



# CONSERVATION COMMISSION

## PUBLIC MEETING

131 Pleasant Street  
Nantucket, Massachusetts 02554  
[www.nantucket-ma.gov](http://www.nantucket-ma.gov)  
Thursday, July 23, 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 5:01 p.m. by Ms. Erisman

Staff in attendance: Jeff Carlson, Natural Resources Director; Terry Norton, Town Minutes Taker

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

\*Matter has not been heard

### **I. PUBLIC MEETING**

#### **A. Appointment of officers**

1. Chair: Golding – Proposes Ms. Erisman continue as chair.

Motion **Motion to appoint Ms. Erisman as Chair.** (made by: Golding) (seconded)

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

2. Vice Chair:

Motion **Motion to appoint Mr. Golding as Vice Chair.** (made by: Engelbourg) (seconded)

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

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

1. **R.J. Turcotte**, Nantucket Land Council (NCL) – On behalf of NCL, he submitted photos regarding vegetation die off in front of 48 Monomoy; it might have been on purpose. Asked Natural Resources to look into. Also, he’s been getting calls about the Veranda House fire clean up; people are concerned about runoff getting into the harbor.

**Carlson** – He’ll look into 48 Monomoy. He’s talked to the Public Health Director about the fire; they’re waiting on on-going issues and have a meeting to go over clean-up protocols.

**Golding** – He heard that the figure was 1.2m gallons of water used to put the fire out.

### **II. PUBLIC HEARING**

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

1. 13 Commercial Street, LLC – 13 Commercial Wharf (42.2.4-10) SE48-3501 (**Cont. 07/28**)
2. Brant Point Club, LLC – 6,8 North Beach Street/4 Dolphin Court (42.1.4-65;65.1;65.2) SE48-3518 (**Cont. 08/11**)
3. Lehrman Dynasty Trust – 18 Washing Pond Road (31-18.1) SE48-3534 (**Withdrawn**)

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

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

Representative None

Public None

Discussion (5:09) None

Staff recomm. There had been an open application; the applicant is choosing to withdraw and refile to allow all members to sit. It will come up later on the agenda.

Motion **Motion to Approve the withdrawal without prejudice.** (made by: Williams) (seconded)

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

4. Kane – 12 Pond Road (56-295) SE48-3473 (**Withdrawn**)

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

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

Representative None

Public None

Discussion (5:11) None

Staff recomm. Similar reason as SE48-3534.

Motion **Motion to Approve the withdrawal without prejudice.** (made by: Williams) (seconded)

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

5. Ack Hang Ten, LLC – 21 Meader Street (42.2.3-44) SE48-3539 (**Withdrawn**)

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

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

Representative None

Public None

Discussion (5:12) None

Staff recomm. Similar reason as SE48-3534.

Motion **Motion to Approve the withdrawal without prejudice.** (made by: Williams) (seconded)

