



CONSERVATION COMMISSION

PUBLIC MEETING

131 Pleasant Street
Nantucket, Massachusetts 02554
www.nantucket-ma.gov
Thursday, July 28, 2022 – 5:00 p.m.

4 Fairgrounds Road – Community Room

Commissioners: Ashley Erisman (Chair), Ian Golding (Vice Chair), Seth Engelbourg, Mark Beale, Linda Williams, Mike Misurelli, and Joe Plandowski

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, Engelbourg, Beale, Williams, Misurelli, and Plandowski

*Matter has not been heard

I. PUBLIC MEETING

A. Announcements

B. Public Comment –

1. Vince Murphy, Natural Resources – Assisting ‘Sconset Beach Preservation Fund (SBPF) with future their expansion and maintenance of the geo-tubes; the Commissioners should have received the 2021 annual report. Reviewed highlights of the report. Asked Commissioners to review the report and set a date for public review on August 4th.
Meridith Moldenhauer, SBPF – We look forward to finding a reasonable path forward. We are supported by Town leadership and to be here and find a path forward.
Carlson – Gregg Berman has a copy of the 2021 report and is in the process of reviewing it; he hasn’t connected with Mr. Berman since he received it.
Erisman – August 4th seems too soon since we would want to have time to review the report and his response first.
Carlson – We’ll add it as an agenda on the August 11th meeting; that’s about the quickest we can do it.
Golding – We’ve ordered it to be removed and are waiting for the appeal. Asked why we would proceed at if the removal order doesn’t exist.
Carlson – With that pending and until the judge’s decision is there, the idea is to maintain the structure in compliance with the order until the judge renders his decision. The reporting requirements for 2021 are still in effect until that decision is rendered.
2. R.J. Turcotte, Nantucket Land Council – The subject of fertilizer and water runoff into the harbor has come up frequently. He brought in copies of a letter from 20016 to Winthrop Management regarding the maintenance of the absorbent pads in the stormwater infiltration system; there is concern that they aren’t being properly maintained.
Dan Bailey, Pierce Atwood – Winthrop Management no longer owns the parking lot. NIR now owns the lot.

II. PUBLIC HEARING

A. Notice of Intent

1. 13 Commercial Street LLC – 13 Commercial Wharf (42.2.4-10) SE48-3501 (**Withdrawn**)

Motion **Motion to Approve the withdrawal without prejudice.** (made by: Beale) (seconded)

Vote Carried unanimously

2. Brant Point Club LLC – 6 8 North Beach Street/4 Dolphin Court (42.1.4-65;65.1;65.2) SE48-3518 (Madden) (**Cont. 8/11**)

3. Airack, LLC – 14 Gosnold Road (30-83) SE48-3550

Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, and Plandowski

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

Representative David M. Haines, Haines Hydrogeologic Consulting

Public None

Discussion (5:12) **Haines** – Haven’t heard from Massachusetts Natural Heritage so will have to continue. Submitted a revised landscape plan based upon previous comments about runoff and reestablishing the bordering vegetated wetlands buffer.

Engelbourg – The vegetated berm extends into the 25’ buffer; there are concerns about protecting that buffer but would prefer the berm not be in the 25’ buffer.

Haines – They can pull the berm out of the 25’ buffer. Asked for a 2-week continuance.

Staff recomm. None

Motion Continued to August 11th.

Vote N/A

4. Coburn – 5 High Brush Path (56-388) SE48-3551

Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, and Plandowski

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

Representative Mark Rits, Site Design Engineering

Public None

Discussion (5:16) **Rits** – Submitted a revised plan correctly labeling the secondary structure as a garage, removed an outdoor shower and sewer connection from jurisdiction. The septic tanks and sewer lines to the leach field are outside the buffer.
Engelbourg – Still confused about whether the system is I/A or not; the plans don't specify that.
Rits – Page 2 of the plan calls out an I/A system.
Beale – Asked the plans for the garage and to respond to the ban against a secondary dwelling.
Rits – Garage/exercise studio with bathroom. This is not intended as a secondary dwelling.

Staff recomm. Have everything needed to close.

