



# CONSERVATION COMMISSION

## PUBLIC MEETING

131 Pleasant Street  
Nantucket, Massachusetts 02554

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

Thursday, November 10, 2022 – 5:00 p.m.

*This meeting was held via remote participation using ZOOM and YouTube.*

**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; Will Dell’Erba, Conservation Agent; Terry Norton, Town Minutes Taker

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

Late Arrivals: Williams

\*Matter has not been heard

### **I. PUBLIC MEETING**

#### **A. Announcements**

#### **B. Public Comment:**

1. Burton Balkind – He went to the Massachusetts Association of Conservation Commissions meeting in Devens MA; if anyone wants information about it, he can provide them his notes.  
As a member of Nantucket Coastal Conservancy, we submitted photos of work done at 79 Baxter Road, a coir installation. Asked if that work is covered by a permit.  
Carlson – Those installations were permitted some time ago. We should have more information soon.

### **II. PUBLIC HEARING**

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

1. \*Nantucket Islands Land Bank-32 Western Avenue (87-81) SE48-3582

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

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

Representative Rachel Freeman, Nantucket Islands Land Bank

Public Pamela Bass, 34 Western Avenue

Discussion (5:05) **Freeman** – This is for improvements to this property; much of the property falls within 100’ of the coastal dune; we also want to remove dead Japanese pines, honeysuckle, and love grass and replant the with native plants. We plan to install a single handicapped-accessible parking space and boardwalk to a deck with benches.

**Engelbourg** – Regarding the accessible sitting areas, asked if they are replacing a similar structure or new.

**Freeman** – The benches are new; there are 2 existing benches, and this will bring that up to 4. There is an existing path.

**Engelbourg** – It seems like a patio to him.

**Misurelli** – Asked if the love grass will come out in the fall or spring and how it will be replaced.

**Freeman** – We will probably seed with a conservation or fescue mix; the love grass will come out in the winter and we can check for possible regrowth in the spring.

**Erisman** – Asked if there will be anywhere to park and lock a bike; there aren’t a lot of places to leave a bike at our beach access points.

**Freeman** – She will keep it in mind. Regarding the “inlaid” boardwalk, it’s similar to what was installed at “Settler’s Landing” in Madaket; there is an example of it at the Youth Hostel.

**Beale** – Asked if they considered another surface rather than the deck.

**Freeman** – We didn’t for this site; this material is pervious. We’ve have installed stone dust in some places, but that requires a lot of maintenance, and we haven’t had success with stone dust.

**Beale** – He would think a non-wood platform would be more suitable for that area.

**Freeman** – Explained that the molded grid they are using in Madaket helps contain the stone dust.

**Golding** – Asked what she means by high maintenance.

**Freeman** – We have washout during rain events with stone dust; we see a lot of erosion and weeds. We haven’t been using the molded grid long enough to ascertain the level of maintenance required.

**Engelbourg** – He thinks in this case the wood at-grade walk makes more sense. You don’t want to put an unstable surface on top of another unstable surface. His only technical concern is if there is significant erosion causing the structure to protrude.

**Bass** – She wrote to ConCom numerous times. You can see that the area for the proposed benches is within the no-disturb area. We weren’t allowed to build into that zone. There’s another neighbor who maintains a bench at the Land Bank site in his mother’s name; she feels he should be consulted with.

**Freeman** – We have a stringent bench policy overseen by Marion Wilson.

**Bass** – To her that is a natural plateau; but she wonders why they are wedging in a wheelchair parking space and hardscaping when there is plenty of space at the public beach. Regarding the path, she agrees the wood will work better. Asked for screening between this and her property; she is willing to donate a green “wall”.

**Erisman** – Surfside Beach is Town of Nantucket property and this is Land Bank property; both have accessibility requirements.

**Williams** – Any public entity is required to provide accessibility whenever a change to access is made.

Staff recomm. Have everything needed to close.

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

Roll-call vote Carried 7-0//Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye

2. 42/44 ARB Way, LLC- 9 Arbour Way (29-137) SE48-3589

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

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

Representative David M. Haines, Haines Hydrogeologic Consulting

Public None

Discussion (5:27) **Haines** – This is to remove a portion of an existing house and rebuild and plant almost 4,000 square feet (sf) as a vegetated buffer. We corrected the planting list to all indigenous species within the 25’ setback. The existing structure is up to within 12’ to the bordering vegetated wetlands; removing that increases the setback to 31’ and reduces the total to 312sf within the 50’ buffer. Also, the foundation will be within 2’ of the water table. We converted part of the proposed deck to a dry-laid stone patio within the 50’ buffer. The new foundation will have flood vents. We eliminated the deer fence.

