



CONSERVATION COMMISSION

SPECIAL MEETING

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

Thursday, October 20, 2022

131 Pleasant Street, Meeting Trailer – 5:00 p.m.

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

Attending Members: Erisman, Golding, Engelbourg, Beale, Misurelli, and Plandowski

Absent Members: Williams

Early Departure: Misurelli, 6:55 pm

I. PUBLIC MEETING

A. Announcements

B. Public Comment: None

C. Workshop discussion

1. Potential Changes to Town of Nantucket Wetland Protection Regulations (Chapter 390)

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

Recused None

Documentation Updated draft of Nantucket Wetland Protection Regulations (Chapter 390); Florida Sand Search guidelines;

Public R.J. Turcotte, Nantucket Land Council

Discussion **Carlson** – To adopt these, they will need to be reviewed by Counsel for legality; then a public hearing must be held before the regulations are voted on for adoption. Once they are adopted, they must have an implementation date that is no less than 3 weeks from date of adoption.

Plandowski – Under Climate Change, asked why it doesn't end with, "...a well as human activities." He doesn't see a need to elaborate on greenhouse gases and fossil fuels.

Erisman – Cows burp methane adding to greenhouse gases.

Carlson – It would be a broader description of the causes of climate change.

Plandowski – Under Coastal Resilience, he has a problem with adding "...and more frequent storm activity." Thinks it should stop after "sea-level rise."

Erisman – She wouldn't want to remove the "more frequent storm activity."

Golding – More frequent storm activity is well documented.

Engelbourg – The interim director of the National Hurricane Center tried to say that frequent storm activity can't be attributed to climate change; he was called out by scores of climate scientists.

Misurelli – Asked how sea-level rise applies to our regulations.

Engelbourg – Our purview includes stormwater management, pollution, and flood waters. We're saying these interests need protection.

Erisman – More frequent storm activity adds to issues of storm surge.

Beale - More frequent storm activity is a global issue and thinks it's worthwhile having that in there.

Engelbourg – Under land subject to coastal storm flowage, it ties into a new Performance Standard #4 pertaining to resiliency and talks directly about storm damage. As storms become more frequent, we should direct construction elsewhere so that the coast can take on the brunt of the storms.

Plandowski – Under Extreme Coastal Risk, suggested eliminating "...prohibitive..." and just saying, "...maintenance costs..." The question being what constitutes prohibitive.

Engelbourg – That's a good point since financial concerns are not within our purview. We need to tie into the wetland resource area interests.

Turcotte – This language is adopted by the Town in the Coastal Resiliency Plan; it's an effort to get the whole Town on the same page.

Plandowski – Under Structure, Coastal Engineering, his questions rises out of the last 2 meetings and discussions about allowing use of steel sheeting to hold back a collapsing wall; this now talks about steel sheeting and could be construed as allowing its use.

Erisman – This is a definition that steel sheeting is a form of Coastal Engineering Structure.

Plandowski – Under Minor Activities F.2.b., he doesn't see split-rail fencing as being capable of holding up any wildlife movement; he questions its inclusion.

Golding – We might find people add mesh fencing to a split rail fence.

Carlson – The State regulations have a more extensive list of minor activities which includes this. This allows us to be consistent with State regulations.

Plandowski – Under Section (7), change “...feasible than bulkhead...” to “...then the bulkhead.” Pointed out the same grammatical error elsewhere. At the end of Appendix D regarding pool draining processes being subject to inspection, asked how that would be tied to wetlands.

Golding – One worry is that it would be drained into a wetland, hopefully with the additional hire, we’ll be keeping a closer eye on all pools being drained.

Erisman – This is for pools that are within ConCom jurisdiction.

Plandowski – Water drained from a pool is supposed to remain on the property; he knows that doesn’t happen and the water can be disposed of improperly. He wonders if there’s a service on Island where they come in with a tanker truck and pump the pool into the tanker.

Carlson – Suggested an alternative wording.

Plandowski – Last page, last sentence of 2nd paragraph, it says “...purposes shall be do so in keeping...” That needs to be “... to be done so...” Asked why properties located only within land subject to coastal storm flowage are exempt from these guidelines.

Carlson – Land subject to coastal storm flowage was exempted because the interests protected don’t include vegetation or additional wetlands; it’s flood-zone property only.

Plandowski – Page 151, Item 1 under trees, asked about the requirement to have Commission staff review any tree to be removed.

Carlson – This is specific to viewshed management. We don’t review trees being cut outside our jurisdiction. We now have a certified arborist on staff. These regulations only apply to land within our jurisdiction.

Plandowski – Item 6 regarding cut material removal by hand, asked why.

