

Town and County of Nantucket
ROADS AND RIGHT OF WAY COMMITTEE

Meeting of 15 November 2016
Conference Room of 2 Fairgrounds Road

DRAFT FOR REVIEW AND APPROVAL

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 Nelson (Snookie) Eldridge, Leslie Forbes, Allen Reinhard, Bert Ryder (4:16 pm), Lee Saperstein, and Stephen Welch; there was a quorum at all times.

Absent were Dave Fredericks, Nat Lowell, and John Stackpole.

Guests: Mike Burns, Transportation Planner (4:16 pm), Kara Buzanoski, Director, DPW (4:55 pm)

The agenda as distributed was accepted.

B. Public Comment. There was no public comment.

C. Minutes. The minutes of the meeting of September 20, 2016, and October 18, 2016, were moved for approval by Snookie Eldridge and Stephen Welch. Those of September 20th were approved unanimously; on a separate vote, those of October 18th were approved with several editorial changes proposed by Stephen Welch.

2. Chapter 91 Public Access Update and Next Steps.

Allen Reinhard introduced the topic by reminding the group that we have a long-standing interest in Chapter 91 licenses, particularly as they affect the public's access to the water. Leslie Forbes and Lee Saperstein have met with Jeff Carlson, Coordinator, Natural Resources, and circulated a report of what they learned (attached); he asked them to discuss this report with the committee.

Lee Saperstein started by reiterating that the committee's overall goals are, as stated by Allen Reinhard, to protect the public's access to the water and to help the Town obtain delegated authority for management of the Chapter 91 license program. The latter goal will require State approval of a home-rule petition for this delegation. He introduced Leslie Forbes's work on reviewing existing licenses. She spoke about builders' and homeowners' uncertainty about the need for a license. There are links between the Nantucket Conservation Commission and the State's Department of Environmental Protection that could trigger a notice of the need for a license but follow-up is uncertain. The specifics of this notification are in their report. They suggested that the ConComm and the Building Department should add to their approval checklists a consideration of the Chapter 91 license.

Discussion of their report ensued. Stephen Welch stated that determination of applicability was an important issue. Lee Saperstein said that his understanding was that any waterfront structure incidental to another, such as piers, walkways, beach steps, and similar, required a license. Furthermore, as seen on a projection of the MORIS map of jurisdictional lands around Nantucket Harbor, filled tidal lands are also subject to licensure. Leslie Forbes suggested that a key contribution that we could make would be to develop educational material about the Chapter 91 process for architects, builders, and surveyors so that they could begin the application process in the beginning, i.e. the design and planning stage, rather than at the end when a building permit is sought. We should ask a surveyor such as Joe Marcklinger, former committee member, to talk about current practices for determining applicability. Others who might know about this are Leo Asadoorian and Dave Fredericks.

Leslie Forbes spoke also about the process of searching deeds for a record of licenses. If they have been recorded properly, we can find them in the electronic records. What we cannot do, now, is find when a license has been issued but not recorded. Allen Reinhard asked about title transfers and whether or not the grantee will file the license as well as the new deed. He wondered if realtors explain the license to their clients. Stephen Welch asked if we have any way of ensuring that DEP notifications become part of our Town's public record. Lee Saperstein replied that this was an item of importance that we will examine. Stephen Welch asked about a time line to get all this done and Lee Saperstein replied that some parts, such as education, could be done in a matter of months but that a successful home-rule petition could take years. Stephen Welch asked if 310CMR 9.07(3)(a), "Petition for Local Permitting Program," could be used to obtain independent authority for Nantucket. Lee Saperstein said that he did not know but would look at it after the meeting. [post meeting note: Local permitting is a separate program from licensing and this section will not apply.] In summary, Allen Reinhard reminded us that our job is to advise the BOS on how best to proceed not to be an independent agency.

In a related matter, Leslie Forbes asked if anyone knew how the new building on Easy Street was asked to provide public access across its property. Allen Reinhard replied that the post-construction discovery that they needed a Chapter 91 license led to it. Returning to the issue of educational material, Lee Saperstein said that the Department of Natural Resources could help to create educational material.

