



CONSERVATION COMMISSION

PUBLIC MEETING

2 Bathing Beach Road
Nantucket, Massachusetts 02554

www.nantucket-ma.gov

Wednesday, May 1, 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; Terry Norton, Town Minutes Taker

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

Absent Members: Steinauer, Golding

Late Arrivals: None

Earlier Departure: None

Agenda adopted by unanimous consent

*Matter has not been heard

I. PUBLIC MEETING

A. Announcements

B. Public Comment:

1. Emily Molden, Director Nantucket Land Council – Asked that the commissioners have an open meeting about pools within ConCom jurisdiction and how they are being conditioned.
2. Carlson – Thursday, May 2nd from 6:00 p.m. to 8:00 p.m., Town of Nantucket will be holding its Great Ponds Management forum at 4 Fairgrounds Road, Community Room. It will be live streamed.

II. PUBLIC HEARING

A. Notice of Intent

1. Mary D. Starr – 19 East Creek Road (55-60) SE48-2985 (**Cont. 05/22/2019**)
2. Gregory Reyes – 19 East Creek Road (55-60) SE48-3065 (**Cont. 05/22/2019**)
3. LAZ Family N.T. – 20 Waquoit Road (90-5) SE48-3131 (**Cont. 06/05/2019**)
4. Town of Nantucket – 4 Bathing Beach Road (29-1) SE48-3163

Sitting Bennett, Erisman, LaFleur, Champoux, Topham

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

Representative None

Public Emily Molden, Director Nantucket Land Council,

Discussion (6:45) **Molden** – Another component was storm drains in the parking lot; didn't see anything on that.

Staff We were waiting for Massachusetts Natural Heritage, which ruled no take with conditions. Reviewed the project. The storm drains will come in as a separate application. Have everything needed to close.

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

Vote Carried unanimously

5. Hither Creek Boatyard – 20 North Cambridge Street (59.4-2, 38-14, 38-15, 60-17) SE48-3136 (**Cont. 05/22/2019**)
6. Booya, LLC – 9 Crow's Nest Way (12-20) SE48-3175 (**Cont. 05/22/2019**)
7. Cuneo – 122 Wauwinet Road (11-32) SE48-3189

Sitting Bennett, Erisman, LaFleur, Champoux, Topham

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

Representative Arthur Reade, Reade, Gullicksen, Hanley, & Gifford LLP

Public None

Discussion (5:08) **Reade** – Reviewed the project.

Staff We were waiting for Massachusetts Natural Heritage; received those: ruled no take/no adverse impact. Have everything needed to close.

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

Vote Carried unanimously

8. Nantucket Conservation Foundation – Medouie Creek & 5 Quaise Pasture Road (20,26-25,21) SE48-3190

Sitting Bennett, Erisman, LaFleur, Champoux, Topham

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

Representative Jennifer Karberg, Research Program Supervisor Nantucket Conservation Foundation

Public None

Discussion (5:10) **Karberg** – Reviewed the project.

Staff We were waiting for Massachusetts Natural Heritage; received those: ruled no take/no adverse impact. Have everything needed to close.

