

Town and County of Nantucket  
**ROADS AND RIGHT OF WAY COMMITTEE**

Posted Meeting of  
September 29, 2022, at 4:00 pm  
Held live in 131 Pleasant Street, Conference Room A, and by Zoom Videoconferencing

**FINAL AND APPROVED MINUTES**

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

A. Chair Bill Grieder called the meeting to order at 4:03 pm. In attendance were Committee Members Rick Atherton, Nelson, “Snookie”, Eldridge, Ed Gillum, Bill Grieder, Nat Lowell, Allen Reinhard, and Lee Saperstein; there was a quorum at all times. All present responded to an attendance roll call. The meeting was recorded and can be viewed on the Town’s You Tube site (on Town’s main web page as “Watch Meetings Live”, select “Playlists” then look for “Roads and Right of Way”).: <https://youtu.be/FZX-Ixozgyk>.

Supporters and Guests attending: TaKyra Netter and Will Dell’Erba, DPW staff; Patrick Reed (left 5:18 pm), Town Transportation Planner; Lynn Filipski (left 4:59 pm), President, ‘Sconset Civic Association; Ian Golding (left 4:59 pm), ConComm; Charles Douglas, NCTV18.

Absent: Rob Ranney and Phil Smith.

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

C. Public Comments.

None at this time.

D. Approval of the minutes of the meeting of August 16, 2022.

When Bill Grieder asked for a motion to approve the minutes of the August 16, 2022, meeting, Rick Atherton asked if we could have a modest editorial change, i.e., removal of the phrase, “in an apparent first,” from item 3. There being no objection to the edit, Ed Gillum moved approval, Allen Reinhard seconded, and the committee voted unanimously by roll-call vote to approve them.

**2. If Available, Ken Beaugrand Update on Road, Sidewalk, and Takings Projects; Encroachment.**

Ken Beaugrand was not in attendance. Patrick Reed, Transportation Planner, however, was on the Zoom call and Bill Grieder invited him to report on transportation planning. Patrick Reed thanked him for the opportunity and invited people to contact him if they had concerns or questions at [preed@nantucket-ma.gov](mailto:preed@nantucket-ma.gov). Bill Grieder noted that the committee is advisory only but has been active in transportation issues. Had Patrick Reed read the committee’s memorandum to the Town about needed sidewalks and footpaths along ways that have none and are active connectors into the Town? Allen Reinhard asked also if he had seen anything about the recommendation to take Franklin Street and Stone Alley. When he admitted that he had not seen these, Lee Saperstein made a note to send them to him, which now has been done.

Next, Patrick Reed related that he is working currently on a Pleasant Street project including sidewalks on Sparks and Pleasant Street. Responding to Ed Gillum's question about contact with the home owner of 57 Pleasant Street, he said that the contractor is working to upgrade the plan for the project. Once complete and made public, they will contact homeowners. Nat Lowell said that Bracken Engineering had done some of the original planning and that he may wish to consult with them. He also emphasized the importance of taking Franklin Street both because the Town's New North Cemetery is an abutter on that street and because of its history of having been mistakenly treated as a public way. Ed Gillum asked if we had had a response from the Select Board on the September 4, 2019, advisory memorandum about taking Stone Alley. No one knew.

### **3. Bill Grieder: 'Sconset Bluff Walk Visit.**

Bill Grieder reported that he had visited the 'Sconset Bluff Footpath on August 20, 2022, along with Lynn Filipski, President of the Siasconset Civic Association, who had attended the committee's previous meeting to report the association's concern about visitors' misuse of the path. He suggested that a small subcommittee could review the Association's concerns and draft a response. He invited comments from Lynn Filipski and she spoke strongly about the need to monitor and change the behavior of people on the path who routinely abuse the privacy of home owners along the path.

