



CONSERVATION COMMISSION

PUBLIC MEETING

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

Thursday, October 28, 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, Engelbourg, Phillips, Beale, Williams
 Absent Members: Golding, LaFleur
 Late Arrivals: Williams, 5:05 pm
 Earlier Departure: Williams, 7:05 pm

*Matter has not been heard

I. PUBLIC MEETING

- A. Announcements
- B. Public Comment –

II. PUBLIC HEARING

A. Notice of Intent

1. Lower Pocomo Nominee Trust – 88 Pocomo Road (15-42) SE48-3432 (**Cont. 11/18/2021**)
2. Pocomo Point Realty Trust – 90 Pocomo Road (15-43) SE48-3438 (**Cont. 11/18/2021**)
3. *NISDA – 55 Wauwinet Road (14-23) SE48-3441 (**Cont. 11/18/2021**)
4. Warrens Landing N.T. – 40 Warrens Landing Road (38-45) SE48-3466 (**Withdrawn**)

Sitting Erisman, Engelbourg, Phillips, Beale

Documentation None

Representative None

Public None

Discussion (5:03) None

Staff None

Motion **Motion to Accept the Withdrawal.** (made by: Engel) (seconded)

Roll-call Vote Carried 4-0//Beale, Engelbourg, Erisman, and Phillip -aye

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

Sitting Erisman, Engelbourg, Phillips, Beale

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

Representative Don Bracken, Bracken Engineering

Public None

Discussion (6:04) None

Staff Mr. Bracken asked this be continued.

Motion Continued to November 18th.

Roll-call Vote N/A

6. Lloyd Realty LLC – 7 Heather Lane (30-24.2) SE48-3478

Sitting Erisman, Engelbourg, Phillips, Beale, Williams

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

Representative Paul Santos, Nantucket Surveyors

Public Reade

Discussion (5:05) **Santos** – This is a continuation for construction of a single-family dwelling, ancillary structures, and landscaping within the buffer to a coastal bank. The revised plan shows the reduced patio in response to abutter concerns. Confirmed we are subject to the 50’ no-build and didn’t rise to the level of 20 times the existing erosion rate, which is approximately 0.62; we feel it is a stable bank. Provided design layout of the pervious patio area. This is outside Natural Heritage and Endangered Species Program jurisdiction.

Engelbourg – The patio should require a drainage system directing water away from the coastal bank. Also, on the site visit, we noticed unpermitted brush cutting; the notice should indicate no brush cutting allowed without permitting.

Erisman – Vista pruning was evident. Asked if they are bringing in fill to raise the area around the house.

Santos – The house is being built forward of the top of the bluff toward Heather Lane – the majority of fill will be outside the 100’ buffer. Out of the back, grade will match existing; the fill would occur to the south of the dwelling.

Staff Have everything needed to close.

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

Roll-call Vote Carried 5-0//Beale, Engelbourg, Erisman, Phillips, and Williams-aye

7. 22 Easton Street, LLC – 22 & 24 Easton Street (42.1.4-12&12.1) SE48-3472

Sitting Erisman, 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 (5:16) **Madden** – Everything is designed in compliance with Flood Zone requirements. The landscape plan shows more project details.

Beale – Asked which structures will be raised and which will not. Asked how they will organize the base of the pool in an area where groundwater is close to the surface, so it won’t flow out under pressure.

Madden – We anticipate some level of dewatering into Easton Street catch basins; we are coordinating with Public Works. Permanent stabilization, typical to a water-tight basement, will be installed. Groundwater is impacted by the tide.

Beale – With the White Elephant pool, they couldn’t empty it because it would pop out of the ground.

Madden – If repairs are needed, the pool will be drawn down, not emptied.

Williams – Given the flooding, such as just occurred, and wash over, asked what happens when wash over goes through the pool and shoves chlorinated water out into the street.

Madden – This will be a salt-water pool; this would be a small amount in the greater scheme of things. Storm events occur in the shoulder season when pools have traditionally been drawn down.

Erisman – Saltwater pools still use chemical treatments; it’s not pure ocean salt water.

Engelbourg – It’s important to note saltwater pools are chlorinated through the filter system and is 10X saltier than the ocean; some say saltwater pools can be more detrimental. We need to look at our regulations regarding land subject to coastal storm flowage; read relevant Performance Standards 1, 2, & 4. He doesn’t know how we missed them allowing pools in flood-prone areas; we need to think about that.