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

Vote Carried unanimously

5. Lehrman Dynasty Trust – 18 Washing Pond Road (31-18.1) SE48-3552

Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, and Plandowski

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

Representative Mark Rits, Site Design Engineering
 Dan Bailey, Pierce Atwood, LP

Public None

Discussion (5:20) **Rits** – Summarized the resubmitted project to repair a bulkhead and 2 groins, which were constructed in 1975. We believe that because these predate the Wetlands Protection Act (WPA), they are grandfathered and so not subject to the performance standards. The applicant is willing to construct the stairs if they are a condition of the approval; however, they prefer to do an in-kind replacement.
Bailey – Read the definition of “grandfathering.” We don't have the physical space to enhance the stairs. As a pre-existing structure, it is our view the Commission is obligated to approve the in-kind replacement. Reviewed other in-kind replacements of groins and bulkheads approved by the Commission. This was litigated under Corey v Nantucket Conservation Commission, the rehab of Petrel Landing Wharf; he represented an abutter taking the stance it wasn't grandfathered because no structure was involved; we lost it.
Erisman – Asked for electronic copies of the Hallowell Lane projects site plans Mr. Bailey referenced.
Golding – Read Chapter 91 Waterway License 3242; asked why Mr. Bailey thinks this project is in compliance with those original conditions. The groin to be replace was above the low-tide line; those conditions have changed, and free access of the intertidal zone no longer exist.
Bailey – The groins that exist now and to be repaired were authorized by that license; it's inherent in the license the Massachusetts Department for Environmental Protection (DEP) approves of the groins subject to public access. He doesn't think access has changed.
Erisman – Wants to avoid the Chapter 91 status because we don't oversee that.
Golding – He wants to propose ConCom write the DEP about this project being out of compliance.
Erisman – Understands it's pre-1978 and on the surface it could be rebuilt; however, when reading the uses, she sees there has been a shift in the use; now the groin is in land under the ocean. The Petrel Landing's resource areas hadn't changed.
Williams – Agrees about trying to apply current performance standards to something that predates the bylaws and that ConCom shouldn't be discussing Chapter 91. They've been accused of not repairing and maintaining in a timely manner; she believes they have. Climate Change and rising seas is not in their control. She feels they have a right to keep it and maintain it. She doesn't see differences between this and other projects along the North Shore. She doesn't support the stairs; feels they would be a massive liability.
Erisman – Agrees other structures have been able to be repaired; that's why she wants to look at them more closely.
Engelbourg – Read pre-existing use regarding alteration or modification. It doesn't say that has to be purposeful; he thinks, in order to actually deny this project, we would have to discuss how it has been modified. We know the resource area has change but we have to talk about whether or not the uses have changed.
Williams – We are talking about use; she believes we need to talk about it as a pre-existing structure.
Golding – He disagrees. There is no longer a pre-1978 structure there. Town Counsel was of the opinion that it could be argued in Court that the bulkhead is not allowed Chapter 91 protection. He feels its use has changed since it no longer protects a pre-1978 structure.
Beale – Read from Nantucket Wetland Bylaw about residential piers. It is now under water. It now interferes with public use.
Bailey – Read grandfathering/pre-existing use definition from ConCom regulations supporting that this is a grandfathered/pre-existing structure. The analysis of a repair-replacement indicates there doesn't have to be a structure in place because it's the bulkhead and groins that are protected.
Erisman – She sees this as an extension of the use where the groin was collecting sand on the beach and now it is acting as a breakwater.
Rits – A breakwater is a shore-parallel design; groins are specifically constructed on beaches and intertidal areas to trap sediment moving along the shore for the purpose of building a wider beach. He had submitted 20-years of photos, many of which showed a beach of variable widths in front of the bulkhead and around the groins. With the destruction of the eastern groin in January, the sand couldn't be trapped and held to help rebuild a depleted beach. The beach around the western groin is building back out; if the damage hadn't happened, the eastern side would be building up beach.

