



CONSERVATION COMMISSION

PUBLIC MEETING

131 Pleasant Street
Nantucket, Massachusetts 02554
www.nantucket-ma.gov

Thursday, September 23, 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,
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; Terry Norton, Town Minutes Taker

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

*Matter has not been heard

I. PUBLIC MEETING

A. Announcements

B. Public Comment –

II. PUBLIC HEARING

A. Notice of Intent

1. *NISDA – 55 Wauwinet Road (14-23) SE48-3441 **(Cont. to 10/28)**

2. ACK Whales End II, LLC – 43 & 45 Squam Road (13-23&24) SE48-3460

Sitting: Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams

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

Representative: Madden

Public: None

Discussion (5:02) **Madden** – Modified the footing to meet 2’ separation and have Massachusetts Natural Heritage (MNH) letter of no take for protection of plants along the northern barrier. The only waiver being requested is for abandonment of the driveway, a portion of which is within the 25’ buffer; it will be revegetated.

Staff: Have everything needed to close.

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

Roll-call Vote: Carried unanimously // Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Williams-aye

3. Warrens Landing N.T. – 40 Warrens Landing Road (38-45) SE48-3466 **(Cont. to 10/7)**

4. Anchialine Properties, LLC – 19 East Creek Road (55-60) SE48-3465

Sitting: Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams

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

Representative: Paul Santos, Nantucket Surveyors

Public: R.J. Turcotte, Nantucket Land Council, Inc.

Discussion (5:04) **Santos** – Reviewed the scope of work within land subject to coastal storm flowage and buffer to salt marsh and policy coastal bank. Have an updated site plan: remove set of stairs, 2’ addition off south elevation, remove 9 square feet (sf) at-grade decking, remove existing concrete apron, remove 1200sf shell driveway, propose bluestone at-grade patio with pergola, plant about 900sf reclaimed driveway with native plantings, and modifications to building with no change in ridge line. Asking for waiver for work in flood zone.

Engelbourg – Concerned about the pergola; it’s adding a structural element and not necessary. Regarding native planting, suggested using more salt-tolerant species.

Erisman – Agrees with Mr. Engelbourg about the pergola and salt-tolerant plants.

Beale – Asked what work will be done in the 25’ zone aside from the pergola. He’s troubled by the extensive work proposed in the 25’ zone; he doesn’t see the rationale for the waiver.

Santos – New work is just the patio and pergola and removal/replanting of driveway. This is a single-family dwelling and driveway within the 25’ zone and in use now; trying to reclaim some area within the driveway. Pergola is an open structure attached to the house and two posts.

Williams – Clarified work within the 25’ buffer.

Phillips – The point Mr. Engelbourg is making is the concern of turning a shell drive into a bluestone patio under an open-frame pergola; the bluestone patio is new material. The pergola is also an additional structure. Adding anything within the 25’ buffer is something she doesn’t support.

Engelbourg – His concern is related more to the pergola. Bluestone is a little less permeable than shell. He doesn’t see how the use is justified within our regulations. There is already an expansive deck. He’s also concerned about the construction protocol for the addition; asked Mr. Santos about that.

Santos – The building is elevated on piers so work could be done by hand. He will ask to continue, and he’ll provide a construction protocol and address planting species. On the rear we’re only projecting out 2’.

Erisman – She’d like to see a construction protocol as well. Thinks they’d have to cut into the bank for the addition.

LaFleur – He shares the same concerns about the new construction within the 25’ buffer. He’d like more information on how the addition will be supported: cantilevered, helix pier, or what.

Turcotte – Agrees about the concerns and urges the Commission to honor the no-build zone from new construction of the addition and pergola.

Santos – Asked for a 2-week continuance.

Staff None

Motion Continued to October 7th.

Roll-call Vote N/A

5. Moores Realty Trust – 14 Tautemo Way (83-13) SE48-3468

Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams

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

Representative Brian Madden, LEC Environmental

Public R.J. Turcotte, Nantucket Land Council, Inc.

Discussion (5:26) **Madden** – MNH confirmed no adverse effect and no take under Massachusetts Endangered Species Act (MESA).