**Beale** – We had mentioned moving the structure into the green space and completely out of the 25’ and 50’ buffer.

**Haines** – He discussed that with the owner but that green space is on a separate lot.

Staff recomm. Have everything needed to close.

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

Roll-call vote Carried 7-0//Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye

3. Hallett Lane, LLC- 12 Almanack Pond Road (25-11) SE48-3587

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

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

Representative Brian Madden, LEC Environmental

Public None

Discussion (5:33) **Madden** – This involves site improvements. We were waiting for Massachusetts Natural Heritage (MNH); received their determination of no adverse impact and no take. This does not require waivers.

Staff recomm. Have everything needed to close.

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

Roll-call vote Carried 7-0//Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye

4. 5 QPR, LLC- 5 Quaise Pastures Road (26-21) SE48-3593

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

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

Representative Mark Rits, Site Design Engineering

Public None

Discussion (5:35) **Rits** – We were waiting for a Department of Environmental Protection (DEP) number; this is for a request move a shed and pool equipment outside the 50’ buffer.

Staff recomm. Have everything needed to close.

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

Roll-call vote Carried 6-0//Beale, Engelbourg, Erisman, Golding, Plandowski, and Williams-aye; Miserelli recused.

5. Steven L. Cohen, Trustee- 6 & 11 East Hallowell Lane (30-98 & 17) SE48-3594

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

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

Representative Mark Rits, Site Design Engineering

Public None

Discussion (5:38) **Rits** – This is a residential redevelopment project; we were waiting for a DEP number. Several commissioners asked to reconfigure the siting so the house would be outside the 50’ buffer. We’re asking to decrease the deck by about 90sf, but it remains within the 50’ buffer.

**Engelbourg** – The portion of the deck within the buffer, asked if it could be cantilevered.

**Rits** – It’s ground level and too large. Reducing the size is an improvement.

**Golding** – It’s a new building and new deck and it seems this is happening all the time. He wonders where pushing the envelope will end.

**Engelbourg** – He tends to agree; this is a half measure. If the deck is close to grade, make it at grade so it isn’t a structure and better protects the resources.

**Beale** – He is concerned with making it a patio.

**Rits** – We have the existing deck which will match up with the proposed house, and we would be happy to leave it in place.

**Golding** – The deck is part of the house and no longer subject to protection.

**Erisman** – She agrees that as a new structure it should be outside the 50’ buffer.

**Williams** – It seems we’re divided; asked if Mr. Carlson would do a positive and negative order. Asked if it should be closed or continued to let them do more work.

**Erisman** – They could end up with an Order of Conditions that doesn’t allow a structure within the 50’ buffer. It’s up to the client whether or not we close this.

**Carlson** – Public comment for Ken Weis, he asks about the purpose of the erosion control/silt control fence and if the hedge will be cut down.

**Rits** – Doesn’t think the hedge will be removed; the silt fence will go up against it; explained the reason for the silt fence. Asked for a continuance.

(Lost Ms. Erisman temporarily due to technical concerns)

Staff recomm. Have everything needed to close.

Motion Continued to Dec 1<sup>st</sup>.

Roll-call vote N/A

6. \*34B Walsh Street Nominee Trust- 34B Walsh Street (29-104) SE48-3586

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

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

Representative Brian Madden, LEC Environmental

Steven Cohen, Cohen & Cohen Law P.C

Public Eileen & Maureen Murphy, 40 Walsh Street

Discussion (5:50) **Madden** – This is to elevate and reconstruct the foundation to an existing dwelling within land subject to coastal storm flowage, elevation 7, and within 100’ buffer to a isolated vegetated wetlands. Proposing a cantilevered deck over the 50’ buffer; no waivers are required. Explained treatment of roof runoff. Asking for a waiver to separation from groundwater; will be within 2’.

**Engelbourg** – He had a chance to view this site; he’s concerned the wetland delineation might need to be revisited. The 1<sup>st</sup> few feet of the lawn have wetland shrubs; the line might need to be moved northward a few feet. That would require adjustment to site activities. Asked staff to do an on-site visit to clear this up.

