



CONSERVATION COMMISSION

PUBLIC MEETING

2 Bathing Beach Road
Nantucket, Massachusetts 02554

www.nantucket-ma.gov

Wednesday, June 5, 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.

Staff in attendance: Jeff Carlson, Natural Resources Coordinator; Terry Norton, Town Minutes Taker

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

Absent Members: 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 – None

II. PUBLIC HEARING

A. Notice of Intent

1. LAZ Family N.T. – 20 Waquoit Road (90-5) SE48-3131 **(Cont. 07/03/2019)**

2. Booya, LLC – 9 Crow’s Nest Way (12-20) SE48-3175

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

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

Representative Paul Santos, Nantucket Surveyors

Public Arthur Reade, Reade, Gullicksen, Hanley, & Gifford LLP for the Evans 7 Crow’s Nest Way

Discussion (5:07) **Santos** – This is for a septic upgrade; actual ownership has changed to 9 Crow’s Nest Way Realty Trust; they have asked to continue with this request. The application is for a septic that serves a 2-bedroom cottage on a condo lot with another 4-bedroom cottage with its own septic. A septic upgrade was issued in the mid-1990s for this lot; at that time, the ConCom issued an Order of Conditions and the Certificate of Compliance with a restriction that the cottage would be no more than 2 bedrooms. This is for an upgraded system that would allow 3 bedrooms for this structure, totaling 7 bedrooms for the site; we are also asking ConCom to release the 2-bedroom restriction. Explained new system and how it could serve the additional bedroom. The waiver requested is under long-term net benefit. The Board of Health (BOH) has requested ConCom approval first since this commission holds the restriction. The existing is a functional system; the new would use improved technology for a 3rd bedroom. The processor in place is certified for 5 bedrooms; that and the pump would remain. The lot area allows for up to 7 bedrooms.

Erisman – She’s uncomfortable with allowing additional bedrooms in a sensitive area.

Champoux – The technology now is much better, even with adding a bedroom.

Reade – The issuance of the 1996 certificate was no easy task due to the proximity to the resource area; at that time the commission was adamant about no future expansion of the bedrooms. Today, the concern is still the proximity to the wetland; his client feels strongly the 2-bedroom restriction should continue forward.

Steinauer – Today, the lot would be considered unbuildable.

Consensus – Agrees the condition should be upheld.

Staff Have everything needed to close.

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

Vote Carried unanimously

3. 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- 3200

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

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

Representative Chas Rogers, Deputy Director Facilities Department of Public Works (DPW)

Public None

Discussion (5:28) **Rogers** – Update on the status of the project: Nantucket High School students have completed two boardwalks; we are trying to find a contractor to build the other two, which are more complicated; we have HDC approval. Funding is contingent upon on all of these to be in place by June 30; it should have come to ConCom months ago. One concern about the Jetties playground is the jungle gym within 5 feet of the setback.

Staff We are still dealing with Massachusetts Natural Heritage about the proposal for Jetties Beach and will have to continue this again. We want to get Massachusetts Natural Heritage to release three of the sites to allow DPW to start work and deal with the Jetties separately; we could take it up at the June 12 meeting; should be a short conversation.

Motion Continued to June 12 by unanimous consent.

Vote N/A

4. Olof Clausson – 30 Eel Point Road (40-44.1) SE48-3201

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

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

Representative None

Public None

Discussion (5:39) None

Staff Brian Madden, LEC Environmental couldn't make it. We received Massachusetts Natural Heritage sign-off on this; this is for a new section of driveway and garage.

Have everything needed to close.

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

Vote Carried unanimously

5. *The Catherine S. Felleman Revocable Trust – 4 Woodbine Street (87-57) SE48-3204 (**Cont. 06/19/2019**)

6. *77 Pocomo, LLC – 77 Pocomo Road (15-6) SE48-3203

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 (5:40) **Gasbarro** – This is within the 100-foot buffer to a coastal bank and the work is residential redevelopment to include a pool and patio; all proposed structures are outside the 50-foot buffer with the septic system outside the 100-foot buffer. There is no proposed pool fence; the fence shown on the plan is the silt fence. At this point we assume the pool will have an auto-cover; if not we will be back for a minor modification for a fence.

Staff Have everything needed to close.

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

Vote Carried unanimously

7. *Erik Passasante – 41 Long Pond Drive (59.4-109.1) SE48-3205

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

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

Representative Cameron Larson, Wetland Scientist ECR, LLC

Public None

Discussion (5:43) **Larson** – This is within the 100-foot buffer to a bordering vegetated wetland that has a small pond within the limits of the wetland. This is for a new slightly larger shed in the same areas as the existing shed; the existing shed will be relocated outside the 100-foot buffer; the disturbed area is within lawn area.

