



CONSERVATION COMMISSION PUBLIC MEETING

2 Bathing Beach Road
Nantucket, Massachusetts 02554
www.nantucket-ma.gov
Thursday, April 22, 2021 – 5:00 p.m.

*This meeting was held via remote participation using ZOOM and YouTube,
Pursuant to Governor Baker’s March 12, 2020 Order Regarding Open Meeting Law*

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

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

Staff in attendance: Jeff Carlson, Natural Resources Director; Joanne Dodd, Natural Resources Coordinator

Attending Members: Erisman, Golding, LaFleur, Topham, Engelbourg, Beale

Absent Members: Phillips

*Matter has not been heard

I. PUBLIC MEETING

A. Announcements

B. Public Comment – None

II. PUBLIC HEARING

A. Notice of Intent

1. Nantucket Conservation Foundation – Capaum Pond (31-12) SE48-3400

Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Beale

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

Representative Naomi Valentine, SWCA Environmental Consultant
Jenn Karberg, Nantucket Conservation Foundation (NCF)

Public None

Discussion (5:05) **Valentine** – This is for removal of toxin-forming algae in Capaum Pond. Received Massachusetts Natural Heritage (MNH) notification of no take. The pond’s current state is very poor quality with elevated Ph and low oxygen. Applications of algaecides will only be when algae are present. Reviewed supplemental information regarding application of algaecides.

Beale – Asked the seasonality of the alum and chemical treatments.

Valentine – We hope to apply the alum as soon as the permit allows, and in the Summer, as needed.

Golding – Regarding sediment sampling, it mentioned 2 causes for high phosphorous: development and geological. Asked her to expand on the geological and about the impact of developments.

Valentine – There are active conversations with landowners around the pond about their landscape maintenance. The report doesn’t insinuate human presence isn’t a contributor; over-ground flow of water meets a significant buffer around the pond.

Karberg – We weren’t discounting development as a source. We haven’t done a watershed analysis for the source; we are looking at what we can do to treat algae blooms now.

Golding – Asked why the pond can’t be opened to flush it out.

Valentine – There’s a significant amount of dangerous biomass; she wouldn’t recommend it.

Engelbourg – It’s not up to the applicant to open the pond to the ocean; that requires coordination with the Town.

Carlson – R.J. Turcott, Nantucket Land Council (NLC), Inc., NLC is working activity with the abutters of Capaum Pond regarding best practices, so we can address long-term water-quality improvement on the pond.

Staff Have everything needed to close.

Motion **Motion to Close.** (made by: Topham) (seconded)

Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, and Topham-aye

2. Town of Nantucket (DPW) – Town Wide (Various) SE48-3366 (**Cont. 05/06/21**)

3. *Town of Nantucket – Cow Pond Lane (55-Variou) SE48-3419
- Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Beale
- Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
- Representative Steven Reichert, Fuss & O’Neil
Robert McNeil, Director Department of Public Works (DPW)
- Public None
- Discussion (5:18) **McNeil** – This was held for a Department for Environmental Protection (DEP) file number, which we now have. Based upon the last meeting, we had our consultant put together a defined planting plan to include hearty density planting recommended from Massachusetts DEP and NLC.
Reichert – There was a comment for raingarden planting.
Engelbourg – Asked if the raingarden plan came into the office.
Reichert – Received it yesterday and forwarded it to the office this morning.
Erisman – Appreciates adding the raingarden.
- Staff We received it and plants look good.
Have everything needed to close.
- Motion **Motion to Close.** (made by: Beale) (seconded)
- Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, and Topham-aye
4. *Town of Nantucket DPW – Surfside Beach (87-60 & 131) SE48-3420
- Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Beale
- Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
- Representative Steven Reichert, Fuss & O’Neil
Robert McNeil, Director Department of Public Works (DPW)
- Public None
- Discussion (5:22) **McNeil** – This is for improvements in the concession area: extend the wrap-around deck and extend infiltration catch basin. Also hoping the deck will help cut off any access from the beach through the dunes.
Reichert – The parking lot currently floods resulting in standing water for up to 72 hours. Explained how the catch basin will be improved to prevent the ponding. All improvements are within the 100-foot buffer with some within the 50-foot buffer to the coastal dunes.
Engelbourg – He supports the idea of improving drainage; however, regarding adding additional structure within the 50-foot buffer, he doesn’t see a waiver request. He doesn’t see the benefit of increasing the deck behind the structure; it will be detrimental to the resource area.
Topham – The south-side deck is a little too big; could see enough for a wheelchair to turn around; suggested it be only a walkway.
Erisman – Agrees with Mr. Engelbourg and Mr. Topham. Thinks they should provide ropes along the walkway to the beach to keep people out of the dune. About stormwater management, asked if they looked at compensatory water storage under the parking lot.
McNeil – Currently the parking lot has the septic system and the public well, so the idea is to push the water away; there is a disturbed area along the dune that was cited as the location for catch basin. Over by the food truck is a grass seating area; that has encouraged people to go around the building to use the picnic tables. The width of the deck includes space for existing showers and wheelchair traffic and sitting benches for those who can’t make it to the beach.
Erisman – People need better “training” on that site; thinks they need a better plan for beach access. The disturbed area being discussed resulted from pedestrian traffic.
McNeil – We have an annual beach management meeting to discuss beach access with the Harbormaster; we’ll have that conversation with them.
Engelbourg – The access behind the building should be dealt with using fencing and signage rather than the deck. All the deck work could be handled on the parking-lot side keeping the structure out of the 50-foot buffer.
Topham – Asked where the well is located and a photo where the showers are located.
Beale – Asked if we should pursue the issue that there is no waiver request.
Erisman – Agrees; would also like to see the location of the well and other justification why the infiltration can’t be under the parking lot.
Golding – Asked if they could rotate the building to move the deck out of the 50-foot buffer.
McNeil – The building is part of a Town facilities study; the deck is considered a short-term solution as we look to reconfigure all the concession sites. About 5 years down the road, we’ll have a more meaningful look at the future of Surfside. We were unaware of the waiver requirement; we’ll work with Mr. Carlson on that. Asked for a 2-week continuance.
- Staff None
- Motion Continued to May 6.
- Roll-call Vote N/A

