



CONSERVATION COMMISSION

PUBLIC MEETING

2 Bathing Beach Road
Nantucket, Massachusetts 02554
www.nantucket-ma.gov
Thursday, July 9, 2020 – 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, Joe Topham, Seth Engelbourg, Maureen Phillips, and Mark Beale

Called to order at 5:00 p.m. by Ms. Erisman

Staff in attendance: Jeff Carlson, Natural Resources Director; Joanne Dodd, Natural Resources Coordinator
Attending Members: Erisman, Golding, Topham, Engelbourg, Phillips, Beale
Absent Members: LaFleur

*Matter has not been heard

I. PUBLIC MEETING

A. Announcements

B. Appointment of officers:

Motion to Keep Officers as are. (made by: Topham) (seconded)

Carried unanimously//Beale, Engelbourg, Gold, Phillips, and Topham-aye

C. Public Comment: None

II. PUBLIC HEARING

A. Notice of Intent

1. Kim Glowacki – 46 Easton Street (42.4.1-22) SE48-3285

Sitting Erisman, Golding, Topham, Engelbourg, Phillips, Beale

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

Representative Dan Wells, Goddard Consulting, LLC

Dan Bailey, Pierce Attwood LLP

Kim Glowacki, owner

Ryan Maxwell, Bracken Engineering

Public Arthur Reade, Reade, Gullicksen, Hanley, & Gifford LLP for the Frisbee family

Discussion (5:08) **Bailey** – There will be no boat storage in the space under the structure. We’ve made no changes to the plans; but we are prepared to build these entirely on helical piers with break-away panels and no foundation. There could be 8 to 9 feet between the top of the pier and the 1st floor. There is a wood bulkhead on site that is seriously deteriorated and probably very old; it continues across the entirety of the site tying into existing bulkheads on both sides. Would like to increase the height of that bulkhead; this is the only property which does not have an effective bulkhead. There will continue to be a build-up of sand and dune in front of the bulkhead. The original structure dates to the 1880s; it will be moved closer to Easton Street out of the 25-foot buffer. There is a lot of Japanese Knot weed along the west side to be removed and replaced with appropriate vegetation.

Phillips – You said you believe the increase of the footprint in the 25- to 50-foot buffer is modest; she believes it will be 57%, which is not modest in her opinion. She has significant concern about adding that much structure in the buffer zone.

Golding – It’s all new construction in an area ConCom doesn’t normally allow new construction. The fact is the remains of the existing building is well outside the 50-foot buffer. The new construction has no statutory right to be protected by a bulkhead or anything else.

Erisman – She’s concerned about the significant increase of structure between the 0- to 50-foot setback. It’s all new construction and can’t see how ConCom can allow that. She recalls it was presented that there was no bulkhead under the dune.

Topham – The current foundation increases the water flow. Being on piers is an improvement and it will be set back as far as possible. There is a lot of massing. Appreciates that there will be no storage underneath. Need info on the bulkhead.

Engelbourg – He had asked the representative to locate the terminus of the bulkhead; ConCom never received a survey plot plan showing that terminus. ConCom never had a filing for the bulkhead extension or replacement; this is the first we’ve heard of it. It’s likely that bulkhead is unlicensed; this is a perfect place to talk about a living shoreline or any other eco-friendly solution. Appreciates the knotweed removal; but it’s not a large enough stand to be a sufficient net benefit for the increase of structure within the buffer.

Beale – ConCom’s concern was the new dwelling construction within the buffer; there is the opportunity to move everything outside the 50-foot buffer.

Topham – That property is the area where the storm surge comes through; asked if a dune-like effect could be raised to align with the bulkheads along that shore.

Reade – His client agrees with the position set forth by commissioners with regard to the increase of residential footprint within the no-build zone.

Carlson – Public Comments. Bill McGowan: bulkhead from 1938. Emily Molden, Nantucket Land Council (NLC): asked if the knotweed extends to other property, if so, that makes removal unlikely; any increase in footprint contradicts the regulations. Howard Lincoln: the bulkhead predates 1938.

Asked that any documentation the public has be sent to his office.

Engelbourg – ConCom conducted a site visit and he noticed that the knotweed extends over the property line; concurs with Ms. Molden.