Engelbourg – The site visit was helpful. There is a variety of debris and cobble associated with the retaining wall that needs to be removed. Given the small impact, he’s okay with the retaining wall staying in place but wants mitigation: remove the patio out of the 25’ buffer; there’s small gap between wall and native vegetation where plantings could go; because of how the wall is constructed, a bunch of sections don’t match and should be squared up. He’s concerned the wall was placed without a permit. but it isn’t causing harm as long as the rest is cleaned up.

Erisman – Would also like to see mitigation with vegetation.

Madden – Relative to squaring up corners, he’ll relate to the applicant to do the best they can without causing further disturbance.

Golding – He doesn’t agree with removing the patio; feels it was an honest oversight and the owner is penitent and it won’t happen again, so he’s okay with it remaining.

Williams – Agrees with Mr. Golding; the patio has been there a long time.

Turcotte – Asked if the commission considers this part of a fish run, which is also a resource area. There are usually some restrictions on work in the Spring along fish runs.

Erisman – Most work has been done so most of what’s left would be shoring up and doing plantings.

Madden – Could do the plantings this Fall or Spring. With the access along the exposed beach, they wouldn’t do any in-water work; all work would be by hand.

Erisman – Doesn’t know if we consider the pond a fish run.

Engelbourg – That’s difficult to quantify here; the only reason it would be a fish run is because and when the pond is opened to the sea.

Erisman – We could condition against work when the pond is open or was recently open.

Staff Have everything needed to close.

Motion Motion to Close. (made by: Golding) (seconded)

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

6. Gilbert – 16 D Street (60.2.1-2) SE48-3467

Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams

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

Representative Don Bracken, Bracken Engineering

Cheryl & Joseph Gilbert, owners

Public None

Discussion (5:36) **Bracken** – We can move the air conditioning outside the 50’ buffer to behind the front cottage. The foundation system under the covered porch would be on sonotubes.

Engelbourg – Asked if the sonotubes would be added within the 25’ buffer (yes).

Erisman – The deck looked rigged up; a fair amount of work will be needed for the new deck.

Engelbourg – Asked if the deck area could be reduced so the tubes are outside the 25’ buffer.

Bracken – It is possible to cantilever some of the deck; that’s information we could provide at the next hearing. Cantilevering is discouraged under the building code.

Golding – Agrees with Mr. Engelbourg about reducing the deck so it’s outside the 25’ buffer.

Bracken – Asked for a 2-week continuance.

Staff None

Motion Continued to October 7th.

Roll-call Vote N/A

7. *RJG Nominee Trust – 13 Crows Nest Way (12-19) SE48-3470

Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams

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

Representative Brian Madden, LEC Environmental

Bracken

Public None
 Discussion (5:42) **Madden** – This is for a septic upgrade to an I/A system. There’s an isolated vegetated wetland and bordering vegetated wetland boarding the site. The existing system will be removed. We need to continue for MNH response. The new system is 50’ from the bordering vegetated wetland.
Engelbourg – Given the structure was built after 1978, he wonders if they have considered an alternate location for the septic rather than its going into the same place.
Bracken – It’s because of groundwater elevation and keeping the separation; it has to be at the higher elevation and the well is by the driveway. The existing leach field is closer to the ocean than the proposed. We have Board of Health (BOH) permits.
Madden – Asked for a 2-week continuance.

Staff None
 Motion Continued to October 7th.
 Roll-call Vote N/A

B. Amended Order of Conditions

1. Sweet Meadow Sylvia Lane – 74 West Chester Street (41-478) SE48-3379

Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Paul Santos, Nantucket Surveyors
 Public None
 Discussion (5:47) **Santos** – This is to eliminate an existing garage and permanent enclosure of a screened-in porch. New components outside the existing footprint have been eliminated so work is all within the existing structure.
Golding – The site visit changed his perspective; he no longer has reservations.
Williams – Agrees with Mr. Golding. Stated she didn’t view this site because she knows it well from the Historic District Commission standpoint.
Engelbourg – Confirmed the landscape walls are part of the amendment not the original Order of Conditions.
Santos – A wall had been shown around the fire pit but not in the location where it was constructed. It was initially two disconnected patios and a landscape wall.
Erisman – Seeing the screen porch was helpful in justifying the proposed work.