Madden – Feel the pool won’t displace or redirect flood waters on site because it is at grade.

Beale – He’s troubled by comments about pool water escaping; it’s more than a flood area, this is a high-tide area. He’s concerned about chemical water escaping from the pool and what happens if we approve something that’s in a perilous position to fail. He feels this is an area where a pool shouldn’t be permitted.

Engelbourg – The definition of pollution is introduction of an unnatural element. We need to consider if this project will cause any amount of pollution in our protected interests.

Erisman – She shares concerns about the pool mixing its water with flood waters causing pollution. The site is getting heavily developed and wonders if the landscaping is flood tolerant or ornamental.

Madden – Landscaping hasn’t been completed yet; we’ve talked about it being salt-spray tolerant. He’d ask that the landscape plan be approved by staff or the commission. The pool could be conditioned to be drawn down at the end of the season or in advance of a storm event to prevent intermixing of waters.

Williams – There are no pools on this side of the road. Wonders if this could be conditioned to be drained by September 15th and not refilled until June 15th.

Erisman – Some pools are meant to hold water; that would have to be researched. A pool in this location is a recipe for trouble.

Turcotte – Agrees with Mr. Engelbourg regarding land subject to coastal storm flowage Performance Standard, especially Nr 4.

Madden – Would be amenable to a condition to drain the pool down, to a level that prevents mixing, seasonally and in advance of a storm event.

Phillips – The fact that a number of commissioners have questions, we need more information about a pool in this area that will have more chemicals than a typical pool.

Beale – Shares Ms. Erisman’s concerns. Asked if Staff should approve a landscape plan or should the Commission see it.

Engelbourg – He’s wary of the logistics of conditioning the pool to be drawn down before a storm event; summer storms can happen without notice. He feels alternatives haven’t been considered.

Madden – Given concerns about the pool, he will pull the pool from the application and accept a condition that it is not approved.

Staff The main house, studio, and guesthouse will be raised to be compliant with the flood zone.

He will call out a Finding that the pool is not approved with this application. They can come back with an amended order.

Have everything needed to close.

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

Roll-call Vote Carried 5-0//Beale, Engelbourg, Erisman, Phillips, and Williams-aye

8. Kane – 12 Pond Road (56-295) SE48-3473
 Sitting Erisman, Engelbourg, Phillips, Beale, Williams
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Brian Madden, LEC Environmental
 Public None
 Discussion (5:44) **Madden** – Asked this be continued.
 Staff None
 Motion Continued to November 18th.
 Roll-call Vote N/A

9. 8 Walsh LLC – 8 Walsh Street (42.4.1-83) SE48-3474 (Cont. 11/18/2021)

10. Eat Fire Spring Trust – 2018 – 12 Margaret’s Way (20-9) SE48-3475

Sitting Erisman, Engelbourg, Phillips, Beale, Williams
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Art Gasbarro, Nantucket Engineering & Survey
 Public None
 Discussion (5:44) **Gasbarro** – This is the second public hearing regarding a septic upgrade and construction of a shed within the buffer zone. We were waiting for Massachusetts Natural Heritage signoff, which we received.
 Staff Have everything needed to close.
 Motion **Motion to Close.** (made by: Phillips) (seconded)
 Roll-call Vote Carried //Beale, Engelbourg, Erisman, Phillips, and Williams-aye

11. *Finley – 26 Eel Point Road (40-118) NAN-136

Sitting Erisman, Engelbourg, Phillips, Beale, Williams
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Brian Madden, LEC Environmental
 Public None
 Discussion (5:46) **Madden** – A similar development was approved in 2004; he reflagged the resource areas. The project was revised to keep structures out of the 50’ buffer. The sports court, house, and some grading occur within the 100’ buffer. There’s 2’ separation between the house foundation and groundwater. There are no State jurisdictional wetlands within 100’.
 Staff Have everything needed to close.
 Motion **Motion to Close.** (made by: Beale) (seconded)
 Roll-call Vote Carried 5-0//Beale, Engelbourg, Erisman, Phillips, and Williams-aye

