



# CONSERVATION COMMISSION

## PUBLIC MEETING

131 Pleasant Street  
Nantucket, Massachusetts 02554  
[www.nantucket-ma.gov](http://www.nantucket-ma.gov)

Thursday, February 24, 2022 – 5:00 p.m.

*This meeting was held via remote participation using ZOOM and YouTube.*

**Commissioners:** Ashley Erisman (Chair), Ian Golding (Vice Chair), David LaFleur, Seth Engelbourg, Maureen Phillips, Mark Beale, and Linda Williams

Called to order at 5:00 p.m. by Ms. Erisman

Staff in attendance: Jeff Carlson, Natural Resources Director; Lisa Graves, Administrative Specialist; Terry Norton, Town Minutes Taker

Attending Members: Erisman, Engelbourg, Phillips, Beale, Williams

Absent Members: Golding, LaFleur

Late Arrivals: Williams, 6:06 pm

Earlier Departure: None

\*Matter has not been heard

### **I. PUBLIC MEETING**

#### **A. Announcements**

#### **B. Public Comment**

**Carlson** – Lisa Graves is with us now; she should be included on any correspondence.

### **II. PUBLIC HEARING**

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

1. Lower Pocomo Nominee Trust – 88 Pocomo Road (15-42) SE48-3432 (**Cont. to 3/10/2022**)
2. Pocomo Point Realty Trust – 90 Pocomo Road (15-43) SE48-3438 (**Cont. to 3/10/2022**)
3. Town of Nantucket – Sesachacha Pond SE48-\_\_\_\_ (Fournier) (**Cont. to 3/10/2022**)
4. \*Linda Loring Nature Foundation – 90,110,124,130&136 Eel Point Road (39;32;33;38-2;33;18;4,3,6,&41) SE48-3500 (**Cont. to 3/10/2022**)
5. \*Island Orange Group – 129 Orange Street (55-147) SE48-3507

Sitting Erisman, Engelbourg, Phillips, Beale

Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.

Representative Mark Rits, Site Design Engineering  
Dan Mulloy, Site Design Engineering  
Dave Fredericks, Island Orange Group, LP

Public None

Discussion (5:03) **Rits** – The resource area is a wetland. This is for site improvements at Hatch’s Package Store to improve conditions and use – install pervious brick walkway from Orange Street, enclose and cover the pad for recyclable material, construct a covered loading dock perpendicular to the building within the 25’ buffer with runoff infiltration, and reconstruct and revegetate the south berm and extend along the western end. Feel these project components will provide a net benefit and allow continued use while being more environmentally friendly.

**Engelbourg** – It looks like the current grade of the driveway area is about 1’ above the wetland; asked how robust the berm would be. Also, regarding the enclosed concrete pad, he doesn’t feel that’s an applicable benefit to the resource area; there are other options.

**Rits** – The south berm would have a maximum elevation of 10’ with the wetland at 7’; along the west, the berm would be 1’ to 1.5’.

**Phillips** – Asked if the berm has been maintained in the past; it sounds like it was left to shift for itself.

**Rits** – The south berm has had some maintenance; it’s mostly dirt and a few weeds.

**Phillips** – The berm is important to the health of wetlands; asked if there’ a maintenance plan.

**Rits** – We’ll be happy to have a plan or ongoing maintenance condition for the berm along the parking area.

**Phillips** – She’s concerned about the defense that since there’ something in the 25’ buffer anything we do won’t make it worse. Asked if the concrete foundation needs to be retained; a pervious surface would be better.

**Rits** – We can discuss that and bring back an alternative flooring. Currently that is just a slab; when we roof it, the drainage will go into the infiltrator.

**Beale** – This is a difficult site but he’s struggling with seeing the net benefits.

**Rits** – Enclosing the pad keeps debris from blowing into the wetland. The main net benefit of the new loading dock will keep trucks, which access the loading dock, from knocking down the fence and intruding into the wetlands. Maintenance and planting of the berms will provide native vegetation where currently there is very little; the berms will minimize direct runoff. We’re trying to minimize the impact from grandfathered uses.

**Beale** – He doesn’t see how the 35’ loading dock will be a benefit.

**Rits** – Explained the current situation causing the trucks to back and turn into the loading area. With the proposed, they would back directly to the loading dock.

