



CONSERVATION COMMISSION

PUBLIC MEETING

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

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; Joanne Dodd, Natural Resources Coordinator; Terry Norton, Town Minutes Taker

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

Remote Participation: Per 940 CMR 29.10, Maureen Phillips is participating remotely via phone.

*Matter has not been heard

I. PUBLIC MEETING

A. Announcements

B. Public Comment – None

II. PUBLIC HEARING

A. Notice of Intent

1. *Lower Pocomo Nominee Trust – 88 Pocomo Road (15-42) SE48-3432

2. *Pocomo Point Realty Trust – 90 Pocomo Road (15-43) SE48-3438

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

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 (5:02) **Gasbarro** – Reviewed supplemental information submitted regarding questions raised at the first hearing.

Golding – According to the GIS, there’s no building at 88 and 90 is post 1978; read the Performance Standards for coastal banks. From his point of view, they could easily move 90 Pocomo back and put the septic on 88 and none of this would be necessary. Noticed they are requesting 2 sets of stairs. He asked the Commission to consider denying these.

Engelbourg – Asked for justification why 2 sets of stairs have a switch back. Regarding bank swallows, a report was submitted by Bob Kennedy; they have a low nest site fidelity and nest in different locations every year due to the ephemeral nature of coastal banks. It is possible bank swallows will try to nest in this bank in the future. Coastal bank Performance Standard Nr. 3 relates to not having an adverse effect on wildlife habitat. They should adopt a time of year restriction for no construction during their breeding period – April through August – or have an avian monitor come to the site before any construction starts to test the bank for possible nests; based upon that test, leaving the top 5’ of the bank clear of netting would be a good way to ameliorate the nesting issue.

Williams – If 88 Pocomo is vacant, asked why they need a separate set of stairs.

Reade – It will be built upon. The lots are owned by different member of the same family and 88 will be developed.

Beale – There is existing sand-drift fence; asked if that is insufficient. Today there was no sign of recent erosion.

Gasbarro – With the seasonal nature of the sand captured by the drift fence, the idea is there is still bank slumping and erosion as documented by photos and CZM. Captured wind-blown sand is fine and easily blown away. Explained the maintenance procedures for coir rolls.

Erisman – Shares Mr. Engelbourg’s concerns about the design of stairs and the bank swallows. This year she saw a pair attempting to nest out there.

Gasbarro – With respect to the Coastal Bank Performance Standards, we are enhancing the stability of the habitat by promoting a healthy community that isn’t slumping. If the beach stairs didn’t have a switch back, we’d have to have a landing; by code, you must have breaks every 13’.

Reade – We will follow Mr. Engelbourg’s recommendation for bank swallows and have the site monitored, not work during nesting season, and remediate every way possible.

Erisman – Asked if there is quantitative data on the high tide level, the impact of the tide on the rolls, and keeping them covered. She doesn’t want this area to become a constant construction site with machinery on the beach.

Gasbarro – The differing beach elevation on the two sides of the point accounts for one beach being slightly higher and how far up the water comes. We’re confident we can maintain sand cover on the rolls.

Beale – He shares concerns about the beach stairs being excessively large when a simple jog would suffice.

Phillips – Regarding the swallows, Mr. Kennedy had written an opinion about the bank swallows for the ‘Scosnet project. Asked if that report could be relied upon.

Gasbarro – We used that report from about 2016. He would agree with the 2 conditions.

Williams – She’s never seen stairs designed like this and agrees it is excessive.

Gasbarro – Asked to continue to August 12.

Staff recomm. None

Motion Continued to August 12.

Roll-call vote N/A

3. *NISDA – 55 Wauwinet Road (14-23) SE48-3441 (**Cont. 08/12/21**)

4. *Nantucket Conservation Foundation – Ram Pasture (57-12) SE48-3443

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

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

Representative Naomi Valentine, SWCA Environmental Consultants

Public None

Discussion (5:29) **Valentine** – This is for invasive phragmites management. Requesting a 5-year permit to go through the process and ensure native species are growing in. Resource where work will take place is land under the water, the bank, land subject to flooding, and a bordering vegetated wetland. Will use a mix of chemical and mechanical management. The herbicide would be Clearcast or another glyphosate product. Following herbicide application, we will use the Marsh Master to cut and remove debris. Clip and drip will be used in sensitive areas to protect native plants.