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

6. \*Zero India Street, LLC – 1 Cambridge Street Unit 2 (42.3.1-130.2) SE48-3546  
 Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, and Plandowski  
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.  
 Representative Mark Rits, Site Design Engineering  
 Public None  
 Discussion (5:12) **Rits** – This is to elevate and slightly reconfigure the structure and for a small addition on a pier foundation. It’s in a flood plain with all impervious surface.  
**Engelbourg** – Asked if the steps are wood or pavers (wood). We should require that there be space to allow water to flow through.  
**Golding** – Confirmed that the brick sidewalk is existing and its porosity.  
**Rits** – The rear brick sidewalk is old and tight fitted making it slightly porous and it’s is on the other property.  
 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
7. \* Frost Daisy Field Trust – 74 Madaket Road (41-810) SE48-3548  
 Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, and Plandowski  
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.  
 Representative Mark Rits, Site Design Engineering  
 Public None  
 Discussion (5:17) **Rits** – These are the last 2 undeveloped lots of a 4-lot subdivision, which went through extensive Massachusetts Natural Heritage (MNH) review. Every structure is outside the 50’ buffer. A good portion of the 25’ and 50’ buffers will remain native vegetation; there is some grading within the 50’ buffer.  
**Golding** – Regarding the pool, asked the separation from ground water.  
**Rits** – The pools are 6-8 feet deep; provided test data indicating greater than 2’ from high ground water.  
**Erisman** – About the 50% between the 25’ and 50’, asked if we would put in the findings that they met that criteria.  
**Engelbourg** – An updated delineation and test pit were not done in the past 4 years.  
**Rits** – The site conditions have not changed; the wetland flags are still up in the original location.  
 Staff recomm. They are proposing some grading but no work between the 50-25 buffers. It’s part of the Performance Standard so doesn’t think it will need a finding.  
 We did reconfirm the wetland boundaries and feel the delineation is valid.  
 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
8. \* Frost Daisy Field Trust – 76 Madaket Road (41-810) SE48-3549  
 Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, and Plandowski  
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.  
 Representative Mark Rits, Site Design Engineering  
 Public None  
 Discussion (5:25) **Rits** – Same build-out solution as for 74 Madaket Road. The wetland meanders a bit so have some grading and associated work within the 50’ buffer; 90% remains undisturbed. Only a corner of the pool and guest house are within the 100’ buffer; rest is outside.  
**Golding** – Where the grading will take place, asked if it would be replaced with native grasses.  
**Rits** – We’re grading the old 15’ contour; where the silt fence is shown, there will be lawn work up to that point. The rest will remain native vegetation for Harrier Hawk habitat.  
**Misurelli** – Asked for an explanation of the 1000-gallon pump tank.  
**Engelbourg** – Every project we permit, we add only native species within the 50’ setback.  
 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
9. Airack, LLC – 14 Gosnold Road (30-83) SE48-3550  
 Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, and Plandowski  
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.  
 Representative David M. Haines, Haines Hydrogeologic Consulting  
 Public None  
 Discussion (5:31) **Haines** – This is for construction of a pool, realignment of the pool and landscaping within 100’ buffer to bordering vegetated wetlands. There is an existing shrub buffer. All structures are outside the 50’ buffer with the 25’ maintained; much of the lawn area will be revegetated and allowed to naturalize. The foundation for the retaining wall is above the 2’ separation from ground water. All work is within existing lawn and driveway. Drive and path will be shell. We will be asking for a continuance for a response from MNH.  
**Misurelli** – The proposed drive runs close to the 25’ buffer; asked if there will be edging to keep the shell within the driveway.  
**Haines** – We can do that.

**Engelbourg** – He had the same concern; on the southern part of the driveway, there’s a high degree of washout into the 25’ buffer; metal edging might qualify as a structure, so he’d prefer plantings.

**Haines** – Suggested a very low mound with plants.

**Golding** – Asked if the normal metal edging would be structural if it sticks up above the shell. He doesn’t recall discussing this before.

**Engelbourg** – Within the definition of structure, it says a combination of materials assembled for support. He thinks edging is structural since it supports the driveway and impedes water flow.

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

Staff recomm. None

Motion Continued to July 28<sup>th</sup>.

Roll-call vote N/A

10. \*Coburn – 5 High Brush Path (56-388) SE48-3551

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

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

Representative Mark Rits, Site Design Engineering

Public Charles Gibson, 9 High Brush Path

Discussion (5:39) **Rits** – There was a typo on the plan, a garage was mislabeled as a guesthouse. This is for small overhang on the wetland side of the garage well outside the 50’ buffer, an outdoor shower with plumbing on the backside of the garage, and a septic upgrade outside the 50’ buffer with the leach field outside the 100’ buffer. No other alterations are proposed.

**Engelbourg** – Questions the outdoor shower on the garage when the house already has one; asked the garage shower be removed.

**Rits** – Many 2<sup>nd</sup> outdoor showers have been permitted and this is well outside the 50’ buffer to the wetlands; he doesn’t expect adverse impact. The garage is existing.

**Engelbourg** – He feels we need to update the plan and clarify the use of the garage; he has some concerns about the structure.

**Beale** – Asked if the existing septic has failed.

**Rits** – He’s not sure if it failed but believes the internal renovation includes an increase in bedroom space; under Board of Health (BOH) regulations, that requires a septic upgrade. The existing system is at least 20 years old.