**Engelbourg** – He feels it’s important to flesh out the improvements over the existing conditions. Asked what the benefits are to the property owner or the wetland. He feels adding structures will negatively impact the wetlands. Asked if there is any ability within the Act or Bylaw that asks applicants to consider off-site mitigation.

**Erisman** – She had a similar thought. Asked what stake they have in the wetlands.

**Rits** – We control 99.98% of the used commercial property. We don’t have leeway to go into the wetlands.

**Fredericks** – The plan is for what is under our control. Thinks the wetlands are own by the Town and The Commons. We are trying to improve conditions over all our site with the best improvements we can come up with.

**Erisman** – She was surprised that dump trucks would maneuver around the loading dock to get to the dumpster; all of those should be farther from the wetland.

**Fredericks** – Once we get a sense of what we can do, we will come back to address those issues.

**Rits** – Asked for a 2-week continuance.

Staff recomm. Through the State Act, off-site mitigation has come up and Massachusetts Natural Heritage (MNH) does a lot of off-site mitigation. He’d have to ask the Finance Director about the process of using Town funds for off-site mitigation.

Motion Continued to March 10.

Roll-call Vote N/A

6. \*13 Commercial Street LLC – 13 Commercial Wharf (42.2.4-10) SE48-3501

Sitting Erisman, Engelbourg, Phillips, Beale,

Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.

Representative Paul Santos, Nantucket Surveyors

Public None

Discussion (5:35) **Santos** – This is a residentially zoned property adjacent to New Whale Street with Nantucket Harbor to the south. This is a single-family structure elevated on wood piers. The site abuts Nantucket Harbor and a coastal beach running under a portion of the structure. When this was approved in 2008, waivers were granted with a finding that raising the house was a net benefit. This is to raise the structure to be compliant with 2014 flood map. It’s within AE Velocity Zone 9. Also asking to construct an addition and relocate the driveway. Reviewed the approval with the Historic District Commission (HDC) resulting in a need for waivers to enclose the side entry and add access along the north side; the expansion is outside the 25’ buffer. Waiver is under no adverse impact.

**Beale** – Could raise the house and move it away from the harbor; that would be an obvious net improvement.

**Erisman** – She would have trouble approving the addition within the 50’ buffer.

**Engelbourg** – He agrees; applying the waiver under no adverse impact/no reasonable alternative is not warranted here. The proposal to raise the elevation is positive, and he has no issues with that. The addition would increase stormwater runoff.

**Phillips** – Agrees; she can’t see what the addition does for the resource areas we are protecting. Mr. Beale’s idea to move the house back is something she’d prefer to see. She doesn’t see granting the waiver.

**Santos** – Asked for a 2-weeks continuance.

Staff recomm. None

Motion Continued to March 10.

Roll-call Vote N/A

7. \*McCausland – 10 Smooth Hummocks Way (82-12) SE48-\_\_\_\_\_

Sitting Erisman, Engelbourg, Phillips, Beale

Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.

Representative Art Gasbarro, Nantucket Engineering & Survey

Public None

Discussion (5:49) **Gasbarro** – This for an as-built set of timber beach stairs; they were built to replace lost stairs. Changes were made in that they turn instead of going straight down.

**Erisman** – This would be a great location for aluminum stairs.

**Engelbourg** – He feels any projects that come in after the fact should have findings that it was built without the benefit of a permit. He has no issue with the stairs and would support a positive Order of Conditions.

**Gasbarro** – Asked for a 2-weeks continuance.

Staff recomm. Bibe

Motion Continued to March 10.