5. * Stillwater’s Nominee Trust – 7 Wamasquid Place (56-113.5) SE48-3422
 Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Beale
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative David M. Haines, Haines Hydrogeologic Consulting
 Public None
 Discussion (5:45) **Haines** – Reviewed the request. Asking for a waiver and temporary dewatering. There will be silt fencing.
 Staff Have everything needed to close.
 Motion **Motion to Close.** (made by: Golding) (seconded)
 Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, and Topham-aye
6. * Nantucket Islands Land Bank – All Land Bank Properties (Various) SE48-3337 **(Cont. 05/06/21)**
7. Nantucket Islands Land Bank – Clifford Street/Southern End of Lovers Lane (88-48) SE48-3417
 Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Beale
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Art Gasbarro, Nantucket Engineering & Survey
 Public None
 Discussion (5:50) **Gasbarro** – This is to replace stairs east of Fisherman’s beach; outside the resource area. We’re waiting for the DEP file number, which we have.
 Staff Have everything needed to close.
 Motion **Motion to Close.** (made by: LaFleur) (seconded)
 Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, and Topham-aye
8. *Nantucket Islands Land Bank – Madequecham Valley Road (89-3.5) SE48-3413
 Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Beale
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Art Gasbarro, Nantucket Engineering & Survey
 Public None
 Discussion (5:52) **Gasbarro** – This is another set of beach stairs for public use within a coastal bank; the aluminum stairs will be seasonal. Also proposing an aluminum platform; all of it can be removed at the end of the season.
Erisman – The footpath to the west; noted people aren’t using them.
Gasbarro – That footpath is at a higher elevation and would require longer stairs. We require a continuance for response from MNH. Asked for a 2-week continuance.
 Staff None
 Motion Continued to May 6.
 Roll-call Vote N/A
9. *Sweet Meadow Sylvia Lane, LLC – 74 West Chester Street (41-478) SE48-3379 **(Cont. 05/06/21)**
10. *Jill Dean Sheppard – 12 & 14 Midland Avenue (59.3-105 & 171) SE48-3421
 Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Beale
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Paul Santos, Nantucket Surveyors
 Public None
 Discussion (5:55) **Santos** – This is to lay a water-line connection to a watermain within land subject to coastal storm flowage; both properties are accessed through a private easement and driveway. The watermain location is west of the two properties within Columbus Avenue. The Flannerys are granting an easement for the Sheppards that is outside the 25-foot buffer. Silt fencing will be in place during the trenching and laying of the waterline. This is outside Natural Heritage and Endangered Species Program jurisdiction (NHESP).
 Staff Have everything needed to close.
 Motion **Motion to Close.** (made by: Topham) (seconded)
 Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, and Topham-aye
11. *EPWL Poles, LLC – 44, 46, 48, & 55 Warren’s Landing (38-23,46,47&30) SE48-3418
 Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Beale
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Paul Santos, Nantucket Surveyors
 Public None
 Discussion (6:00) **Santos** – This starts at Blue Heron Way and extends to 200 Eel Point Road and is to replace overhead service lines with buried lines. This will enhance the wetland scenic views. There is a portion of the project within the buffer to a saltmarsh south of Eel Point Road. Explained how work will proceed; trenching will be within the road or on the shoulder. Requested a waiver for work within the 25- & 50-foot buffers. It does require review by NHESP; expect to have their review in time for the next meeting.
Topham – One of the areas that has problems with downed power lines is this area.
Santos – Asked for a 2-week continuance.
 Staff None
 Motion Continued to May 6.
 Roll-call Vote N/A

12. Trojah Nominee Trust – 26 Easy Street (13-22) SE48-3369

Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Beale
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Art Gasbarro, Nantucket Engineering & Survey
 Arthur Reade, Reade, Gullicksen, Hanley, & Gifford LLP
 Public None
 Discussion (6:10) **Gasbarro** – This is for redevelopment of the property; Provided supplemental information. Reviewed construction to allow flood waters to go under the building and to infiltrate.
Topham – That solution is what he was hoping for.
Erisman – Also appreciates the solution.
 Staff Have everything needed to close.
 Motion **Motion to Close.** (made by: Beale) (seconded)
 Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, and Topham-aye