**Williams** – A Title 5 report would have been provided since this is a recent sale. Asked if there is no information on the septic’s viability.

**Rits** – He doesn’t do septic designs; it’s likely it is a required upgrade.

**Erisman** – Asked if the garage is serviced by plumbing (yes).

**Gibson** – Sent a letter that outlines his concerns. Currently, there are no toilets in the garage; that was prohibited by the BOH in 2002. He believes it is within ConCom’s purview to maintain what the Commission established for this subdivision. The plans show a sewer line connecting the garage to the new system; feels it’s an end-run attempt to make the garage habitable space. Increasing bedroom capacity is a burden on the watershed. The outdoor shower is within a building restriction easement, which isn’t shown on the plan. On the original 2001 drawings for the garage, the Commission allowed some grade change and fill that has increased runoff toward his property. Asked for a rejection of the proposal or strongly word the approval denying any toilet or septic to this building.

**Engelbourg** – Some of the concerns need to go to the BOH or Planning Board; concerns relevant to our jurisdiction would include a condition to contain runoff from the outdoor shower.

**Golding** – Mr. Gibson’s letter is very detailed. Asked if Town Counsel should look at this first; he’s uneasy about dealing with this without a firmer grasp of what could or could not be permitted. That is supposed to be strictly a garage.

**Erisman** – She’d concerned about the blurred lines between our jurisdiction and that of the BOH. If those conditions weren’t carried over, it might make it hard to hold to those conditions today.

**Williams** – She’s leery about telling them they can’t upgrade to an I/A system. The permit should state that the garage wasn’t for human habitation; asked if ConCom can do that. An I/A system might increase the number of bedrooms on the site.

**Erisman** – We’d have to look at how a bedroom would impact the resource area.

**Rits** – When we provide the revised plan, the outdoor shower and septic line won’t be jurisdictional features; that leaves only the overhang on the garage and the upgrade to the I/A system.

**Beale** – The homeowner wants to upgrade their septic; however, if it hasn’t failed, he’d hate to have the disruption within the 100’ buffer. He’d hate to turn down an upgrade, but this sounds like an increase in the intensity of use.

**Rits** – This will be a Septitec I/A system. We will update the plan for the next meeting providing the septic details. The request is for a septic upgrade located within a stone patio.

**Engelbourg** – The plan doesn’t say anything about an upgrade to I/A. The 310 CMR wetlands protection act requires the applicant to apply and obtain all necessary permits required within local bylaw at the same time. If an applicant hasn’t done that, we shouldn’t open the hearing. We have some leverage to make sure other boards have seen this at the same time we see it; that would prevent the blurred lines. Asked if Mr. Rits has applied for or obtained the other necessary permits.