Roll-call Vote N/A

8. \*34 Easton Realty Trust – 34 Easton Street (42.1.4-18) SE48-\_\_\_\_\_
- Sitting Erisman, Engelbourg, Phillips, Beale  
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.  
 Representative Art Gasbarro, Nantucket Engineering & Survey  
 Public None  
 Discussion (5:53) **Gasbarro** – This is to remove the existing structure and build a structure compliant with flood-zone requirement. The new structure would be outside the 50’ buffer and meet building and flood codes. Asked for a 2-weeks continuance.  
 Staff recomm. None  
 Motion Continued to March 10.  
 Roll-call Vote N/A
9. \*Nantucket Islands Land Bank – 321 Polpis Road (25-8) SE48-\_\_\_\_\_
- Sitting Erisman, Engelbourg, Phillips, Beale  
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.  
 Representative Art Gasbarro, Nantucket Engineering & Survey  
 Public None  
 Discussion (5:55) **Gasbarro** – This is to clean up a property by removing structures and restore the area with as little disturbance as possible.  
**Erisman** – She’s glad this is going to the Land Bank and will get cleaned up.  
**Gasbarro** – Asked for a 2-weeks continuance.  
 Staff recomm. None  
 Motion Continued to March 10.  
 Roll-call Vote N/A
- 10.\*Hellzapoppin Trust – 25 Willard Street (29-33) SE48-3503
- Sitting Erisman, Engelbourg, Phillips, Beale  
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.  
 Representative David M. Haines, Haines Hydrogeologic Consulting  
 Public None  
 Discussion (5:57) **Haines** – This is to renovate a 1938 structure; site contains a bordering vegetated wetlands and land subject to coastal storm flowage; almost the entire site is within the 100’ buffer. Will enclose a porch and add a 2<sup>nd</sup> story; outside the 50’, we’re adding living space over an existing deck; the house will be raised to elevation 9 with a new foundation with flood vents. Asking for waivers for work within 25’ and 50’ and within 2’ of the water table for the foundation. Will allow the wetland that had been mowed to revegetate naturally. Waivers under no adverse impact/no reasonable alternative. No dewatering is planned; the helical piers will allow water to migrate. We are looking at moving the house away from the wetlands as much as possible. We are moving the existing garage.  
**Engelbourg** – Appreciates they are considering moving the house; that would be preferable.  
**Phillips** – She agrees.  
**Erisman** – We would love to see the proposal moving the house as far away as possible.  
**Haines** – Asked for a 2-weeks continuance.  
 Staff recomm. None  
 Motion Continued to March 10.  
 Roll-call Vote N/A
- 11.\*Nantucket Longevity Trust – 52 Monomoy Road (43-53) SE48-3504
- Sitting Erisman, Engelbourg, Phillips, Beale, Williams  
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.  
 Representative Jennifer Karberg, for Nantucket Longevity Trust  
 Steven Leinbach, co-owner  
 Public None  
 Discussion (6:05) **Karberg** – The salt marsh has been opened allowing high-tide through to erode the beach. This is a pilot project to improve the resiliency of the beach by getting the salt marsh to revegetate itself. We will use minimal sand fencing to capture sand and keep pedestrians out of the area and plant out the marsh with native salt marsh plants. We will track the plants: how many went in and how many survived. The Department of Marine Fisheries suggested monitoring plants after an entire winter. This abuts land containing shellfish and eel grass beds. We will plant at low tide so receding water doesn’t pull out the plants. Request a waiver for work within the buffer under no adverse impact and long-term net benefit.  
**Williams** – Asked how they will stop people coming across the salt marsh.  
**Leinbach** – The intention is to close that up and not allow boat launching.  
**Erisman** – She was pleased to read this proposal. The paved driveway leads to the open spot with a shed; she asked if the runoff will be mitigated.  
**Leinbach** – The shed is on sono-tube pilings; the driveway has been there since 1961. He’d be interested in looking at dealing with driveway runoff.  
**Karberg** – If we can stop the high tide from washing in, we can see if there are issues with run off.