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

Vote Carried unanimously

9. Andrew Biggio – 155 Wauwinet Road (11-1) SE48-3192
 Sitting Bennett, Erisman, LaFleur, Champoux, Topham
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Art Gasbarro, Nantucket Engineering & Survey
 Public None
 Discussion (5:14) **Gasbarro** – Reviewed the project. The Board of Health approved the variance request.
 Staff Have everything needed to close.
 Motion **Motion to Close.** (made by: LaFleur) (seconded by: Topham)
 Vote Carried unanimously
10. *Sankaty Head Golf Club – 8 & 18 Hoicks Hollow Road (23-9,5) SE48-3194
 Sitting Bennett, Erisman, LaFleur, Champoux, Topham
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Varoujan Hagopian, Coastal Engineer GEI Consultants, Inc.
 Brad Saunders, Regulatory Specialist GEI Consultants, Inc.
 Public Seth Engelbourg, 20 Trotters Lane
 Emily Molden, Director Nantucket Land Council
 Burt Balkind, Massachusetts Audubon Society
 Discussion (5:15) **Hagopian** – This is to mitigate an average erosion of about 3.5 to 4 feet a year with soft-slope stabilization using coir rolls and vegetating the bank. This is a high-energy environment. Massachusetts Natural Heritage has identified a Piping Plover habitat, which we will have to address. All work is above the mean-high water but within the 100-year-flood level. Explained the sand nourishment maintenance. Explained the end returns will tuck into the bank. The project is about 380 feet.
Saunders – Also included a description of compliance with performance standards. Work on the coastal bank is not to deprive down drift sand; hope the sacrificial sand will prevent that. We have a proposed monitoring program; we will notify the commission when sand is to be added to the template. If there is damage to the structure requiring replacement of the logs, they will apply for that work.
Champoux – Mr. Hagopian brought one of the first such structures at Shimmo Pond Road; that is successful, but it is a less energetic environment. Confirmed the bags will be jute and biodegradable.
Erisman – Confirmed that the bags will provide sand in the event of a major storm that removes the sacrificial sand.
Bennett – Asked how many service transepts are proposed and asked if there are Bank Swallow nests.
Hagopian – We have three existing transepts. They have not seen any swallows. The rolls are anchored by a wrap and dovetail anchors; the rolls can be easily removed for repair or replacement. Explained the run off flow will be captured and discharge it into the ground away from the top of the bank; described the drywells.
Engelbourg – This coastal bank is a significant source of fossil records. Asked for a survey or report on that before construction starts.
Hagopian – No one from our team has observed significant fossils during our study of the area. We can make a condition that anyone doing work must collect and record and turn over fossils to appropriate people.
Molden – It would be helpful to have additional calculations on how the erosion rate matches the proposed nourishment. The posts in front of the tubes at the base of the structure are a concern because in large storms there is a potential for those posts to be exposed. A discussion about whether this is a coastal engineering structure (CES) or not could be helpful.
Hagopian – The posts will be deep enough not to be exposed. It behooves us to maintain the sand cover. This project needs to be monitored and maintained.
 Discussion about whether the posts constitute a CES or not.
Erisman – Confirmed the buildings are pre-1978.
Balkind – Mass Audubon knows of Plover habitat toward Saccacha Pond that is roped off. Would like that protected. Also, Peregrine Falcons and Snowy Owls have been noted in that area; asked for an impact study.
Hagopian – Asked for a 3-week continuance.
 Staff Archeological records are not in the purview of ConCom; it should be referred to the applicable agency. We usually restrict work around habitat areas; he believes the time-of-year restriction will be placed by Massachusetts Natural Heritage; they have requested further information.
 Motion Continued to May 22 by unanimous consent.
 Vote N/A