- Rits** – He doesn’t know at this time. Asked for a 2-week continuance.
- Staff recomm. You always look at the project merits against the Performance Standards. We look at how it impacts the wetland resource area.  
We have a hard time under the act restricting uses unless it’s tied to the regulations; we’d need detailed findings.
- Motion Continued to July 28<sup>th</sup>
- Roll-call vote N/A
11. \*NBB Fuels, LLC – 6,11, 12 New Whale Street (42.3.1-89.1, 42.24-14, 42.2.4-11) SE48-3554 (**Cont. 7/28**)
12. \*Ferguson Hulbert Avenue Nominee Trust – 50 Hulbert Avenue (29-62) SE48-3553
- Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, and Plandowski
- Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
- Representative Art Gasbarro, Nantucket Engineering & Survey
- Public None
- Discussion (6:09) **Gasbarro** – For work within land subject to coastal storm flowage to remove an existing structure and construct a similarly sized structure in the same vicinity. We will comply with all flood-zone requirement.  
**Engelbourg** – He doesn’t think the project meets Performance Standard 1 because of the proposed retaining walls, which will redirect water and reduce the ability of the site to retain water.  
**Golding** – He shares Mr. Engelbourg’s concerns. From the cross section, it shows a large drop in grade; he thought the land was flat.  
**Gasbarro** – The road is at elevation 4 and the house at elevation 10 to 8. It’s being moved shifts the structure gets it out of the zoning setback. He sees the concern regarding no fill allowed within land subject to coastal storm flowage; however, we have to look at the individual conditions of every site; no significant fill is being proposed that would impact the property’s ability to retain water.  
**Engelbourg** – Despite what exists now, reconfiguring the retaining walls changes the ability to contain flood water; feels a waiver should be requested and we could discuss the merits of that.  
**Williams** – This property is an anomaly on the south side of Hulbert Avenue. It might be advantageous to look at the difference between the existing and proposed and how it’s integrated into the ground.  
**Erisman** – Asked if there is a square area comparison of existing retaining wall and proposed. Also, asked if the roof runoff is being collected.  
**Gasbarro** – He doesn’t see gutters on architectural drawings; he can do calculations on that. The proposed steps aren’t in the flood zone; he thinks it is an improvement in flood storage capacity.  
**Engelbourg** – He’s persuaded by the discussion and thinks this is permissible. He was concerned about the northeast corner.
- Staff recomm. When he reviewed the project, he looked at it as increasing the flood storage capacity. Flood level is at elevation 7; the wall creates a pit on the lot allowing flood waters to come back past elevation 7 point to the retaining wall increasing the flood storage capacity.  
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
13. \*Town of Nantucket – 98, 100 & 104 Washington Street (55.1.4-9.2, 9.1 & 104) SE48-\_\_\_\_ (**Cont. 7/28**)
14. \*Lehrman Dynasty Trust – 18 Washing Pond Road (31-18.1) SE48-3552
- Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, and Plandowski
- Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
- Representative Mark Rits, Site Design Engineering  
Dan Bailey, Pierce Atwood LP
- Public R.J. Turcotte, Nantucket Land Council  
Rick & D. Anne D. Anne Atherton via YouTube  
Burton Balkind via YouTube
- Discussion (6:28) **Rits** – This is to reconstruct a timber groin damaged in a January 2022 storm. The existing bulkhead and groins have been on site since 1975; previous applications have referenced those dates and are on record in Commission files. The structures have been repaired and maintained with some updates permitted by ConCom over the years. These predate the Wetlands Protection Act (WPA) and Town bylaws. Reviewed GIS aerial photos starting with 1998 to 2021; he understands the GIS photos are done in early Spring. Storm Henri wiped out most of the beach in front of the bulkhead-groins; since then, the system hasn’t been building up sand as it should. He conducted a wading survey with a dozen transects; telemetry information has been provided. Mean-high water on June 28, 2022, shows minus 0.1; sand is starting to accumulate west of the groin. Anticipates that with time, sand will build up starting on the east and working around. The system is designed to accumulate sand. We are asking to rebuild the eastern groin in its historical location and conditions. We are proposing to add 2 sets of stairs to provide public access across the top landward of the groin. As a grandfathered structure, we feel this isn’t subject to regulations and performance standards as a new construction would.  
**Golding** – On May 12<sup>th</sup> at low tide, he would have been knee at the eastern end. He appreciates providing the mean-high tide line on the drawing. He doesn’t feel the bulkhead is entitled to Chapter 91 grandfathering; it was built to protect a pre-1978 house, which was moved off in 1992; the new structure was built in 1995. Under the public trust document, they have an obligation to provide public access from low tide to high tide; as it’s shown now, people would be in waist high water; they should provide access up to the mean high-water mark.

