vote Carried unanimously
- 3. Vineyard Wind, LLC – Nantucket Waters – SE48-3164
  - Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux, Golding
  - Staff Asked for thoughts on conditions for this project. Will memorialize the DMFW letters. He will draft a positive order of conditions.
  - Discussion (7:30) None
  - Motion Continued to March 6 by unanimous consent.
  - Vote N/A
- 4. Cliff ACK Realty Trust – 96 Cliff Road (41-15) SE48-3167
  - Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux, Golding
  - Staff That area is very heavily vegetated; aerial photos will be very telling.
  - Discussion (7:32) **Erisman** – Can we ask for the status of the vernal pool; once construction is done, we can't see back there.
  - Motion **Motion to Issue as drafted.** (made by: LaFleur) (seconded by: Champoux)
  - Vote Carried unanimously
- 5. Perry Family Trust of 2015 – 16 Fulling Mill Road (27-23.3) SE48-3170
  - Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux, Golding
  - Staff Add Condition 19 all BOH required reports be copied to Natural Resources and contract be on file.
  - Discussion (7:36) None
  - Motion **Motion to Issue as amended.** (made by: Steinauer) (seconded by: Lafleur)
  - Vote Carried unanimously

**E. Extension Requests**

- 1. Ronald and Nancy Lindsay – 15 Pippin’s Way (43-94.3) SE48-2888
  - Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux, Golding
  - Public They are not going to finish before permit expires and so looking for a 1-year extension.
  - Discussion (7:37) None
  - Motion **Motion to Issue a 1-year extension.** (made by: Champoux) (seconded by: Steinauer)
  - Vote Carried unanimously
- 2. Kaezmarek – 25 Brewster Road (29-35) SE48-2440
  - Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux, Golding
  - Staff They are not going to finish before permit expires and so looking for a 1-year extension.
  - Discussion (7:38) None
  - Motion **Motion to Issue a 1-year extension.** (made by: LaFleur) (seconded by: Champoux)
  - Vote Carried unanimously

**F. Other Business**

- 1. Approval of Minutes 2/6/2019: adopted by unanimous consent.
- 2. Monitoring Report – None
- 3. Enforcement Actions
  - a. None
- 4. Reports:
  - a. CPC, Golding – Asked if anyone would like to replace him.
  - b. NP&EDC, Bennett – Maureen Phillips, Coastal Conservancy, gave a presentation.
- 5. Commissioners Comment
  - a. Discussion about proposed housing versus proposed office space at the Sparks Avenue Fire Station.
- 6. Administrator/Staff Reports
  - a. This is the year the seats for Ben Champoux, David LaFleur, and Andrew Bennett are up this year. Asked members to think about possible good fits. That comes up after the April election.

Adjourned at 7:50 p.m. by unanimous consent.

Submitted by:  
Terry L. Norton