- Turcotte** – This is a great project, and he hopes more property owners with fringing salt marshes will follow suit.
- Staff recomm. Have everything needed to close.
- Motion **Motion to Close.** (made by: Beale) (seconded)
- Roll-call Vote Carried 5-0//Beale, Engelbourg, Erisman, Phillips, and Williams-aye
- 12.\*Nantucket Yacht Club, Inc. – 1 South Beach Street (42.4.2-8,10,11&12) SE48-3502
- Sitting Erisman, Engelbourg, Phillips, Beale, Williams
- Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
- Representative Leo Asadoorian, Blackwell & Associates  
Richard Fitzgerald, AGM Marine Contractors, Inc.
- Public None
- Discussion (6:18) **Asadoorian** – This is to replace pilings.  
**Fitzgerald** – The pier is supported by timber piles and a wave fence. Damage consisted of marine bore activity. The pilings will be repaired and replaced in kind; explained the repair/replacement work.
- Staff recomm. Have everything needed to close.
- Motion **Motion to Close.** (made by: Williams) (seconded)
- Roll-call Vote Carried 4-0//Engelbourg, Erisman, Phillips, and Williams-aye; Beale abstain
- 13.\*88 Pocomo, LLC – 88 Pocomo Road (15-33&42) SE48-3506
- Sitting Erisman, Engelbourg, Phillips, Beale, Williams
- Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
- Representative Mark Rits, Site Design Engineering
- Public J. Graham Goldsmith, 86 Pocomo Road
- Discussion (6:23) **Rits** – This is for construction of a single-family house and other residential construction. Within jurisdiction is porches and decks outside the 50’ buffer. The septic and driveway are outside the 100’ buffer. The erosion rate is under 1’ a year, well below the regulated threshold.  
**Williams** – Asked why they can’t site it father back and thus outside ConCom jurisdiction.  
**Rits** – The regulations as written allow structures outside the 50’ buffer.  
**Engelbourg** – Asked if the grading detail is across the entire site.  
**Rits** – That’s centered on the proposed dwelling across its area.  
**Goldsmith** – No one talked to him advance, and he’s concerned the some of the grade changes require retainage 10’ to 12’ high. One retaining wall will drop water onto his site. This is a very fragile area of the bank. It would be more stable to tuck the house into the hill. There ought to be a cross section through the whole slope.  
**Erisman** – Asked if they looked into putting the house into the hill.  
**Rits** – Most of the retaining walls are landward of the bank. Typically loads are calculated at a 45-degree angle from the footings; the load of the 32’ height will never interface with the top of the bank, which is over 70’ away. They are planning to install appropriate drainage outside jurisdiction and have the wall properly stepped and drained.  
**Erisman** – A lot of the house is out of the 50’ and a lot of structures outside our 100’ jurisdiction.
- Staff recomm. The CZM erosion is 66/100<sup>th</sup> of a foot per year. This new structure will require inclusion of a prohibition against any coastal erosion structure to protect the structure.  
Have everything needed to close.
- Motion **Motion to Close.** (made by: Williams) (not seconded)
- Roll-call Vote Carried 5-0//Beale, Engelbourg, Erisman, Phillips, and Williams-aye
- 14.\*Nantucket Land Council – Nantucket Harbor SE48-3507
- Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams
- Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
- Representative R.J. Turcotte, Nantucket Land Council  
Allysa Novak, PHD Boston University
- Public None
- Discussion (6:39) **Turcotte** – This is the second restoration site and will be another pilot area for the eel grass seeding process. The site was picked in conjunction with Natural Resources. At mean high water it’s about 150’ from shore at a depth of -3’ to -8’. Work takes place in land under the ocean and shellfish habitat and rare/endangered species habitat.  
**Erisman** – She’s glad to see more of these.  
**Turcotte** – Any volunteers will be welcomed. Asked for a 2-week continuance.
- Staff recomm. We’re waiting for MNH.
- Motion Continued to March 10.
- Roll-call Vote N/A

**C. Amended Order of Conditions**

1. Philips, Trustee – 19 East Tristram Avenue (31-4.1) SE48-3304 (Cont. to 3/10/2022)
  2. 28 EPR Trust – 28 Eel Point Road (40-44) SE48-3174
- Sitting Erisman, Engelbourg, Phillips, Beale, Williams
- Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
- Representative Mark Rits, Site Design Engineering

Public None  
 Discussion (6:45) **Rits** – This is for site modifications: addition of sports court on western side outside the 50’ buffer to an isolated vegetated wetlands, addition of grass and stepping-stone walking path outside the 25’ buffer, and a firepit moved to the patio.  
 Staff recomm. Recommend issue.  
 Motion **Motion to Issue.** (made by: Williams) (seconded)  
 Roll-call Vote Carried 5-0//Beale, Engelbourg, Erisman, Phillips, and Williams-aye

**III. PUBLIC MEETING**

**C. Minor Modifications**

1. Ang – 11 Jonathan Way (75-42) SE48-3217

Sitting Erisman, Engelbourg, Phillips, Beale, Williams  
 Representative Jeff Blackwell, Blackwell & Associates  
 Staff recomm. Recommend issue the Minor Modification.  
 Discussion (6:47) **Blackwell** – A composting toilet engineer was hired; the recommendation was for a central mechanical room with a vacuum system to bring in the black-water waste. It’s proposed location is 77’ from the wetland.  
**Erisman** – This has come a long way.  
 Motion **Motion to Issue the Minor Modification.** (made by: Williams) (seconded)  
 Roll-call Vote Carried 5-0//Beale, Engelbourg, Erisman, Phillips, and Williams-aye