- Rits** – We are well aware the water is deeper there now; that’s because it isn’t functioning as it was designed.
- Williams** – Asked how much control ConCom has over Chapter 91 (none). If we don’t have jurisdiction, she doesn’t want to spend time on Chapter 91 access.
- Erisman** – We do have to consider public access for fishing, fowling, and navigation around a structure like this.
- Bailey** – He agrees the Commission has no authority over the public trust; however, his client has no inclination to limit public access across his property. The nature of grandfathered use is that it doesn’t have to and can’t comply with the performance standards; read the definition of grandfathered use. This is an existing structure with a request to repair a grandfathered structure. We aren’t extending or modifying; we are replacing in kind and have a right to have this work approved.
- Plandowski** – He and Mr. Missurelli visited this site a couple of days ago; he’s now glad he did.
- Engelbourg** – The applicant is modifying the structure by adding the stairs and we have to find they will have no adverse impact. Given the updated delineation of new high water, suggested characterizing the eastern side as now being land under the ocean.
- Rits** – It is currently sub tidal.
- Engelbourg** – It seems relevant to think about what normal maintenance means as it pertains to land under the ocean. Questions the assertion that a rebuild of a collapsed groin qualifies as regular maintenance. The conditions are now substantially different.
- Erisman** – In the GIS photos, she noticed end scour and the increased peninsular effect, especially on the west side. Its impacts are different from when it was originally permitted.
- Rits** – Regarding the west end scour, there is a big difference on the west end, but the total loss is only several feet, which is consistent with erosion seen along the north shore.
- Bailey** – Regarding normal maintenance, it warrants a careful definition. but he would say, drawing on case law, it is to maintain something such that it conforms with the original specifications and serves the original purpose. Contends the request to replace the east bulkhead constitutes normal maintenance. Cited other projects that were approved as normal maintenance that involved much greater work.
- Engelbourg** – The original intent was to stabilize the site to provide coastal protection for a dwelling, which no long exists. We do need a better definition of normal maintenance. Some salient points need to be considered and we need to consider what resource are on site – land under the ocean, coastal beach, and coastal bank, each with specific performance standards. We have a performance standard that states no bulkhead may be rebuilt even if it predates the Wetlands Protection Act, and the applicant can’t show it provides the same protection with a more environmentally solution. For land under the ocean, read important standards independent of the fact if they apply to grandfathered use.
- Rits** – In the time this request has been going through this process, the structure would have been repaired; therefore, that system has not had a groin since January. The structure has been there for decades. We are not proposing any new impacts. We are putting the stairs in at the request of Commissioners.
- Beale** – He’s trying to sort out whether or not the bulkhead deserves protection with the removal of the pre-1978 structure. At the eastern end, asked if they could move the stairs further south and still keep them on the property.
- Rits** – They can’t move the stairs further south because of a steep bank. We feel that once the groin is reestablished and starts to preserve sediment, the beach will build back out.
- Bailey** – We enforce the definition of grandfathering and preexisting use as they are in local regulations. Given the language, it’s our position that any structure is grandfathered.
- Golding** – Read a piece from Mr. Lahey regarding New England Tidelands, which is independent of Chapter 91. Under the Public Trust Doctrine, it is the applicant’s obligation to do what’s necessary to provide public access. When this was originally permitted, the groins were above the low tideline.
- Engelbourg** – We should try to avoid the Colonial Public Trust Doctrine; when it was drawn up, Nantucket was part of New York state. We need to stick to our regulations.
- Bailey** – He agrees with Mr. Engelbourg. However, Massachusetts hasn’t accepted the argument that Nantucket is not subject to the Colonial Public Trust Doctrine.
- Turcotte** – Doesn’t think the proposed stairs would last very long; they would be the only safe way for public to pass is over the bulkhead. Cited a court case which discussed were mean-high water lies.
- Carlson** – Read YouTube public comments:
- D. Anne Atherton – Asked if this grandfathered coastal erosion structure can exist forever.
  - Rick Atherton** – Said it seems clear that there are significant issues; asked that the hearing be continued for further discussion.
  - Burton Balkind** – Stated he agrees with Mr. Atherton.
- Erisman** – Asked if the alternative analysis is provided in the packet.
- Rits** – Yes, along with other previously submitted information.
- Erisman** – We are looking at shifting resource areas and the change of dynamics; that brings into question the validity of rebuilding the structure.
- Engelbourg** – In the previous application, Mr. Rits referenced a letter which indicated how an alternative, such as building up the beach, would impact the shellfish habitat; that letter doesn’t actually say that. Asked for clarification.