13. *MLR3, LLC – 45 Shawkemo Road right of way (27-18) SE48-3411

Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Beale
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Brian Madden, LEC Environmental
 Ryan Maxwell, Bracken Engineering
 Public None
 Discussion (6:14) **Madden** – This is for a proposed 10' wide driveway. Reviewed information they had collected per requests at the prior hearing: emergency access requirements and potential development footprint. No existing plantings will be disturbed. Potential development has been approved by MNH.
Engelbourg – Asked if there is the statutory requirement for emergency personnel is sufficient to overcome our performance standards.
Golding – Asked what the legal framework is to develop an area and if developers have the right to overturn our regulations.
Engelbourg – We don't typically issue a waiver under Provision B. Doesn't feel the burden of proof for Provision A has been met. He feels there will definitely be an adverse impact.
Beale – Asked what statutory requirement NFD is referring to regarding the minimum width.
Madden – Chief Murphy referenced Massachusetts Fire Code 527 CMR 18 and Town Code 139. §20.1(b)(2)(f). Work within the 25-foot buffer is separated from the resource area by a travelled way. We aren't proposing revegetation.
Erisman – In this situation on Nantucket, we need be look at actually moving roads, especially when developing new properties.
Beale – Asked if there is anything limiting building a single-family dwelling on this property; this is for a secondary dwelling.
Madden – If we build a single-family dwelling now, we would be in violation of State and Town fire codes. This is not a cut through; there is no potential for future access off this road.
Golding – This is a classic example of shoe-horning a building into a lot. If we deny this, the applicant can take it to court to decide if it is a reasonable taking.
Engelbourg – It's his understanding this access is a private road. Looking at an aerial view, asked if the footprint of the travelled way could be relocated more to the south. He's looking for creative ways to get the required width outside the 25-foot buffer.
Madden – Could ask the property owner if the easement could be modified, but where it intrudes on the 25' buffer, the grade rises and could cause greater disturbance due to the need to regrade.
Topham – It's not shown on the plan, you can see 2 structures closest to Shawkemo Road. He doesn't know which would be the least disruptive; a berm along the drive as proposed could protect the buffer.
Engelbourg – There is a significant constraint due to the proximity of the easterly abutter. Wants the applicant to take another look at alternative options.
Beale – With all due respect, we need a second opinion on whether it is a legal lot or not; the Select Board doesn't grant developments without sufficient access. This is a legal lot for one house.
Carlson – He already responded to some questions from Mr. Turcott. He forwarded the Fire Chief's letter to commissioners.
Topham – He'd like to see the Planning Board approved site plan for this subdivision.
Madden – Asked for a 2-week continuance.
 Staff A waiver request was provided under Provision A, no-adverse-impact/no-reasonable-alternative, and Provision B, separated from resource are out of their control. The question came up justifying the necessity for the 10' width; that is the public safety information they provided.
 Motion Continued to May 6.
 Roll-call Vote N/A

14. *04TST36WASINGPOND, LLC – 36 Washing Pond Road (31-13.2) SE48-_____

Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Beale
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Art Gasbarro, Nantucket Engineering & Survey
 Public None
 Discussion (6:42) **Gasbarro** – Presented the project; work within jurisdiction is grading, landscaping, and hardscaping. Also proposed is an elevated boardwalk to access the beach. Requested a waiver based upon long-term net benefit for the raised boardwalk, which allows plants to grow underneath and contains foot traffic. The regulations require that walkways through resource areas be elevated.
Engelbourg – Asked if the boardwalk is considered water dependent and if there is a travelled path already on the property. For any impacted and disturbed area, asked if there is a restoration plan.
Gasbarro – His understanding regarding water-dependent use is that the ConCom doesn't extend that beyond piers and decks. The house removed off the lot was located closer to the bank, so the original path no longer exists; there is an Order of Conditions for the restoration of that area.
Engelbourg – Asked if they've considered the possibility of a path going up into the buffer zone then connecting to a staircase. There are other ways to contain traffic. We're talking about a major change in how the project impacts the buffer.
Gasbarro – Vegetation wouldn't be able to grow on a footpath; he thinks the raised boardwalk allowing vegetation is better.
Erisman – Agrees with the idea of markers with ropes to contain traffic; this is a structure within the 50-foot buffer and sets a precedent. If it's for the homeowner's use, they can stay within the path; rentals would have more difficulty. There are some jogs in the boardwalk that add extra structure; feels it should be straight.
Topham – 141 Cliff Road had a grass path, and everyone knew where to go to reach the stairway.
Golding – His preference is a grass path as well. Urges them to reconsider the boardwalk.
Gasbarro – We are waiting for MNH response. Requested 2-week continuance.
Carlson – Mr. Turcott comments: NLC has serious concerns about the implications of approving this; they did not meet the burden off proof; don't feel the foot traffic would do more harm than a boardwalk.

