



# CONSERVATION COMMISSION

## PUBLIC MEETING

2 Bathing Beach Road  
Nantucket, Massachusetts 02554

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

Wednesday, June 12, 2019

4 Fairgrounds Road, Community Room – 4:00 p.m.

**Commissioners:** Andrew Bennett(Chair), Ashley Erisman (Vice Chair), Ernie Steinauer, David LaFleur, Ben Champoux, Ian Golding, Joe Topham

Called to order at 4:04 p.m.

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

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

Town Counsel: George Pucci, K&P Law P.C. (by phone)

Agenda adopted by unanimous consent

### **I. PUBLIC MEETING**

#### **A. Announcements**

#### **B. Public Comment – None**

### **II. PUBLIC HEARING**

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

1. Town of Nantucket – Jetties Beach, Jetties Beach Playground, the end of Jefferson Avenue, and Children’s Beach (29-1, 29-2, Road Layout, 42.4.2-9) SE48-2300

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 (5:03) **Rogers** – He has an email from Amy Horick at Massachusetts Natural Heritage, she received the 2005 beach plan, which she hasn’t had time to review. He asked her for a determination by Tuesday. She agreed that Children’s Beach doesn’t have to be reviewed. The other three will have to wait for Tuesday, June 18.

**Erisman** – Because we wouldn’t allow it for any other project, she oesn’t think authorizing work before the orders are issued is a good idea; it sets a bad precedent.

**Rogers** – Explained how Massachusetts Natural Heritage stated the Mobi Mats® were non-compliant. Read an email from Gloria Russo expressing concern that the Mobi Mats® had not been installed and supporting their presence.

**Erisman** – The application should have been filed months ago.

**Topham** – Suggested putting this on the agenda for June 17<sup>th</sup> just in case.

Staff Given the situation, doesn’t think the commission wants to issue out an order; that’s taking action on a portion that you can’t take action on. Suggested authorizing the DPW to start the project while waiting for the order. We have shared everything necessary to include the original Beach Management Plan; there is nothing more we can give Massachusetts Natural Heritage.

Last year, he and the deputy director of Massachusetts Natural Heritage were standing on the non-compliant Mobi Mats® looking at piping plovers and he asked if there were any issues with compliance and the answer was no. Now they are saying that there were issues.

Motion Continued to Monday, June 17, 2019 regular meeting by unanimous consent.

Vote N/A

### **III. PUBLIC MEETING**

#### **C. Orders of Conditions** (if the public hearing is closed – for discussion and/or issuance)

1. Sankaty Head Golf Club – 8 & 18 Hoicks Hollow Road (23-9, 5) SE48-3194

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

Staff Under Condition 39, it has 686 cubic yards (CY) for nourishment, which is the amount replacing the loss from the bank in its totality; to calculate, they compared the long-term and short-term erosion rate to the length of the bank. They did provide the bank height, elevation 12 to elevation 35. He’ll change the condition to require 7 CY per linear foot per year.

We had discussed the nourishment materials; they’ll take a series of samples from the bank and they will have to replicate that; he will add that to Condition 25.

He’ll add Condition 40 about a walkable beach.

They can access the site from the property if need be; the Hoicks Hollow access is on their property.

- Discussion (4:05) **Steinauer** – Asked about the height of the bank. He’d prefer about 7 yards per linear foot of mitigation sand.  
**Champoux** – He’d also like to see a little overage, perhaps 2%, for the mitigation sand.  
**Golding** – Under Condition 25, we discussed mimicking the real materials in the bank, so wouldn’t be just fines.  
**Steinauer** – There should be a condition about maintaining a walkable beach under a normal tide. Asked if they are required to maintain the Hoicks Hollow access.
- Motion **Motion to Approve as amended.** (made by: Golding) (seconded by: Champoux)
- Vote Carried unanimously
2. Sconset Beach Preservation Fund – 59-119 Baxter Road (49&48-various) Area SE48-3115
- Sitting Bennett, Erisman, Steinauer, LaFleur, Champoux, Golding, Topham
- Recused None
- Documentation Supporting documents and plans.
- Discussion (4:15) **Bennett** – Asked if anyone wants more information.  
**Pucci** – Following what was discussed with respect to the application of the local regulations, he looked further into the issue and wants to clarify that if you’re applying the substantial improvement language with respect to pre-1978 building, he recommends the Commission apply its regulations as written in their entirety, to include the public infrastructure portion as well. The standard by which your decision - whether denied or approved - would be reviewed is if it is arbitrary and capricious or otherwise contrary to law; he believes the Commission has been working in compliance with the law. Suggested the Commission focus on the applicable performance standards.  
**Golding** – Asked if the Commission should take a vote on the State regulations before discussing the local regulations or vice versa.  
**Champoux** – He wants more clarification on applying the standard of 20% improvement, does that mean we shouldn’t apply infrastructure standards because it would be cherry picking.  
**Pucci** – Yes; if you are going to apply any portion, apply all of it.  
**Bennett** – Infrastructure is not covered by the State.  
**Erisman** – Read the local regulation on infrastructure pre-1978 structures being protected from imminent danger.  
**Carlson** – He went through the minutes, but the dates aren’t super clear; it came in between late 2004 and early 2005.  
**Golding** – The applications is for the expansion of the entire geo-tube. In his opinion, there is no imminent danger to infrastructure. The existing structure was allowed to provide time for the Town to come up with an alternative to the infrastructure. For the purpose of our discussion, it doesn’t meet those conditions.  
**Erisman** – She asked as several times to have the properties of imminent danger to the infrastructure to be documented; we never really got that. Where it is in danger is currently protected by the geo-tubes, and there is an alternative in place.  
**Steinauer** – The number was 25 feet was because that was how much bluff was loss and another loss like that would threaten the road.  
**Carlson** - The 25 feet was determined by the Town’s consultant, Malone & McBroom, and concern about the structural stability of the road to support a heavy vehicle, such as a fire truck.  
**Bennett** – There are unprotected areas to the north where the road is pretty close. Asked if the access road was for infrastructure or just access.  
**Carlson** – It was for vehicle access. The Town is working on plans to provide sewer and utilities through alternative routes. Wants to clarify that the Commission has the ability when looking at the project to deal with the length of the structure and defining the project area; but recommends against holistic engineering changes. Your main role is to ensure the project conforms to the performance standards and mitigate impact.  
**Bennett** – The length is a concern, we should talk about “tweaking” the project.  
**Golding** – He feels that rather than “tweaking” the application.  
**Champoux** – The coastal dune at the southern end has been tripping him up; he’d like to see the structure held back at least 100 feet from it. It’s in imminent danger if not immediate danger.  
**Erisman** – She asked why the coir returns were not added onto this project; we asked for that and they said no.  
**Topham** – Below lot 59, he doesn’t see those as in imminent danger. He’d be okay with “tweaking” the project.  
**Erisman** – She feels it is on the applicant to tweak it for a softer structure and they didn’t. She’s not comfortable with “tweaking” it.  
**Golding** – He agrees with Ms. Erisman.  
**Steinauer** – He’s opposed to the project; if we go forward with it, it should stop short of the dunes. If they don’t, they would end up covering up and destroying those dunes. Suggested wording that allows them to come back to the Commission for an extension if the dunes disappear.  
**Bennett** – We’ve always put returns the effected lot where the project ends. He’s concerned about the effect of the design of this structure on the lighthouse property and the northern part of the bluff.  
**Topham** – He thinks there will be more end scour on the lots next to the end of the geo-tubes.  
**Erisman** – She feels it should terminate on a property with a structure that is in danger, not an empty lot.  
**Consensus agrees.**