**Rits** – The way he read the letter is that work as proposed is permissible without expansion or nourishment won't cause impact to the habitats. To have a living beach or beach nourishment, we would impact a larger area of land under the ocean than by replacing the groin.

Discussion about alternatives, flanking issues, impacts on land under the ocean, and habitats.

**Engelbourg** – Asked if the Town Council request is still valid.

**Bailey** – Asked for a specific list of what commissioners are looking for. Knows ConCom is waiting for input from Town Council. Feels we've addressed all necessary issues.

**Beale** – He's opposed to this as it now stands based upon inadequate access on the east and west. They need a better plan.

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

**Erisman** – Agrees that changing of the resource areas warrants a better plan than the groin and bulkhead.

**Misurelli** – Mr. Beale brought up a good point about access.

**Engelbourg** – The burden of proof to show alternatives can't be achieved is on the applicant.

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

Staff recomm. We have all the old files, and they are public record.

We have no say over Chapter 91. The part that's germane as it relates to performance standards and recreation; recreation in our bylaw allows uses such as swimming, walking, fishing, etc. We require unimpeded access or passage, and we look at how it relates to the performance standards.

He renewed the request for Town Council.

By base requirements we have everything needed to close.

Motion Continued to July 28<sup>th</sup>

Roll-call vote N/A

**B. Amended Order of Conditions**

1. Philips, Trustee – 19 East Tristram Avenue (31-4.1) SE48-3304 (**Cont. 7/28**)

2. 22 Easton Street, LLC – 22 & 24 Easton Street (42.1.4-12, 12.1) SE48-3472

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

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

Representative Steven Cohen, Cohen & Cohen Law P.C

Public None

Discussion (7:39) **Cohen** – The proposed pool is outside the 100'buffer to the bulkhead but within land subject to coastal storm flowage; there were concerns expressed about saltwater mixing with flood waters. This is for a 10X15 spa elevated on a previously-approved deck above flood waters. There is also some change to vegetation and addition of a geo-thermal well. No waivers are required. The conditions regarding filling and emptying pools are not objectionable to his client.

**Erisman** – She's concerned about the synthetic turf putting green, which could contain PFAS, being in the flood zone.

**Cohen** – He's aware of the concern. This is a very small area. If the commission were to deny it, they'd accept a natural grass putting green.

**Golding** – He'd prefer to specify the putting green be grass.

Staff recomm. Suggested adding a condition requiring the putting green have natural grass or specification of synthetic turf on file with the Commission indicating it doesn't contain a PFAS leaching material. If they find a safe product, they could come back for a minor modification.

**Motion to Issue with conditions as discussed.** (made by: Beale) (seconded)

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

3. Notsoeasy, LLC – 26 Easy Street (42.4.2-23) SE48-3369

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

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

Representative Art Gasbarro, Nantucket Engineering & Survey

Public None

Discussion (7:49) **Gasbarro** – The change is to keep the existing main structure and replace the small structure with a new larger structure. No work is proposed within 50' of the bulkhead. Resource here is land subject to coastal storm flowage.

Staff recomm. Have everything needed to close.

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

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

4. 34 Easton Realty Trust – 34 Easton Street (42.4.2-23) SE48-3369

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

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

Representative Art Gasbarro, Nantucket Engineering & Survey

Public None

Discussion (7:53) **Gasbarro** – This is to move the structure farther from the road and closer to the bulkhead. It's still farther from the resource areas – coastal bank and coastal beach and land subject to coastal storm flowage – than the existing. No work will be within the 25' buffer.

**Golding** – It’s massive and takes up the entire lot making the area feel more urban. Asked if the building ConCom permitted had this much footprint; it was closer to the road and now is larger and within the 50’ buffer, which we don’t permit. The previous location also allowed some view of the water from the street.

**Erisman** – She was amenable to the large structure because it was out of the no-build zone; this is in the no-build zone

**Engelbourg** – As previously permitted, the building was okay. The amended plan doesn’t meet our regulations and will cause adverse impact. By expanding the width of the structure, the wetland scenic view is completely minimized. Asked for a continuance to provide feedback to his client.