11. *Treerock Realty Trust – 28 Gardener Road (43-132) SE48-3195
- Sitting Bennett, Erisman, LaFleur, Champoux, Topham
- Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
- Representative David M. Haines, Haines Hydrogeologic Consulting
- Public None
- Discussion (5:58) **Haines** – This is to abandon the existing septic system and tie into municipal sewer. Resource areas are a wetland, embankment, and ditch system. Explained how they would remove the existing septic system. Massachusetts Natural Heritage has ruled no take/no adverse impact. A silt fence will be installed, and all areas reseeded after completion.
- Erisman** – It looks like this property is covered with love grass which encroaches into the buffer zone.
- Haines** – Where the work is proposed had been lawn and was seeded when the septic was installed.
- Champoux** – Asked if love grass is on the invasive species list. All disturbed areas should be planted with native grass.
- Staff Love grass is under consideration as an invasive species.
Have everything needed to close.
- Motion **Motion to Close.** (made by: LaFleur) (seconded by: Champoux)
- Vote Carried unanimously
12. *Candice M. Heydt Trustee – 20 Brant Point Road (29-153) SE48-____
- Sitting Bennett, Erisman, LaFleur, Champoux
- Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
- Representative Paul Santos, Nantucket Surveyors
- Public None
- Discussion (6:05) **Santos** – This is completely within land subject to coastal storm flowage and has a bordering vegetated wetland on the east side. The request is for a 53-square-foot (SF), 1st-floor addition onto an existing structure. The addition is outside the 50-foot no build. The foundation will be flow-through; no change in grade is proposed; work is within existing lawn area. Asked for a 3-week continuance.
- Staff Need the Department of Environmental Protection number.
- Motion Continued to May 22 by unanimous consent.
- Vote N/A (Topham recused)
13. *Rebecca M. Gilbreth, ETAL – 92 Hulbert Avenue (30-51) SE48-____
- Sitting Bennett, Erisman, LaFleur, Champoux, Topham
- Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
- Representative Mark Rits, Site Design Engineering
- Public None
- Discussion (6:09) **Rits** – This is to lift the structures onto flood compliant foundations – slab on grade or piers – and for a 2nd-floor addition; no change in footprint. One building is within the 25-foot buffer and part of the addition is within the 50-foot buffer; all the structures predate the Wetland Protection Act. It is all lawn area up to the existing brush line, which is all native vegetation.
- Erisman** – Her concern is the use of annuals in the landscaping bed that require fertilizer; wants this conditioned for native species only.
- Rits** – He can submit a revised plan that call out piers. Asked for a 3-week continuance.
- Staff The two little “landscape beds” are nothing.
He’ll draft a positive order.
- Motion Continued to May 22 by unanimous consent.
- Vote N/A

14. *Edwin Snider Realty Trust – 2 Brocks Court (42.3.4-84) SE48-_____

Sitting Bennett, Erisman, LaFleur, Champoux, Topham
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Mark Rits, Site Design Engineering
 Sarah Alger, Sarah F. Alger P.C.
 Brian Madden, LEC Environmental
 Public Marsha Fader, 36 Liberty Street
 Discussion (6:14) **Alger** – This is to clean up the violations and get it off the books and delineate the lines. This plan takes into account all the wetland lines delineated by the Commission in the past few years.
Rits – There was inadvertent incorrect information about work done; a previous property owner moved the house and constructed an addition that occupied the previous footprint. The current owner built a deck and retaining wall, which we have previously addressed. We want to get all the work authorized. The reinterpretation of the wetland bylaws forced a reconsideration of wetlands based upon soils. The wetland encompasses most the lawn area; willing to allow that area to go back to native vegetation.
Erisman – She would prefer the elements within the 25-foot buffer removed. The wetland should be restored with wetland plantings, not left to revegetate on its own.
Madden – We can look into creating a wetland restoration plan.
Fader – Referred to a letter submitted by abutters, who asked it be read into the record. She drafted a letter of concerns: grade change and what was presented in the NOI wasn't accurate in the information about who did the work.
Champoux – Asked about a natural line and then a straight line along the property, which looks like fill.
Madden – That is explained in his letter. He based his delineation on the current hydrology.
Alger – Noted an error on the application. Asked for a 3-week continuance.
 Staff The fence was removed, and he feels comfortable with the line; the site is in the greatest state of compliance since our involvement.
 The letter from the abutters is in our records; he will distribute it to the Commissioners.
 Under the Act violations of non-compliance run with the property, not the owner.
 The line that was put forward, you don't always have access to abutting properties for the purpose of delineation; we did review a line along the property line in 2007 which was valid for a minimum of 3 years; the State Permit Extension Act extended that 3-year permit out to 2014 and it was still eligible for an extension request.
 Wetland delineation was originally done by vegetation alone; soils were regularly considered by 2010; our local requirements have a different depth to groundwater for hydric soil consideration.
 Motion Continued to May 22 by unanimous consent.
 Vote N/A