Golding – There was no information about possible impact on aquatic life; asked for clarification on that.

Valentine – Work is just on the fringes of the pond; applications will be conducted from both sides and it is a reason there will be repeated cutting. There would be no on-water application.

Staff recomm. Have everything needed to close.

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

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

5. *Waterfront, LLC – 17 Loretta Lane (14-10.2) SE48- **Withdrawn**

Motion **Motion to Approve the withdrawal.** (made by: Beale) (seconded)

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

6. *Middle Slip, LLC & Stone Throw, LLC – 29B & 29C Old North Wharf (42.3.1-225.1/225.2) SE48-3453

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

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

Representative Art Gasbarro, Nantucket Engineering & Survey

Public None

Discussion (5:37) **Gasbarro** – This is a maintenance dredging project off the end of North Wharf. We will remove about 1,950 cubic yards of material that will then be disposed of at the landfill. We will not exceed depths previously allowed and will apply for water-quality tests. The Chapter 91 license permits the proposed dredging work.

Engelbourg – There was a grain size analysis that showed a high percentage of fines; wants chemical and biological sampling done. All dredging activities should be done with a siltation boom or something to minimize transport. This is land containing shellfish, though it might not be productive; given our bylaw requirements, a shellfish survey should be done and if they are found, a plan should be provided on how that will be dealt with – transport or remediation. Generally, if fines are more than 10%, an analysis is required.

Gasbarro – Because of the limited depth and amount of material, we felt we could forego the chemical analysis. You can add a condition the analysis has to be done.

Staff recomm. Have everything needed to close.

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

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

7. *Sally Horchow – 27 East Tristram Avenue (31-2) SE48-3451

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

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

Representative Don Bracken, Bracken Engineering

Public None

Discussion (5:44) **Bracken** – The wetland resource boundaries were confirmed in June. This is for an addition to the house, landscaping, and upgrade to the septic; also proposing a grass walking path outside the 50’ buffer.

Staff recomm. Have everything needed to close.

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

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

8. *Donald E. Walker – 227 Madaket Road (59-1.2) SE48-3452

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

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

Representative Don Bracken, Bracken Engineering

Public None

Discussion (5:46) **Bracken** – Resource areas include bordering vegetated wetlands, isolated vegetated wetlands, land within 100-year flood zone, and a coastal bank. This is for upgrade of the septic. The existing tank will be pumped and filled and the existing leaching trenches removed and replaced with clean sand; the new system will be a little farther from the isolated vegetated wetlands and coastal bank.

Staff recomm. On our site inspection, the owner was parking a vehicle in proximity to the wetland. Have everything needed to close.
 Motion **Motion to Close.** (made by: Williams) (seconded)
 Roll-call vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Williams-aye

III. PUBLIC MEETING

C. Requests for Determination of Applicability

1. James R. Brett – 60,62,64 & 66 Arkansas Avenue (59.4-33,34,35&36)
 Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams
 Representative Jose Pichardo, Green Seal Environmental, LLC
 Staff recomm. Recommend issuing as a Negative 3 allowing work within the buffer zone.
 Discussion (5:49) **Pichardo** – Work is to repair a failed septic system. The only work within the buffer is to install a 4” pipe to connect to the proposed system, which will be outside the buffer zone.
 Motion **Motion to Issue as a Negative 3.** (made by: Williams) (seconded)
 Roll-call vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Williams-aye

2. Kurt R. Steinkrauss – 100 Cliff Road (41-14)
 Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams
 Representative Don Bracken, Bracken Engineering
 Staff recomm. Recommend issuing as a Negative 3 allowing work within the buffer zone.
 Discussion (5:52) **Bracken** – Resource areas are off site across the road. Reviewed the intended work just within 100’ of a bordering vegetated wetland with vernal pool.
 Motion **Motion to Issue as a Negative 3.** (made by: Williams) (seconded)
 Roll-call vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Williams-aye

