

Town and County of Nantucket
ROADS AND RIGHT OF WAY COMMITTEE

Posted Meeting of
January 18, 2022
Held by Zoom Videoconferencing

FINAL AND APPROVED MINUTES

1. Call to Order, Approval of the Agenda, Approval of Minutes, and Public Comments.

A. Chair Allen Reinhard called the meeting to order at 4:01 pm. In attendance were Committee Members Rick Atherton, Nelson (Snookie) Eldridge, Ed Gillum, Bill Grieder, Allen Reinhard, Rob Ranney, Lee Saperstein and Phil Smith; there was a quorum at all times. Nat Lowell was absent. All responded to an attendance roll call. The meeting was recorded and can be viewed on You Tube.

Supporters attending: Stephen Arceneaux, Director, DPW, Ken Beaugrand, Real Estate Specialist (left at 4:20 pm), and Phyllis Ruguaru, DPW Office Manager.

B. Approval of the Agenda. The agenda was approved unanimously by acclamation.

C. Public Comments. None.

D. Minutes. Approval of the minutes from December 21, 2021, was moved by Snookie Eldridge, seconded by Bill Grieder, and approved unanimously by roll-call vote.

4. Draft Statement Regarding Proposed Amendment to the Chapter 91 Statute.

Because Ken Beaugrand was late in logging into the Zoom meeting, Allen Reinhard asked for and received permission to take up Agenda Item 5. out of order. The discussion centered around a letter (appended to these minutes) drafted by Rick Atherton that asks for support from the Select Board for the amendment of the Chapter 91 legislation proposed by Representative Dylan Fernandes and Senator Julian Cyr, which adds the word “recreation” in the list of permitted uses of intertidal land. These uses now, as they have been since the original statute was passed, are only for “fishing, fowling, and navigating.”

With general support for the letter, most of the discussion centered around helpful edits and additions to the draft:

- Phil Smith suggested that the entire text of the relevant paragraphs in the statute be included as an appendix with the new word inserted and underlined;
- Lee Saperstein suggested that, inasmuch as the letter is longer than one page and likely to get longer, which does seem necessary, that a short executive summary should precede the letter;

- Phil Smith and Ed Gillum identified the following sentence,
 “While the original purpose of the ordinance is well known, the primary focus no longer serves the public purpose for which it was adopted [access to the inter-tidal zone for purposes of fishing, fowling, and navigating].”
 as not being entirely accurate and suggested that the word “sole” be substituted for “primary;”
- Phil Smith noted that “strolling,” which appears in some discussions of the Chapter 91 purposes, is not identical with jogging and may also need some definition;
- Bill Grieder commented that this why “recreation” is a better word than “strolling;”
- Because there was concern that “recreation” may be overly broad, Rick Atherton reminded the group that statutes are normally supported by regulation, in which further definitions may be included;
- Phil Smith continued to support the insertion of the word, “recreation;”

Lee Saperstein asked about next steps and Allen Reinhard replied that, if the committee agreed with the thrust of the letter, it could endorse it. Lee Saperstein then made a motion, seconded by Phil Smith, to accept the letter in principal and to authorize Allen Reinhard and Rick Atherton to insert the edits and send the letter as soon as possible. He commented that not waiting for approval at the next meeting saves a considerable amount of time. A roll-call vote was unanimously in favor of this motion. [Action: Rick Atherton to amend the draft in accord with committee suggestions and Allen Reinhard to send it to the Town Manager for submission to the Select Board.]

2. Ken Beaugrand Update on Road, Sidewalk Projects and Recommended Takings.

With Ken Beaugrand now on the call, Allen Reinhard asked if he had anything to report. Yes, replied Ken Beaugrand, the Select Board has been reviewing suggested street takings and conveyances in advance of preparing Select-Board generated warrant articles for the Annual Town Meeting. He noted that there were also two citizen’s articles that do not raise any concerns if implemented. A draft of the warrant is to be discussed at tonight’s Select Board meeting (Jan. 19, 2022) and is included in the supplemental packet for that meeting. In response to a question from Allen Reinhard, Ken Beaugrand said that Franklin Street and Stone Alley are not in this list.

- Red Barn and Sheep Pond Roads. An elaborate exchange of land between the Town and the Nantucket Conservation Foundation is proposed so as to create an easement for a new road to replace the eroded and unpassable existing Sheep Pond Road. There would be no net loss of open-space land.
- 167 Surfside Road. The proposed exchange would correct an earlier surveyor’s mistake, ensure that no lots are landlocked, and provide the owners with proper title to the properties.
- Dorset Road. The existing way in Tom Nevers is by easement within the defined layout and this taking will cure that access.