2. Killian – 10 Mayhew Lane (41-443) SE48-3356

Sitting Erisman, Engelbourg, Phillips, Beale, Williams  
 Representative Brian Madden, LEC Environmental  
 Staff recomm. Recommend issue the Minor Modification.  
 Discussion (6:51) **Madden** – This is to update the configuration of the pool; pool equipment has been relocated outside the 50’ buffer; the patio around the pool has been raised to increase separation from ground water. The buffer was expanded to the west to remove invasives and revegetate.  
 Motion **Motion to Issue the Minor Modification.** (made by: Williams) (seconded)  
 Roll-call Vote Carried 5-0//Beale, Engelbourg, Erisman, Phillips, and Williams-aye

**D. Requests for Determination of Applicability**

1. None

**E. Certificates of Compliance**

1. None

**F. Orders of Condition**

1. Nantucket Longevity Trust – 52 Monomoy Road (43-53) SE48-3504 (Karberg)

Sitting Erisman, Engelbourg, Phillips, Beale, Williams  
 Documentation Draft Order of Conditions  
 Staff Included Finding 3 that the wavier isn’t applicable; this is clearly a water-dependent project.  
 Finding 4 would state that existing vegetation isn’t being altered so no waiver required; can change to state composition is not changing.  
 He’ll amend Condition 19 requesting an annual survivability report.  
 Discussion (6:54) **Engelbourg** – He agrees that this is water dependent.  
**Phillips** – Agrees this is water dependent. Her concern is the use of the word “alter”, which means change. They are changing what’s there.  
**Engelbourg** – Asked about the possibility of adding a survivability condition. If the plants fall below a certain level, they should make a report to the commission.  
**Erisman** – That would be good for reporting.  
**Beale** – He doesn’t want to make it onerous.  
 Motion **Motion to Approve as amended.** (made by: Beale) (seconded)  
 Roll-call Vote Carried 5-0//Beale, Engelbourg, Erisman, Phillips, and Williams-aye

2. Nantucket Yacht Club, Inc. – 1 South Beach Street (42.4.2-8,10,11&12) SE48-3502

Sitting Erisman, Engelbourg, Phillips, Beale, Williams  
 Documentation Draft Order of Conditions  
 Staff Added Condition 19 about minimizing turbidity.  
 Discussion (7:04) **Engelbourg** – We need conditions about siltation booms to keep material from getting into the harbor.  
 Motion **Motion to Approve as amended.** (made by: Engelbourg) (seconded)  
 Roll-call Vote Carried 4-0// Engelbourg, Erisman, Phillips, and Williams-aye; Beale abstain

3. 88 Pocomo, LLC – 88 Pocomo Road (15-33&42) SE48-3506

Sitting Erisman, Engelbourg, Phillips, Beale, Williams  
 Documentation Draft Order of Conditions  
 Staff Finding documents structures outside jurisdiction.  
 Included normal fill conditions and the condition calling out no coastal erosion structure will be approved.  
 Condition 21 will address any part of the structures moving into jurisdiction.  
 Discussion (7:06) **Erisman** – On some we had request that if the structure moves into the 50’ buffer they will come before us.  
**Engelbourg** – Noted a typographical error on Condition 2.

Motion **Motion to Approve as amended.** (made by: Beale) (seconded)  
 Roll-call Vote Carried 5-0//Beale, Engelbourg, Erisman, Phillips, and Williams-aye

**G. EXTENSION REQUEST**

1. Rabil – 141 Cliff Road (30-1,2,3,4,5,6&7) SE48-3026

Sitting Erisman, Engelbourg, Phillips, Beale, Williams  
 Documentation SE48-3026  
 Representative Paul Santos, Nantucket Surveyors  
 Staff No comments

Discussion (7:09) **Santos** – This is to keep the order extended so we can do maintenance on the existing array. Asking for 3 1-year extensions.

Motion **Motion to Approve 3 1-year extensions.** (made by: Williams) (seconded)

Roll-call Vote Carried 5-0//Beale, Engelbourg, Erisman, Phillips, and Williams-aye

2. 36 Lily Street, LLC – 36 Lily Street (42.4.3-94) SE48-3005

Sitting Erisman, Engelbourg, Phillips, Beale  
 Documentation SE48-3005  
 Representative Brian Madden, LEC Environmental

Public Sarah Alger, Sarah F. Alger P.C  
 Mark Forsythe, 8 Gull Island Lane  
 Sarah McLane, 6 Gull Island Lane  
 Abigail Camp, 27 Lily Street  
 R.J. Turcotte, Nantucket Land Council

Discussion (7:16) **Madden** – Asking for 3 1-year extensions; work began in 2019 and paused due to COVID. The applicant has had trouble getting onto Toscana’s schedule; work is to commence next week.