Staff Have everything needed to close.

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

Vote Carried unanimously

III. PUBLIC MEETING

A. Requests for Determination of Applicability

1. Ambrecht – 13 Giny Lane (41-850)

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

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

Representative Mark Rits, Site Design Engineering

Public Steven White, 47A West Chester Street

Discussion (5:46) **Rits** – This is for a retaining wall outside the 50-foot buffer with grading and fill; the proposed wall is separated from the wetland by a developed lot. Our client would like to keep the wall approximately 1-foot off the property line.

Champoux – It's not jurisdictional but it is a neighborly thing to maintain the trees. It's obvious the wall will cut the roots of the trees. The request for a retaining wall is within reason.

White – We have issues in addition to the trees; if the wall is allowed, it can't be constructed without access to my property. Described an apparent raise in the grade. The Town Engineer is of the opinion that the slope is stable which brings into question the need for the wall. The wall will have a 6-foot footing, silt fencing, and over digging to install the forms. If they cut back the roots and injure the trees, they are liable for property damage should the trees fall.

Topham – Asked if fill was permitted.

Champoux – We have permitted retaining walls outside the 50-foot buffer; whether or not it is legal to build is immaterial to our performance standards.

White – He disagrees with Mr. Champoux. Asked about monitoring the work related to the trees.

Erisman – She would want a NOI so it can be conditioned; there is a long line of silt fence required and it is within the buffer to the resource area.

Discussion about how this relates to the performance standards and if a NOI is required.

Rits – Regarding the adverse impact to the wetland, if the silt fence fails it has to cross another property with a pool and patio.

Staff You can issue a Negative 3 allowing work in the buffer or issue as a Positive 3, which would require an NOI. If you condition something, it is done related to the impact as it relates to the bylaw.

Motion **Motion to Issue as a Negative 3.** (made by: Steinauer) (seconded by: Champoux)

Vote Carried unanimously

2. Courtney & Kevin Connolly – 8 Polliwog Pond Road (55-423.5)

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 (6:04) **Gasbarro** – This is for work that has occurred outside the 50-foot buffer to a wetland but feels there is no adverse impact. The work abandoned a failed septic and attached to gravity sewer. The work was inspected by the Sewer Department.

Steinauer – We would have approved and RDA if it had come before us.

Staff Recommend issue as a Positive 2B which doesn't confirm resource boundary and Negative 3 for the work.

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

Vote Carried unanimously

B. Minor Modifications

1. 115 Washington Street Extension, LLC – 115 Washington Street (55.1.4-39) SE48-2996

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

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

Representative None

Public None

Discussion (6:08) None

Staff This is another project for Mr. Madden. They are looking to connect a permitted boardwalk and patio with bluestone pavers and remove a section of boardwalk.

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

Vote Carried unanimously

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

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

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

Representative None

Public None

Discussion (6:10) None

Staff They are looking to eliminate the second driveway off Blue Heron Way and adjusting the square footage of the garage up to 480 square feet.

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

Vote Carried unanimously

C. Certificates of Compliance

1. Town of Nantucket Natural Resources Department – Shimmo Creek (adjacent to 1 Pimney's Point & 14 Shawkemo Road.) (Adjacent to 43-1&2.1) SE48-2913

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

Staff This is the Shimmo Creek Oyster restoration project; it is in substantial compliance. SE48-2913 is expiring. This is a site of continuing work with another 7-10 years of monitoring. They have deployed about 50,000 pounds of recycled shell material.

Discussion (6:12) None

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

Vote Carried unanimously

2. Gallagher – 45 Millbrook Road (56-232) SE48-3066 **(Cont. 06/19/2019)**

3. Town of Nantucket – Hummock Pond Road – Milk Street to Cisco Beach (66-129) SE48-2437 **(Cont. 06/19/2019)**

4. Van Vorst – 8 Old Quidnet Milk Route (20-8.6) SE48-3149 **(Cont. 06/19/2019)**

5. Cambridge – 10 Medouie Creek (20-31.1) SE48-2307 **(Cont. 07/03/2019)**

6. Cambridge – 10 Medouie Creek (20-31.1) SE48-1810 **(Cont. 07/03/2019)**

7. Pippins Way, LLC – 15 Pippin's Way (43-94.2 formerly) SE48-2655

8. Pippins Way, LLC – 11 Pippin's Way (43-94.2 formerly) SE48-2655

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

Staff These orders are related to the demolition of structures; all structures are gone. Recommend issue.

Discussion (6:16) **Sarah Alger**, Sarah F. Alger P.C. – These had a partial certificate of compliance issued a while ago; both properties have gotten new orders of conditions.