Phillip – Previously there had been attempts to cast this as water dependent use; we made a formal ruling that it was not. This is not an appropriate place for a lot of new construction; though it might not be financially feasibility, our charge is the environment. These proposed structural changes don’t rise to the level that they must be done.

Golding – Our regulations state that all non-water dependent should be 50 feet from a coastal bank; this is new construction. The relative surface area of the original structure to the new structures is irrelevant.

Bailey – We have the right to protect the existing structure. He disagrees that if the commission takes the position that improvements within the 50-feet must be reconstructed outside the 50 feet, no one will attempt to make improvements. We are trying to improve the situation and admit there will be new construction within the 50-foot buffer.

Erisman – The commissioners understand that there must be some construction within the 50, but we need to see some reduction; all we see is an increase.

Beale – In trying to max out this property, the applicant is increasing the square footage within the 50-foot zone. She feels the proposal is overly ambitious.

Bailey – Asked to continue for one months.

Staff He will have to look into the bulkhead but thinks any work to it would be detrimental to the coastal dune that now covers it. If a bulkhead falls into disrepair, it could become abandoned and there is the chance it was never licensed.

Motion Continued to August 6.

Roll-call Vote N/A

2. 46 Shimmo Pond Road N.T – 46 Shimmo Pond Road (43-77) SE48-3264 **Withdrawn**

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

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

3. 62 Cliff Road Realty Trust – 62 Cliff Road (41-20) SE48-3306 **(Cont. 07/23/2020)**

4. *ETG Nominee Trust – 6 Old Harbor Road (40-95) SE48-_____

Sitting Erisman, Golding, Topham, Engelbourg, Phillips, Beale

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

Representative Jeff Blackwell, Blackwell & Assoc.

Public None

Discussion (5:40) **Blackwell** – This is a vacant lot; work within the buffer is a pool, pool wall, section of driveway, portion of the smaller structure, and landscaping with a walking path. The lot is served by Town water but there will be on-site septic.

Erisman – Asked if there is a chance for runoff to go down the path to Washing Pond.

Blackwell – The grade pitches west toward the pond; however, there would be lawn around the pool to dissipate the energy of and absorb runoff. He doesn’t anticipate sediment running down the path, but he discussed with the owner the chance of a raised boardwalk.

Engelbourg – It’s okay as long as there is no fertilizer use within the lawn.

Erisman – All lawns that abut wetlands should submit fertilizer and watering reports.

Blackwell – We have no objection to that condition.

Erisman – Nantucket Land Council asked how the runoff would be maintained and fertilizer used on the path.

Staff In protecting the interest of the bylaw, commissioners can condition the use of any chemicals on lawns. Have everything needed to close.

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

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

5. *Arthur Schwabe – 8 Caroline Way (82-27) SE48-3307

Sitting Erisman, Golding, Topham, Engelbourg, Phillips, Beale

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

Representative Jeff Blackwell, Blackwell & Assoc.