3. Update of Potential Takings List: Plan and Process.

Allen Reinhard reminded the committee that we had a "Priority" road takings list as part of our agenda for many years. Originally, former committee member, Annie Bissinger Poor, provided us with an elaborate street-by-street matrix. With the recognition that the Board of Selectmen sets priorities, we simplified the list and renamed it "Potential". Most recently, we put the list into a spreadsheet that included an assessment of the critical conditions that would lead to a taking. He asked what we wanted to do with the list. Lee Saperstein projected the matrix onto the screen and pointed out that three of the ways have been taken and are in the process of being rebuilt. The question could be rephrased into, "do we want to continue to refine the matrix or do we want to concentrate on two or three key streets."

At this point Kara Buzanoski contributed some detailed information. She reminded us that there are several roads on the spreadsheet that are also in the Town's Transportation plan: Amelia Drive and Friendship Lane. Winn Street has a problem in terms of width of the private portion of the way. Unfortunately, so does Amelia, which cannot support parking and two-way traffic. We are waiting on the traffic planning report before considering what to do with Rugged Road and Ticcoma Way, both of which are private.

Lee Saperstein said that he will amend the matrix to show those roads that are now taken and improved (attached) and asked that committee members consider its relevance to today's conditions and if other roads should be added. It is recognized that there will be increased traffic on Old South Road from the proposed real estate developments. There are plans for road construction that will ease the flow of traffic but something will need to be done to relieve the increased volume. Allen Reinhard said, in closing, that Amelia needs further examination.

4. Projects List Discussion.

Allen Reinhard introduced the topic by saying that the list (below) was now in three parts and seemed reasonable. He asked, with respect to one of the projects "in need of advancement," was there any chance of work being done on the Prospect Street sidewalk. Kara Buzanoski replied, "not for this year fiscal year." She added that next year, FY 2018, would see the provision of sidewalks on Pleasant Street (Williams to Five Corners); in FY 2019 and beyond, it was expected to put sidewalks on Cliff Road (Sherburne TPK to N. Liberty). Prospect Street would be next if there is enough money otherwise it would go to FY 2020. Not on the list but needed is the reconstruction of Newtown Road to include sidewalks. Stephen Welch asked if any takings would be needed on Newtown. Kara Buzanoski replied, "Not if we eliminate parking." We can make it fit into the existing 40-ft width. Stephen Welch said that we should add Newtown to our priorities.

Allen Reinhard thanked Kara Buzanoski and Mike Burns for their input. With respect to the projects list, he said that now that we have split the list into three categories he felt that it was in good shape. He asked if anyone had additions and no one did.

5. Old, New, or Other Business.

Allen Reinhard asked Kara Buzanoski if she would give us several status reports. The Mill Hill Park bicycle path is in the planning stage and construction is hoped for before next summer. The construction contract for the Milk Street multi-use path has been awarded. Also, the in-town bike path, Goose Pond Causeway, has been awarded and pre-construction activities are underway.

Allen Reinhard reported that Dave Fredericks had made a presentation on Harbor Place (ex-Wilkes Square) to the Board of Selectmen and we should ask him to present it to us. Kara Buzanoski said that it was extraordinary to have four different ownership interests cooperating in a single development. It is an once-in-a-life-time opportunity that we should not miss.

Allen Reinhard asked also about the downtown sidewalk improvements. Kara Buzanoski said that we have a contract with a local surveyor to plan for improvements on Straight Wharf alongside the Stop and Shop parking lot (New Whale Street to Candle Street). The goal is to widen the roadway, primarily in the sidewalk, and move parking to the Stop and Shop side. If the plan is feasible, it will move to planning for further development.

6. Adjourn.

With the agenda completed, adjournment came at 5:26 pm.

Next meeting: **December 20, 2016**, 4:00 p.m., 2 Fairgrounds Road.

Although close to the Christmas holiday, it was decided to leave the meeting on call. Allen Reinhard will check on members' availability one week before the meeting.