15. *Netore, LLC – 34 Dukes Road (56-187) SE48-_____

Sitting Bennett, Erisman, LaFleur, Champoux, Topham
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Sarah Alger, Sarah F. Alger P.C.
 Public None
 Discussion (6:44) **Alger** – Asked for 3-week continuance.
 Staff None
 Motion Continued to May 22 by unanimous consent.
 Vote N/A

16. *Town of Nantucket – Jetties Beach, Jetties Beach Playground, the end of Jefferson Avenue & Children's Beach (29-1, 29-2, Road Layout, 42.4.2-9) SE48-_____

Sitting Bennett, Erisman, LaFleur, Champoux, Topham
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative None
 Public None
 Discussion (6:45) None
 Staff They are waiting for Massachusetts Natural Heritage and have asked for continuance.
 Motion Continued to May 22 by unanimous consent.
 Vote N/A

B. Amended Orders of Conditions

1. Hulbert ACK, LLC – 2 Hulbert Avenue (42.1.4-2.1) SE48-3142 (Cont. 05/22/2019)
2. Hulbert ACK II, LLC – 4 Hulbert Avenue (42.1.4-2) SE48-3141 (Cont. 05/22/2019)

III. PUBLIC MEETING

A. Requests for Determination of Applicability

1. 262 Polpis Nominee Trust – 260 & 262 Polpis Road (25-1.1 & 1)

Sitting Bennett, Erisman, LaFleur, Champoux, Topham
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Brian Madden, LEC Environmental
 Public None
 Discussion (6:48) **Madden** – This is to confirm the wetland resource boundaries. This has been before you in the past for demarcation of wetlands. Resource areas: bordering vegetated wetland, isolated vegetated wetland, Polpis Harbor, Millbrook Creek, coastal dune, coastal bank, and land subject to coastal storm flowage.
 Staff Most of the markers are still there and being respected.
 Recommend issue as Positive 2 verifying the resource areas.
 Motion **Motion to Issue as recommended.** (made by: Topham) (seconded by: Champoux)
 Vote Carried unanimously

2. Daniel & Linda Cummings – 32 Crooked Lane (41-331)

Sitting Bennett, Erisman, LaFleur, Champoux, Topham
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Don Bracken, Bracken Engineering
 Public None
 Discussion (6:51) **Bracken** – This is for wetland boundary determination. No work is proposed within the 50-foot buffer.
 Staff Recommend issue as Negative 3 allowing work in buffer.
 Motion **Motion to Issue as recommended.** (made by: Champoux) (seconded by: LaFleur)
 Vote Carried unanimously

3. The Madaket Road Nominee Trust – 234 Madaket Road (59.4-120)

Sitting Bennett, Erisman, LaFleur, Champoux, Topham
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Don Bracken, Bracken Engineering
 Public None
 Discussion (6:56) **Bracken** – This is to upgrade the existing septic; work will be outside 50-foot buffer but within the 100-foot buffer.
 Staff Recommend issue as Negative 3 allowing work in buffer.
 Motion **Motion to Issue as recommended.** (made by: LaFleur) (seconded by: Champoux)
 Vote Carried unanimously

4. Wauwinet Realty Trust – 10 Fargo Way (14-15)

Sitting Bennett, Erisman, LaFleur, Champoux, Topham
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Don Bracken, Bracken Engineering
 Public None
 Discussion (6:58) **Bracken** – Explained project; all work outside the 50-foot.
 Staff Recommend issue as Negative 3 allowing work in buffer.
 Motion **Motion to Issue as recommended.** (made by: Champoux) (seconded by: Lafleur)
 Vote Carried unanimously