Nat Lowell said that we were repeating actions taken as much as ten years ago when we filed the subcommittee report on the Bluff Footpath (q.v. <https://www.nantucket-ma.gov/450/Siasconset-Footpath-Public-Access-Subcom> for access to the report and its appendices). He said also that the problem of commercial tour buses bringing visitors to the footpath has only increased in the last decade. Bill Grieder displayed a photograph of the sign installed by the 'Sconset Trust that asks visitors to respect homeowners' privacy. Ed Gillum noted that we should review the report, bring it up to date, and arrange for enforcement. Lynn Filipski added that the COVID pandemic created an upturn in visitations as people sought an outdoor, non-crowded activity. She noted also that tourist behaviors had declined. On the positive side, the Town had provided 'Sconset with clamshell materials for renewing the surface of Front Street. She said, also, that the Association would pay the salary of an intern to create an educational program to be given to users of the footpath. Lee Saperstein suggested to Patrick Reed that the Town's interest in studying alternative routes for Baxter Road in the event that the bluff recedes further may put access to the footpath firmly in his care.

Ed Gillum repeated that growth in the number of visitors increased the need for enforcement. He said that abutters have hired a private security agent for Steps Beach. Snookie Eldridge reported that in 1928 or 29, Mrs. Mitchell had tried to close the footpath and that action led to a court case that resulted in it staying open to the public. Nat Lowell suggested to Lynn Filipski and the committee that a privately supported Community Service Officer, CSO, made more sense than an intern. Admitting that one of his first jobs on Nantucket was to mow the path, he asked about today's mowing. Lynn Filipski replied that the DPW does a good job.

Rick Atherton added that the Town could have a positive role to play in improving conditions on the footpath; these include a reduction in publicity on its web site and printed brochures and, also, in reducing the presence of these materials in the Tourist Center on Federal Street. The Town could make it a condition of a license for Tourism operators that they instruct visitors to the footpath on expected behavior and then stay with them as they walk the path instead of merely

dropping them off. Lynn Filipski inserted their concern for opening hours that are now sunrise to sunset. Because summer sunrise can be well before 6:00 am, she thought specific times such as 7:30 am to 7:00 pm would be better. Ed Gillum asked about the hours for the playground at Codfish Park and whether they could match those set for the footpath. Eventually, said Bill Grieder, because we are advisory only, these suggestions will need to be assembled into a report or memorandum and sent to the Select Board. Ian Golding noted that his family had lived for decades at 99 Baxter Road, which gave him a personal interest in this issue in addition to his participation in the Conservation Commission.

Concluding this issue, Bill Grieder suggested that a subcommittee could create a report on suggested actions that improve behaviors on the footpath. He asked that this subcommittee be approved by the committee to which Nat Lowell moved its creation, Snookie Eldridge seconded, and the Committee so approved. Thence, he appointed Allen Reinhard, Ed Gillum, and Nat Lowell to a subcommittee for drafting a report and asked if they could report at our next meeting.

#### **4. Chapter 91: 66 Washington Street (Signage), 46 Easton Street (310 CMR 9.52 Requirements).**

Rick Atherton noted that both of the properties in this item are along the planned harbor walk as conceived by both this committee and ReMain Nantucket. The Roads and Right of Way concept was to be able to walk along the waterfront from Brant Point to the new park at Consue Springs, the former Hayes property. He related that the Easton Street property had been an agenda item at the Conservation Commission for several of its meetings.

He next displayed the “Compliance Statement” (attached in the appendix) made by the Waterways Program of the Department of Environmental Protection, DEP, approving the provision by the owners of 46 Easton Street of an access walkway from Easton Street to the harbor alongside of their property. Rick Atherton repeated that the committee is interested in a harbor walk and the property owners should, therefore, provide some means of walking alongside the harbor. He said that the DEP document seeks input. Because there is not enough time to prepare a formal response and have it approved and submitted by Town Management, he suggested that a memorandum be drafted that informs the DEP of our interest in Chapter 91 licensing issues and, particularly of any submission that could reduce the possibility of a future harbor walk. He recommended also that, before sending it, the memorandum be shared with the Select Board and Town Manager.