Public None

- Discussion (5:47) **Blackwell** – A previously existing structure located close to the top of the coastal bank was removed; a new home was constructed more than 100 feet from the top of bank in 2018. The builder assumed the boardwalk could be continued and made the wood stairs aluminum to facilitate seasonal removal. Seeking permission for the extension and replacement of the beach stairs.
- Staff Have everything needed to close.
- Motion **Motion to Close.** (made by: Topham) (seconded)
- Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, Phillips, and Topham-aye
6. *Nantucketshire, LLC – 30 Dukes Road (56-189) SE48-3312
- Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
- Documentation Site and topographical plans, photos, requisite departmental reports, and correspondence.
- Representative Jeff Blackwell, Blackwell & Assoc.
- Public None
- Discussion (5:50) **Blackwell** – This is for a sewer connection to run a forcemain to connect to the Dukes Road forcemain. A substantial portion of the front of the property is taken up by a wetland system; the pressure line would be installed in the driveway thus avoiding the wetland; there will be work within the 25-foot buffer. The failed septic will be removed.
- Staff Have everything needed to close.
- Motion **Motion to Close.** (made by: Beale) (seconded)
- Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, Phillips, and Topham-aye
7. Phyllis J. & Donald T. Visco – 67 Easton Street (42.4.1-115.1) SE48-3308
- Sitting Erisman, Golding, Topham, Engelbourg, Phillips, Beale
- Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
- Representative Mark Rits, Site Design Engineering
- Public Brigitte Petrocelli, 2 North Beach Street
Arthur Reade, Reade, Gullicksen, Hanley, & Gifford LLP for Brigitte and Nicholas Petrocelli
- Discussion (5:54) **Rits** – There have been a number of discussion about the wetland delineation; last year’s discussion shows a small wetland surrounded by hydric soil. The area has been maintained as a lawn as far back as 1955. Work is to construct a small cottage in the upland portion of the property; all the upland is within the 25-foot buffer. The property is also, within land subject to coastal storm flowage. The cottage will be on piers. To offer a benefit, the entire site will continue to be maintained as lawn. We will restore the entire wetland with a mix of shrubs and native wetland seed to create a vegetative wetland. There is a drainage trench around two sides of the property; it was installed before drainage trenches were excluded from being wetlands; because of the trench, much of the soil has become hydric. The structure will be connected to Town water and sewer. The restored wetlands will be indicated by a permanent barrier. We will need waivers.
- Engelbourg** – He’s concerned about the history of the drainage trench; satellite imagery indicates it wasn’t there in 2010 but appeared in 2014. Mowing and maintenance of the lawn predate the Wetlands Protection Act; however there has been further activity since then.
- Erisman** – She’s concerned the photos indicate certain vegetation has disappeared from the site in the last decade. Regarding the robust planting, the commission would like to see the planting plan and the wetland reestablishment plan; wetland reestablishment will probably take 3 years before any construction can start.
- Rits** – We will work with Brian Madden, LEC Environmental, on that plan; we could try to get that to the commission by the next meeting.
- Topham** – Would like to have a condition that a certain percentage of plants must survive.
- Golding** – The trouble with conditioning the wetlands, is if it fails, we aren’t going to ask Mr. Visco to remove the cottage. The site does clearly retain a lot of water; he often sees ducks enjoying that water.
- Topham** – The entire neighborhood has the same soil condition for about 500 feet.
- Engelbourg** – He hesitant right now so would like to see the restoration plan. Suggested conditioning that no construction take place until the wetlands is established.
- Phillips** – If this can be brought back to a proper wetland, that would be good. This has a large opportunity for mitigation and if we condition it properly and the wetland takes effect, that’s a good way to go.
- Reade** – This is proposing building a structure, which would abut the wetland boundary and is within the 25-foot buffer. This wetland is without benefit at this time; having a wetland where ducks can swim around is great. No structure justifies where the entire structure would be within the 25-foot buffer and touching the wetland boundary; allowing this flies in the face of ConCom regulations. This is not a buildable lot based upon the wetland.
- Beale** – Asked if denying the applicant any construction constitutes a taking.
- Reade** – There’s plenty of case law that any denial of construction on a non-buildable lot does not constitute a taking.
- Engelbourg** – Echoes Mr. Reade’s comments. Wetlands, even in a potentially denuded state, still provide numerous resources; our purview includes wildlife habitat, which this wetland currently provides. Vegetation, even when cut, has a root system more efficient at absorbing water than any man-made structure. Regardless of what they do, there will be loss of water absorption. There has to be a long-term net benefit and burden of proof of that is upon the applicant.

Erisman – She worries about this site because there is a history of non-permitted work; approving this might set a precedent for allowing houses through restoration where wetlands have been left to degrade to lawn. Would like to see the planting plans. In addition to the planting plans, she would also like an ecologist on the team to speak to the improved habitat and things of that nature. We would need to justify many performance standards as an improvement.

Topham – Looking at other properties with wetlands where houses have been permitted, those seem to work. He thinks there’s some benefit to this but would also like to see the planting plan; there are success stories to look at.

Engelbourg – The waiver says Long-term net benefit; that burden of proof is on the applicant.

Erisman – Read written comments. NLC provided a letter; asked staff to provide history on this lot regarding unpermitted work; this property has always been an isolated vegetated wetland and within land subject to coastal storm flowage; contend the entire site has great flood-source value. Ms. Molden comments, this is not a buildable lot and is not presently a buildable lot. “David L.” (asked he clarify his last name) is an abutter and wants to have pumping and drainage plan; he says, “first and foremost, we are mindful of the impact to wildlife and vegetation.”