12. *ACK Sandy, LLC – 6 Sandy Drive (29-76) SE48-_____

Sitting Erisman, Engelbourg, Phillips, Beale, Williams
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Brian Madden, LEC Environmental
 Public None
 Discussion (5:50) **Madden** – This is for renovation an existing single-family dwelling, relocating to comply with buffer-zone setbacks, and elevating with some additions. A bordering vegetated wetland is to the southeast which minimally encroaches onto the property. Foundation will be flood-compliant pier. Will revegetate lawn areas within the buffer with salt-tolerant species.
Phillips – She was surprised to see that, within the 50’ buffer, the patio is being retained on the south and another porch is being added within the 50’ buffer. She doesn’t see how keeping the patio fits into our standards.
Madden – The initial intent with the house being pushed north was so it would be compliant with all setbacks, the patio would move with the relocation footprint; the portion closest to the bordering vegetated wetland would be removed. The stockade fence currently around the patio will be removed. If we can relocate the porch entryway, we can move the patio completely outside the 50’ buffer.
Phillips – As much as possible of the patio should be removed from within the 25’ buffer; they are adding a porch on the north elevation and there are other places to be outside within a structured environment. One photo showing the current foundation looks like new when she was assuming this had been around for a while; asked what is behind that.
Madden – We can look closer at the patio. Relative to the foundation, he doesn’t know if renovation work took place recently. His clients purchased this property recently.
Beale – Noted that part of the new addition is within the 50’ buffer; it would appear the proposed addition along the north end will probably have to be reduced outside the 50’ buffer.
Erisman – She agrees about the addition coming out of the 50’ buffer. Agrees with Ms. Phillips about the patio not being within the 25’ buffer.
Madden – Asked for a continuance; we don’t have a file number.
 Staff None
 Motion Continued to November 18th.
 Roll-call Vote N/A

13. *11Woodbury Lane Realty Trust – 11 Woodbury Lane (41-550) SE48-____

Sitting Erisman, 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 (6:05) **Madden** – Explained the project: reconstruction of main house and garage. To lay utilities will require dewatering. A bordering vegetated wetland is off-site to the northwest; proposing to improve site conditions. A corner of the garage – slab on grade – will intrude into the 50’ buffer with 2’ separation from groundwater. Submitted a landscape plan addressing restoration of the 25’ buffer to bring the property within 50% compliance. The former structure intruded much more into the 50’ buffer.

Engelbourg – He understands the small corner of the structure, but he’d like to see it redesigned to get that out of the 50’ buffer.

Turcotte – Nantucket Land Council agrees with Mr. Engelbourg about the structure being reconfigured to be outside the 50’ buffer.

Erisman – Agrees. We aren’t asking them to change something on the ground, the house is gone.

Madden – There are extenuating circumstances on this lot. We have existing structural components on the ground and we are decreasing the encroachment into the buffer.

Beale – He supports getting the corner out of the 50’ buffer. He doesn’t see a compelling reason to waive that.

Williams – She completely supports this project as proposed. She’s not comfortable with telling them to change it now.

Madden – Asked for a continuance.

Staff None

Motion Continued to November 18th.

Roll-call Vote N/A

14. *Land Bank – 1, 3, 5, 7, 9, 11, 13, 15, & 15A Miacomet Road (67-49,345,346,679,680,681,682) SE48-____

Sitting Erisman, Engelbourg, Phillips, Beale, Williams

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

Representative Rachael Freeman, Nantucket Islands Land Bank

Public Art Gasbarro, Nantucket Engineering & Survey

Discussion (6:15) **Freeman** – This is for a trail within the buffer to the Miacomet Pond. We are planning to reroute a section of the trail outside the 100’ buffer; a neighbor feels the deer trails should be left for the deer. We are waiting to hear back from Massachusetts Natural Heritage. We are planning a single-track trail no wider than 3’ and to avoid as much vegetation as possible.

Engelbourg – He agrees with the neighbor about rerouting this trail outside the 25’ buffer across the entire site; it will minimize people walking off the trail and encroaching into the wetland.

Erisman – Agrees.

Phillips – Also agrees. This is a great example of the Land Bank working with the community.

Williams – Asked if this addresses issues with unsafe conditions at the intersection of Otokomi. Reducing vegetation around the intersection might help to increase sight lines.

Freeman – No, this is an area where people drive quickly; we’ve brought it to the attention of the Traffic Safety Workgroup, who thought it wasn’t significant enough to warrant another solution.

Engelbourg – Suggested at the intersection, where the trail is on each side of the road, there could be a visual barrier indicating to the pedestrian they are approaching the road.

