



CONSERVATION COMMISSION

PUBLIC MEETING

131 Pleasant Street
Nantucket, Massachusetts 02554

www.nantucket-ma.gov

Thursday, June 23, 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 5:01 p.m. by Ms. Erisman

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

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

Absent Members: LaFleur, Williams

*Matter has not been heard

I. PUBLIC MEETING

A. Announcements

B. Public Comment

1. Burton Balkind – Asked about faces being visible on the screen during ZOOM meetings.
Carlson – Sent away for information from Town Counsel on contact; will get answers to that.
2. Turcotte – Thanked Ms. Phillips for her work on the Board.

II. PUBLIC HEARING

A. Notice of Intent

1. 13 Commercial Street, LLC – 13 Commercial Wharf (42.2.4-10) SE48-3501 (**Cont. 7/14**)
2. Brant Point Club, LLC – 6,8 North Beach Street/4 Dolphin Court (42.1.4-65;65.1;65.2) SE48-3518 (**Cont. 7/14**)
3. Kane – 12 Pond Road (56-295) SE48-3473 (**Cont. 7/14**)
4. Lehrman Dynasty Trust – 18 Washing Pond Road (31-18.1) SE48- 3534

Sitting Erisman, Golding, 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

Public None

Discussion (5:05) **Rits** – Haven’t received response from Town Counsel on the question of the bulkhead being grandfathered. We’ve waited quite some time for those comments; asked how to move forward.

Erisman – She’s concerned about our lack of ability to get Town Counsel responses to our questions in a timely manner. She agrees it’s not fair to keep continuing this application.

Beale – Asked if we’re clear that the stairs will provide public access on top of the entire bulkhead.

Rits – Yes, the stair would allow you to come up on the western side of the west groin, access the top and come down on the eastern side of the east groin.

Golding – He shares Mr. Beale’s concern. He’s taken photos; to him the current plan is not acceptable because people would be wading in the water to access the stairs. The only way it would be acceptable is if stairs on both sides provide access leeward to the sand. He understands the frustration at lack of response.

Mulloy – It isn’t possible to provide stairs to the sand on that end because we don’t have enough property; the gambion straddles the property line there.

Engelbourg – Last meeting there was a technical question about the stairs not intersecting land under the ocean and being on top of the groin. Asked if that’s referenced in the current plans.

Rits – We discussed attaching the stairs to the groin, so the bottom step is at mean-high water (MHW) elevation and floating above the ground. We will supply that on an additional plan.

Engelbourg – We need that for the submission. We have a regulatory responsibility to not hold applications open as long as necessary; he too is annoyed Town Counsel hasn’t responded in a timely manner. If Town Counsel isn’t going to provide an opinion, it is our responsibility to act as we see fit regarding the regulations.

Beale – In his opinion, the stairs are still not appropriately design. They might have to give up land to build the stairs appropriately.

Phillips – She believes, because there has been so much erosion that now there is less land available seaward, the building of any access is very problematic, and access is clearly required. Feels we must have a very clear way of moving from west to east to maintain public access without swimming or having to get very wet. She thinks Town Counsel’s delay in responding has gotten egregious; they are under retainer to provide services to the Town, which ConCom is not getting. We need to do something about that ASAP.

Mulloy – We understand the Commission’s standpoint, however, feels we are starting to get beyond the scope of what this application entails. We are providing the best access available. We are running up against this being the last meeting “for 2 of the commissioners”; if we continue to July, we might have to withdraw and resubmit.

Erisman – We should still be able to hear this matter because we will have 4 eligible commissioners in July.
Golding – This is an awkward situation, and he feels this is very important request to be weighed in on because the bulkhead no longer protects a pre-1978 structure. If we come to a decision, that would render the request for Town Counsel moot. He would like the client to cooperate in providing proper public access; the tideline on the bulkhead is 4’ above the sand.

Engelbourg – He agrees with Mr. Carlson regarding our purview over Chapter 91. He disagrees regarding recreation; it is a protected interest under coastal beach where it states, “unobstructed access along the shore.” Agrees with Mr. Mulloy that it isn’t within our realm to tell them to do work beyond the original scope of the application. He disagrees with Mr. Mulloy regarding providing access on the site per our local regulations.