R&ROW Committee Outstanding Projects List:

Projects Underway and need only oversight until completion

- Downtown Sidewalk Survey Project
- In Town Bike Path from Washington St. Ext. to Rotary
- Boulevard to Airport road takings, and reconstruction as Public Ways
- Bike path linking Surfside, Hummock Pond & Madaket Bike paths via Mill Hill
- First Way Pedestrian/Bike Access and Road Improvement Safety Project

Projects in need of advancement, completion or encouragement

- Installation of sidewalk from Prospect St. multi-use path to Upper Vestal Street
- Sconset Footpath install Public Way Monuments
- Chapter 91 Public Access License Enforcement: Harbors Plan Implementation
- Nantucket Open Space Plan Update

Long Term Projects and projects on hold

- Nantucket Central Railroad Trail Project
- Nantucket Greenway and Footpath System
- East Creek Road viewing platform and CPC grant
- Work with DPW on maintenance plan for public way monuments and trails

Massachusetts General Laws, MGL
Chapter 91 Licenses

A REPORT TO THE ROADS AND RIGHT OFWAY COMMITTEE
By Leslie Forbes and Lee Saperstein

The following report is based on a conversation held on Friday, October 22, 2016, with Jeff Carlson, Coordinator, Natural Resources, Town of Nantucket. The topics were chosen to assist Roads and Right of Way with fulfillment of its charge in the Harbor Plan to review Chapter 91 Licenses and, thus, to maintain Nantucketers' access to the water.

Chapter 91, section 18, established a system of licenses for incidental structures built on or near the water, including on filled tidal lands. The regulatory scheme for these licenses can be found at 310CMR9.00 *et seq* (<http://www.mass.gov/eea/agencies/massdep/water/regulations/310-cmr-9-00-massachusetts-waterways-regulation.html>).

Topics/Actions Discussed

- Identify and catalog existing licenses; identify renewal dates
Jeff Carlson maintains a paper file of recent licenses. We will review files ("License and Plan") in the on-line digital record for Nantucket's Registry of Deeds for completeness of this file. Additionally, renewals are for a period of time that may vary license by license so that we will need to add information on recording date and renewal dates. All of this could go on an Excel Spread Sheet.
- Put a digital map of filled tidal lands onto the Town's GIS (Leslie has started on this)
Jeff Carlson showed us the on-line resource, Massachusetts Ocean Resource Information System, MORIS, on which we can delineate the Chapter 91 Jurisdictional Boundary for Nantucket (http://maps.massgis.state.ma.us/map_ol/moris.php). Once on Nantucket's GIS system:
 - 1) Property owners can see if they are governed by Chapter 91; and
 - 2) The Town can identify all properties located within the Chapter 91 jurisdiction.
- Consider how to identify those properties that should have a Ch. 91 License and do not
 - We believe that we will be able to identify properties as described in 2) above.
 - Additionally, all waterfront properties, whether or not defined as within the jurisdiction of Chapter 91, will need a license for any structure meeting the definitions in §9.04, 9.05, and 9.10.
- Verify recording of licenses. The regulation is quite clear; a license must be recorded to be valid. If the owner does not record it within 60 days, the license is void and the structure may be deemed a hazard (310CMR9.18). In addition, the owner must file a Certificate of Compliance issued by the DEP within 60 days or five years after completion of authorized work. However, with no active enforcement, there is no assurance that these steps are accomplished.
- Identify links to the ConComm and Building Department that help to ensure that licenses are obtained and recorded

- The Conservation Commission, if it makes an “Order of Condition,” will file a copy of the order with the DEP who can add a comment that a Ch. 91 license may be needed. The DEP mails a paper notice to the applicant and e-mails a file copy to Nantucket DNR. This process may alert Natural Resources to the need for a Chapter 91 license but it is not totally assured.
- The Building Department does not, at present, check for Chapter 91 licenses. In both cases, we could recommend changes in procedures that improve notification of the need for a license.
- Identify methods for educating architects, surveyors, lawyers, etc. about Ch. 91 jurisdiction and requirements so they can advise owners.
- Create awareness of the enforcement program.
 - At present, enforcement belongs to the State and it does not have the staff to perform regular inspections. They have told Nantucket DNR that they will send an inspector to Nantucket if we can identify a handful (maybe five or more) of egregious violations.
 - Using a local, awareness approach, Nantucket could send a letter to owners whose property is within the jurisdictional boundary but without a Ch. 91 license, asking them to start the process, and providing a Citizen’s Guide (see below.)
 - Work with DEP to set an Amnesty Period to provide incentive and relief for non-compliant owners to take action.
 - Use information on renewal dates to notify property owners of impending renewal dates.
- Draft a citizen’s guide on who needs a Chapter 91 License and how to get one. We believe that we will be able to write a citizens guide with what we have learned about the program and what we can borrow from Statewide guides.
- Create a strategy to bring autonomous control of the Chapter 91 process to Nantucket.
 - Given our isolated circumstance as an island at sea, it would be a good thing to manage the Chapter 91 process locally. It will, however, require a Home-Rule Petition to obtain delegation of authority for the Chapter 91 process. With new representation in the General Court, we will have to move carefully on this. We do not know whether the DEP would welcome or resist such a petition.
 - Jeff Carlson suggested that we investigate how Oak Bluffs and Vineyard Haven work with owners and DEP on Chapter 91 licensing and enforcement.