3. Sea Daze, LLC – 27 Baxter Road (49.2.3-10)
 Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams
 Representative Art Gasbarro, Nantucket Engineering & Survey
 Staff recomm. Recommend issuing as a Positive 2A confirming the resource boundary.
 Discussion (5:53) **Gasbarro** – This is for confirmation of the resource area boundary to a coastal dune.
 Motion **Motion to Issue as a Positive 2A.** (made by: Williams) (seconded)
 Roll-call vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Williams-aye

D. Certificates of Compliance

1. Mscisz – 51 Crooked Lane (41-531) SE48-2737
 Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams
 Representative None
 Staff recomm. This was for installation of a pool. Recommend issuing with on-going Cond 2k0
 Discussion (5:54) None
 Motion **Motion to Issue.** (made by: Golding) (seconded)
 Roll-call vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Williams-aye

2. Barbieri – 48 West Miacomet Road (86-4) SE48-2945
 Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams
 Representative None
 Staff recomm. This was for relocation away from eroding bank. Recommend issuing.
 Discussion (5:56) None
 Motion **Motion to Issue.** (made by: Golding) (seconded)
 Roll-call vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Williams-aye

3. Muller – 13 Commercial Wharf (42.2.4-10) SE48-1461
 Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams
 Representative None
 Staff recomm. Recommend issuing.
 Discussion (5:56) None
 Motion **Motion to Issue.** (made by: Golding) (seconded)
 Roll-call vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Williams-aye

4. Seth D & Kim M. White – 47A West Chester Street (41-227.1) SE48-3117 (**Cont. 08/12/21**)
 5. Marcus Ribka – 5 High Brush Path (56-388) SE48-2026
 Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams
 Representative None
 Staff recomm. This was for construction of a garage, driveway, and parking. The work is done in compliance
 Discussion (5:58) None
 Motion **Motion to Issue.** (made by: Golding) (seconded)
 Roll-call vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Williams-aye

- 6. Marcus Ribka – 5 High Brush Path (56-388) SE48-926
 - 7. Marcus Ribka – 5 High Brush Path (56-388) SE48-611
 - 8. Marcus Ribka – 5 High Brush Path (56-388) SE48-610
- Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams
 Representative None
 Staff recomm. They did not do the project; asking to invalidate the Order of Conditions.
 Discussion (5:59) None
 Motion **Motion to Invalidate the Order of Conditions.** (made by: Williams) (seconded)
 Roll-call vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Williams-aye

E. Orders of Condition

- 1. Colby Crenshaw – 24 Almanack Pond Road (25-37) SE48-3447
- Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams
 Documentation Draft Order of Conditions
 Staff This is for restoration of unpermitted cutting. Conditions require basic monitoring and photo monitoring and no cultivars. He'll add a Finding that the proposed work was in response to unpermitted work.
 Discussion (6:00) **Engelbourg** – When they are remediating unpermitted work, that should be memorialized in the Order of Conditions.
 Motion **Motion to Issue as amended.** (made by: Engelbourg) (seconded)
 Roll-call vote Carried 6-0/Beale, Engelbourg, Erisman, Golding, LaFleur, and Phillips-aye; Williams recused
 - 2. DeBiasio – 39 Meadowview Drive (56-133) SE48-3448

Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale
 Documentation Draft Order of Conditions
 Staff This was for removal of the shed in the wetlands; we didn't agree with the wetland boundaries. Included a Finding regarding the discrepancy in the resource area boundaries.
 Discussion (6:04) None
 Motion **Motion to Issue as drafted.** (made by: Golding) (seconded)
 Roll-call vote Carried 6-0//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips-aye; Williams recused
 - 3. Nantucket Conservation Foundation – Ram Pasture (57-12) SE48-3443

Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams
 Documentation Draft Order of Conditions
 Staff This is essentially the same order as for the phragmites removal projects for the other ponds.
 We can condition this changing Rodeo to Clearcast or equal.
 We have those in the original Long Pond order; after the Land Bank put together the monitoring protocol, we stopped including them because we weren't seeing the effect from the Marsh Master and they are proposing clip and drip.
 Discussion (6:05) **Erisman** – They were asking for the 5-year permit; confirmed that would be a 3-year permit and two extensions.
Golding – Asked if this should be a condition against using Rodeo or equal. Asked why normal precautions from wind, etc. aren't addressed.
 Motion **Motion to Issue as amended.** (made by: Williams) (seconded)
 Roll-call vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Williams-aye
 - 4. Middle Slip, LLC & Stone Throw, LLC – 29B & 29C Old North Wharf (42.3.1-225.1/225.2) SE48-3453

Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams
 Documentation Draft Order of Conditions
 Staff Didn't draft an order because the file number came in late. He noted they are looking for silt curtains and the analysis.
 Discussion (6:08) None
 Motion Continued to August 12th.
 Roll-call vote N/A
 - 5. Sally Horchow – 27 East Tristram Avenue (31-2) SE48-3451

Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams
 Documentation Draft Order of Conditions
 Staff No special conditions.
 Discussion (6:09) None
 Motion **Motion to Issue as drafted.** (made by: Williams) (seconded)
 Roll-call vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Williams-aye
 - 6. Donald E. Walker – 227 Madaket Road (59-1.2) SE48-3452

Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams
 Documentation Draft Order of Conditions
 Staff Pretty straight forward. Only condition is to remove the vehicle from the resource area.
 The Board of Health (BOH) certificate is required only to issue our Certificate of Compliance.
 Discussion (6:10) **Engelbourg** – He thought with upgrades that a BOH certificate is required.
 Motion **Motion to Issue as drafted.** (made by: Williams) (seconded)
 Roll-call vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Williams-aye

F. EXTENSION REQUEST

- 1. Nantucket Land Council – Nantucket Harbor (N/A) SE48-3092

Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams
Staff Recommend issuing three 1-year extensions.

Discussion (6:12) **R.J. Turcotte**, Nantucket Land Council – This is to extend the eel grass restoration permit at Monomoy and Nantucket Harbor. Over half the eel grass plugs have survived and are reproducing by seed as well as vegetative propagation. Asking for three 1-year extensions; at the next meeting, we will come in with Minor Modification request because we hope to try some seeding methods rather than transplanting.

Motion **Motion to Issue three 1-year extensions.** (made by: Beale) (seconded)

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

G. Other Business

- 1. Approval of Minutes 07/08/2021:

Motion **Motion to Issue as drafted.** (made by: Williams) (seconded)

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

- 2. Enforcement updates

- a. Siasconset Beach Preservation Fund 87-105 Baxter Road (48-Various) SE48-2824

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

Staff He has filed a formal request for legal services with an independent counsel due to difference of opinion with the Select Board; hopefully that will be signed off as soon as possible. The next step would be the procurement process.

Speakers None

Discussion (6:16) **Erisman** – Asked people who are following this to be patient as ConCom moves through the process, which is slow.

Golding – Suggested a formal motion to Mr. Carlson to seek counsel as expeditiously as possible. He wants it on the record that the Commission support Mr. Carlson.

Motion **Motion to Support Mr. Carlson in seeking independent counsel as expeditiously as possible.** (made by: Golding) (seconded)

Roll-call vote Carried 5-2//Beale, Engelbourg, Erisman, Golding, Phillips-aye; LaFleur & Williams-nay

- 3. Reports:

- a. CPC, Beale & Williams

- b. NP&EDC, Phillips

- c. Polpis Harbor Committee representative appointment:

Carlson – Mr. Beale was our representative before.

Beale – The Committee hasn't met for 1 year. He'll stay on as the representative.

Motion **Motion to Appoint Mark Beale to the Polpis Harbor Committee.** (made by: Williams) (seconded)

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

- 4. Commissioners Comment

- a. Williams – appreciates the brevity of the meeting compared to HDC.

- 5. Administrator/Staff Reports

- a. This is Ms. Dodd's last meeting; she leaves before the next meeting.

H. Adjournment

Motion **Motion to Adjourn at 6:27 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