- Misurelli** – We should be looking to solutions facing climate change. He supports approving this.
- Plandowski** – The groin needs to be repaired regardless of other issues.
- Staff recomm. This has a valid license; the question is if the bulkhead qualifies as pre-1978 under the regulations – it does. Have everything needed to close.
- Motion **Motion to Close.** (made by: Williams) (seconded)
- Vote Carried unanimously
6. *NBB Fuels, LLC – 6,11, 12 New Whale Street (42.3.1-89.1, 42.24-14, 42.2.4-11) SE48-3554
- Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, and Plandowski
- Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
- Representative Dave Fredericks, Harbor Fuel
- Public None
- Discussion (5:59) **Fredericks** – Reviewed the history of the Tank Farm. Only 3 tanks remain on the property; that license ends December 2022. Recently we licensed 2 10,000-gallon tanks to serve the harbor. The dike walls are existing and there to protect against flooding; the tanks are stand-alone, double-wall tanks. Having a discussion with National Grid about private easement issues regarding pipes, so here we’re only talking about on-site pipelines.
- Golding** – Asked what the extreme storm surge and if the walls are sufficient.
- Fredericks** – Extreme surge is 4.5’ with the walls at 5.5’ from existing grade. We are trying to use the existing walls to limit the amount of construction; we’re willing to add perhaps 18”.
- Williams** – She thinks this is a net gain.
- Staff recomm. Have everything needed to close.
- Motion **Motion to Close.** (made by: Williams) (seconded)
- Vote Carried unanimously
7. *Town of Nantucket – 98, 100 & 104 Washington Street (55.1.4-9.2, 9.1 & 104) SE48-____ (Cont. 8/11)
8. *Kane – 12 Pond Road (56-295) SE48-3555
- Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, and Plandowski
- Documentation Site and topographical plans, photos, requisite departmental reports, and correspondence.
- Representative Brian Madden, LEC Environmental
- Public None
- Discussion (6:07) **Madden** – This is for an addition, deck, garage-studio, driveway, abandon septic, and landscaping. The resource area is a vegetated wetland. The architect revised the project to keep the addition outside the 50’ buffer; the footings are above 2’ separation from groundwater. The deck will be expanded away from the resource area. Runoff will go to subsurface infiltration systems. For mitigation, the 45 square-foot shed within the 25’ buffer will be removed, and there will be 785 sf restoration of the 25’ buffer; requesting a waiver for that work. Structural area within the 50’ buffer is a 5:1 ratio.
- Williams** – She’s satisfied; the big issue was the foundation for the connector.
- Staff recomm. Have everything needed to close.
- Motion **Motion to Close.** (made by: Williams) (seconded)
- Vote Carried unanimously
9. *The Graylan Group LLC – 7 Pond Road (56-153) SE48-3556
- Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, and Plandowski
- Documentation Site and topographical plans, photos, requisite departmental reports, and correspondence.
- Representative Chloe Coggins, Nantucket Surveyors
- Public None
- Discussion (6:13) **Coggins** – For an addition, outdoor shower, patio, relocate a shed within the buffer. The shed and patio are being relocated outside the 50’ no-build zone.
- Engelbourg** – We need an updated plan showing relocation of the shed.
- Staff recomm. If you call for the removal of the shed, they are obligated to do that; the updated plan could be conditioned. Have everything needed to close.
- Motion **Motion to Close.** (made by: Williams) (seconded)
- Vote Carried unanimously
10. *Hilderbrand – 60 Crooked Lane (41-198) SE48-3558
- Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, and Plandowski
- Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
- Representative Chloe Coggins, Nantucket Surveyors
- Public None
- Discussion (6:17) **Coggins** – for construction of porch & pergola and demolition of 2nd floor, which involves removing the roof within the buffer to a vegetated wetland. Haven’t closed out the previous order.
- Erisman** – Asked if this is pre-1978. The metal grate was within the 25’ buffer.
- Staff recomm. The cattle grate has been in longer than we have knowledge of it so we can’t take enforcement; we have plans over 7 years old showing the cattle grates. Have everything needed to close.
- Motion **Motion to Close.** (made by: Williams) (seconded)
- Vote Carried unanimously

B. Amended Order of Conditions

1. Philips, Trustee – 19 East Tristram Ave (31-4.1) SE48-3304 (**Cont. 8/11**)
 2. 34 Easton Realty Trust – 34 Easton Street (42.4.2-23) SE48-3369
- Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, and Plandowski
 Documentation Site and topographical plans, photos, requisite departmental reports, and correspondence.
 Representative Art Gasbarro, Nantucket Engineering & Survey
 Public None
 Discussion (6:21) **Gasbarro** – Reviewed revised plans filed in response to previous concerns. We are within land subject to coastal storm flowage. The project represents a significant improvement from existing conditions.
 Staff recomm. Recommend issuing the amended order.
 Motion **Motion to Issue.** (made by: Williams) (seconded)
 Vote Carried unanimously

