



# CONSERVATION COMMISSION

## PUBLIC MEETING

131 Pleasant Street  
Nantucket, Massachusetts 02554

[www.nantucket-ma.gov](http://www.nantucket-ma.gov)

Thursday, September 9, 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 – None**

### **II. PUBLIC HEARING**

#### **A. Notice of Intent**

1. Lower Pocomo Nominee Trust – 88 Pocomo Road (15-42) SE48-3432 (**Cont. 10/07/21**)
2. Pocomo Point Realty Trust – 90 Pocomo Road (15-43) SE48-3438 (**Cont. 10/07/21**)
3. Warrens Landing N.T. – 40 Warrens Landing Road (38-45) SE48-3466 (**Cont. 09/23/21**)
4. Anchialine Properties, LLC – 19 East Creek Road (55-60) SE48-3465 (**Cont. 09/23/21**)
5. \*Johnson – 34 Easton Street (42.1.4-18) SE48-3469

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 (5:01) **Gasbarro** – This is for replacement of a Chapter 91 licensed timber pier within Nantucket Harbor. All material will be removed by a licensed marine engineer and properly disposed of.

**Golding** – Asked if there is any change in design.

**Gasbarro** – The dimensions will be the same but there will be an upgrade in material.

**Beale** – Asked what environmental issues the State would bring up when replace a pier.

**Gasbarro** – A time of year restriction related to winter flounder is all he’s seen. Work will be from a barge so will dependent upon tide cycles, so the barge doesn’t bottom out.

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. \*Moore’s 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 None

Discussion (5:06) **Madden** – This is for recognize maintenance activities that took place on the wooden retaining wall bordering Hummock Pond; the wall dates back to late the 1970s. Following removal of phragmites, the wall received damage, so the owner performed maintenance activities unaware it would require a NOI. The work included some extension of the wall.

**Engelbourg** – Feels this doesn’t fit the definition of maintenance with the extension and reconfiguration of the wall. Also, the photos show a variety of debris and cobble being placed within the wall potentially causing the wall to function as a bulkhead and how the wall will change the natural properties of the shoreline eco system. There was also an un-permitted patio; he has concerns about the history of this property.

**Erisman** – Shares the concerns about the wall being extended to the retaining wall.

**Beale** – Asked if the dates are good.

**Madden** – He’ll work with the property owner to find old photos of what the wall used to look like and confirm the construction date. We aren’t looking to extend to the west at this time. If erosion occurs to the west, something softer would be more appropriate.

**Erisman** – Asked if they considered a softer solution to the east side.

**Madden** – The connection point is about 8’ to 10’; there are over-hanging shrubs in that area.

**Golding** – An aerial photo shows a modern house to the east that’s at least 4X the size of this with a bulkhead along the whole property line with a jetty. This is very modest in comparison to that.

**Phillips** – What struck her was that the removal of the phragmites was contributed to the need to extend this wall; she agrees that when the phragmites go away and the stability of what’s remaining becomes a concern; however, she’s disappointed that when the owner realized conditions are changing, they should have come in.

**Madden** – We have to continue for 2 weeks for Massachusetts Natural Heritage; urged commissioners to go out to the site.

Staff He can do a history review on the project to the east.  
He’ll schedule a site visit for this.

Motion Continued to Sept. 23<sup>rd</sup>

Roll-call Vote N/A

7. \*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

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

Discussion (5:21) **Bracken** – This is for structural work to the dwelling within 100’ of a coastal bank and saltmarsh. Asking for a waiver for reconfiguration west elevation within 50’ of the coastal bank.

**Phillips** – Asked why the air conditioning (A/C) and shower be moved toward the road to get it closer to out of the 50’ buffer.

**Bracken** – It looks like we could move it a couple of feet.

**Engelbourg** – He’s concerned with the addition raising the ridge and adding to the roof; the massing is increasing and that impacts the resource areas. A portion of the existing deck goes into the 25’ buffer; if they are replacing that, they need another waiver. We need an updated plan documenting the changes to the deck within the 25’ buffer.