Staff None
 Motion Continued to May 6.
 Roll-call Vote N/A

15. *Carver, Jr. & Delaney – 4 Old Quidnet Milk Route (20-53) SE48-3423

16. *4 Ahab Road, LLC – 41 Wauwinet Road (20-7) SE48-3424

Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Beale
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Mark Rits, Site Design Engineering
 Public None
 Discussion (6:56) **Rits** – These 2 lots are under single ownership and work spans both lots. Proposing a redevelopment of an existing developed property. Portions of the main house are within the 100-foot buffer along with the cabana and pool deck and landscaping. Landscaping and a small amount of grading extend into the 50-foot buffer. At the southwest corner inside the 100-foot buffer to a wetland, the applicant is proposing an off-grid solar array with storage batteries. The driveway straddles both lots; will abandon existing driveway for a shared driveway with 4 Old Quidnet Milk Route. All driveway work is outside the 25-foot buffer to a wetland on 4 Old Quidnet Milk Route. Provided a grading cross section, most of which will happen outside the 50-foot buffer. Asked for a 2-week continuance.

Staff None
 Motion Continued to May 6.
 Roll-call Vote N/A

17. *Peter & Caitlin DuPont – 47 Millbrook Road (Lot 1) SE48-3415

Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Beale
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Brian Madden, LEC Environmental
 Ryan Maxwell, Bracken Engineering
 Public None
 Discussion (7:02) **Madden** – Presented the project and explained resource areas.
Carlson – Mr. Gaynor Gallagher asked the type of septic being used; it is his understanding that I/A systems are required within the 100-foot buffer; considered about nutrient loading to the pond.

Staff Have everything needed to close.
 Motion **Motion to Close.** (made by: LaFleur) (seconded)
 Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, and Topham-aye

18. *James G. & Sarah R. Tyler – 47 Millbrook Road (Lot 2) SE48-3416

Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Beale
Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
Representative Brian Madden, LEC Environmental
Ryan Maxwell, Bracken Engineering

Public None

Discussion (7:06) **Madden** – This is to install a new I/A system which encroaches minimally within the 100-foot buffer. The well needs to be relocated. This owner is the daughter of the above property owner.
Carlson – The same comments apply.

Staff Have everything needed to close.

Motion **Motion to Close.** (made by: Beale) (seconded)

Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, and Topham-aye

19. *Randolph G. Sharp, Jr. Trust – 49A Meadowview Drive (56-113.1 portion) SE48-3414

Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Beale
Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
Representative Brian Madden, LEC Environmental
Ryan Maxwell, Bracken Engineering

Public None

Discussion (7:08) **Madden** – This is for construction of a single-family dwelling and appurtenances within buffer to 2 bordering vegetated wetland; all outside the 50-foot buffer and no new work within the 25-foot buffer. Requesting a waiver for house and pool within the 50-foot buffer. Proposing to relocate driveway outside the 25-foot buffer and revegetate and restore the entire 25-foot buffer.

Golding – Regarding the 2-foot separation from groundwater, this is an unending battle to enforce our standards. Asked which direction the groundwater flows.

Madden – We can provide additional information on that to justify the waiver under no adverse impact.

Engelbourg – Appreciates the offer to provide additional information on the ground water. The requirement to maintain the 2-foot separation to high groundwater for dwellings is one thing; for pools, people should consider shallower pools.

Madden – Noted that 4 Wamasquid has a full basement and no issue with water. Requested a 2-week continuance.

Staff None

Motion Continued to May 6.

Roll-call Vote N/A

III. PUBLIC MEETING

C. Requests for Determination of Applicability

1. Cummings – 36 Crooked Lane (41-330)

Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Beale
Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
Representative Art Gasbarro, Nantucket Engineering & Survey
Public None

Discussion (7:15) **Gasbarro** – There are buffers for a bordering vegetated wetland and isolated vegetated wetland on this lot; we adjusted the garden fence, so it doesn't encroach into the 50-foot buffer.

Engelbourg – With any proposed garden project, we should require soil testing and reporting on fertilizer use.

Staff Can condition fertilizer use on an RDA.

Recommend Negative 3 with the condition for a soil testing prior to use of fertilizer and that fertilizer comply with our regulations.