III. PUBLIC MEETING

C. Requests for Determination of Applicability

1. None

D. Minor Modifications

1. 14 North Road, LLC – 14 North Road (43-83) SE48-3359
 2. Larrabee – 9 Millbrook Road (56-324) SE48-3410
- Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, and Plandowski
 Documentation Site and topographical plans, photos, requisite departmental reports, and correspondence.
 Representative Brian Madden, LEC Environmental
 Public None
 Discussion (6:24) **Madden** – This is for changes to the driveway and relocation of a dry well..
 Staff recomm. Recommend issue the Minor Modification.
 Motion **Motion to Issue the Minor Mollification.** (made by: Williams) (seconded)
 Vote Carried unanimously
- Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, and Plandowski
 Documentation Site and topographical plans, photos, requisite departmental reports, and correspondence.
 Representative David M. Haines, Haines Hydrogeologic Consulting
 Public None
 Discussion (6:26) **Haines** – This is to show a shifted location of the driveway greater than 25’ from the wetland. We removed the loam pile and restored and seeded last year; it’s coming in well. Recently moved a portion of the driveway from the wetland and seeded it; it’s not yet come up. The silt fence has been restored. Once the driveway access is available, the loam pile will be spread out. The well has to be removed and new well put in.
Erisman – The driveway was being driven on and restoration of the wetlands started after a heavy rainstorm. She’s concerned about the proximity of the driveway to the wetland and is hoping for more detail on the driveway edging to prevent runoff into the wetlands.
 Staff recomm. Recommend issue Minor Modification.
 He sent the site plan around to commissioners; this site has had issues with silt fencing.
 Motion **Motion to Issue the Minor Modification.** (made by: Williams) (seconded)
 Vote Carried unanimously

E. Certificates of Compliance

1. Gallaher & Aguiar-4 Pond Road (56-158) SE48-3404
 2. Morris & Smith – 235 Madaket Road (59.4-364) SE48-3121 (**Cont. 8/11**)
- Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, and Plandowski
 Documentation Site and topographical plans, photos, requisite departmental reports, and correspondence.
 Representative None
 Public None
 Discussion (6:31) None
 Staff recomm. This was for a sewer connection, construction of garage, and abandoning the septic. Feel it is in substantial compliance though the shed got a little smaller than planned. Recommend CofC be issued.
 Motion **Motion to Issue.** (made by: Williams) (seconded)
 Vote Carried unanimously

F. Orders of Condition

1. Coburn – 5 High Brush Path (56-388) SE48-3551
- Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, and Plandowski
 Documentation Draft Order of Conditions
 Staff Standard set of conditions. He’ll add the upgrade to I/A in the overview.
 Discussion (6:34) **Erisman** – Asked to identify upgrade to I/A system.
 Motion **Motion to Issue as amended.** (made by: Williams) (seconded)
 Vote Carried unanimously

2. NBB Fuels, LLC – 6,11, 12 New Whale Street- (42.3.1-89.1, 42.24-14, 42.2.4-11) SE48-3554
 Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, and Plandowski
 Documentation Draft Order of Conditions
 Staff Standard conditions. He'll add a Finding regarding meeting sea-level rise.
 Discussion (6:36) **Golding** – Mr. Fredericks said he'd take into consideration raising the dyke wall 18".
Williams – Doesn't want to make it a condition.
Engelbourg – CRAC's position is we should adopt conditions that meet requirements for sea-level rise; the height of the wall should meet those requirements.
 Motion **Motion to Issue as amended.** (made by: Williams) (seconded)
 Vote Carried unanimously

3. The Graylan Group LLC – 7 Pond Road (56-153) SE48-3556
 Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, and Plandowski
 Documentation Draft Order of Conditions
 Staff Based upon the discussion, he added Condition 20 relocating the shed outside commission jurisdiction.
 Discussion (6:40) None
 Motion **Motion to Issue as amended.** (made by: Williams) (seconded)
 Vote Carried unanimously

4. Hilderbrand – 60 Crooked Lane (41-198) SE48-3558
 Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, and Plandowski
 Documentation Draft Order of Conditions
 Staff Standard conditions.
 Discussion (6:42) None
 Motion **Motion to Approve as drafted.** (made by: Williams) (seconded)
 Vote Carried unanimously