Carlson – This site has a sordid history regarding unpermitted work since 2011; gave a brief narrative. He’ll put together a more detailed narrative and check with Town Counsel about ConCom’s definition of the isolated vegetated wetland, which the owner challenged in court.

Golding – Absolutely wants to hear from Town Counsel about the definition of an isolated vegetated wetland.

Carlson – Thinking about waiver provisions; commissioners need to keep in mind separate waivers are issued for different criteria. For things that aren’t a direct net benefit, granting a waiver for this based upon that is a slippery slope; suggested they have to look at No Reasonable Alternative/No Adverse Impact.

Golding – A question for Town Counsel is does the location and previous use have any precedent going forward; this has been a lawn downtown.

Carlson – This is an area of development.

Topham – Suggested adding to the list of questions for Town Counsel - the ability to declare a Taking.

Carlson – To demonstrate a Taking, you have to prove there is no functional use for the property. Based upon that logic, there is still some value and use to this property.

Erisman – With the No Reasonable Alternative/No Adverse Impact, asked if both of those hold equal weight. Based upon characteristics of the site, there is evidence of No Reasonable Alternative.

Carlson – In this case the issue is the lack of setback to the wetland. The question will be whether or not putting a structure within the 50-foot setback is an adverse impact.

Phillips – In looking at this as an empty lot that floods, if we can recreate the wetland vegetation, which has diminished over the years, and compare that to the fact lots of people believe it is a good wetland as is, she’s struggling with the idea of making it into a better wetland; asked if there are gradations to the success of a wetland to balance the negative impact of the structure.

Erisman – That is where the burden of proof falls upon the applicant. Traditionally, creating a functional wetland is very difficult; you’re looking at 7 to 10 years for the plants to get established.

Engelbourg – First is the issue of ConCom performance standards; second is the question of improving the habitat sufficiently to make it functional.

Rits – We will provide a planting plan and get an ecologist involved. We understand the challenge, time, and high failure rate of establishing a wetland. One thing in our favor is the well-established hydric soils. There has been much discussion about flood storage and hydrology; we aren’t planning much grading so expect those to remain much as it is now. We are proposing a pier foundation that won’t impact flow or infiltration.

Petrocelli – Cited that their recent application for renovations, they were told respect the wetlands on this property; they did that.

Golding – We are pretty much bound by our regulation not to approve this; the fact is this is a defined wetland with the house built right there.

Rits – Asked for a 2-week continuance.

Staff None

Motion Continued to July 23rd.

Roll-call Vote N/A

8. *Madaket Wheelhouse, LLC – 13 Massachusetts Avenue (60-75) SE48-3309

Sitting Erisman, Golding, Topham, Engelbourg, Phillips, Beale

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

Representative Gasbarro

Public None

Discussion (6:38) **Gasbarro** – The raised walkway is heaving; this is to replace the 4X4 posts with helical anchors. The thought is the plates on the anchors will prevent the up-heaving.

Golding – On the details, it indicates it’s a concept drawing only; asked what bearing this has on the application, how deep the anchors will be, and what material the anchors will be.

Gasbarro – It’s a 3-foot-wide walkway with supports spaced every 10 feet. Anchors are galvanized steel and will go about 4-feet deep. We need to continue for Massachusetts Natural Heritage.

Staff None

Motion Continued to July 23rd.