Carlson – We’ve been permitting removal within our buffer zones by hand for a while; we could look at it again. If something is being removed from within the 25’ buffer; if you’re felling large trees, it gets cumbersome.

Misurelli – There are safety issues with trying to take down trees of a certain caliper with a handsaw.

Golding – He’d like there to be a definition of “Beach Compatible Sand.” Having seen a pile of “sand” that looks like topsoil out at ‘Sconset, he circulated the Florida definition of compatible sand; read that definition. They can always ask for a waiver if it’s not within an approximation of the Munsell color scale.

Engelbourg – He agrees; he had also sought out including compatible Munsell color and odor and requiring a soil test reviewed by staff; he sent that in, but it didn’t make it into this draft.

Carlson – He’s on board with the need for a better definition. The question is what we’re looking for the material to be compatible with. This has been an age-old debate in Massachusetts - should the material being put down reflect the coastal bank or coastal beach.

Golding – Most of what comes out of ‘Sconset Bluff is cobble and sand. We need to have parameters so nourishment materials don’t look like topsoil; they can always ask for a waiver.

Engelbourg – Suggested updating the performance standards rather than having a definition. If we update the standards and someone applies, the Commission can decide what type of sediment will be used.

Golding – He agrees Mr. Engelbourg’s suggestion would be more specific.

Carlson – There is a visual component that should be included; however, we must be careful regarding a compatible range.

Further discussion about wording for sand compatibility – grain size, color, odor, etc.

Golding – Regarding the reference to 50% of the 25’ and 50’ buffers being altered, we had talked about expanding that because there is less and less land available. Feels it should go to 75% of unaltered area within the 25’ and 50’ buffers.

Erisman – Agrees that would be helpful.

Engelbourg – He’s advocated for this by expanding that percentage to within the 100’ buffer. He’s okay with the 50% total disturbance within any regulated buffer zone.

Carlson – We can recreate zoning groundcover ratio by creating a disturbance ratio. Asked if the 50% area would be calculated from resource area and buffer zone area or from the just area that the permit would be for work.

Golding – There’s also the need to consider at what point it becomes a taking.

Carlson – He’ll write that out then look at plans to see what it looks like in reality. Applicants could apply for a waiver.

Golding – For pre-1978 structures, when they are moved off their lot, they should no longer be protected; we need to address that in these bylaws.

Misurelli – Asked if that’s Chapter 91 or within our purview.

Golding – He feels that if a structure is moved off the site, it is no longer protected even if it’s being moved to a new location where it could become threatened.

Erisman – She also worries about property owners who have moved a pre-1978 house away from an eroding bank; they’ve done the right thing and erosion continues placing the house under threat again.

Golding – You’re entitled to protection as long as the structure is not moved off the lot; his concern is when it is moved to a new lot.

Engelbourg – It’s important because someone could move a pre-1978 structure to a threatened area.

Carlson – DEP interprets it as any structure, which is moved closer to a resource area or to a different resource area, loses its pre-1978 protection. (stopped at 1:08:56)

Golding – His last point is about applications requesting repair to Chapter 91 licensed structures need a DEP in advance of coming to ConCom; the reason is nearly all of these are now out of compliance. It will become an increasing issue with applications before saying it's not our business because it's Chapter 91.

Beale – Questions if we can ask them that.

Engelbourg – The Wetlands Protection Act requires all appropriate permits be acquired or in process before applying for an NOI. Agrees we need a better way to check.

Carlson – If you apply for a Chapter 91 license, you're required to have a written Order of Conditions; we would be creating a state process by requiring them to get compliance sign-off from DEP.

Golding – It says on the DEP Mass Waterway website it says you have to come before them to tell them there's adequate public access when you apply for a rebuild/reconstruction.

Carlson – He thinks the way to get what Mr. Golding is looking for is to focus on the public access component.

Golding – Asked about expanding on the definition of recreation.

Carlson – You'd want a performance standard under Coastal Beach that tackles unobstructed access along the inter-tidal zone. Fisheries might include the ability to expand on the definition of recreation; he'll have to check.

Erismann – She wonders how it would apply to pre-existing structures.

Carlson – The performance standard could require that any rebuild of a grandfathered structure needs to include a public access component and that any constructions of the public access component doesn't affect the grandfathered status.

Engelbourg – He'd like to discuss memorializing what "use and normal maintenance" means; we're relying on old definitions. He had advocated setting a percentage of repair, but it seemed it could be arbitrary. Currently it's done by common practice; the only thing that's not maintenance is if the structure hasn't been repaired in the last 5 years.

Misurelli – He doesn't want it to be too burdensome for staff.

Carlson – Historically, the threshold has always been around 20% of the total structure then it gets beyond normal maintenance.