Motion **Motion to Issue SE48-2655 for both properties.** (made by: Steinauer) (seconded by: LaFleur)

Vote Carried unanimously

9. Martha Wells – 36 Low Beach Road (74-55) SE48-369 (**Reissue**)
 Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux, Topham
 Staff Recommends this be reissued
 Discussion (6:18) None
 Motion **Motion to Reissue.** (made by: Champoux) (seconded by: Steinauer)
 Vote Carried unanimously

D. Orders of Condition

1. Booya, LLC – 9 Crow’s Nest Way (12-20) SE48-3175
 Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux, Topham
 Staff He put in normal I/A conditions. You might want to address the 2-bedroom issue. We should talk about binding future commissions; asked if it should be phrased in a way that references the development of technology which eliminates the negative impact to the resource area. He will include Condition 20 that includes the no-expansion restriction with the same language as the original.
 If you are going to deny, there are two reasons: not enough information and the project can’t be conditioned to meet the performance standards. If they don’t want to do the project, that is their choice.
 Discussion (6:19) **Erisman** – They have a functioning system; the upgrade is solely for a 3rd bedroom. If the system were in failure, she would understand the request to upgrade.
Champoux – He wants to uphold the 2-bedroom restriction. We should take the restriction with serious consideration; there was a reason for it. A 3rd bedroom also increases the use.
LaFleur – The restriction is based upon technology available at this time.
Steinauer – The question would be if the improved technology improves the situation despite the extra bedroom.
 Discussion about whether or not to keep the 2-bedroom restriction.
 Motion **Motion to Issue as amended.** (made by: Champoux) (seconded by: Topham)
 Vote Carried unanimously
2. Sankaty Head Golf Club – 8 & 18 Hoicks Hollow Road (23-9,5) SE48-3194
 Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux, Topham
 Staff Reviewed the findings and conditions. Will add Condition 39 requiring the sand volume be provided annually. Suggested continuing this to June 12 to allow time to compute the actual amount of nourishment per linear foot to be required annually.
 Discussion (6:35) **Steinauer** – We need to require a minimum annual contribution. It is only about 2 cubic yards (CY) per linear foot, which seems very small. Thinks it should be about 7 CY per linear foot.
 Motion Continue to June 12 by unanimous consent.
 Vote N/A
3. Edwin Snider Realty Trust – 2 Brocks Court (42.3.4-84) SE48-3198
 Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux, Topham
 Staff Reviewed the findings and conditions, to include violation fines of \$50 a day back to the date of the issuance of the enforcement order. He will include the statement the 3-month requirement is from date of issuance or the end of the appeal period.
 Discussion (6:43) **Erisman** – Asked about monitoring the survivability of the restoration plants.
Sarah Alger, Sarah F. Alger P.C. for the applicant – Asked about the 3 months requirement is in the event of an appeal.
 Motion **Motion to Issue as amended.** (made by: Steinauer) (seconded by: LaFleur)
 Vote Carried unanimously
4. Olof Clausson – 30 Eel Point Road (40-44.1) SE48-3201
 Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux, Topham
 Staff This is straight forward.
 Discussion (6:51) None
 Motion **Motion to Issue as drafted.** (made by: Champoux) (seconded by: Steinauer)
 Vote Carried unanimously
5. 77 Pocomo, LLC – 77 Pocomo Road (15-6) SE48-3203
 Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux, Topham
 Staff Reviewed the pool conditions and the finding that the shed is outside jurisdiction.
 Discussion (6:52) None
 Motion **Motion to Issue as drafted.** (made by: LaFleur) (seconded by: Champoux)
 Vote Carried unanimously
6. Erik Passasante – 41 Long Pond Drive (59.4-109.1) SE48-3205
 Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux, Topham
 Staff Reviewed the finding.
 Discussion (6:53) None
 Motion **Motion to Issue as drafted.** (made by: Steinauer) (seconded by: Topham)
 Vote Carried unanimously

E. Extension Requests

1. Pocomo Neighbors 47,53,55,57,61,63,67,69(Various) Pocomo Road SE48-2874

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

Staff None

Discussion (6:54) **Art Gasbarro**, Nantucket Engineering & Survey – Asking for a 1-year extension. Provided an update on the overall project. A small rope might be effective in keeping people from walking on the project area.
Erisman – There appeared to be concentrated runoff washing at the restoration area.

Motion **Motion to Grant the 1-year extension.** (made by: Steinauer) (seconded by: Topham)

Vote Carried unanimously

F. Other Business

1. Approval of Minutes 05/20/2019 & 05/22/2019: Adopted by unanimous consent.
2. Monitoring Report: none
3. Enforcement Actions
 - a. None
4. Reports:
 - a. None
5. Commissioners Comment
 - a. None
6. Administrator/Staff Reports
 - a. None

Adjourned at 7:01 p.m. by unanimous consent.

Submitted by:

Terry L. Norton