**Golding** – He’s concerned this is a way to get around our regulations; currently this is an open deck being covered; he’s opposed to chiseling at our wetlands with what is essentially new construction.

**Williams** – Thinks it would be helpful for this to be added to the viewing list.

**Beale** – The old plans call it a deck and the new plans call it a porch; asked how much will be covered.

**Bracken** – The roof is an extension of the main mass of the house; we’re covering about 80% of the deck.

**Golding** – West elevation, it looks to him like the roof is covering the entire porch; he can see them coming back in a couple of years asking to enclose it causing an end-run around our regulations. He’s opposed to new construction within our 25’-50’ zone.

**Erisman** – Agrees this sort of in-filling is concerning and speaks more to new construction as well as increasing habitable space within the 25. We’re looking at a small beach cottage being expanded into a fairly large structure.

**Turcotte** – Agree about the covered porch in the no-build zone. Asked the type of septic system and if the 2<sup>nd</sup>-floor bathroom requires an expansion.

**Bracken** – It’s an I/A system with no increase in bedrooms. Asked for a 2-week continuance.

Staff He’ll add this to the site visit list.

Motion Continued to September 23<sup>rd</sup>.

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 (5:38) **Santos** – This is to eliminate one stone patio and consolidate with the other and validate placement of a landscape wall at the edge of the patio; modify the garage to become a dwelling; and the screen porch will be enclosed.

**Engelbourg** – He has concerns about the new structural elements being proposed within the 50’ no-build zone: landscape wall, planting beds, firepit, enclosed area of the porch, new entry way on the garage. They are individually small but added together become significant. Asked for clarification on the planting beds and firepit. He understands the wall demarcates the patio from lawn, but he’d prefer non-structural demarcation.

**Santos** – They have started work on the wall without a permit.

**Erisman** – She’s concerned because they seem to be pushing the limits with the wetlands. They know they need permits for work on this site.

**Golding** – It looks like the west and the screened-in portion of the porch are both in the no-build zone. He brought this up for 14 D Street and thinks it should be left as is. This will be fully weather proofed and is new construction. We should hold to the 50’ no-build zone.

**Santos** – Pointed out that this porch is already enclosed; there is no expansion. Both as a screened porch and enclosed in, it is a structure.

**Williams** – Cited that a screened-in porch counts as a structure for zoning purposes.

**Phillips** – There’s some missing of a point. Yes, this is already enclosed; however, the point is there will be a new kind of enclosure built within the 50; it’s still new construction in a no-build zone. Agrees with Mr. Golding.  
**Engelbourg** – Our regulations talk about habitable space “space for living, eating, or cooking.” This question needs to be addressed in the future by better defining open and screened porches.  
**Santos** – Asked for a 2-week continuance.

Staff None  
 Motion Continued to September 23<sup>rd</sup>.  
 Roll-call Vote N/A

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

Discussion (5:55) **Santos** – This is to relocate the pool house outside ConCom jurisdiction and remove brush for expansion of the lawn into 50’ buffer. Footpaths between the 25’ and 50’ buffer are being allowed to revegetate naturally. A second component is to reconstruct wooden beach stairs to access the beach.

**Golding** – He’d like to see a cross section of the replacement steps and a site visit. The idea of building a 10X24 platform within the 25’ buffer is a significant disturbance.

**Erisman** – the platform is more like a desk; should be no more than 3’ long.

**Phillips** – Asked if the brush in the photo would be removed and if doing that could impact the stability of the bank.

**Santos** – The lawn is at elevation 24 with the top of bank around elevation 30.

**Beale** – He agrees with Ms. Phillips about the platform.

**Golding** – It looks like a miniature Versailles on Eel Point Road; he’d prefer minimal disturbance. The aluminum stairs are very unobtrusive and the proposed is not.

**Beale** – Agrees with Mr. Golding. The 1<sup>st</sup> part of the steps is on a gentle slope and the platform on a flat area. This would be good to visit.