**Madden** – We met out there last week and moved a couple of flags up gradient in coordination with ConCom staff. There is a high-brush blueberry that’s been there since 2010.

**Engelbourg** – The planting area appears to have a lot of recently introduced new plants that haven’t been established since the last NOI. Wants to ensure good monitoring and conditions that everything remains in compliance.

**Madden** – Subsequent to 2010, there has been a lot of deer browsing; the planting needed to be reestablished in the area. We will be installing mulch to stabilize the ground cover. We welcome any conditions that memorialize maintaining the groundcover in the future.

**Golding** – Asked if the addition and cantilevered deck will interfere with rainwater refreshing the wetlands.

**Madden** – He doesn’t believe so. We are planning to update the stormwater management.

**E.Murphy** – We are opposed to this project and any waivers being granted. Reviewed the history of this lot. Feels the prior owner deliberately converted a planting area to lawn. We disagree with the buffer zones.

**M.Murphy** – We take issue with the delineation of the 50’ buffer. Cited other unpermitted work within the 50’ buffer. This is a substantial expansion of an existing home. We also strongly oppose to granting waivers.

**Erisman** – We regularly see buffer boundaries moving and have permitted cantilevered decks over the 50’ buffers.

**Beale** – He missed the site visit; he didn’t realize this would be controversial and would like this continued to do a site visit with Mr. Golding.

**Golding** – He agrees with Mr. Beale.

**Erisman** – She agrees; she couldn’t attend the site visit as well.

**Miserelli** – Regarding the planting area, we can require monitoring for that.

**Erisman** – For ono-going conditions like this, we should mark it in the Order of Conditions and require yearly survival reports.

**Cohen** – His client is amenable with any monitoring requirements.

**Madden** – Compared to the 2010 plan, the wetland boundary is within a foot. Asked for a continuance.

Staff recomm. During our on-site inspection, we specifically looked at the soils adjacent to the winterberry. We were able to find hydro soils beneath the 18” threshold level. There is some level of fill that went on. In the planting area, we documented some new plants. The 2010 certificate was closed out in 2012; in about 2013-2014, the planting area was turned back into lawn. That has been somewhat rectified.

Motion Continued to December 1<sup>st</sup>.

Roll-call vote N/A

7. \*36B Lily Street, LLC- 36B Lily Street (42.4.3-94) SE48-3591 (**Withdrawal**)

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

Roll-call vote Carried 6-0// Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski-aye; Williams recused

8. \*Easton Street, LLC- 55 Easton Street (42.4.1-86) SE48-3590 (**Cont. 12/1**)