**Engelbourg** – When we last heard this, there were issues with the site. Asked if those have been ameliorated.

**Madden** – The foundation was filled in. Also met with the Land Bank and Public Works to discuss drainage.

**Erisman** – We had a letter about re-delineating the wetlands; asked if they would consider that, given the hydrology.

**Madden** – He hasn’t seen any changes to the wetland boundaries. The site is separated from the wetland by a road.

**Forsythe** – This development will impact a large number of resources within the area. This is a dynamic resource area. There’s been groundwater sitting on the surface all winter. The studio is within 50’ of the wetland. Asked the Commission to deny the extension or reassess the wetlands

**McLane** – Looking at the original NOI, asked if the on-going conditions were met such as providing photos. Asked the commission look at the conditions now.

**Erisman** – Some monitoring components don’t trigger until the project is underway.

**Carlson** – He’ll try to pull that together.

**Madden** – A lot of the original conditions were based around the renovation work. He’ll provide photos moving forward.

**Camp** – This site is pretty wet every day. She’s concerned further development will disperse water elsewhere and pollute Lily Pond even more; it’s already murky. Urged taking a second look at the site.

**Turcotte** – The commission is well within its right to request an updated plan to ensure nothing has changed.

**Engelbourg** – Under the Nantucket regulations, there are specific requirements about when we can/cannot deny an extension request; read the requirements. We received a letter from LEC on 2/18 indicating this Order of Conditions is valid until March 6<sup>th</sup> under the COVID extensions. He feels Reason “E” was definitely not fulfilled.

**Erisman** – She questions Reasons “B” and “C”.

**Madden** – We were in touch with Natural Resources staff 30 days in advance of the expiration date and provided a letter on what has and has not transpired.

**Alger** – The applicant has been working in good faith with the Land Bank over the last year; after the Land Bank closed on the other lot, they entered into negotiations to purchase the remaining property. When that fell through, the applicant had to go back to Toscana to get things up and running. Thinks a denial would be unusual considering events and the applicant should be given the opportunity to complete the work.

**Engelbourg** – He understands the extenuating circumstances. It’s important to ensure we’re on the regulations. He’d be interested in other thoughts. Reread the reasons for denial.

**Phillips** – Given the information we know now, she believes Reason “B” applies and would rely on that. Thinks Reason “C” is questionable. If we refuse to issue the extension, asked if they have to come back with a new NOI.

**Madden** – Reason “B” is specific to new information and indicates the permit is no longer adequate. Beyond hearsay, there is no new information submitted that would run afoul of the conditions. He hasn’t seen any significant adverse flooding.

**Erisman** – The comments about excess water on the site is concerning.

**Alger** – Reminded the commission that the applicant was asked by the Town to survey and redesign the storm drain system. That new design wasn’t approved until August 2021. Those drains are now in and work can start. The applicant has attempted to work cooperatively with the Town and the Land Bank.

**Forsythe** – The first reason is applicable because there has been no work; he’s hearing a lot of excuses. The last extension was approved because of COVID.

**McLane** – We have provided extensive documentation and pictures of standing water and dead animals. She replaced the pipe that ran under Gull Island and she was required by Public Works to increase the pipe size. She argues that new pipe has not changed the standing water issue.

**Engelbourg** – This commission never issued an extension of this permit; that was withdrawn because it was automatically extended under State law due to COVID.

**Beale** – Asked for clarification on the 30-day notification.

**Carlson** – Explained the process he and the applicant went through leading up to the formal extension request. We’ve had similar situations before; if the filing of the application predates the expiration, the Department of Environmental Protection (DEP) encourages that we grant the extension.

**Engelbourg** – The regulations require all requests be in writing 30 days in advance; if we aren’t doing that, we need to clean that up, so actions are in accordance with the regulations.

**Turcotte** – This is clearly a controversial and dynamic resource area; the commission should require a new delineation.

**Erisman** – She thinks we should have a site visit. It would be wise to think about a new delineation and get some of these resource-area questions answered.

**Beale** – Asked if we could do less than 1 year. Also asked what happens if we don’t act.

**Carlson** – The minimum is 1 year; the permit expires the first week of this March. Given DEP guidance, it was filed correctly. He’d have to look into what happens if ConCom doesn’t act.