5. Albion Ridge, LLC – 1 Reeds Way (92.4-319)

Sitting Bennett, Erisman, LaFleur, Champoux, Topham
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Don Bracken, Bracken Engineering
 Public None
 Discussion (6:59) **Bracken** – Septic upgrade and leach field within the 100-foot buffer and tank within the 50-foot buffer.
 Staff Recommend issue as Negative 3 allowing work in buffer.
 Motion **Motion to Issue as recommended.** (made by: LaFleur) (seconded by: Topham)
 Vote Carried unanimously

B. Certificates of Compliance

1. Tambourine Properties, LLC – 2 South Beach Street (42.4.2-60) SE48-2752

Sitting Bennett, Erisman, LaFleur, Champoux, Topham
 Staff This is in compliance.
 Discussion (7:00) None
 Motion **Motion to Issue.** (made by: Champoux) (seconded by: Topham)
 Vote Carried unanimously

2. Susan H. Ball – 41 Easton Street (42.4.1-20) SE48-1387 (cont. 05/06/2019)

C. Orders of Condition

1. Town of Nantucket – 4 Bathing Beach Road (29-1) SE48-3163
Sitting Bennett, Erisman, LaFleur, Champoux, Topham
Staff There is a condition requiring a before and after photo of the drainage.
The Massachusetts Natural Heritage letter of conditions will be referenced.
Discussion (7:01) None
Motion **Motion to Issue as drafted.** (made by: Champoux) (seconded by: LaFleur)
Vote Carried unanimously
2. Cuneo – 122 Wauwinet Road (11-32) SE48-3189
Sitting Bennett, Erisman, LaFleur, Champoux, Topham
Staff Will add Condition 20 requiring photo evidence of the path and walkway. Will add Condition 21 prohibiting boat storage.
Discussion (7:03) **Erisman** – There were boats in one photo.
Motion **Motion to Issue as amended.** (made by: Champoux) (seconded by: LaFleur)
Vote Carried unanimously
3. Nantucket Conservation Foundation – Medouie Creek & 5 Quaise Pasture Road (20,26-25,21) SE48-3190
Sitting Bennett, Erisman, LaFleur, Champoux, Topham
Staff Will add Condition 19 requiring the final report be presented at a public meeting. We could add a finding that sourcing native plants should be attempted to the best of their ability.
Discussion (7:06) None
Motion **Motion to Issue as amended.** (made by: Topham) (seconded by: LaFleur)
Vote Carried unanimously
4. Andrew Biggio – 155 Wauwinet Road (11-1) SE48-3192
Sitting Bennett, Erisman, LaFleur, Champoux, Topham
Staff Will add a condition requiring photos of revegetation across the site.
Discussion (7:11) **Erisman** – Asked if they were providing photos of existing condition.
Motion **Motion to Issue as amended.** (made by: Champoux) (seconded by: LaFleur)
Vote Carried unanimously
5. Treerock Realty Trust – 28 Gardener Road (43-132) SE48-3195
Sitting Bennett, Erisman, LaFleur, Champoux, Topham
Staff Will add Condition 19 requiring disturbed areas be revegetated.
Discussion (7:13) None
Motion **Motion to Issue as amended.** (made by: Topham) (seconded by: Champoux)
Vote Carried unanimously

D. Other Business

1. Approval of Minutes 4/10/2019: adopted by unanimous consent
2. Monitoring Report: Smick – 12 North Road SE48-3022
3. Enforcement Actions:
 - a. None
4. Reports:
 - a. NP&EDC, Bennett – Nothing to report.
 - b. Mosquito Control Committee, Erisman – Nothing to report.
5. Commissioners Comment:
 - a. None
6. Administrator/Staff Reports
 - a. Select Board will be putting out for committee vacancies. If you know of interested people, encourage them to apply.
 - b. SBPF hearing is Monday, May 6 at 4:00 p.m. in the Nantucket High School Large Group Instruction Room.

Adjourned at 7:24 p.m. by unanimous consent.

Submitted by:
Terry L. Norton