- Eel Point. To protect walking trails at Eel Point, it will be proposed to take certain lands to clarify the Town’s ownership and ensuring a pedestrian easement retained for the Town.
- Weeweeder Avenue. A taking and conveyance to ensure correct title in the Town to protect open space by the airport.
- West Chester Street. Another taking and conveyance to cure misalignment of West Chester Street and to provide a place for the Land Bank to install trails.
- Ames Avenue. When Ames Avenue was laid out, it was placed inadvertently on land donated to the Town for open space. This article proposes to take the land under the way, transfer it to the Town, and then mitigate the loss of open-space land with the dedication of equal areas to open space. Because open space is involved, approval through a home-rule petition will be needed.
- Altar Rock. The nearly six acres of land surrounding Altar Rock belongs to the Town. The Town prefers to transfer this land into the care of the Nantucket Conservation Foundation, NCF. Another home-rule petition will be needed to effect this transfer.

Two citizen’s articles for zoning changes have been reviewed and will not be opposed: Nobadeer Way opposite the airport with zoning amended to R10L (limited, which means no secondary dwelling) and one other at 14 Tripp Drive and South Shore Road.

3. Map Project, Chapter 91: Public Access Map Locations; Next Steps and Plan for Locating and Installing New Public Way Monuments.

A. Chapter 91. This was discussed earlier under the re-located item 4.

B. Public Access Map Locations. The broad issue of access to the water, explained Allen Reinhard, which is part of our mission, suggests that the committee identify marked and unmarked public ways, access points defined by non-governmental organizations, NGO, such as the Land Bank and the Conservation Foundation, “One-Big-Beach” easements, and those lands with Chapter 91 licenses that specifically permit access to the water.

He envisions a broadly distributed map of access points but realizes that a comprehensive list is needed before a map can be drawn. Rick Atherton noted that access should be accompanied by the public’s recognition of its responsibility to stay on the path. Ed Gillum added that any access point that we list should be seen to be open to passage, which means that they will have to be checked physically. Not all Chapter 91 Licenses requiring open passage to the public are marked, such as beach stairs. Rick Atherton promised to circulate an earlier letter from Jeff Carlson, now Director, Natural Resources, on beach stairs with licenses or permits from the Town.

Phil Smith said that all access points should be verified by a visit to ensure that they are open to passage. Allen Reinhard agreed and said that this verification is a “ground truth” exercise. This conversation led to the conclusion that a list of access points should be made before attempting

to create a publishable map. Part of the verification would be to check owners' willingness to have their access points included on a publicly available map. Bill Grieder added that, once the list is complete or nearing completion, the access points should be equitably divided and assigned to committee members for verification. The burden of inspection should be shared. Snookie Eldridge said that he has a copy of the original sub-division plan for 'Sconset Bluff and has given a copy of it to Mark Willett at the Water Company. Lee Saperstein suggested that Allen Reinhard and Phil Smith assemble the first draft of the list of access points and circulate it to the committee members for review and addition of new points. The field ground truthing can then be assigned to committee members. Snookie Eldridge volunteered to help. [Action: Allen Reinhard and Phil Smith draft list of access points and send to committee members.]

Lee Saperstein suggested that, once a map is drafted, it should be reviewed by Town officials before posting it for the public. Yes, agreed Allen Reinhard; Andrew Vorce, Director of Planning, Jeff Carlson, Director, Natural Resources, and Libby Gibson, Town Manager, should review a copy.

C. Plan for Locating and Installing New Public Way Monuments. Allen Reinhard said that he has asked Lee Saperstein to join him in identifying places where new Public Way monuments should be installed. Lee Saperstein agreed to help and said that the master file of monuments would then be brought up to date.

5. Old, New, and Other Business, and Member Comments,

Bill Grieder noted that, based on ferry reservations made today, the first day on which reservations could be made, next summer will be as busy as was the last year's.

There were no other comments.

6. Adjourn.

Adjourn: The meeting was adjourned at 5:01 pm by consensus. The next meeting will be held at 4:00 pm on **Tuesday, February 15, 2022.**

Lee W. Saperstein, Secretary _____ Date _____

Roads and Right of Way Outstanding Projects List:

Public Way Monument Project: (Lee & Allen & Snookie)

Install remaining monuments at Sconset Footpath, Hulbert Ave., and other locations

Update file of existing monuments

Move monuments at Westchester St. Ext. & Crooked Lane

Sidewalk Projects: (Lee & Allen)

Prospect St. (sidewalk to Upper Vestal St.) and on to Madaket bike path
Cliff Rd. Coffin Park to bike path at Sherburne Tpk.
Pleasant St. Gardner Perry Lane to Williams St.
Lovers Lane Bike path and road reconstruction: follow progress
Follow implementation of downtown sidewalk improvements
Bike/Pedestrian connection from Surfside to Hummock Pond to Madaket paths

Chapter 91 Monitor Project: (Lee, Rick, Phil)

Make local license information available online
Harbor Walk Project, list of permits and approvals, Identify route
Chapter 91 licenses along route for the Harbor Walk
Locate other locations on waterfronts requiring licenses

Nantucket Greenway and Trail System Project: (Allen, Lee)

Nantucket Central Railroad trail map of route
Island Trail Map with all walking trails

TO: MEMBERS OF THE SELECT BOARD (“Board”)
FROM: THE ROADS AND RIGHT OF WAY COMMITTEE (“Committee”)
RE: ADVISORY RE LEGISLATION TO INCREASE PUBLIC ACCESS
DATE: TBD

Consistent with the purpose of the Committee (to review any issues concerning the status of access over public and private roads, rights of way, abutters ways, proprietors roads, footpaths and any other ways throughout Nantucket County, and to make recommendations to the Board of Selectmen and County Commissioners to ensure and improve public access over them) and our guiding philosophy (to preserve access to Nantucket’s public and private lands, including our harbors, coastline, ponds, moors, conservation lands and historical sites), we would like to bring an important matter regarding public access to the attention of the Board.