**Phillips** – She’s not sure if the new pipe is sufficient new information, which might indicate the current permit is inadequate. She thinks we have sufficient information to support not extending the permit. Asked if there is a way to get a new delineation and get any other information that would be useful in making a decision.

**Erisman** – Thinks we could continue this.

**Carlson** – The permit is still valid. We are dealing with 2 resource areas, the bordering vegetated wetlands and isolated land subject of flooding. That’s an exercise in topography. Original structures are still there with some new structures. We’d have to document a significant change in hydric soils on the site; that’s difficult because it takes time for them to stabilize. Work has been done on the site. He’s not sure it’s in the Commission’s best interest to go down a path where no enforcement action has been issued; the commission should work with the applicant to find a resolution without being punitive. He’s willing to go look at the delineations, but he doesn’t expect the end result to be extensively different.

**Beale** – In his opinion, if they couldn’t get the job done in 5 years, they should kill the project. He can’t find a preponderance of evidence anywhere to support a denial.

**Engelbourg** – It could be arbitrary to not provide the same extension to this as we did to a project with the same dates. Going forward, all project extensions should be submitted in writing 30 days in advance of expiration.

**Madden** – Suggested 2 years or 1 year and meet with the Commission about additional information to work things out.

Motion **Motion to Approve the one 1-year extension.** (made by: Beale) (seconded)

Roll-call Vote Carried 2-0//Beale and Erisman-aye; Williams recused; Engelbourg and Phillips abstain

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

Sitting Erisman, Engelbourg, Phillips, Beale, Williams

Documentation SE48-3194

Representative Kevin Dale, Vaughan, Dale, Hunter & Beaudette, P.C.

Staff We looked into that with DEP and found out that the permit is still valid unless the resource area itself changes.

It’s in compliance because the bulk work hasn’t started; all they’ve done is clean up.

Discussion (7:11) **Dale** – Asking for 3 1-year extensions for the erosion control project at the beach club; they’re trying to determine the future of the beach club, keep where it is or move.

**Erisman** – Because conditions changed so much, asked if anything else is required given the erosion.

**Engelbourg** – Asked if this project, as it stands, is in compliance.

Motion **Motion to Approve the 3 1-year extensions.** (made by: Engelbourg) (seconded)

Roll-call Vote Carried 4-0//Engelbourg, Erisman, Phillips, and Williams-aye; Beale abstain

**H. Other Business**

1. Approval of Minutes 2/10/2022:

Motion **Motion to Approve.** (made by: Williams) (seconded)

Roll-call Vote Carried 5-0//Beale, Engelbourg, Erisman, Phillips, and Williams-aye

2. Monitoring Reports: None

3. Enforcement updates:

a. 21 Meader Street

Sitting Erisman, Engelbourg, Phillips, Beale, Williams

Discussion (8:16) **Carlson** – Talked with consultants about the possibility of a wetland on the site. He feels he’s seen some hydric soils. It’s also within land subject to coastal storm flowage so would require a permit for any work. The lot has been stripped of vegetation and an area excavated; landscape timbers have been installed around the lot. He reached out to the agent of the LLC to stop work. Looking to issue an enforcement order with a cease and desist.

Motion **Motion to Authorize issuance of an enforcement order.** (made by: Engelbourg) (seconded)

Roll-call Vote Carried 5-0//Beale, Engelbourg, Erisman, Phillips, and Williams-aye

4. Reports:

a. None

5. Commissioners Comment:

a. Erisman – Scott Leonard contacted her about seal pups getting harassed when sand is being delivered to coastal projects.

Carlson – He’ll reach out to State agencies that work with sea mammals.

Engelbourg – If anyone sees intentional disruption of protected marine species, they should call the Environmental Police.

6. Administrator/Staff Reports:

a. Our special counsel Ben Tymann has requested an executive session to go over strategy and follow up on how the compliance workshop will impact the on-going case. He had asked that it be in conjunction with the next meeting. The Administrative Record is due on March 15.

b. He will be away next week.

**I. Adjournment**

Motion **Motion to Adjourn at 8:26 p.m.** (made by: Phillips) (seconded)

Roll-call Vote Carried 5-0//Beale, Engelbourg, Erisman, Phillips, and Williams-aye

Submitted by:

Terry L. Norton

PROPOSED