Erisman – Her opinion is that they could qualify for this.

Beale – He knows asking for access is outside the NOI; he was hoping they would volunteer something. They haven’t provided that, so he would not vote in favor of the current submission.

Golding – The applicant’s lawyer said the structure is entitled to protection because of the Chapter 91 license; that’s why he asked for Town Counsel’s opinion. He is pleased the client is providing some form of access but would like decent public access without wading to the stairs. He too could not support this application as it stands.

Phillips – This is why we need Town Counsel’s opinion. We have two issues at loggerheads, so we need clear direction on whether or not Chapter 91 trumps our bylaw regarding access. The client could use their own land to provide access not involving the sea.

Rits – Mr. Golding has been arguing we don’t have a coastal beach; if that is so, there is no resource area subject to those protections. We either have a beach or a bulkhead acting like a coastal bank. Agrees we need Town Counsel’s opinion so would have to continue.

Engelbourg – If there is no coastal beach, that means the bulkhead acts as a coastal dune but then the groins would be in land under the ocean. Our bylaws do not allow coastal erosion structures (CES) in land under the ocean.

Rits – We and our attorney feel the bulkhead and the groins are pre-1978, grandfathered structures and therefore subject to a set of reduced regulations. We need to wait for Town Counsel’s input. Asked for a continuance to July 14th.

Staff recomm. We haven’t gotten Town Counsel comments back on this yet. Expects the response to be forthcoming. Explained why the process for request for legal services takes time. Public access is important. However, we’re straying into Chapter 91 authority; we need to stay within our own rules and regulations.

Motion Continued to July 14th.

Vote N/A

5. Ack Hang Ten, LLC – 21 Meader Street (42.2.3-44) SE48-3539 **(Cont. 7/14)**

6. Crenshaw – 24 Almanack Pond Road (25-37) SE48-3543

Sitting Erisman, Golding, Engelbourg, Phillips, Beale

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

Representative Brian Madden, LEC Environmental

Public None

Discussion (5:47) **Madden** – This was continued for Massachusetts Natural Heritage (MNH) determination letter; that has been issued. He also will be submitting a photo-monitoring report of current conditions.

Erisman – Confirmed the split-rail fence won’t have any chicken wire added.

Staff recomm. Have everything needed to close.

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

Vote Carried 5-0//Beale, Engelbourg, Erisman, Golding, and Phillips-aye

7. *HMSW, LLC – 25 Sankaty Head Road (48-3) SE48-3545

Sitting Erisman, Golding, Engelbourg, Phillips, Beale

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

Representative Mark Rits, Site Design Engineering

Public None

Discussion (5:50) **Rits** – Explained the scope of the proposed work. Clarified the site plan showing the footprint of the existing and proposed houses and the location of the pool. The erosion rate is about 1’ to 1.5’ a year; the top of coastal the bank was approved about 2 years ago; since then, we’ve lost about 2’.

Staff recomm. Have everything needed to close.

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

Vote Carried 5-0//Beale, Engelbourg, Erisman, Golding, and Phillips-aye

*18 Tennessee Avenue, LLC – 18 Tennessee Avenue (60.1.2-18) SE48-3547

- Sitting Erisman, Golding, Engelbourg, Phillips, Beale
- Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
- Representative Mark Rits, Site Design Engineering
- Public None
- Discussion (5:57) **Rits** – This septic upgrade was previously approved but never constructed. Existing leach trenches straddle the buffer line. The only work within jurisdiction is the septic tanks and plumbing.
Engelbourg – Asked what will happen to the existing facility: renewed or abandoned in place.
Rits – Disconnected and abandoned in place. Digging it out would require extensive disruption of soil and brush. No work is proposed in the wetlands.
- Staff recomm. They also have to file with BOH to drain the tank and have it inspected.
 Have everything needed to close.
- Motion **Motion to Close.** (made by: Beale) (seconded)
- Vote Carried 5-0//Beale, Engelbourg, Erisman, Golding, and Phillips-aye