Rick Atherton volunteered to draft a memorandum to the Mass DEP discussing our interest in Chapter 91 licenses, particularly in light of our interest in the Harbor Walk. He said that it be informational and not a formal response to the request for comment on 46 Easton Street. All agreed and it is expected to be an agenda item at the next meeting.

Bill Grieder shared his screen so that we could look at a photograph of a sign in front of 66 Washington Street that advised walkers that this was private land and that they had to remain on the water side of the low-water tidal line. None of this was true. The land belonged to the Land Bank for the benefit of Nantucket citizens and the sign was incorrect in that Chapter 91 requires that the water-based activities of fishing, fowling, walking, and navigation take place below the high-water mark, not “low” as written. Allen Reinhard reported that the sign has been moved from Land Bank property.

## **5. Public Way Monument Project: Identify Installation Locations and Schedule Installation Process.**

As listed in the revised projects list, work on installing the additional public way monuments and revisions to the Master Chart on the web site is underway.

## **6. Will Dell'Erba Update on Park and Recreation Projects and DPW Road Projects; Encroachments.**

Will Dell'Erba reported that the Town and the DPW are busy with a number of projects but that there was nothing truly new to report. Milling of the existing surface and re-paving of several ways was underway: New Street in 'Sconset and Eel Point Road. With respect to encroachments, he reported that, at the intersection of Dukes Road with the Madaket Road, brush cutting had improved the sight lines from the intersection and opened up views of the stop sign. He is working with Ken Beaugrand, Real Estate Specialist, to create a shared spread sheet on reported encroachments so that they could track work done to remove them.

Rick Atherton commented that he greatly appreciated the responsiveness of the DPW to requests for work. Bill Grieder then noted that there is a portion of the shoulder of 'F' Street in Madaket leading down to the boat ramp that had been cut back to provide parking for boat trailers and that this had now grown out to reduce its capacity. Will Dell'Erba responded that the sickle-bar attachment used to cut road sides had been out of action but was now repaired and up and running; we may have seen a lot of cutting activity. He promised to look into 'F' Street. [On the next day the Committee received a note saying that the brush cutting on 'F' Street had been completed.]

Nat Lowell, noting that Will Dell'Erba was new to the committee, asked what was his official role. The reply was "Permit Services Coordinator," although he has also been assigned the liaison to this committee. Bill Grieder noted that his background has been with trees and their cultivation. Nat Lowell thanked him both for his answer and his service.

## **7. Old, New, and Other Business, and Member Comments.**

With respect to the Projects List found at the bottom of the agenda and these minutes, Bill Grieder reported that he had annotated them with specific progress on each item, thereby giving also a status report on the projects. He asked committee members to review the list and continue to submit new items for inclusion on it.

Ed Gillum noted that it was part of our mission to review citizen access to the water and to provide, if not expand, this access. Recent news reports on the loss of access because of beach erosion suggests that a future agenda item should be a report from either Natural Resources or Public Works on the repair or replacement of these access points.

Nat Lowell reported that there is a move to require that recorded plans associated with property deeds show Town Trees. This is a similar move to that recommended some time ago by the Committee that historic encroachments such as friendship stairs also be recorded. Snookie Eldridge said that plantings at 54-56 Sankaty Road were in road layout and were a substantial encroachment. Ed Gillum noted that he had seen small, metal disks nailed to some trees; Will Dell'Erba said that, yes, they were put there to designate Town trees.

## 8. Adjourn.

A move to adjourn was made by Snookie Eldridge, seconded by Allen Reinhard, and approved unanimously. Adjournment came at 5:45 pm. The next meeting is at **4:00 pm on October 18, 2022**, and will be in 131 Pleasant Street with optional Zoom attendance.