31 October 2016

POTENTIAL ROAD TAKINGS LIST, November 2015 w/ K. Buzanoski and Andrew Vorce Recommendations; Amended November 2016

Order	Road	Road Status, Public (pub) or Private (pvt)	Public Use of this Road	Road links Two Public Roads	Public Safety Concerns	Traversable by Emergency Vehicles	Abutters' Requests	Access to Public Property Including Beaches	Traffic Circulation Patterns	Other Benefits to the General Public; Comments
1	Friendship Lane, from Bartlett Road to Joy Street	pvt	Yes	Yes	Moderate	Difficult	Yes, %age	No	Light	Drainage and maintenance problems
2	Winn Street	pvt/pub	Yes	Yes	Moderate	Difficult	Yes	No	Moderate	Taking private portion and rebuilding will provide public access around Quaker Burial Ground to beach bike paths. Private portion of Winn St. is narrow and this may affect ability to rebuild it.
3	Amelia Drive and Ticcoma Way	pvt/pub	Yes	Yes	Moderate	Moderate	Yes	No	Heavy	Amelia is private and Ticcoma (to Fairgrounds) is public. Expanding commercial developments and narrow roadways limit two-way traffic and suggest that the taking of Amelia and improvements to both are appropriate. Impending traffic studies will affect future priorities
4	Backus Way	pvt	Yes	Yes	Substantial	Difficult	No	Yes	Heavy	Backus Way is a private road but is part of the road and pedestrian links to the public schools campus.
5	Millbrook Road	pvt	Yes	Yes	Slight	Moderate		Yes	Moderate	
6	Smooth Hummocks Way	pvt	Yes	Yes	Slight	Moderate		Connection	Light	Alternate access to Bartlett Farm and beaches
7	Cato Lane; if connected	pvt	Yes	Yes	Moderate	Easy	No	Connection	Heavy	Alternate access to Mid-Island if connected
8	Eel Point Road from No. ? To Warren's Landing Road	pvt	Yes	Yes	Slight	Difficult		Yes	Light	Eel Point and Warren's Landing
9	Warren's Landing Road	pvt	Yes	Yes	Slight	Moderate	Yes, FLA	Yes	Light to moderate	Access to Warren's Landing and Eel Point; Fisher's Landing Assn Letter
10	Red Barn Road	pvt	Yes	Yes	Slight	Difficult	No	Yes	Light	Sheep Pond Road is an isolated public way. Taking of Red Barn connects it to the public road network and would provide access to significant open access space and beach resources at West Moors and Head of Plains,
*	Boulevarde	pub	Yes	Yes	Moderate	Difficult	Yes, %age	Yes	Heavy	Boulevarde to Clifford is now a public way; rebuilding is next
*	Airport Roads: Boulevarde, Clifford Street, Lovers Lane, Okorwaw, Monohansett	pub	Yes	Yes	Moderate	Difficult	Yes, %age	Yes	Heavy	In addition to Boulevard, Clifford is a public way; the others are in the process of being taken; design and reconstruction, if needed, are next.
*	First Way	pub	Yes	Yes	Substantial	Moderate	Yes	Yes	Heavy	This public way is due to be re-built to provide safe access to the public schools campus
No Rec	Hooper Farm Road		Yes	Yes	Slight	Moderate	No	No	Light	Abutters do not wish taking
No Rec	Eel Point Road, from end of public road to Number ?	pvt	Yes	Yes	Moderate	Difficult		Yes	Light	40th Pole and Eel Point
No Rec	Somerset Road, from Raceway Drive to Friendship Lane	pvt	Yes	Yes	Slight	Difficult	Yes, %age	Yes	Light	
*										Takings completed; work underway to rebuild