9. \* Nantucket Cottage Hospital- 60 Meadow View Drive (56-167) SE48-3592
- Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, Plandowski  
 Documentation Site and topographical plans, photos, requisite departmental reports, and correspondence.  
 Representative Paul Santos, Nantucket Surveyors  
 Public None  
 Discussion (6:15) **Santos** – This is for proposed construction of a secondary dwelling and landscaping within the buffer to an off-site BVW. The property is served by Town water and sewer. We do not require any waivers.  
**Engelbourg** – His only concern is, in the accompanying photos, it appears the brush-cut area was done recently and is now in a denuded state. Much of that area is within the 100’ buffer and the work done without a permit. Asked that area be restored to the same value it had previously.  
**Santos** – There is an abutter fence that encroaches onto this property; based on that, part of that area is where this dwelling will be located.  
**Engelbourg** – Matching up the plans and photos, it seems the northwest part of the lot is within the 100’ buffer and should be restored.  
**Beale** – It would help to know exactly where the cutting took place.  
**Santos** – His fence line is shown within the 100’ buffer; the application before you is requesting to clear as much as necessary to develop what we’re proposing. The NOI is asking to install a board fence away from what has been cleared.  
**Erisman** – For her it’s far enough from the wetlands not to require replanting.  
 Staff recomm. Have everything needed to close.  
 Motion **Motion to Close.** (made by: Beale) (seconded)  
 Roll-call vote Carried 7-0//Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye
10. \*Kaschuluk- 27 North Liberty Street (41-453) SE48-\_\_\_\_
- Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, Plandowski  
 Documentation Site and topographical plans, photos, requisite departmental reports, and correspondence.  
 Representative Art Gasbarro, Nantucket Engineering & Survey  
 Public None  
 Discussion (6:23) **Gasbarro** – This is for side-by-side properties where the resource area boundary was delineated 2 years ago. We have to continue for DEP number. It came to his attention he shows a proposed plan outside the 50’ buffer but is part of the application. This is to renovate an existing structure, reduce an existing deck within the 50’ buffer. The existing driveway would be reconfigured. There’s lawn adjacent to the resource area that will be restored up to the boundary with wetland species. There are invasive species – fox grape, knot weed, sycamore maples – so will require a blanket approval to remove those using best practices.  
**Golding** – Thanked Mr. Gasbarro for giving us the architectural drawings and such a complete plan.  
**Gasbarro** – Asked for a continuance.  
 Staff recomm. None  
 Motion Continued to December 1<sup>st</sup>.  
 Roll-call vote N/A
11. \*Nanticut Realty Trust- 29 North Liberty Street (41-486) SE48-\_\_\_\_
- Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, Plandowski  
 Documentation Site and topographical plans, photos, requisite departmental reports, and correspondence.  
 Representative Art Gasbarro, Nantucket Engineering & Survey  
 Public None  
 Discussion (6:29) **Gasbarro** – This only involves removal of invasive trees, Sycamore maples and 2 cherry trees.  
**Miserulli** – He assumed they verified if the tree along the road is a Town tree.  
**Gasbarro** – He checked and the Town supports the removal of that tree.  
**Engelbourg** – Asked which trees are which on the plan. If any of those are native black cherries, we will need accurate depiction of which trees are what  
**Gasbarro** – He will update the plans with the species.  
**Golding** – Asked if any new trees will be planted.  
**Gasbarro** – He will follow up on that as well.  
 Staff recomm. Confirmed that they can remove those trees.  
 Motion Continued to December 1<sup>st</sup>.  
 Roll-call vote N/A

**B. Amended Order of Conditions**

1. Stark Point, LLC- 16 Easton Street (42.1.4-11) SE48-3566
  - Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, Plandowski
  - Documentation Site and topographical plans, photos, requisite departmental reports, and correspondence.
  - Representative Paul Santos, Nantucket Surveyors
  - Public R.J. Turcotte, Nantucket Land Council
  - Discussion (6:32) **Santos** – The resource area is land subject to coastal storm flowage and coastal bank. This amended order is to discuss the merits of a 274sf waterproof, sub-surface vault. We added 25 flood vents. The original ConCom Finding was that the vault diminished the ability of the lot to absorb flood water; he feels that has been mitigated with the 25 flood vents. We will create a shallow sub-surface recharge area within the proposed shell driveway equivalent to the area of the vault. All structures are tied to a subsurface recharge area.  
**Engelbourg** – The issue goes down to the ability to absorb flood water. The vents are great and allow water to pass through and be infiltrated elsewhere. There might be a way to make up for that loss of absorption; you can't have a waterproof area in the ground and still allow the ground to absorb water.  
**Santos** – It's not so much a vault as a concrete pad.  
**Erisman** – Appreciates efforts to have the water absorbed elsewhere.  
**Beale** – He recalls the discussion. He'd feel more secure if some of the more science-minded members were comfortable with the subsurface recharge.  
**Turcotte** – Asked for the volume in cubic liters for this vault and how that would be replicated.  
**Santos** – We have a little direction; he's comfortable with continuing to the next meeting.  
**Engelbourg** – There will still be some area beneath grade and just knowing what that area of the vault so we can deal with a compensatory storage area on site.  
**Santos** – asked for a continuance.
  - Staff recomm. None
  - Motion Continued to December 1<sup>st</sup>.
  - Roll-call vote N/A

**III. PUBLIC MEETING**

**C. Minor Modifications**

1. None

**D. Requests for Determination of Applicability**

1. None

**E. Certificates of Compliance**

1. Nantucket Islands Land Bank-65 & 67 Easton Street (42.4.1-115 & 115.1) SE48-3409
  - Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, Plandowski
  - Representative None
  - Staff recomm. This was for installation of a fence and vegetation; work was completed in compliance. No on-going conditions.
  - Discussion (6:45) None
  - Motion **Motion to Issue.** (made by: Golding) (seconded)
  - Roll-call vote Carried 7-0// Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye
2. 56 Monomoy Nominee Trust- 56 Monomoy Road (43-41) SE48-3362
  - Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, Plandowski
  - Representative Paul Santos, Nantucket Surveyors
  - Staff recomm. This was originally for a spa then amended to include vegetation and invasive species work. Work was done in compliance; recommend issue with on-going Conditions having to do with the operation and maintenance of the spa.
  - Discussion (6:46) None
  - Motion **Motion to Issue with on-going Conditions 19, 20, 21, & 23.** (made by: Engelbourg) (seconded)
  - Roll-call vote Carried 7-0// Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye

**F. Orders of Condition**

1. Sunset House, LLC- 15 Hallowell Lane (30-10) SE48-3570
  - Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, Plandowski
  - Documentation Draft Order of Conditions
  - Staff Read the local regulations regarding grandfathered use. Reviewed changes made to Findings for the negative order based upon discussion
  - Discussion (6:49) **Engelbourg** – Asked if Town Counsel had an opportunity to weigh in on the discussion of this being pre-existing and if any Performance Standards apply or not.  
**Carlson** – He talked with DEP about if this must meet Performance Standards as best possible and if the pre-existing use is meeting the Performance Standards.  
**Golding** – The wood bulkhead seems to be in good condition; there's a lot of end scour on the west and unpermitted riprap. On January 29, 2013, a Historic District (HDC) application moved the house back; in May 2013, they added 246sf; that's more than we allow for statutory protection. In the face of sea-level rise, he sees no reason to approve a steel bulkhead when the timber will do. He's also concerned that more environmentally friendly approaches haven't been put forward. He would ask for a roll call on a vote for denial.

**Engelbourg** – He also supports a denial. Given comments in relation to DEP and the existence of multiple Performance Standards in our regulations which require applicants to consider environmentally better erosion solutions, there is enough to show the project doesn't meet the Performance Standards and can't be conditioned to do so. The burden of proof is upon the applicant, and they have not satisfactorily done that.

**Williams** – She doesn't agree with a denial. She supports the applicant's position of this being grandfathered.

**Erisman** – She had been on the side of the approval before Mr. Carlson's comment about the DEP regarding presenting alternatives. She thinks Coir would work here.

**Carlson** – Part of the issue is when looking at the definition of grandfathering work, you have to look at the case that they are modifying the material but not the footprint.

**Engelbourg** – He's sensitive to the reasons for using steel; however, it doesn't meet the qualification for being a repair. In his mind it's a wholesale replacement and modification of use.

**R.J. Turcotte**, Nantucket Land Council – If it's still functioning, he doesn't see a reason to disturb the resource area.

**Erisman** – When she looks at the collective materials, she sees that as a greater impact.

**Engelbourg** – There's also the burden of proof of the applicant to show no further impact; that wasn't done. Reviewed some of the ecologically friendly alternatives; other properties have had no trouble meeting the restrictions of the site.

**Golding** – Assuming the applicant refuses to ameliorate conditions, in time they will be sticking out into the intertidal zone. The house is not entitled to statutory protection. We're entitled to look at both the short-term and long-term view.

Motion **Motion to Issue the negative order as amended.** (made by: Engelbourg) (seconded)

Roll-call vote Carried 5-2//Beale, Engelbourg, Erisman, Golding, and Plandowski-aye; Misurelli, and Williams opposed

2. Nantucket Islands Land Bank – 32 Western Avenue (87-81) SE48-3582

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

Documentation Draft Order of Conditions

Staff Waivers are required. Could have Condition 21 stating the deck won't be seaward of the abutter's patio and maintain visual screening between the two.

Discussion (7:14) **Beale** – We had mentioned the neighbor's willingness to plant a barrier; asked if that is appropriate.

**Erisman** – We could say that if they don't come to an agreement, a final planting plan is required. Ms. Freeman said they would be willing to move the wood patio back in line with the neighbor's patio.

**Engelbourg** – Condition 19, based upon discussion, we talked about removing and properly disposing of invasive species. The long-term benefit waiver as listed isn't the one we should use; we should use the waiver for invasive removal.

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

Roll-call vote Carried 7-0// Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye

3. 42/44 ARB Way, LLC – 9 Arbour Way (29-137) SE48-3589

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

Documentation Draft Order of Conditions

Staff Waivers are required. Have general conditions for annual reports on survival of plants.

Discussion (7:20) **Erisman** – We should specify all native plants with no cultivars and have our lighting condition.