Lee W. Saperstein, Secretary \_\_\_\_\_ Date \_\_\_\_\_

### **Roads & ROW Ongoing Projects List:**

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

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

- Need scheduling with DPW

Update file of existing monuments

- In progress

Move monuments at Westchester St. Ext. & Crooked Lane

- Need to coordinate with Land Bank

#### **Sidewalk Projects: (Lee & Allen)**

Prospect St. (sidewalk to Upper Vestal St.) to Madaket bike path

- Referred to Transportation Planner

Cliff Rd. Coffin Park to bike path at Sherburne Tpk.

- Request sent to Selectboard to add to future sidewalk list.

Pleasant St. Gardner Perry Lane to Williams St.

- Referred to Transportation Planner

Lovers Lane Bike path/ road reconstruction

- Bids received over budget – need additional funding

Follow implementation of downtown sidewalk improvements

- Updates provided by DPW representative to RROW

Bike/Pedestrian connection from Surfside to Hummock Pond to Madaket paths

- Land takings completed – needs Town Meeting funding

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

• GIS department head Nathan Porter working to make available online Harbor Walk Project, list of permits and approvals.

- Plan presented to Select Board – ReMain Nantucket providing assistance

Identify Chapter 91 licenses along route for the Harbor Walk

- In progress

Locate other locations on waterfronts requiring licenses

- Request sent to ConCom to copy RROW on any received applications or notices

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

Nantucket Central Railroad trail map of existing portions of route

- Locations identified at Easy Street, Washington Street extension, Naushop development and Bayberry Commons to Surfside

## Island Trail Map with all walking trails

- In progress

## PROJECT COMPLIANCE STATEMENT

### 46 Easton Street, Nantucket

As detailed below, the Project complies with the requirements of 310 CMR 9.51, 9.52 and 9.53.

1. 310 CMR 9.51 Requirements – Conservation of Capacity for Non-Water Dependent Use

Non-water dependent use projects must comply with the following requirements of 310 CMR 9.51(3):

- (a) new pile-supported structures for nonwater-dependent use shall not extend beyond the footprint of existing, previously authorized pile-supported structures or pile fields, except where no further seaward projection occurs and the area of open water lost due to such extension is replaced, on at least a 1:1 square foot basis, through the removal of existing, previously authorized fill or pile-supported structures or pile fields elsewhere on the project site; as provided in 310 CMR 9.34(2)(b)1., the Department shall waive the on-site replacement requirement if the project conforms to a municipal harbor plan which, as determined by the Secretary in the approval of said plan, specifies alternative replacement requirements which ensure that no net loss of open water will occur for nonwater-dependent purposes, in order to maintain or improve the overall capacity of the state's waterways to accommodate public use in the exercise of water-related rights, as appropriate for the harbor in question.

*Not applicable. The Project does not include any new pile-supported structures in areas of open water.*

- (b) Facilities of Public Accommodation, but not nonwater-dependent Facilities of Private Tenancy, shall be located on any pile-supported structures on flowed tidelands and at the ground level of any filled tidelands within 100 feet of a project shoreline. The Department may allow any portion of the equivalent area of a Facility of Public Accommodation to be relocated within the building footprint, or in other buildings owned, controlled or proposed for development by the applicant within the Development Site if the Department determines the alternative location would more effectively promote public use and enjoyment of the project site. As provided in 310 CMR 9.34(2)(b)1., the Department shall waive the above use limitations if the project conforms to a municipal harbor plan which, as determined by the Secretary in the approval of said plan, specifies alternative limitations and other requirements which ensure that no significant privatization of waterfront areas immediately adjacent to the water-dependent use zone will occur for nonwater-dependent purposes, in order that such areas will be generally free of uses that conflict with, preempt, or otherwise discourage water-dependent activity or public use and enjoyment of the water-dependent use zone, as appropriate for the harbor in question;

*The Project is limited to a small expansion of an existing, unlicensed residential structure. The expansion is not a Substantial Structural Alteration, so the Applicant is eligible for licensing, but will need a variance because the existing first floor residential use is within 100 feet of the project shoreline. A Variance Supplement is included with this Application. The*