Erisman – Public comments: Susan Berman is concerned about safety crossing at South Shore Road. Catherine Rafael says this proposal makes no sense to her; she uses the trail and feels increased traffic will be dangerous. This will have to continue.

Freeman – Asked for a continuance.

Staff People with comments can submit them to the office via email by the Thurs before the meeting.

Motion Continued to November 18th.

Roll-call Vote N/A

B. Amended Order of Conditions

1. Scannell – 119R Eel Point Road (33-17.1) SE48-3378 (Cont. 11/18/2021)

III. PUBLIC MEETING

C. Certificates of Compliance

1. Counihan – 11 Swain Street (42.4.1-77) SE48-2849

Sitting Erisman, Engelbourg, Phillips, Beale, Williams

Staff Site is within compliance and recommend issue.

Discussion (6:29) None

Motion **Motion to Issue.** (made by: Beale) (seconded)

Roll-call Vote Carried 5-0//Beale, Engelbourg, Erisman, Phillips, and Williams-aye

2. Mainsail, LLC – 3 Pops Lane (60.2.4-64.1) SE48-3355
 - Sitting Erisman, Engelbourg, Phillips, Beale, Williams
 - Staff Work is within compliance and recommend issue.
 - Discussion (6:31) None
 - Motion **Motion to Issue.** (made by: Williams) (seconded)
 - Roll-call Vote Carried 5-0//Beale, Engelbourg, Erisman, Phillips, and Williams-aye
3. SDW Meadow, LLC – 18 Meadow Lane (41-406) SE48-3323
 - Sitting Erisman, Engelbourg, Phillips, Beale, Williams
 - Staff Recommend issuing with on-going Conditions 19, 20, 21, & 22.
 - Discussion (6:31) None
 - Motion **Motion to Issue with on-going Conditions 19, 20, 21, & 22.** (made by: Williams) (seconded)
 - Roll-call Vote Carried 5-0//Beale, Engelbourg, Erisman, Phillips, and Williams-aye
4. DeBiasio – 39 Meadow View Drive (56-133) SE48-3448
 - Sitting Erisman, Engelbourg, Phillips, Beale
 - Staff Recommend issue.
 - Discussion (6:33) None
 - Motion **Motion to Issue.** (made by: Beale) (seconded)
 - Roll-call Vote Carried 4-0//Beale, Engelbourg, Erisman, and Phillips-aye; Williams recused
5. Moore, Trustees – 8 Sachus Road (30-239) SE48-1341
 - Sitting Erisman, Engelbourg, Phillips, Beale, Williams
 - Staff Site is in compliance, recommend issuing.
 - Discussion (6:34) None
 - Motion **Motion to Issue.** (made by: Williams) (seconded)
 - Roll-call Vote Carried 5-0//Beale, Engelbourg, Erisman, Phillips, and Williams-aye

D. Orders of Condition

1. Anchialine Properties, LLC – 19 East Creek Road (55-60) SE48-3465
 - Sitting Erisman, Engelbourg, Phillips, Beale, Williams
 - Documentation Draft Order of Conditions.
 - Staff Included our new condition for fill and conditioned the plantings with a permanent marker for restored areas. Condition 27 requires spring and fall inspection of the site until all work is done. He can add a condition that all construction material be stored within the garage and covered dumpster. Will add Condition 29 requiring non-reflective glass; Condition 30 will require an on-site meeting with staff to review construction protocols prior to start of work.
 - Discussion (6:35) **Erisman** – She couldn’t remember if the application had information about storm preparation regarding construction material.
Williams – This is a very sensitive site; asked if the conditions are enough to protect anything from ending up in The Creeks.
Engelbourg – Asked for a condition requiring non-reflective glass.
Erisman – She pictures construction vehicles parking at the Land Bank property.
 - Motion **Motion to Issue as amended.** (made by: Williams) (seconded)
 - Roll-call Vote Carried 5-0//Beale, Engelbourg, Erisman, Phillips, and Williams-aye
2. Lloyd Realty LLC – 7 Heather Lane (30-24.2) SE48-3478
 - Sitting Erisman, Engelbourg, Phillips, Beale, Williams
 - Documentation Draft Order of Conditions.
 - Staff Included the new fill condition. Will add Condition 20 addressing drainage off the patio and Condition 21 banning vista pruning.
 - Discussion (6:44) **Erisman** – Mr. Engelbourg had talked about drainage directed away from the coastal bank.
Engelbourg – No vista pruning.
 - Motion **Motion to Issue as amended.** (made by: Beale) (seconded)
 - Roll-call Vote Carried 5-0//Beale, Engelbourg, Erisman, Phillips, and Williams-aye
3. 22 Easton Street, LLC – 22 & 24 Easton Street (42.1.4-12&12.1) SE48-3472
 - Sitting Erisman, Engelbourg, Phillips, Beale, Williams
 - Documentation Draft Order of Conditions.
 - Staff The permit is now reworded to omit the pool: additional Finding 2 is that the pool is not part of this and all pool conditions have been removed. A new condition requires a landscape plan to be filed through a Minor Modification or as an NOI.
 - Discussion (6:46) None
 - Motion **Motion to Issue as amended.** (made by: Williams) (seconded)
 - Roll-call Vote Carried 5-0//Beale, Engelbourg, Erisman, Phillips, and Williams-aye