**Champoux** – He would like to discuss the sand stockpile; he wants to ensure there is a year’s-worth or 2-years’-worth of sand is on the Island and ready to go.

**Golding** – To him it is clear there is no relationship between the material in the bluff and the template sand; that’s another reason he opposes this. He wouldn’t object if it were conditioned to match the bluff material.

**Carlson** - Department of Environmental Protection guidance on nourishment material is that it is beach compatible. There is some latitude under the performance standards to condition a different type of material if you feel it will protect the interests.

**Steinauer** – We usually tweak the mitigation volume; he thinks the proposed mitigation volume to replace what is needed won’t work. He thinks it should stay at 22 CY per linear foot per year. If we change mitigation, we need to change the height.

**Consensus agrees based upon the success of the current project.**

**Golding** – He argues that the current project has not been a success. We haven’t had satisfactory analysis about the meiofauna, which is the building block of marine fisheries. He’d be more comfortable continuing with what we have for further study. Reiterated that the fourth tube was temporary until the infrastructure was stabilized.

**Steinauer** – On place the project did not perform was during the storms; sand was left sitting on top until after the storm and wasn’t available during the storm.

**Golding** – It was clear under the superseding order of conditions that the fourth tier was temporary until the infrastructure was altered.

**Topham** – Disagrees with Mr. Pucci, he felt like the Commission had to sign that; there was no option not to.

**Pucci** – There was no instruction from him that the case had to be settled. When he clarified about the context of the proposal to send it back to ConCom pursuant to the settlement.

**Steinauer** – Going back to Mr. Golding’s analysis of the lots, asked how big can a “gap lot” be to protect a qualifying house.

**Champoux** – He thinks the infrastructure is part and parcel of protecting the pre-1978 homes, which qualify for protection. We’ve already used the language for a structure that protects infrastructure.

**Golding** – If we deny this, the infrastructure is still protected by the current geo-tube structure, which was approved on a temporary basis.

**Erisman** – The Stated didn’t allow four tiers on the gap lots; that would require us re-engineering the structure. She also questions the Commission’s not having any statements from the Department of Public Works (DPW) and the people who run that infrastructure.

**Golding** – The DPW didn’t weigh in on the threat to the infrastructure.

**Bennett** – Asked for a read from the board on which direction to go.

**Opposed:** Bennett, Erisman, Steinauer, Golding

**In Favor:** LaFleur, Topham, Champoux

**Pucci** – He can review the draft denial in time for the commission to review by the 19<sup>th</sup>. He doesn’t think he needs to participate. Asked if there are other options to meet.

**Bennett** – We will vote when we have the actual order.

Staff We have until the 20<sup>th</sup>. He doesn’t think he can get together a draft negative order and have it reviewed by Mr. Pucci by tomorrow; he can have it ready for the regular June 19<sup>th</sup> meeting. A denial is different in how the performance standards are applied and the basis behind that.

The instructions by the majority of the Board is to draft a negative order of conditions.

The other option is to have a meeting Monday, June 17<sup>th</sup> at 4 for commissioners to review.

Motion **Continued to Monday, June 17, 2019 at 4 p.m. in the 4 Fairgrounds Road Community Room by unanimous consent.**

Vote N/A

**IV. PUBLIC MEETING**

**A. Other Business**

1. Approval of Minutes 06/05/2019: Held for June 17 by unanimous consent
2. Monitoring Report
3. Enforcement Actions
  - a. None
4. Reports:
  - a. None
5. Commissioners Comment
  - a. None
6. Administrator/Staff Reports
  - a. None

Adjourned at 5:16 p.m. by unanimous consent.

Submitted by:  
Terry L. Norton