- Roll-call Vote N/A
9. *Eleven Crooked Lane, LLC – 10 Hickory Meadow Lane (41-904) SE48-3311
- Sitting Erisman, Golding, Topham, Engelbourg, Phillips, Beale
- Documentation Site and topographical plans, photos, requisite departmental reports, and correspondence.
- Representative Ryan Maxwell, Bracken Engineering
- Public None
- Discussion (6:42) **Maxwell** – We are submitting a new NOI since the existing is due to expire. What’s on the plan have been approved, under the expiring Orders of Conditions, and already under construction.
- Staff Our recommendation; if this gains approval, ConCom allow the existing Order of Conditions to end. When work is done, they would file for a Certificate of Compliance on both. We have no concerns at this time. Have everything needed to close.
- Motion **Motion to Close.** (made by: Topham) (seconded)
- Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, Phillips, and Topham-aye
10. *Liberty Realty Trust – 36 North Liberty Street (41-265) NAN-131
- Sitting Erisman, Golding, Topham, Engelbourg, Phillips, Beale
- Documentation Site and topographical plans, photos, requisite departmental reports, and correspondence.
- Representative Ryan Maxwell, Bracken Engineering
- Public None
- Discussion (6:47) **Maxwell** – The previous permit was issued in 2013 with no work done; that was closed out. We are seeking a new permit for the same work.
- Staff The site is as it was when initially permitted. This filing is only under the local bylaw. Have everything needed to close.
- Motion **Motion to Close.** (made by: Phillips) (seconded)
- Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, Phillips, and Topham-aye
11. *Stafford Meyer – 41 Dukes Road (56-327) SE48-3310
- Sitting Erisman, Golding, Topham, Engelbourg, Phillips, Beale
- Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
- Representative Ryan Maxwell, Bracken Engineering
- Public None
- Discussion (6:49) **Maxwell** – This is for a new porch replacing steps and stoop all outside the 50-foot buffer; no grade change.
- Staff Have everything needed to close.
- Motion **Motion to Close.** (made by: Topham) (seconded)
- Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, Phillips, and Topham-aye

III. PUBLIC MEETING

C. Certificates of Compliance

1. Silver Fox Partners Real Estate, LLC – 235 Madaket Road (59.4-364) SE48-3121
- Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
- Staff In our review we found issues; asking this be carried forward for two weeks to resolve those issues.
- Discussion (6:51) **Carlson** – Asked this be continued to work out issues.
- Motion Continued to July 23rd.
- Roll-call Vote N/A
2. Escapehatch, LLC – 20 Western Avenue (87-74) SE48-576
- Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
- Staff In our review we found issues; asking this be carried forward for two weeks to resolve those issues.
- Discussion (6:52) **Carlson** – This is for a septic system; the original was permitted and installed in the late 1990s; they are asking to close that out. We are confident it is appropriate to issue the Certificate of Compliance.
- Motion **Motion to Issue.** (made by: Golding) (seconded)
- Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Topham-aye

D. Orders of Condition

1. ETG Nominee Trust – 6 Old Harbor Road (40-95) SE48-3314
- Sitting Erisman, Golding, Topham, Engelbourg, Phillips, Beale
- Documentation Draft Order of Conditions
- Staff From the discussion, he changed Condition 19 requiring a soil test; Condition 20 added herbicide, pesticide, and fertilizer are not to be used.
- Discussion (6:41) None
- Motion **Motion to Approve as drafted.** (made by: Golding) (seconded)
- Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, Phillips, and Topham-aye
2. Arthur Schwabe – 8 Caroline Way (82-27) SE48-3307
- Sitting Erisman, Golding, Topham, Engelbourg, Phillips, Beale
- Documentation Draft Order of Conditions
- Staff Had no unusual conditions.
- Discussion (6:56) None
- Motion **Motion to Approve as drafted.** (made by: Phillip) (seconded)
- Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, Phillips, and Topham-aye

- 3. Nantucketshire, LLC – 30 Dukes Road (56-189) SE48-3312
 - Sitting Erisman, Golding, Topham, Engelbourg, Phillips, Beale
 - Documentation Draft Order of Conditions
 - Staff Added the condition required Sewer Department approval.
 - Discussion (6:57) None
 - Motion **Motion to Approve as drafted.** (made by: Golding) (seconded)
 - Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, Phillips, and Topham-aye
- 4. Eleven Crooked Lane, LLC – 10 Hickory Meadow Lane (41-904) SE48-3311
 - Sitting Erisman, Golding, Topham, Engelbourg, Phillips, Beale
 - Documentation Draft Order of Conditions
 - Staff He took the conditions from the last one and updated with conditions now being applied.
 - Discussion (6:59) None
 - Motion **Motion to Approve as drafted.** (made by: Engelbourg) (seconded)
 - Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, Phillips, and Topham-aye
- 5. Liberty Realty Trust – 36 N. Liberty Street (41-265) NAN-131
 - Sitting Erisman, Golding, Topham, Engelbourg, Phillips, Beale
 - Documentation Draft Order of Conditions
 - Staff Conditioned to keep construction material outside the setback.
 - Discussion (7:00) None
 - Motion **Motion to Approve as drafted.** (made by: Beale) (seconded)
 - Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, Phillips, and Topham-aye
- 6. Stafford Meyer – 41 Dukes Road (56-327) SE48-3310
 - Sitting Erisman, Golding, Topham, Engelbourg, Phillips, Beale
 - Documentation Draft Order of Conditions
 - Staff Same provision all construction material be kept outside the 50.
 - Discussion (7:02) None
 - Motion **Motion to Approve as drafted.** (made by: Golding) (seconded)
 - Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, Phillips, and Topham-aye