8. *Zero India Street, LLC – 1 Cambridge Street Unit 2 (42.3.1-130.2) SE48-3546 (Cont. 7/14)

B. Amended Order of Conditions

1. Philips, Trustee – 19 East Tristram Avenue (31-4.1) SE48-3304 (Cont. 7/14)

III. PUBLIC MEETING

C. Requests for Determination of Applicability

1. None

D. Minor Modifications

1. Nantucket Islands Land Bank – 158 Orange Street (55-61.1) SE48-3248

- Sitting Erisman, Golding, Engelbourg, Phillips, Beale
- Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
- Representative Rachel Freeman, Nantucket Islands Land Bank
- Public None
- Discussion (6:03) **Freeman** – This is to install a bench on a property predominantly within the buffer to a salt marsh and bordering vegetated wetlands. The bench will be constructed similar to benches at all our properties.
Engelbourg – He’s not sure they needed to submit for this but he’s glad to see this.
- Staff recomm. Recommend issue minor modification.
- Motion **Motion to Issue the Minor Modification.** (made by: Golding) (seconded)
- Vote Carried 5-0// Beale, Engelbourg, Erisman, Golding, and Phillips-aye

E. Certificates of Compliance

1. Stevens – 45 Starbuck Road (59.3-50) SE48-3244

- Sitting Erisman, Golding, Engelbourg, Phillips, Beale
- Representative None
- Staff recomm. The work was constructed in compliance and recommend issuing with ongoing Conditions 19, 20, 21, and 22.
- Discussion (6:07) None
- Motion **Motion to Issue with ongoing Conditions 19, 20, 21, and 22.** (made by: Beale) (seconded)
- Vote Carried 5-0//Beale, Engelbourg, Erisman, Golding, and Phillips-aye

F. Orders of Condition

1. Crenshaw – 24 Almanack Pond Road (25-37) SE48-3543

- Sitting Erisman, Golding, Engelbourg, Phillips, Beale
- Documentation Draft Order of Conditions
- Staff Pool outside jurisdiction but the Finding indicates it can’t be drained within our jurisdiction.
- Discussion (6:10) None
- Motion **Motion to Issue as drafted.** (made by: Golding) (seconded)
- Vote Carried 5-0//Beale, Engelbourg, Erisman, Golding, and Phillips-aye

2. HMSW, LLC – 25 Sankaty Head Road (48-3) SE48-3545

- Sitting Erisman, Golding, Engelbourg, Phillips, Beale
- Documentation Draft Order of Conditions
- Staff Included our new pool Conditions.
- Discussion (6:11) None
- Motion **Motion to Issue as drafted.** (made by: Phillips) (seconded)
- Vote Carried 5-0//Beale, Engelbourg, Erisman, Golding, and Phillips-aye

- 3. 18 Tennessee Avenue, LLC – 18 Tennessee Avenue (60.1.2-18) SE48-3547
 - Sitting Erisman, Golding, Engelbourg, Phillips, Beale
 - Documentation Draft Order of Conditions
 - Staff Added Condition 20 regarding removing the abandoned system should it be exposed; he will modify the Condition regarding an on-site meeting.
Any Order of Conditions is recorded against the deed.
 - Discussion (6:12) **Engelbourg** – He’s concerned given the location of the facility within the wetlands; if that happens, they will need consideration about stabilizing the wetland during work. Asked for a condition requiring an on-site meeting with staff.
Erisman – If it’s a challenging removal, perhaps we should require a new NOI.
Golding – Asked how to include subsequent owners.
Phillips – Recording the Order of Conditions to the deed is known as a Covenant that runs with the land.
Engelbourg – With these precarious exposure situations, he’s concerned about removal being done in a timely manner after discovery of exposure.
 - Motion **Motion to Issue as amended.** (made by: Beale) (seconded)
 - Vote Carried 5-0//Beale, Engelbourg, Erisman, Golding, and Phillips-aye

G. REQUEST

- 1. None

H. Other Business

- 1. Approval of Minutes 06/09/2022

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

- 2. Discussion of Regulatory Update

- Sitting Erisman, Golding, Engelbourg, Phillips, Beale
- Documentation Draft Regulations
- Staff He’s still putting stuff together from our last discussion. Should have it out tomorrow.
- Discussion (6:20) **Erisman** – Asked for a meeting next week for one more discussion with the sitting commissioners.
Phillips – She’d be fine just sending her comments to Mr. Carlson but would do a meeting as well.
Erisman – This will continue on our agenda.