**Engelbourg** – Make the same change to Condition 19 as previously stated.

Motion **Motion to Issue as amended.** (made by: Misurelli) (seconded)

Roll-call vote Carried 6-1//Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye; Beale opposed

4. Hallett Lane, LLC – 12 Almanack Pond Road (25-11) SE48-3587

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

Documentation Draft Order of Conditions

Staff No waivers required. Conditions 19 needs to be amended and he will add exterior lighting and have the pool conditions.

Discussion (7:23) **Engelbourg** – You can't direct light downward and away from land subject to flooding; should just be directed downward and away from the BVW.

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

Roll-call vote Carried 7-0//Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye

5. 5 QPR, LLC – 5 Quaise Pastures Road (26-21) SE48-3593

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

Documentation Draft Order of Conditions

Staff Need to fix Condition 19. Added pool will not be discharged into resource area.

Discussion (7:25) None

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

Roll-call vote Carried 6-0//Beale, Engelbourg, Erisman, Golding, Plandowski, and Williams-aye; Misurelli recused

- 6. Nantucket Cottage Hospital- 60 Meadow View Drive (56-167) SE48-3592
  - Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, Plandowski
  - Documentation Draft Order of Conditions
  - Staff No waivers required. Have Conditions 18 & 19.
  - Discussion (7:27) None
  - Motion **Motion to Approve as drafted.** (made by: Beale) (seconded)
  - Roll-call vote Carried 7-0// Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye

**G. EXTENSION REQUEST**

- 1. None

**H. Other Business**

- 1. Approval of Minutes 10/06/2022:

- Motion **Motion to Approve as drafted.** (made by: Engelbourg) (seconded)
  - Roll-call vote Carried 4-0//Beale, Engelbourg, Golding, and Misurelli-aye; Erisman, Plandowski, and Williams abstain
- Minutes 10/27/2022:

- Motion **Motion to Approve as drafted.** (made by: Plandowski) (seconded)
- Roll-call vote Carried 5-0//Engelbourg, Erisman, Golding, Plandowski, and Williams-aye; Beale & Misurelli-abstain

- 2. Discussion of Select Board Letter dated 11/03/22 responding to the 10/24 letter from the Conservation Commission regarding the Geotubes and Baxter Road.

- Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, Plandowski
- Documentation Select Board Letter dated 11/03/22; 10/24 letter from the Conservation Commission
- Speakers Benjamin Tymann, Tymann, Davis and Duffy LLP
- Discussion (7:32) **Erisman** – There is some confusion in the back and forth; having us discuss this publicly will clear up some confusion with the Select Board.

**Tymann** – The commission issued an Enforcement Order on September 2, 2021 relating to the existing geotube array; that was appealed in Superior Court; ConCom received permission for special municipal counsel; there were hearings in June and July 2022; on September 2, 2022, Judge Gilday supported the Enforcement Order. We received a letter on October 5<sup>th</sup> followed by a proposal to bring the geotubes into compliance. In those documents, the commission was requested to reopen the Enforcement Order and now SBPF has asked the Enforcement Order be modified. As best he knows, these weren't the product of a public process and related to a court order. Purpose 3 of Chapter 30A Section 21 relates to strategy of litigation and where a public body reasonably expects to take place in on-going litigation. The Commission was essentially asked not to move forward with a Court Order. The Commission might have to return to court to seek execution of the Court Order.

Regarding retention of special municipal counsel, he met the requirement to represent ConCom for the SBPF appeal. It's his responsibility as counsel-for-record to represent the commission as long as the Superior Court Order is not fully implemented.

**Plandowski** – Asked if the door is open for negotiations.

**Tymann** – That is a litigation strategy question best discussed in Executive Session. He felt the process questions should be addressed in an open session.

**Plandowski** – Wants assurance Mr. Tymann will to represent ConCom.

**Tymann** – That is matter is fair to discuss in open session. The Town didn't address that question in the November 3<sup>rd</sup> letter. He maintains a responsibility and a duty to continue in his role since enforcement hasn't been carried out. With respect to independent municipal counsel on a future application, that is unresolved.

**Erisman** – She had 2 issues aside from the Open Meeting Law (OML). First is Mr. Tymann's continued representation since the Town is a co-applicant with SBPF; keeping him is the logical way to go. She finds it ridiculous that the Select Board didn't answer that question. Second is the implication that we were pre-judging an application; she's worried they are getting confused at being future co-applicants and SBPF being holders of a "defunct" order. They are allowed to submit any NOI they want, but they were requesting an NOI under the heading of removal. The enforcement stands and they need to work within that.