Staff Recommend issue.
 Motion **Motion to Issue.** (made by: Williams) (seconded)
 Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Williams-aye

2. Scannell – 119R Eel Point Road (33-17.1) SE48-3378

Sitting Erisman, Golding, LaFleur, Phillips, Beale, Williams
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Paul Santos, Nantucket Surveyors
 Public None
 Discussion (5:55) **Santos** – This is for removal of aluminum stairs, construction of wooden stairs, construction of a cabana, and construction of a pool with associated equipment. Feedback at the last hearing was that the large platform is not appropriate, so it was removed. Would like to have a 12’ landing at the upper area of the stairs for storage of beach gear. Reviewed the profile of the stairs which he submitted to staff today.
Phillips – Asked if they are proposing the storage space where the platform had been proposed.
Santos – It would only be 5’ wide and about 10’ or 12’ long in the flat area between the two stairs. He can provide a detailed depiction of what he’s proposing at the next hearing.
Phillips – We had discussed aluminum versus wood; asked if the wooden stairs would go where the old stairs are.
Santos – Yes; noted that it’s a large run of stairs and the aluminum stairs are very hard to remove.
Golding – He doesn’t want any platform at all. Asked if it would be visible from the beach. The cross section shows a handrail while the drawing showing the steps doesn’t; he sees no reason for handrails. The beach access should be as unobtrusive as possible but that depends upon visibility from the beach.
Erisman – She is not in favor of storage on that unique geologic feature. It could become a dune and shouldn’t be impeded; there is plenty of property in the cleared area before the stairs for storage of gear.
Beale – Asked if stairs going up to the storage area are necessary since the grade is so shallow. Agrees there is plenty of real estate outside the 50’ zone to store “toys.”
Santos – There is already a set of permanent stairs there and the platform keeps gear in that one area.
LaFleur – He’s okay with a walkway but not storage.
Phillips – Listening to her fellow commissioners, her opinion is to have no platform or storage. Whether or not there is a walkway, it’s helpful to keep people within a certain area.
Erisman – Doesn’t see walking across the sand as any more harmful than the stairs. This area seems very dynamic; she would want a condition that the platform or walkway is to be removed should the sand area become a dune.
Santos – Asked for a 2-week continuance.

Staff None
 Motion Continued to October 7th.
 Roll-call Vote N/A

III. PUBLIC MEETING**C. Requests for Determination of Applicability**

- Herrmann – 2 Wamasquid Place (56-113.3)

Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams
 Representative Brian Madden, LEC Environmental
 Staff Recommend Positive 2 confirming the resource area and Negative 2 for work within the buffer.
 Discussion (6:11) **Madden** – This is to confirm no resource areas on the parcel and approve a driveway within 100’ buffer to a bordering vegetated wetland located across the street. The driveway will be pervious.
 Motion **Motion to Issue as a Positive 2 and Negative 2.** (made by: Williams) (seconded)
 Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Williams-aye

D. Certificates of Compliance

- Nantucket wail 43 Squam Road– 15 Bassett Road (26-59) SE48-3151

Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale
 Staff Recommend issue
 Discussion (6:13) None
 Motion **Motion to Issue.** (made by:) (seconded)
 Roll-call Vote Carried 6-0//Beale, Engelbourg, Erisman, Golding, LaFleur, and Phillips-aye; Williams recused

- 41B Cliff Road, LLC – 41B Cliff Road (29-40) SE48-1370

Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale
 Staff Work never took place; they are seeking to invalidate the order; staff recommends it.
 Discussion (6:15) None
 Motion **Motion to invalidate SE48-1370.** (made by: Beale) (seconded)
 Roll-call Vote Carried 6-0//Beale, Engelbourg, Erisman, Golding, LaFleur, and Phillips-aye; Williams recused

- Medouie15 Capital, LLC – 15 Medouie Creek Road (20-3) SE48-3365

Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale
 Staff Work is in compliance, recommend issue.
 Discussion (6:16) None
 Motion **Motion to Issue.** (made by: LaFleur) (seconded)
 Roll-call Vote Carried 6-0//Beale, Engelbourg, Erisman, Golding, LaFleur, and Phillips-aye; Williams recused

- Shawkemo I, LLC – 36 Shawkemo Road (27-3) SE48-2943

Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams
 Staff Work is in compliance and recommend issue.
 Discussion (6:17) None
 Motion **Motion to Issue.** (made by: Beale) (seconded)
 Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Williams-aye