- Motion No action at this time.
- Vote N/A

- 3. Enforcement Actions/Potential Enforcement Actions
 - a. Sacacha Pond identification of Widgeon grass or Sago pond weed.

- Sitting Erisman, Golding, Engelbourg, Phillips, Beale
- Discussion (6:21) **Carlson** – Mr. Engelbourg submitted photos of both the grass and weed. The Town’s consultant Ken Wagner said his identification as Widgeon grass was based upon the stipule attachment to the stem.
Engelbourg – He’s not sure a single photo is sufficient to identify a species. He’d like another aquatic botanist to look at the photo and then decide what to do.
- Motion No action at this time.
- Vote N/A

- 4. Reports:
 - a. CRAC, Golding
 - b. CPC, Beale
- 5. Commissioners Comment

- a. **Engelbourg** – It’s come to his attention that we need a condition requiring all construction or maintenance vehicles be contained on the site where work is happening. Asked staff to look into whether or not doing that is possible.
Erisman – Worries about our ability to enforce that when they park on public property.
Phillips – If we require them to park on site, that could be potentially damaging to the resource area and buffers.
Carlson – He will look into that; suggested taking those concerns to Traffic Safety and Roads and Rights-of-Way Committee.
- b. **Engelbourg** – Noticed a lot of projects with an Order of Conditions that have done a poor job of sediment stockpiling; open piles of sand are not contained in anyway. Our Orders of Conditions should require proper sediment storage.
- c. **Engelbourg** – Thanked Ms. Phillips for her service.
Phillips – Her feelings of disappointment at not being reappointed were mitigated by the fact that Mr. Engelbourg was reappointed; that means a very well qualified core of people remain on the Commission. She is taking her ability to reapply under advisement.
- d. **Erisman** – Over the past couple of weeks, she’s noticed issues with erosion at beach access points: Madaket, Pocomo, Monomoy, and Cisco. We might need to be more active to prevent loss of these points.
Phillips – The Madaket Conservation Association has been working with the Town for ideas on what can be done. She’s sure other area associations have similar concerns.
- 6. Administrator/Staff Reports
 - a. In-person meetings:
The Governor’s order allowing remote meetings ends July 15th; the House extension to December 2023 is pending. He has the Community Room reserved as well as a ZOOM link for all meetings through December 2022.

- Erisman** – She’s willing either way. Suggested keeping it remote for the July 14th meeting; we can meet the new commissioners at the site visit. She’s against hybrid meetings; they are a nightmare to run.
- b. Thanked Ms. Phillips for her efforts on the Commission.
 - c. Will have to do elections and appointments at the July 14th meeting.

I. Executive Session

Motion **Motion to go into Executive Session Pursuant to MGL C. 30A § 21(A) for Purpose 3: To Discuss Strategy with Respect to Litigation with Regard to Siasconset Beach Preservation Fund (SBPF) Geotextile Tube Project Removal Order (SBPF v Nantucket Conservation Commission), where an Open Meeting May have a Detrimental Effect on the Litigation Position of the Conservation Commission. And, to Discuss Strategy related to the proposed Memorandum of Understanding between the Town of Nantucket Select Board and Siasconset Beach Preservation Fund with Respect to Litigation with the Siasconset Beach Preservation Fund (SBPF) Geotextile Tube Project Removal Order (SBPF v Nantucket Conservation Commission), where an Open Meeting May have a Detrimental Effect on the Litigation Position of the Conservation Commission at 6:44 pm. with no intent to return to open session.** (made by: Phillips) (seconded)

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

PROPOSED