Motion **Motion to Issue as recommended.** (made by: Golding) (seconded)

Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, and Topham-aye

2. The Braes, LLC – 23 Baxter Road (49.2.3-12)

Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Beale
Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
Representative Art Gasbarro, Nantucket Engineering & Survey
Public None

Discussion (7:18) **Gasbarro** – This is for a resource area delineation for a coastal dune that doesn't reach the bottom of the bank.

Staff Recommend Issue Pos 2A confirming the resource boundaries.

Motion **Motion to Issue as recommended.** (made by: Topham) (seconded)

Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, and Topham-aye

D. Minor Modification

1. Luxury Brands, Inc – 100 Low Beach Road (75-27) SE48-3027

Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Beale
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Brian Madden, LEC Environmental
 Public None
 Discussion (7:21) **Madden** – Reduction in the area of the building, pool, driveway, and pool equipment.

Engelbourg – He has concerns about the planting schedule; there are some non-native plants and some that are potentially detrimental, especially in areas close to the resources: southern bayberry, magnolia, privet, hydrangea. Asked to look at the list more closely and come back with revisions.

Madden – Magnolia and privet are up by the road. Asked to continue 2 weeks.

Staff None
 Motion Continued to May 6.
 Roll-call Vote N/A

2. Kristin Engle, Trustee – 90 Pocomo Road (15-43) SE48-2946

Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Beale
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Paul Santos, Nantucket Surveyors
 Public None

Discussion (7:26) **Santos** – This is to incorporate the final landscape plan for the location of the pool and spa. No waivers are required.

Staff Recommend issuing.

Motion **Motion to Approve the Minor Modification.** (made by: LaFleur) (seconded)

Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, and Topham-aye

E. Certificates of Compliance

1. Sweet Meadow Sylvia Lane, LLC –74 West Chester Street (41-478) SE48-3017 (Cont. 05/06/21)

2. S/P Norwell, LLC – Lot 5 Mariner Way (55.1.4-72.5) SE48-2747

Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Beale

Representative Kathryn Barnicle, Ilex Environmental

Staff This is in compliance with original permits.

Discussion (7:28) **Barnicle** – House is constructed in place.

Motion **Motion to Issue.** (made by: LaFleur) (seconded)

Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, and Topham-aye

3. 17 Folger Ave Realty Trust – 17,19,21 Folger Avenue (80-151,110& 42 Respectively) SE48-3280

Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Beale

Representative Ryan Maxwell, Bracken Engineering

Staff This was for a sewer line installation; work is complete and as-built signed off.

Discussion (7:30) None

Motion **Motion to Issue.** (made by: Golding) (seconded)

Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, and Topham-aye

F. Orders of Condition

1. ACK86QR, LLC – 86 Quidnet Road (21-102, 103, &69) SE48-3412

Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Beale

Documentation Draft Order of Conditions

Staff Conditions are related to going from conventional to I/A.

Discussion (7:32) None

Motion **Motion to Approve as drafted.** (made by: Beale) (seconded)

Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, and Topham-aye

2. Nantucket Conservation Foundation – Capaum Pond (31-12) SE48-3400

Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Beale

Documentation Draft Order of Conditions

Staff Unique to this is providing notification of use of algicide and an annual report. Condition 20 requires notification for any chemical treatment.

Discussion (7:33) **Golding** – Noted an error under Condition 19, he understands they are using Sea Clear.

Motion **Motion to Approve as amended.** (made by: Golding) (seconded)

Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, and Topham-aye

3. Town of Nantucket – Cow Pond Lane (55-Variou) SE48-3419

Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Beale

Documentation Draft Order of Conditions

Staff The raingarden is not within our jurisdiction. Looking at the drainage area, no special conditions. Condition 19 will require annual photo monitoring.