E. Other Business

- 1. Approval of Minutes 6/25/2020:
 - Motion **Motion to Approve.** (made by: Phillips) (seconded)
 - Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, Phillips, and Topham-aye
- 2. Town of Nantucket – Sesachacha Road (21-20) SE48-2967
 - Sitting Erisman, Golding, Topham, Engelbourg, Phillips, Beale
 - Representatives None
 - Mr. Shuch’s representatives Sarah Alger, Sarah F. Alger P.C., Alan Shuch of 45 Quidnet Road
Seth Wilkinson, Wilkinson Environmental
 - Discussion (7:03) **Erisman** – Commissioners got a lot of information today as well as Mr. Carlson’s report.
Carlson – Summarized his report: focused on the town-owned piece and evaluated it against the approved plan then counted plants to ensure they matched the original list; the invasive species have been removed from both sites.
Golding – Mr. Such noted an 11-inch diameter cedar.
Erisman – It was suggested commissioners visit the site; she’s having issues differentiating between the violation and the permitted project. That would be helpful.
Beale and Phillips – Would also like a site visit.
Carlson – A site visit can be arranged as long as everyone observes social distancing and wears a mask; he’ll help facilitate that. He didn’t lay a ruler against the cedar but by estimation it is 10- to 12-inches diameter at the base.
Golding – The report sounds fairly egregious; it sounds like there’s nothing to discuss except remediation going forward.
Engelbourg – There is the issue of what additional enforcement actions should be taken against Mr. Johnson. The second issue is how to get the site into compliance. He’s not concerned about the number of each plant as long as they reflect the intended ecosystem.
Erisman – Asked if the landscapers call Mr. Wilkinson when they encounter deer pressure.
Wilkinson – There has been good communication between himself, Mr. Such, and Mr. Shuch’s landscapers.
Erisman – Asked why the Virginia Rose was being eaten by deer and why it wasn’t swapped out.
Wilkinson – There were other roses planted in the uplands; but we tried to avoid supplementing other plants on the list.
Erisman – Mr. Carlson’s report laid out the things that need to be completed to close out the permit. Mr. Johnson’s violation needs to be looked at thoroughly to get the square footage and get that moving in the correct direction.

Carlson – There is an open permit on the Town piece. Part of that is whether or not the Board is okay with replacing the cedar that was removed and authorize a species switch. It’s fine if the commissioners want to view and discuss the enforcement order.

Wilkinson – Mr. Shuch purchased materials for this project, which he will provide to the Department of Public Works (DPW); the plants should get into the ground ASAP; if the DPW can’t do that in a timely manner, Mr. Shuch’s landscaper will; he asks that a Natural Resources staff member be present when the plants go in.

Erisman – When talking about the plants Mr. Shuch purchased, asked if those are specific to the area of violation – yes.

Golding – Asked how old the 11-inch diameter tree was and how could it be replaced in kind.

Carlson – Without aging the tree, it’s hard to say. Aerial photos indicate they weren’t over 40 years old. You can’t replace a mature tree in kind; survivability is low. At the time this project started, a number of trees were infected by the Asiatic beetle and in ill health. Feels the eco system can be returned fairly quickly.

Golding – Asked how we penalize vista pruning so people won’t do it.

Erisman – That requires Town Counsel advice; believes charging by square footage can be a deterrent.

Beale – The cedar family does not like being transplanted; suggested getting several healthy young ones in there.

Engelbourg – One way we might creatively get at vista pruning is by measuring the biomass in addition to the square feet pruned.

Wilkinson – He seconds what Mr. Engelbourg said about measuring the biomass; using the Basal Inch allows you to extrapolate the biomass.