Staff recomm. None  
 Motion Continued to July 28<sup>th</sup>.  
 Roll-call vote N/A

**III. PUBLIC MEETING**

**C. Requests for Determination of Applicability**

- Centerplace Homeowner’s Association – 80A, 82, 82A, 84, 84A Old South Road (68-412, 413, 414, 415, 416)

Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, and Plandowski  
 Representative Art Gasbarro, Nantucket Engineering & Survey  
 Staff recomm. Staff has been out there and agree it is not a jurisdictional resource area.  
 Recommend as a Negative 1, an area not to be protected  
 Discussion (8:01) **Gasbarro** – This is to confirm an existing man-made drainage swale is not a jurisdictional wetland. There are some wetland plants.  
 Motion **Motion to Issue as a Negative 1.** (made by: Beale) (seconded)  
 Roll-call vote Carried 7-0//Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye

**D. Minor Modifications**

- Nantucket Island School of Design – 23 & 25 Wauwinet Road (20-36, 80) SE48-3279

Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, and Plandowski  
 Representative Brian Madden, LEC Environmental  
 Staff recomm. This is to relocate the barn; looking to relocate some water and sewer lines.  
 Discussion (8:05) None  
 Motion **Motion to Issue the Minor Modification.** (made by: Misurelli) (seconded)  
 Roll-call vote Carried 7-0//Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye

**E. Certificates of Compliance**

- None

**F. Orders of Condition**

- Zero India Street LLC-1 Cambridge Street Unit 2 (42.3.1-130.2) SE48-3546

Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, and Plandowski  
 Documentation Draft Order of Conditions  
 Staff Only conditions are to meet all protocols; he’ll add Condition 20 about the exterior steps being wood and not to impede water flow.  
 Discussion (8:08) **Golding** – Asked if we want to say no risers, only treads so flow isn’t impeded.  
 Motion **Motion to Approve as amended.** (made by: Engelbourg) (seconded)  
 Roll-call vote Carried 7-0//Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye

- Frost Daisy Field Trust – 74 Madaket Road (41-810) SE48-3548

Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, and Plandowski  
 Documentation Draft Order of Conditions  
 Staff This and the next are almost identical. Normal pool and fertilizer conditions. Read his draft Finding regarding the building envelop being considered for the subdivision in its entirety.  
 Discussion (8:10) **Erisman** – Because these properties were permitted with building envelopes for the whole subdivision, asked how those envelopes would be memorialized to prevent expansion into the 25’ or 50’ buffers. They should also demarcate the no-development area.  
**Beale** – We should amend the regulations banning fertilizers within 50’ of the water.  
**Engelbourg** – Asked if we should require future submissions to show the area already served.  
 Motion **Motion to Issue as amended.** (made by: Golding) (seconded)  
 Roll-call vote Carried 7-0//Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye

- Frost Daisy Field Trust – 76 Madaket Road (41-810) SE48-3549

Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, and Plandowski  
 Documentation Draft Order of Conditions  
 Staff Will add the same Conditions and Finding as for SE48-3548  
 Discussion (8:16) None  
 Motion **Motion to Issue as amended.** (made by: Beale) (seconded)  
 Roll-call vote Carried 7-0//Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye

4. Ferguson Hulbert Avenue Nominee Trust – 50 Hulbert Avenue (29-62) SE48-3553
  - Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, and Plandowski
  - Documentation Draft Order of Conditions
  - Staff Normal flood-zone conditions.
  - Discussion (8:18) None
  - Motion **Motion to Issue as drafted.** (made by: Misurelli) (seconded)
  - Roll-call vote Carried 7-0//Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye

**G. EXTENSION REQUEST**

1. 36 Lilly Street, LLC – 36 Lily Street (42.4.3-94 SE48-3005 **(Withdrawn)**)
  - Sitting Erisman, Golding, Engelbourg, Beale, Misurelli, and Plandowski
  - Representative Sarah Alger, Sarah F. Alger P.C
  - Staff recomm. None
  - Discussion (8:20) None
  - Motion **Motion to Approve the withdrawal.** (made by: Misurelli) (seconded)
  - Roll-call vote Carried 6-0//Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski-aye; Williams recused.