5. Lehrman Dynasty Trust – 18 Washing Pond Road (31-18.1) SE48- 3552
 Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, and Plandowski
 Documentation None
 Staff If there's positive order, the decision is whether or not stairs or not. If there's a negative order, there needs to be discussion on why and putting together the findings. They will put in stairs if the commission requires them but prefer not to have stairs.
 Discussion (6:42) Mean-high water is a set elevation; as the beach moves in or out, it also moves.
Golding – We were given a proposal with stairs and one without; asked which would we be approving. The next question is if we are denying it, is that on the basis that conditions have changed.
Engelbourg – If the approval requires stairs, we have to show the stairs don't adversely impact the resource area.
Beale – He feels the stairs are necessary for public access over the bulkhead; however, they want to put the stairs in the water, which defeats their purpose.
 Discussion about mean-high water and land under the ocean versus the beach building back up.
 Sense of the board – positive or negative Order of Conditions.
Erisman – Does not support this based upon the shifting resource areas.
Golding – Agrees.
Williams – Supports this without stairs; concerned the stairs would get ripped off, though can go either way.
Misurelli – Supports this with stairs.
Plandowski – Supports this without stairs.
Engelbourg – Supports this; believes our regulations support a positive order with stairs.
Beale – Supports this with stairs.
Engelbourg – We need a Finding that the stairs would not have an adverse impact to our protected interests.
 Motion Continued to August 11th.
 Vote N/A

6. Kane – 12 Pond Road (56-295) SE48-3555
 Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, and Plandowski
 Documentation None
 Staff Explained that he hadn't drafted an order because of the waiver request. He'd include typical conditions and conditions for monitoring and survivability.
 Discussion (7:00) **Erisman** – Suggested a finding that since the mitigation is greater than 4:1, it's not detrimental.
Engelbourg – Asked for a Finding about the connector not have a foundation but still being a structure. For the new deck, he'd like a condition requiring appropriate spacing to allow infiltration.
 Motion Continued to August 11th.
 Vote N/A

G. EXTENSION REQUEST

1. None

H. Other Business

1. Approval of Minutes

a. 06/23/2022

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

Vote Carried 5-0// Misurelli and Plandowski abstain

b. 07/14/2022:

Erisman – Correct the date.

Golding – Page 5 correct Leheigh to Lahey

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

Vote Carried unanimously

2. Discussion of Regulatory Update

Carlson – He sent out an edited draft; asked for a workshop date so as not to take up regular meeting time.

Erisman – She wants to make sure we don’t delay much more, so if we’re waiting for after Labor Day, she wants a date early in the month.

Golding – He will be unable to physically attend meetings after the 3rd week of September. Asked to have that meeting earlier in September or late August.

Engelbourg – He thinks it’s easier to work through regulations when in person. Noted that Arlington MA has good climate change language in their regulations; he’ll send it to Mr. Carlson.

Williams – Thinks Newport RI also has climate change language.

Carlson – Mr. Golding sent him information regarding compatible beach sand to be included into the regulations; he’s forward that to commissioners.

3. Enforcement Actions/Potential Enforcement Actions

a. None

4. Reports:

a. CPC, Williams – Mr. Beale missed it.

b. NP&EDC, Engelbourg

5. Commissioners Comment

a. Beale – We need to talk about ZOOM versus in person. We have the option of ZOOM meetings until March 2023. He’s happy with ZOOM; we get better attendance.

Erisman – She’s happy with ZOOM as well though some meetings might be more appropriate in person. If we go back to ZOOM, we should all be visible on camera; that’s a request from the public.

Williams – She agrees with Mr. Engelbourg about regulation meetings being person.

Golding – He prefers ZOOM though discussing regulations is better around the table.

Misurelli – He too agrees on the efficacy of ZOOM.

PLandowski – He’s okay either way.

Erisman – We can have regular meetings on ZOOM but meet in person on the regulations. August 11 meeting will go back to ZOOM.

b. Engelbourg – Asked for update on Sacacha Pond project to remove widgeon grass.

Carlson – It will be coming before the ConCom.

c. Engelbourg – He was in Mass ConCom session about writing effective Orders of Conditions; whenever there is a wetland, they add a condition of no dumping products in the wetland to back us up a bit.

Carlson – It might be in the standard conditions the Town issues; he’ll check that.

d. Golding – 18 Washing Pond Road brings up the issue of walking the beach of the north shore; a number of these projects, including 18 Washing Pond, intrude into the water. He’d like us to write DEP to ask them to examine this bulkhead to ensure it is in compliance; if it isn’t, they should force it into compliance.

Erisman – She worries about targeting 18 Washing Pond but thinks it’s worthwhile to ask DEP to double check the validity of some of these licenses.

Beale – He agrees with Ms. Erisman regarding all bulkheads.

Erisman – Asked Mr. Carlson to draft a letter regarding how to deal with some of these and do inspections.

6. Administrator/Staff Reports

a. Still waiting to hear from Superior Court.

I. Adjournment

Motion **Motion to Adjourn at 7:39 p.m.** (made by: Engelbourg) (seconded)

Vote Carried unanimously

Submitted by:

Terry L. Norton