*proposed expansion is more than 100 feet from the mean high water mark, so the expansion itself is not subject to FPA requirements, but because the expansion triggers a licensing requirement, the entire structure is subject to the Waterways Regulations.*

- (c) new or expanded buildings for nonwater-dependent use, and parking facilities at or above grade for any use, shall not be located within a water-dependent use zone; except as provided below, the width of said zone shall be determined as follows: 1. along portions of a project shoreline other than the edges of piers and wharves, the zone extends for the lesser of 100 feet or 25% of the weighted average distance from the present high water mark to the landward lot line of the property, but no less than 25 feet; and 2. along the ends of piers and wharves, the zone extends for the lesser of 100 feet or 25% of the distance from the edges in question to the base of the pier or wharf, but no less than 25 feet; and 3. along all sides of piers and wharves, the zone extends for the lesser of 50 feet or 15% of the distance from the edges in question to the edges immediately opposite, but no less than ten feet.

*The expansion is not located within the water dependent use zone. There are no parking facilities within the water dependent use zone.*

- (d) at least one square foot of the project site at ground level, exclusive of areas lying seaward of a project shoreline, shall be reserved as open space for every square foot of tideland area within the combined footprint of buildings containing nonwater-dependent use on the project site; in the event this requirement cannot be met by a project involving only the renovation or reuse of existing buildings, ground level open space shall be provided to the maximum reasonable extent; as provided in 310 CMR 9.34(2)(b)1.

*The Project provides more than 50% open space on the lot.*

- (e) new or expanded buildings for nonwater-dependent use shall not exceed 55 feet in height if located over the water or within 100 feet landward of the high water mark; at greater landward distances, the height of such buildings shall not exceed 55 feet plus ½ foot for every additional foot of separation from the high water mark; as provided in 310 CMR 9.34(2)(b)1.

*The height of the Project is under 55 feet.*

## 2. 310 CMR 9.52 Requirements – Utilization of Shoreline for Water Dependent Purposes

Non-water dependent projects that include a water dependent use zone must provide facilities to encourage activation of the waterfront. 310 CMR 9.52 provides:

- (1) In the event the project site includes a water-dependent use zone, the project shall include at least the following: (a) one or more facilities that generate water-dependent activity of a kind and to a degree that is appropriate for the project site, given the nature of the project, conditions of the water body on which it is located, and other relevant circumstances; in making this determination, the Department shall give particular consideration to: 1. facilities that promote active use of the project shoreline, such as boat landing docks and launching ramps, marinas, fishing piers, waterfront boardwalks and esplanades for public recreation, and water-based public facilities as listed in 310 CMR 9.53(2)(a); and 2. facilities for which a demonstrated

need exists in the harbor in question and for which other suitable locations are not reasonably available; and

(b) a pedestrian access network of a kind and to a degree that is appropriate for the project site and the facility(ies) provided in 310 CMR 9.52(1)(a); at a minimum, such network shall consist of:

1. walkways and related facilities along the entire length of the water-dependent use zone; wherever feasible, such walkways shall be adjacent to the project shoreline and, except as otherwise provided in a municipal harbor plan, shall be no less than ten feet in width; and
2. appropriate connecting walkways that allow pedestrians to approach the shoreline walkways from public ways or other public access facilities to which any tidelands on the project site are adjacent. Such pedestrian access network shall be available to the public for use in connection with fishing, fowling, navigation, and any other purposes consistent with the extent of public rights at the project site.

*The Project includes a five-foot wide pedestrian access path on the east side of the property from Easton Street to the existing bulkhead. There will be signage on Easton Street identifying this public access path. It is not feasible to have a walkway along the shorefront because this is a single family home, and such a walkway would create a safety and security hazard.*

**310 CMR 9.53: Activation of Commonwealth Tidelands for Public Use**

310 CMR 9.53 is not applicable. No part of the site is on Commonwealth Tidelands.