**Erisman** – We are moving more toward aluminum stairs which can be moved in the event of a change in the bank.

**Turcotte** – Agree about the deck and stairs. Aluminum stairs are removable in a storm event.

**Santos** – Asked for a 2-week continuance.

Staff He’s schedule the site visit for Monday the 20<sup>th</sup>.  
 Motion Continued to September 23<sup>rd</sup>.  
 Roll-call Vote N/A

### III. PUBLIC MEETING

#### C. Requests for Determination of Applicability

##### 1. Catino – 11 D Street (60.2.1-17)

Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams  
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.  
 Representative Don Bracken, Bracken Engineering  
 Discussion (6:09) **Bracken** – North of this is a lot with the top of a coastal bank; that 100’ buffer extends into this property about 14’. The only work within that buffer is to remove a garage. A new septic to be located outside the 100’ buffer.  
 Staff Recommend Negative 3 allowing work in buffer zone

Motion **Motion to Issue as Negative 3.** (made by: Beale) (seconded)  
 Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Williams-aye

##### 2. 32 Hulbert Trust – 32 Hulbert Ave. (29-72)

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  
 Discussion (6:12) **Gasbarro** – This is to confirm the resource area as land subject to coastal storm flowage to allow some brush cutting for access into the property.

**Engelbourg** – Asked to add the condition that vegetation with DBH of 4” or more be left.

**Golding** – He had the same request.

Staff Recomm Negative 2 work within area subject to protection under The Act and Positive 2 to confirm resource areas.

Motion **Motion to Issue as a Negative 2 and Positive 2 and with the condition to leave growth with a base of 4” or greater.** (made by: Engelbourg) (seconded)

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

**D. Minor Modifications**

1. 5 Sherburne Way, LLC – 5 Sherburne Way (30-38) SE48-3363
  - 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
  - Discussion (6:15) **Gasbarro** – This modification is for resiting structures farther from the resource areas.
  - Staff Recommend issuing as a Minor Modification.
  - Motion **Motion to Issue the Minor Modification.** (made by: Phillips) (seconded)
  - Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Williams-aye
2. EPR RGH, LLC – 119 Eel Point Road (33-17.2) SE48-3437
  - Sitting Erisman, Golding, LaFleur, Phillips, Beale, Williams
  - Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
  - Representative Paul Santos, Nantucket Surveyors
  - Discussion (6:18) **Santos** – This is to relocate gazebo 10’ north and move the pool outside ConCom jurisdiction.
  - Staff Recommend issue as a Minor Modification.
  - Motion **Motion to Issue the Minor Modification.** (made by: Golding) (seconded)
  - Roll-call Vote Carried 6-0//Beale, Erisman, Golding, LaFleur, Phillips, and Williams-aye// Engelbourg recused
3. Nantucket Islands Land Bank – 174 Orange Street & 2 Milestone Road (55-64&65) SE48-3388
  - Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale
  - Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
  - Representative Rachael Freeman,
  - Discussion (6:21) **Freeman** – This to request planting native species to help screen areas within the 100’ buffer. Explained rationale behind choices for plants.
  - Engelbourg** – There are a couple of cultivars listed; asked that those be replaced with native species.
  - Erisman** – Shares Mr. Engelbourg’s opinion.
  - Staff Recommend issue as a Minor Modification.
  - Motion **Motion to Issue the Minor Modification.** (made by: LaFleur) (seconded)
  - Roll-call Vote Carried 6-0//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips-aye//Williams recused

**E. Certificates of Compliance**

1. Brown & Little – 9 North Avenue (42.4.4-58) SE48-3234
  - Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams
  - Staff The work is done in compliance, carry for Condition 20 prohibiting fertilizer within the 25’ buffer.
  - Discussion (6:28) None
  - Motion **Motion to Issue with on-going Condition 20.** (made by: Williams) (seconded)
  - Roll-call Vote Carried 6-0//Beale, Erisman, Golding, LaFleur, Phillips, and Williams-aye// Engelbourg recused
2. Rothbard – 3 Brooks Farm Road (41-222.1) SE48-3238
  - Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams
  - Staff The site is in compliance and the wetland restoration is healthy.
  - Discussion (6:30) None
  - Motion **Motion to Issue.** (made by: Williams) (seconded)
  - Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Williams-aye