E. Orders of Condition

- ACK Whales End II, LLC – 43 & 45 Squam Road (13-23&24) SE48-3460

Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams
 Documentation Draft Order of Conditions
 Staff Has standard pool conditions. He has to remove the part of the waiver that references the 2’ separation from groundwater. He will add Condition 24 addressing source and testing of fill.
 Discussion (6:18) **Engelbourg** – There was discussion about new footings.
 Motion **Motion to Approve as amended.** (made by: Engelbourg) (seconded)
 Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Williams-aye

- Moore's Realty Trust – 14 Tautemo Way (83-13) SE48-3468

Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams
 Documentation Draft Order of Conditions
 Staff He will go through the minutes to get Mr. Engelbourg’s suggestions for possible conditions. Asked if there are other suggestions.
 Discussion (6:21) None
 Motion No action at this time.
 Roll-call Vote N/A

F. Other Business

- Approval of Minutes 9/9/2021:

Engelbourg – Page 3 “Vegetation about 4 deviation.” should read “DBH”

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

- 2. Monitoring Reports: None
- 3. Reports:
 - a. CRAC, Golding
 - b. CPC, Beale
- 4. Commissioners Comment
 - a. **Williams** – Emails were sent about the date for the joint meeting with the Select Board; asked that it be after October 11th rather than October 4th. She will be out of Town and won't have good reception.
LaFleur – He'll be gone From October 2-15 but thinks he'll be able to zoom in.
 - b. **Golding** – Now that SBPF has appealed the removal, asked the timeline since ConCom doesn't have legal representation. Asked also what ConCom will do about legal representation and isn't the appeal period normally 30 days. Read a September 22 email from Libby Gibson. If the Select Board isn't supporting our regulatory framework, questions why ConCom is meeting with them.
Carlson – We haven't received the summons, so he doesn't know the date. He'll look at that. He resubmitted a request for legal counsel now that there is an actual proceeding.
Erisman – We have to tackle this appeal, which requires individual counsel. He's hoping the meeting will help the Select Board understand ConCom's charter and regulations and bring us together in that regard. The appeal has not officially reached the Resource Office and the Commissioners but seems to have reached social media.
Williams – She thinks it's vital to have a joint meeting and have an open dialogue. As she understands it, Town Council is required to submit an answer to the Superior Court within a specified number of days of receiving the appeal.
Engelbourg – The question remains as to whether or not we'll be afforded independent counsel. The Town Charter is specific about the conditions by which the ConCom can obtain special municipal counsel; we need to see who the parties are first.
Golding – As far as he's concerned, if the Town doesn't step up to the plate, he'll pay for ConCom's lawyer. There is no way he's going to sit by if the Town isn't going to defend ConCom. He thinks the Charter can be challenged in court.
Erisman – Let's wait to see what the appeal says.
Engelbourg – He doesn't think it is wise or fruitful to discuss hypotheticals at this time.
Phillips – This is a case of 1st impression; she's done research on when a municipality refuses to support a commission. There is a technically strict way for ConCom to get counsel automatically; that is neither here nor there and we will need counsel. She would have thought our position is very clear; Ms. Gibson again wants us to lay out our position. Though it might be useful to educate them; it's apparent from quotes in the newspaper that they don't understand how the process works. The technical requirement of Town Charter has nothing to do with this situation; it's one way to get counsel but we can take whatever valid action necessary to get counsel.
Williams – She fought for that section of the charter when she was on the charter commission 25 years ago. Feels this discussion is creeping into the area of executive session.
Phillips – Disagrees with Ms. Williams on crossing into the area of an executive session.
- 5. Administrator/Staff Reports
 - a. The appeals summons is dated September 21st.
 - b. Update on enforcement from Bassett Road. Information will be in front of ConCom at the next hearing.
 - c. We were contacted by Mr. Blackwell about a structure at 21 Sheep Pond Road where the well is below the top of the bank and is having issues with saltwater intrusion. They are asking for emergency permission to install a new well. They will be back in front with a NOI.
Blackwell – They have no potable water and can't use their washing machine as the salt will corrode it.
Erisman – They should probably start looking at removing everything.
Williams – They've lost a couple 100 feet; they are currently surrounded by conservation land. They have not been able to find a lot to move to.

Motion **Motion to Issue authorization to construct a new well.** (made by: Williams) (seconded)
 Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Williams-aye

G. Adjournment

Motion **Motion to Adjourn at 6:53 p.m.** (made by: Williams) (seconded)
 Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Williams-aye

Submitted by:
 Terry L. Norton