We understand that Nantucket’s elected representatives to the Great Court, Senator Julian Cyr and Representative Dylan Fernandez, are primary sponsors of a bill to expand the use of the inter-tidal zone by proposing to amend Chapter 91 to include “recreation” as an allowed use.

[Insert statement by Dylan and Julian contained in a cover note here?]

The bill states simply that Section 1 of Chapter 91 be amended to add the words “recreation and:”

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 1 of chapter 91 of the General Laws, as appearing in the 2018
2 Official Edition, is hereby amended by inserting after the words “for the purposes of”,
in line 36,

3 the following words:- **recreation and**.

4 SECTION 2. Said section 1 of said chapter 91, as so appearing, is hereby further
5 amended by inserting after the definition of “Private tidelands” the following
definition:-

6 “Recreation”, the use of land for relaxation, exercise, watersports or other enjoyable
7 pastimes. [Bold added.] [Source citation?]

The Committee has discussed the impacts of this change to an ordinance (aka a legislated bill) originally adopted in 1641-1647. While the original purpose of the ordinance is well known, the primary focus no longer serves the public purpose for which it was adopted [access to the inter-tidal zone for purposes of fishing, fowling, and navigating].

Most of the Commonwealth's beaches now serve as a focus of enjoyment of the natural setting of views where the water meets the land. Before our Commonwealth was settled by immigration from Europe, the shoreline belonged to all the inhabitants of the land. Currently Massachusetts is one of two states [the other?] that have the most restrictive access to its shoreline in our Country. This takes one very small step (to increasing public access along the shoreline) by expanding access in the limited intertidal zone along the coast (the area of beach between the high and low water marks).

The adoption of this bill, in either the current or an amended form, would be consistent with the public-access mission of the Committee, as well as to the core value (public access) of our Nantucket community, a value we all hold dear.

It is interesting to note that several Chapter 91 licenses in Nantucket already require the right to "stroll" in the intertidal zone on the licensed property. [Examples?] The bill itself goes further than "strolling" to define recreation as "the use of land for relaxation, exercise, watersports or other enjoyable pastimes."

Prior efforts such as this legislation have been attempted to bring enhanced public access to the coastline, but they have been met resistance from expected quarters [NAME the expected quarters?]. We assume that similar opposition will emerge in response to this proposed bill, but that is no reason for Nantucket not to publicly support of the bill.

Nantucket citizens can help this process by asking the Select Board to adopt a resolution of support for the bill. Such support, we expect, can assist the sponsors in the state legislative process.

For some additional background we have included below several statements of introductory comments from state policies and regulations below. These, in our judgement, are supportive of the public benefit that will be enhanced by the bill's passage.

The Committee respectfully request that the Board consider supporting this important legislation. Our members stand ready to assist in any way we can.

Thank you.

[Signed Chair]

EXCERPTS FROM INTRODUCTORY COMMENTS PROVIDED [BY?] [Highlights added.]

From an overview, specifically, the MassDEP Waterways Regulation Program states as below. The highlights emphasize portions that are helpful to opening up the intertidal zone for public access.

Preserves pedestrian access along the water's edge for fishing, fowling and navigation and, in return for permission to develop nonwatery dependent projects on Commonwealth tidelands, provides facilities to enhance public use and enjoyment of the water. Seeks to protect and extend public strolling rights, as well as public navigation rights. Protects and promotes tidelands as a workplace for commercial fishing, shipping, passenger transportation, boat building and repair, marinas and other activities for which proximity to the water is either essential or highly advantageous.

And further:

(2) Purpose. 310 CMR 9.00 is promulgated by the Department to carry out its statutory as defined in 310 CMR 9.02.

The general purposes served by 310 CMR 9.00 are to:

- (a) protect and promote the public's interest in tidelands, Great Ponds, and non-tidal rivers and streams in accordance with the public trust doctrine, as established by common law and codified in the Colonial Ordinances of 1641-47 and subsequent statutes and case law of Massachusetts;
- (b) preserve and protect the rights in tidelands of the inhabitants of the Commonwealth by ensuring that the tidelands are utilized only for water-dependent uses or otherwise serve a proper public purpose;
- (c) protect the public health, safety, and general welfare as it may be affected by any project in tidelands, great ponds, and non-tidal rivers and streams;
- (d) support public and private efforts to revitalize unproductive property along urban waterfronts, in a manner that promotes public use and enjoyment of the water; and
- (e) foster the right of the people to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment under Article XCVII of the Massachusetts Constitution.