

Follow-up Thoughts from Nantucket BOS 12 April Meeting

- DEP cannot and will not issue a license until zoning approval has been achieved. Zoning is the first control mechanism. If a proposal does not meet the zoning standards then zoning is also the final controlling mechanism.
- Any development that occurs within Ch91 jurisdiction must comply with BOTH zoning and CH91.
- A state-approved harbor plan means that when DEP is reviewing a license application, it MUST abide by what the plan says. However, DEP's primary concerns are water-dependent use and public access on a site-by-site basis within their jurisdiction. It is far less focused on some of other issues that Nantucket faces at the moment, such as:
 - Monitoring water quality and identifying and resolving problems
 - Public education regarding water quality
 - Boat pollution abatement
 - Control of non-point source pollution
 - Natural resource protection
 - Commercial and recreational fishing (including shellfishing)
 - Harbor safety and navigation
 - Moorings
 - Acquisition of right of ways or public access sites
 - Tourism and recreation.

And in many cases these issues are not within DEP's jurisdiction.

- Before DEP makes a license decision there is a public comment period. As part of this, the local planning board may file a Section 18 recommendation. If their recommendation is that a license should not be issued, their argument must be based on some local regulations, standards or other official adopted policies. One option is to adopt a local zoning by-law that states that "the Planning Board shall participate as appropriate in the waterways regulation proceedings of the DEP" and that one of the standards that must be achieved is compliance with the LOCALLY APPROVED HARBOR PLAN. Dennis Ducsik (CZM) drafted a model zoning by-law for this purpose back in 1996.
- There are guidelines as to what a state-approved harbor plan must achieve. While it will contain issues and recommendations on many topics, DEP is really only looking to see that the Ch91 standards are met, particularly with regards to public access and water-dependent use. As these guidelines are designed to be applicable throughout Massachusetts, they may not necessarily reflect the real local issues. Nantucket is unique. And as such, a typical harbor plan may not be the best solution.
- Most municipalities seek state-approval because they wish to make "substitutions". This is where some of the DEP standards are relaxed in some areas and tightened in others. Frequently this is to achieve higher densities of

development in some areas. Once again Nantucket is unique in that the town would like to tighten public access and water-dependent standards throughout. In other words, the wish is for standards that surpass the Ch. 91 minimums.

- If Nantucket were to submit a harbor plan for approval that contained stricter standards than those in Ch. 91, it is extremely likely that approval would not be forthcoming until the town had adopted zoning that would achieve the same, higher standards.
- As stated above, DEP cannot issue a license until zoning approval has been given. Therefore, if a proposed project does not comply with the tighter zoning standards, it cannot get a Ch. 91 license. Once again, zoning is the control. Not Ch. 91.
- DEP would probably be extremely grateful if Nantucket adopted zoning that was more strict than Ch. 91 in terms of public access and water-dependent use. If that were the case, DEP staff could be sure that any proposal that had been granted zoning approval would be “better” than anything that Ch. 91 could insist on. This would simplify their job.
- DEP is understaffed and overworked. To this end, the staff have little interest in, or ability, to be the enforcement power. Our feeling is that they would far prefer that strict, well-enforced zoning achieve the same, or better results than a Ch. 91 review of an application would.
- DEP also has little interest in going against the feelings of a town. Even if a project cannot be stopped by zoning, DEP will look very hard at any proposal that the public is against. However, it can only look at the part of the project that lies BELOW the historic high water (i.e. in its jurisdiction). If anything in the proposal includes a non-water dependent use within jurisdiction, DEP can decide to not issue a license or can insist on a higher degree of public access, or some other form of mitigation.
- HOWEVER, if a project was acceptable under zoning and all the planned uses within Ch. 91 jurisdiction were water-dependent and the plan included sufficient public access then it would be difficult for DEP to refuse a license. Even when the proposed development goes against the wishes of the local people. As DEP can only look at what is planned within jurisdiction, if part of the project area is above the historic high water, a developer could simply place the non-water dependent uses out of jurisdiction. Within Ch91 jurisdiction, both zoning and Ch91 apply with equal strength. Outside jurisdiction, only zoning applies.
- With or without state approval, what is clear is that Nantucket MUST develop much tighter zoning along the waterfront that helps the town to achieve its future vision.
- While the issue of the Great Harbor Yacht Club is on everyone’s mind, it is important to remember that any type of harbor plan encompasses a great deal more than the development that might be proposed at specific locations. It is a way to capture what people hope will be the future of both harbors and outlines the most effective ways to make this a reality.

- As stated in the previous Board of Selectmen meeting on 12 April, 2006, there is no right or wrong decision on whether or not to go for a state-approved harbor plan. And the Urban Harbors Institute is happy to assist which ever way it goes. However, we agree with both Ms. Gibson and Mr. Fronzuto that the most effective and efficient way to go at this time is with a locally approved plan. Aiming for state-approval would require significant extra time and effort and would achieve little that could not be achieved through the development of effective new zoning. While the 1993 plan achieved a great deal, probably the most significant recommendation that was not implemented was the development of a harborfront overlay zone. Had this been completed and adopted, the current situation with Great Harbor Yacht Club may well have never occurred.