Engelbourg – Thinks it has to be more about the condition of the structure rather than a percentage. If you have to take things out of the ground, disassemble, or add structural supports, that isn't normal maintenance.

Erismann – Suggested looking at the amount of sediment disturbance.

Carlson – He can reach out to the Cape and Island Conservation group to see if someone else has something we can use.

Misurelli – He likes the ground disturbance aspect; that helps with clarification.

Engelbourg – We had begun discussing increasing the buffer-zone setbacks and pushing activities back to farther areas. We also talked about adding a Great Pond area. He thinks pumping, bluestone patios, and such should be moved out of the 25' buffer; he feels the 25' buffer is much too small for wildlife and water circulation. We could add a 75' buffer. Patios, decking, firepits, such disturbances within the 25' to 50' buffers need to be updated.

Golding – He agrees. He was pleased to see that under definition of structures swimming pool equipment and dry-laid stone patios were added.

Carlson – A definition for Impervious Surfaces was added and are now referenced.

Erismann – Firepits are also problematic. She feels like kitchens structures should also be added.

Carlson – If the kitchen is made out of stone or such, yes; if it's a grill and chairs on a patio, that's not a structure.

Golding – Asked about increasing our purview beyond 100 feet.

Engelbourg – For Great Pond areas, he feels they need more than a 100' buffer. Swimming pools are structures allowed within the 50' buffer; he feels they shouldn't be within the 100' buffer.

Golding – Why are we bothering to define Great Pond areas with restrictions out to 200' when pools are allowed within 100'.

Engelbourg – He advocated for including more performance standards prohibiting pools and other structures but there were legal concerns. We want to create that area, so anyone has to come before us for review.

Carlson – The first question is if it's within our legal authority to create it. From what he's seen, it's great to add it until it's challenged. Nantucket tends to be one of the more litigious places.

Engelbourg – There were emails referencing other towns and their setbacks; their no-disturb barrier is 50' versus 25'. He questions 25' as a suitable no-disturb buffer. There are exceptions for activities such as invasive species removal and passive passage.

Erismann – She is increasingly concerned about our groundwater's ability to recharge and purify through our wetlands when you remove vegetation that allows nutrient uptake; we're pushing the limit of our wetland resources.

Carlson – Increasing the no-disturb buffer is something that will need to be discussed in a public hearing.

Engelbourg – He thinks we have the appropriate scientific studies to back up increasing the no-disturb to 50' as well as a precedent of other towns which have done this. That said, we have detailed what activities are allowed within the 25' and 50' buffers.

Beale – We should propose it and see what happens.

Further discussion about the pros and cons of increasing the no-disturb buffer and/or ratio.

Engelbourg – In Land Under the Ocean regarding residential piers, though the performance standard is well written, he'd prefer it be replaced with a moratorium on new residential piers.

Carlson – This question has come up before. This was specifically left in to deal with situations where people are rebuilding pre-existing piers; he can add a sentence that no new piers will be allowed. If a pre-existing pier is being rebuilt in kind, it would still have to meet the performance standards.

Engelbourg – His last thing is to consider a performance standard about expansion of impervious surfaces; he would like adding that within buffer zones no more impervious surface area can be created than currently exists. Applicants should be required to maintain the area of impervious surface that existed prior to work. In an open lot, we can't say that; he's talking about a raze and rebuild.

Golding – He thinks it would be very unpopular to say you can't increase the footprint of a structure within the 50' to 100' buffers.

Carlson – Suggested making the percentage change in impervious surface must be offset by mitigation of the same percentage.

Engelbourg – More surface area means the land is less permeable to capture and store runoff; ways to increase storage is to add vegetative buffers and swales. We could suggest a percentage ratio of the increased structure to increased flood storage.

Carlson – That's a good idea. Massachusetts Natural Heritage has certain activities that credit higher than others; that's a way to tackle flood storage on properties that are near maxed out.

Engelbourg – He would consider this a performance standard for every resource area.

Carlson – He has thought about having general performance standards that apply to all resource areas in addition to the specific performance standards.

Consensus thinks that's a good idea. Discussion about how to implement general performance standards.

Engelbourg – He had some technical changes.

Erisman – Asked to set the follow-up meeting.

Carlson – He'll have the suggestions made today added into the document. When we get close to the end, we'll produce 3 copies: red-lined, clean, and a summary of changes. We have this room booked for November 17th; our regular meeting is November 10th. We've started putting together the 2023 schedule

No action at this time.

Motion

Vote

N/A

D. Adjournment:

Motion

Motion to Adjourn at 7:12 pm. (made by: Beale) (seconded by:)

Vote

Carried unanimously

Submitted by:

Terry L. Norton