**F. Orders of Condition**

1. Johnson – 34 Easton Street (42.1.4-18) SE48-3469
  - Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams
  - Documentation Draft Order of Conditions.
  - Staff Conditions will require a siltation boom and recommendations from Marine Fisheries. Will add Cond 20 requiring proper disposal of material.
  - Discussion (6:31) **Engelbourg** – Wants a condition added requiring the removed material is properly disposed of offsite.
  - Motion **Motion to Approve as amended.** (made by: Golding) (seconded)
  - Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Williams-aye

**G. Extension of Orders**

1. Lampe – 15 Aurora Way (56-447) SE48-2993
  - Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale, Williams
  - Staff Asking for 2 years.
  - Discussion (6:33) None
  - Motion **Motion to Issue the 2-year extensions.** (made by: Williams) (seconded)
  - Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Williams-aye

**H. Other Business**

- 1. Approval of Minutes 8/26/2021 and 9/2/2021:

Golding – 9/2 page 3 top: “February 4, 2020 DEP report” should be “ DEP appeal”.

Motion **Motion to Approve 8/26 as drafted and 9/2 as amended.** (made by: Williams) (seconded)

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

- 2. Monitoring Reports - None

- 3. Reports:

a. None

- 4. Commissioners Comment

a. Erisman – An amended letter to go to the Select Board has been circulated.

Carlson – Need a motion to send it.

Golding – The revised version is very good.

Motion **Motion to forward the revised letter to the Select Board.** (made by: Golding) (seconded)

Roll-call Vote Carried 6-1//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips-aye; Williams-nay

- 5. Administrator/Staff Reports

a. The version of regulations Ms. Dodd had saved on her machine became damaged when migrating to another location. We are almost done with rebuilding those.

Golding – Asked if the notes made at meetings can be highlighted, such as Mr. Engelbourg made today regarding porches.

Carlson – Much of that comes down to how we define structures. We’ve previously talked about what is and is not structural.

Engelbourg – Likes the idea of moving forward with improving definitions.

b. 10 Bassett Road, Art Gasbarro is representing the applicant to talk about significant deviation for the plan for work within buffers to resource areas. Explained the work done as shown in photos. Our recommendation is to issue an enforcement with a Cease and Desist on the wall. Where the driveway comes in, some silt has been placed outside the driveway layout and that needs to be addressed.

Gasbarro - This just recently came to his attention; the owner is concerned and committed to rectifying the situation. We will come in with an amended order to make modifications to remove or change. The landscape designers are working on plans to step walls back. He will be doing a survey to determine the scope of deviant work.

Williams – The Building Commissioner asked her about this wall; he is committed to stopping the work, which is not permitted. There is a tremendous amount of grade change within the 50’ buffer.

Carlson – The debris piles are on the interior side of the wall; the silt fence is in need of repair.

Erisman – We need to focus on the Wetland Regulations. It would be nice to get the landscape company in her to explain how they went from the 30” timber wall to a 6’ cement wall.

Golding – This seems absolutely deliberate. Asked what fine we can add to this.

Carlson - \$50 per day per violation. We first need to get the scope of violations from Mr. Gasbarro.

Williams – Agrees about having a conversation with Atlantic Landscaping Inc.

Phillips – Wants to figure out what fines we can levy. Wants to formally request Atlantic be at the next meeting.

Carlson – We’ll issue to enforcement orders: one to the property owner and one to the landscape company with a Cease and Desist. If work was done on or impacted another property, that is a trespass issue outside our purview.

Gasbarro – Doesn’t think they can have an application in by the next meeting but he can provide an update.

Carlson – Putting a list together of other projects this contractor is working on and hold permits; we will be doing site inspections to ensure compliance.

Motion **Motion to Issue the Enforcement Orders: one to the property owner and one to the contractor.** (made by: Engelbourg) (seconded)

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

**I. Adjournment**

Motion **Motion to Adjourn at 7:02 p.m.** (made by: Engelbourg) (seconded)

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

Submitted by:

Terry L. Norton