Carlson – He will meet the parties involved out in the field to facilitate this moving forward; he can make that happen quickly, so they can get the plants into the ground. The permit is open; the commission authorizes work under the permit but could make a motion to allow field substitutions and the cedars.

Motion **Motion to Authorize site substitutions and cedar plantings.** (made by: Engelbourg) (seconded)

Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, Phillips, Topham-aye

Carlson – Fertilizer is regulated through the Town; Herbicides and pesticides are regulated through the State.

Erisman – NLC asked material of path to the pond and maintenance and asking a condition against using fertilizer on the path.

Carlson – Have everything needed to close. He’ll reach out to Mr. Wilkinson to schedule the site visit with the commissioners.

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

Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, Phillips, Topham-aye

3. Discussion of SBPF – 77-122 Baxter Road SE 48-1659; SBPF – 65-67 Baxter Road SE48-1602

Sitting Erisman, Golding, Topham, Engelbourg, Phillips, Beale

Representatives Steven Cohen, Cohen & Cohen Law P.C.

Dwight Dunk, Epsilon Consulting, LLC

Other speakers None

Discussion (7:30) **Carlson** – Still getting the report

Motion Continued to July 23rd

Roll-call Vote N/A

4. Reports:

a. CRAC, Golding

b. NP&EDC, Phillips

5. Committee Appointments:

a. CPC – Mr. Topham appointed without objection

b. CRAC – Mr. Golding appointed without objection

c. NP&EDC – Ms. Phillips appointed without objection

d. Polpis Harbor Public Access Workgroup – Beale volunteered. Mr. Beale appointed without objection

6. Commissioners Comment

a. **Golding** – Looking to Ms. Erisman to provide impetus to update the local regulations. Sarah Oktay was on the commission when it was last done.

Erisman – She’s entering into her 7th year on the Commission and there has been no change/update to the regulations.

Carlson – Changes require a public hearing. Having those on a regular agenda is a terrible idea; suggested starting special meetings in middle to end of August.

Phillips – What she’d like to do is look at what other commissions did to beef up their regulations, also the Massachusetts Association of Conservation Commissions also has resources, so we don’t re-invent the wheel.

b. **Topham** – The Historic District Commission (HDC) had a meeting in which they discussed sea-level rise and it was mentioned ConCom and HDC sometimes are at odds. He reached out to the HDC chair, Ray Pohl, about getting the two groups together to come to an agreement. He can talk to Mr. Pohl first then talk to Holly Backus, Preservation Planner.

Carlson – He will reach out to the HDC; he believes there should be a work group with one member of each regulatory board to hash out conflicts. He talks with Ms. Backus frequently and is willing to reach out to her. he feels there should be a process in which people submit their applications to a compilation group to work out whether or not it will work.

c. **Erisman** – Happy to still be on the Commission.

d. **Beale** – When the Commission feels there’s no change and the applicant won’t get what he wants, feels we should tell them that.

Topham – At the head of Hummock Pond there was a house that wanted corals in front of their house, and we said no. In the case of properties tonight, we have to go through the process first.

Carlson – If you say no and they withdraw, that’s great. If they want to go through the process to get a denial for the appeal process, you have to work hard to try to make the project comply.

Topham – It is a matter of checking all the boxes so that Town Counsel, George Pucci, has a good case.

Carlson – So far ConCom has not lost an appeal.

Engelbourg – The regulations are written so the burden of proof is on the applicant. It is our job to allow them to have a thorough hearing with our knowledge of the regulations and laws. Feels telling them preemptively is not beneficial.

Golding – It’s a good idea to reach out to Mr. Pohl; we should liaise more often.

Carlson – Rick Atherton suggested starting this by having each Board chairman meet.

e. **Phillips** – Would like to see some standardization in applicants marking up the plans.

7. Administrator/Staff Reports

a. He will get sometimes for the commission to meet with the folks at Sesachacha Pond

b. Regarding regulation changes, we should look at the bylaws to see if those need changes. Bylaw changes require a Warrant Article. He’ll send links to everybody

F. Adjournment

Motion **Motion to Adjourn at 8:01 p.m.** (made by: Golding) (seconded)

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

Submitted by:

Terry L. Norton