- 4. Eat Fire Spring Trust – 2018 – 12 Margaret’s Way (20-9) SE48-3475
 - Sitting Erisman, Engelbourg, Phillips, Beale, Williams
 - Documentation Draft Order of Conditions.
 - Staff Except for fill condition, no special conditions for this.
 - Discussion (6:49) None
 - Motion **Motion to Issue as amended.** (made by: Williams) (seconded)
 - Roll-call Vote Carried 5-0//Beale, Engelbourg, Erisman, Phillips, and Williams-aye

- 5. Finley – 26 Eel Point Road (40-118) NAN-136
 - Sitting Erisman, Engelbourg, Phillips, Beale, Williams
 - Documentation Draft Order of Conditions.
 - Staff Same conditions as the last one.
 - Discussion (6:50) None
 - Motion **Motion to Issue as drafted.** (made by: Williams) (seconded)
 - Roll-call Vote Carried 5-0//Beale, Engelbourg, Erisman, Phillips, and Williams-aye

E. Other Business

- 1. Approval of Minutes 10/7/2021:
 - Motion **Motion to Approve as drafted.** (made by: Williams) (seconded)
 - Roll-call Vote Carried 5-0//Beale, Engelbourg, Erisman, Phillips, and Williams-aye
- 2. Monitoring Reports - None
- 3. Reports:
 - a. CPC, Beale
- 4. Commissioners Comment
 - a. Williams – Confirmed that the joint meeting with the Select Board is Monday, November 1st at 4:30 pm.
Carlson – It is an open meeting; accepting public comment is at the discretion of the Select Board chair; Town Counsel will not attend.
 - b. Erisman – She had asked for an executive session; not sure we need it. Asked about any timeline for the appeal.
Carlson – We are down to the circuit courts regarding the SBPF geo-tube extension appeal. He sent around a filed amendment to everyone. He has not been served and isn’t aware anyone has been served. They have to December to serve the paperwork. Until we are served, no clock is running with no pending deadline. It’s better to post the executive session and cancel it than the other way around.
Phillip – Since the joint meeting was posted as open, she feels the executive session is unnecessary at this time.
 - c. Erisman – Saw a permit violation at Pocomo Point; multiple pieces of heavy machinery have used the point to access the Wilkinsen project, which is almost 1 mile down the beach. The structure had been buttoned up as if all work was complete but has since been opened.
Carlson – We did check it out. Morgan Sayle, our new Coastal Resource Technician, has been out to photo these coastal project areas and she put a report together.
 - d. Beale – Asked about 88 and 90 Pocomo coir rolls.
Carlson – They are trying to decide whether or not to redesign the project.
- 5. Administrator/Staff Reports
 - a. ARCADIS Coastal Resiliency Plan has been issued within the last 24 hours and is posted on the Town website; he’ll send a link to commissioners.
 - b. The next regular meeting is in 3 weeks, November 18th; it’s the only meeting in November.

F. Executive Session

- Motion **Cancelled**
- Roll-call Vote N/A

G. Adjournment

- Motion **Motion to Adjourn at 7:09 p.m.** (made by: Phillips) (seconded)
- Roll-call Vote Carried 4-0//Beale, Engelbourg, Erisman, and Phillips-aye

Submitted by:
Terry L. Norton