Discussion (7:37) **Golding** – Asked if we want before and after photo evidence,

Motion **Motion to Approve as amended.** (made by: LaFleur) (seconded)

Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, and Topham-aye

4. Stillwater's Nominee Trust – 7 Wamasquid Place (56-113.5) SE48-3422
 Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Beale
 Documentation Draft Order of Conditions
 Staff Pretty straightforward.
 Discussion (7:39) None
 Motion **Motion to Approve as drafted.** (made by: Golding) (seconded)
 Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, and Topham-aye
5. Nantucket Islands Land Bank – Clifford Street/Southern End of Lovers Lane (88-48) SE48-3417
 Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Beale
 Documentation Draft Order of Conditions
 Staff Pretty straightforward.
 Discussion (7:40) None
 Motion **Motion to Approve as drafted.** (made by: Beale) (seconded)
 Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, and Topham-aye
6. Jill Dean Sheppard – 12 & 14 Midland Avenue (59.3-105 & 171) SE48-3421
 Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Beale
 Documentation Draft Order of Conditions
 Staff Pretty straightforward.
 Discussion (7:41) None
 Motion **Motion to Approve as drafted.** (made by: Topham) (seconded)
 Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, and Topham-aye
7. Trojah Nominee Trust – 26 Easy Street (13-22) SE48-3369
 Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Beale
 Documentation Draft Order of Conditions
 Staff Included the updated plan.
 Discussion (7:42) None
 Motion **Motion to Approve as drafted.** (made by: Beale) (seconded)
 Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, and Topham-aye
8. Peter & Caitlin DuPont – 47 Millbrook Road (Lot 1) SE48-3415
 Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Beale
 Documentation Draft Order of Conditions
 Staff Applied for a waiver for 2-foot separation from groundwater for the structure. Will add it is an I/A system.
 Discussion (7:43) **Engelbourg** – This is where a member of the public asked if it is an I/A system; that should be included.
 Discussion on the motion:
Erisman – This is for a dwelling on each lot of a subdivided lot.
Engelbourg – His concern is the way the waiver requirement is applied to ancillary structures.
Beale – There is merit for the waiver for the dwelling as long as it isn't a full cellar.
 Motion **Motion to Approve as amended.** (made by: LaFleur) (seconded)
 Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, and Topham-aye
9. James G. & Sarah R. Tyler – 47 Millbrook Road (Lot 2) SE48-3416
 Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Beale
 Documentation Draft Order of Conditions
 Staff This doesn't require any waivers; it is for a new well and replacing an existing septic.
 Discussion (7:48) **Engelbourg** – Asked if it is an I/A system.
 Motion **Motion to Approve as drafted.** (made by: Topham) (seconded)
 Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, and Topham-aye
- G. Other Business**
1. Approval of Minutes 4/8/21:
 Motion **Motion to Approve as drafted.** (made by: Topham) (seconded)
 Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, and Topham-aye
2. Reports:
 a. CRAC, Golding
3. Enforcement updates – Town of Nantucket – 79 Baxter Road and 'Sconset Bluff SE48-1659
 Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Beale
 Documentation Aerial photo
 Representatives Dwight Dunk, Epsilon Associates Inc.
 Glenn Wood, Rubin & Rudman, LLP
 Chad Sumner, SumCo Eco
 Helmut Weymar, 79 Baxter Road
 Discussion (7:51) **Carlson** – We issued out an enforcement for work in front of 79 Baxter Road. Cited everyone listed in the enforcement order.
Dunk – We understand the 3 main topics to be work below mean high water, staff not notified, and potential for loss of pedestrian access. Equipment did operate below the Rack Line, which isn't necessarily the mean high-water line. Talked to the contractor, SumCo Eco about the need to notify the commission. Regarding the

potential for coir rolls to impede pedestrian access, the aerial shows sufficient space below the coir rolls. Read three conditions to allow maintenance work to continue on the coir rolls.

Golding – I wonders how we can resolve this going forward about interference with pedestrian traffic at high tide. He was out there on 18 December and has photos that show the water is right up to the rolls; he had to climb onto the coir rolls. He was surprised at the assertion it is 50 feet from mean high tide. Thinks 3rd-party photos might help.