**Plandowski** – He was surprised by the article in today's Newspaper; it could have been approached differently.

**Erisman** – That article adds to the confusion for the public regarding the Select Board not being able to approve an NOI under any wetland process.

**Carlson** – To date, we have not received a new NOI for that area.

**Misurelli** – He watched the Select Board meeting last night. They approved the NOI to go in front of the ConCom for review.

**Engelbourg** – On the Select Board response to our letter and the October 2<sup>nd</sup> meeting where the letter was discussed for drafting and review, there seems to be a Select Board notion that our letter discourages cooperation or willingness to work for a positive outcome. We are setting ground rules on an appropriate way to collaborate. He urges the Town Administration and Select Board to reconsider that.

**Beale** – He's finding it difficult that when we get a Town NOI, we will need counsel on hand. We will hear it with an open mind; however, we need to remind them of fact that we feel we need counsel on hand. He would like Ms. Erisman to send a reminder to Ms. Gibson and Mr. Bridges not to forget that request.

**Golding** – If it's not forthcoming, asked if ConCom should consider an NOI until we have legal counsel.

**Erisman** – We have to consider an NOI regardless; but that NOI might not extend their removal dates. We have had counsel for all SBPF hearings to date; we won't be able to use Town Counsel in future considerations with SBPF.

**Misurelli** – There are lots of people who thank ConCom for being environmentally conscious, but you can be too extreme. He hopes we can come up with a solution.

**Erisman** – ConCom works very well with applicants and approves a high number of applications. It's sad this one matter is being used to paint us in a negative light.

**Engelbourg** – Our record of approval is 99%. We do have a regulatory responsibility that we must enforce. However, if a permit can't be modified or conditioned to meet our Performance Standards, we have a responsibility to issue a denial.

**Plandowski** – His impression from the Select Board meeting and the newspaper article is that on Monday, we will have an NOI.

**Erisman** – Back to Mr. Misurelli's point of drafting a reminder letter, she'd be happy to put that into the works.

Motion **Motion to have the Chair draft and send the Select Board Chair a letter reminding them of our request for independent counsel.** (made by: Beale) (seconded)

Roll-call vote Carried 7-0//Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye

3. Discussion of Regulatory Update

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

Discussion (7:58) **Erisman** – We have an in-person meeting scheduled for next Thursday, November 17<sup>th</sup> at 5:00 pm.

**Misurelli** – Asked if that's a continuation of discussion or a public hearing.

**Carlson** – The hopes is to get it to the point a draft is ready for counsel review.

4. Harbor Plan Advisory Committee Representative

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

Discussion (7:59) **Carlson** – The Harbor Plan is State approved and guides public policy in and around our harbors. The intent is to update the plan and will be 12- to 16-month commitment.

**Erisman** – Mr. Engelbourg is the NP&EDC representative on that committee. He is not an option.

**Williams** – She was on the committee that drafted the Harbor Plan. She would be interested in being ConCom's representative on the committee.

**Beale** – As a harbor-front property owner, he too is very interested in being on the committee.

**Engelbourg** – Asked if we have to appoint the representative today.

**Carlson** – It would be administratively great to have our representative so the 1<sup>st</sup> meeting can get underway by late this November.

Motion **Motion to Nominate Ms. Williams as the Harbor Plan Advisory Committee Representative.** (made by: Misurelli) (seconded)

Roll-call vote Carried 7-0//Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye

5. Enforcement Actions/Potential Enforcement Action

a. 46 Monomoy Road

Discussion (8:05) **Carlson** – Should have a report on that next meeting.

6. Reports:

a. CRAC, Golding – Read letter into the record.

b. CPC, Beale

7. Commissioners Comment

a. Erisman – Apologized for all her technical issues.

b. Erisman – We have an Executive Session listed; asked if we want to go into exec sess.

Golding – He'd like the letter go out expeditiously then have an Executive Session if the response isn't satisfactory.

8. Administrator/Staff Reports

a. None

**I. Adjournment**

Motion **Motion to Adjourn at 8:12 p.m.** (made by: Golding) (seconded)

Roll-call vote Carried 7-0//Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye

Submitted by:  
Terry L. Norton