**H. Other Business**

1. Approval of Minutes 06/23/2022:
  - Erisman – These weren’t the packet.
  - Motion No action at this time.
  - Vote N/A
2. Committee Appointments
  - a. CRAC, Golding – He’s happy to continue.
    - Motion **Motion to Appoint Mr. Golding.** (made by: Beale) (seconded)
    - Roll-call vote Carried 7-0//Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye
  - b. CPC, Beale – Accepted the appointment.
    - Motion **Motion to Appoint Mr. Beale.** (made by: Williams) (seconded)
    - Roll-call vote Carried 7-0//Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye
  - c. NP&EDC, Williams – Volunteered; she’d been on this board before.
    - Engelbourg – He’s also interested.
    - Motion **Motion to appt Mr. Engelbourg.** (made by: Golding) (seconded)
    - Roll-call vote Carried 5-2//Beale, Engelbourg, Erisman, Golding, and Plandowski-aye; Misurelli and Williams-nay
3. Discussion of Regulatory Update
  - Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, and Plandowski
  - Discussion (8:26) **Carlson** – He had someone look at the regulations; a fresh version will go out tomorrow.  
**Gasbarro** – Asked if the drafts will be available to the public.  
**Carlson** – Yes; they’ll be posted on the Commission website and he will email a copy to Mr. Gasbarro.
4. Letter of Support Invasive Species
  - Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, and Plandowski
  - Discussion (8:27) **Erisman** – A letter was distributed about a meeting regarding species invasive to Nantucket.  
**Engelbourg** – Massachusetts Invasive Plan Advisory Group (MIPAG) job is to evaluate species for invasive potential and give recommendations to Massachusetts Department of Agricultural Resources (MDAR). The discussion is to ban Scotch Broom, Japanese Black Pine, and Leaping Love Grass. The ConCom’s letter would be in support of those recommendations.  
**Misurelli** – Asked if it would be Commission support as opposed to individual support.  
**Williams** – She supports the recommendation. Asked about the Scotch Broom being on the list.  
**Engelbourg** – With warming temperatures, it’s surviving and propagating more than it used to. There’s additional information on the MDAR website regarding qualifications for invasive species. It has been on the Island for over 100 years.  
**Williams** – Asked if it must be eradicated or can it be controlled.  
**Engelbourg** – He’ll leave that with the people in the industry. The prohibited list bans sale and import to prevent further expansion, but it doesn’t require you to remove an existing plant.  
**Misurelli** – The important point is the cultivar is nothing like what we’re used to seeing.  
**Engelbourg** – Black Pine was brought here in the 1800s for soil stabilization and wind break. Suggested editing the letter to reflect the commission’s vote.
  - Motion **Motion to Authorize sending the letter of support.** (made by: Engelbourg) (seconded)
  - Roll-call vote Carried 7-0//Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye
5. Enforcement updates
  - a. Carlson – Looking into a couple of possible violations and will look into 48 Monomoy.
6. Reports:
  - a. None
7. Commissioners Comment
  - a. Erisman – Welcomed Mr. Miserelli and Mr. Plandowski.
  - b. Golding – In the discussion of Chapter 91 licenses, asked if we have an Island-wide list of licensees.  
 Carlson – He has it in his office. He’ll go over it with Mr. Golding; it’s for licenses that have been recorded.



- c. Engelbourg – Asked if there’s an update on Sacacha Pond.
- d. Engelbourg – He had mentioned the requirement for applicants to apply for all required permits at one time; that hasn’t been the case in the past. Asked if there’s a way to move forward with ensuring that has been done.
  - Erisman – Several years ago, Mr. Carlson set up an inter-board discussion, but nothing came of it.
  - Carlson – He has good access to BOH. The Town is rolling out Intergov. He’ll pull together information on that.
- 8. Administrator/Staff Reports
  - a. Welcomed the new members. Invited them to send in photos if they find something that looks long.

**I. Adjournment**

Motion           **Motion to Adjourn at 8:44 pm.** (made by: Williams) (seconded)

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

Submitted by:

Terry L. Norton