Dunk – We chose the oldest aerial we could find showing it is located where it was authorized in 2010. The mean high water is based upon the topography of the beach. Beaches can build up in the summer and subside in the winter as well as being impact of lunar tides. The terraces haven’t moved in the last 10 years. We’re also seeing wave action, which can extend beyond the mean high-water line.

Engelbourg – It’s clear the water is going past the mean-high water line.

Dunk – NOAA updates their tide tables every 19 years; we’re using their data.

Erisman – She’s had questions as well and that it isn’t updated enough with sea level rise and other changes. The overlay with the mean-high water line; asked if that was summer or winter.

Dunk – He’d have to check the date of the air-shot survey; he believes they did it in September.

Erisman – A lot of issues are happening in the winter and we need to account for that in our Order of Conditions.

Topham – it seems the last time soil was placed on the template it was the same contaminated sand as SBPF used for the geotubes. Feels like this project is in total neglect. The Quidnet Association points their fingers at the geotubes; this site is more damaging due to not contributing at all to the littoral system. He feels no one is taking responsibility for the amount of neglect.

Dunk – We’re here for the enforcement order; the owners have been placing sand and maintaining the terrace on their property. Attorney Steven Cohen, Cohen & Cohen Law P.C., noted that when the terraces went in, the owners were responsible for maintenance in front of their properties.

Erisman – Through this enforcement process, asked if we can require a new NOI with the Weymars listed as the owners and removing SBPF.

Carlson – He would like to check with Town Counsel about that. Even in the short term, the commission has the ability to issue a determination stating what has to be done. The order requires about 3 cubic yards per linear foot of sand a year for 5,000 linear feet on the stretch from 77 to 95 Baxter.

Topham – The applicant needs to tell us when they last added sand and tell us how much is not going into the littoral system.

Dunk – According to the recent log 250 cubic yards was delivered in March.

Erisman – We had issues tracking down the delivery tickets.

Carlson – Toscana was able to provide us the sand delivery information. He’ll share that.

Golding – Asked if it would be in the owner’s interest to agree to a new NOI if the original calculation has been shorting his section.

Wood – That sounds good.

Carlson – He’s also talked with Town Counsel about the Town and ARCADIS working on a study on a project that might or might not happen; it could change direction in this area and the impact of that on a new NOI. It might be better to tackle permitting when that information comes forth, hopefully within a few short months.

Topham – He doesn’t want to wait for a new report and NOI; he’d like to see something going forward now.

Erisman – We can condition the Enforcement Order to get the site back into compliance and maintained.

Carlson – Through the Emergency Order, we can require nourishment is provided as required in the Order of Conditions and that notification is provided to the commission.

Wood – That was the discussion we had, to implement through the Emergency Order.

Carlson – With the information tonight, he’ll get the question to Town Counsel. Suggested that he will draft up a set of findings memorializing tonight’s discussion and draft out conditions to be reviewed at the next meeting.

Motion Continued to May 6.

Roll-call Vote N/A

4. Commissioners Comment

a. **Engelbourg** – At a past meeting, he mentioned the State Invasive Plant Committee list will undergo review. They are looking at including Scotch Broom based upon input solely from Nantucket.

b. **Engelbourg** – We need to address banks that don’t touch the water as a resource area; it still serves all the bank functions of providing sand and protecting the beach.

Erisman – Some of those non-coastal banks will become coastal banks as the sea level rises.

c. **Erisman** – She’s noticed a lot of wetland violations during her walks while on vacation; staff has responded very well to her notifications.

5. Administrator/Staff Reports

- a. There were public comments regarding 79 Baxter Road; one point made is that the license issued by the Town for this project has expired. He'll ensure the Select Board knows.
- b. He will try to have Seth Wilkinson at the next meeting about array work in Pocomo to discuss how to address a ground-water breakout on the beach.

H. Adjournment

Motion **Motion to Adjourn at 8:32 p.m.** (made by: Golding) (seconded)

Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, and Topham-aye

Submitted by:

Terry L. Norton

PROPOSED