



CONSERVATION COMMISSION

PUBLIC MEETING

2 Bathing Beach Road
Nantucket, Massachusetts 02554

www.nantucket-ma.gov

Wednesday, August 14, 2019

4 Fairgrounds Road, Training Room – 5:00 p.m.

Commissioners: Ashley Erisman (Chair), Ian Golding (Vice Chair), Ernie Steinauer, David LaFleur, Joe Topham, Seth Engelbourg, and Maureen Phillips

Called to order at 5:04 p.m.

Staff in attendance: Jeff Carlson, Natural Resources Coordinator; Joanne Dodd, Natural Resources Office Administrator; Terry Norton, Town Minutes Taker

Attending Members: Erisman, Golding, Steinauer, LaFleur, Engelbourg, Phillips

Absent Members: Topham

Late Arrivals: None

Earlier Departure: None

Agenda adopted by unanimous consent

*Matter has not been heard

I. PUBLIC MEETING

A. Announcements

B. Public Comment

1. **Maria Zodda**, 3 Dionis Beach Road – Regarding Dionis Beach access: Read a letter signed by abutters to the board requesting the owner of the property at 25 East Tristram Avenue to allow neighbors use of the ladder on their property at 25 East Tristram Avenue to access the beach. She and her neighbors can't access the beach safely because of ConCom's actions on the bluff; in the future, the ConCom should monitor the amount of sand deposited.
Erisman – That is not within our jurisdiction; suggested they contact the homeowner directly.

II. PUBLIC HEARING

A. Notice of Intent

1. Mary D. Starr – 19 East Creek Road (55-60) SE48-2985 (**Cont. 08/28/19**)
2. Gregory Reyes – 19 East Creek Road (55-60) SE48-3065 (**Cont. 08/28/19**)
3. *Gisela Leinhard – 11 Jonathan Way (75-42) SE48-3217

Sitting Erisman, Golding, Steinauer, LaFleur, Engelbourg, Phillips

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

Representative Jeff Blackwell, Blackwell & Assoc.

Public None

Discussion (5:08) **Blackwell** – Requested a continuance for 2 weeks

Staff None

Motion Continued to August 28 by unanimous consent.

Vote N/A

4. Lotte Leschly QPRT & Jan Leschly QPRT – 65 Squam Road (13-15) SE48- 3233(**Cont. 08/28/19**)
5. 115 Baxter Rd, LLC and 117 Baxter Rd, LLC – 115 & 117 Baxter Road (75-42) SE48-3232(**Cont. 08/28/19**)
6. Andrew O' Brien Living Trust and Sonja Anderson Living Trust – 13 C Street (60.1.2-76) SE48-3227

Sitting Erisman, Golding, Steinauer, LaFleur, Engelbourg, Phillips

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

Representative Art Gasbarro, Nantucket Engineering & Survey

Public None

Discussion (5:08) **Gasbarro** – Creation of path to and elevated walkway across a saltmarsh to access Hither Creek; were waiting for a file number, which has been received. This qualifies as a water dependent use.

Erisman – Asked if the grass path will be mown or if sod will be planted. Previous order said no fertilization and no irrigation; would prefer that be carried over to this.

Gasbarro – The turf and grass walking path is very narrow and mowing will be to widen it. It can be conditioned that it not be sodded and no fertilizer use. Right now, the path is like lawn edge.

Staff Have everything needed to close.

Motion **Motion to Close.** (made by: Phillips) (seconded by: LaFleur)

Vote Carried unanimously

7. 102 Wauwinet Road Nominee Trust – 102 Wauwinet Road (11-24.2) SE48-3222

Sitting Erisman, Golding, Steinauer, LaFleur, Engelbourg, Phillips
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Brian Madden, LEC Environmental
 Public None
 Discussion (5:13) **Madden** – The boardwalk portion of the proposal has been eliminated and plans updated accordingly.
 Staff Have everything needed to close.
 Motion **Motion to Close.** (made by: Steinauer) (seconded by: Engelbourg)
 Vote Carried unanimously

8. *Nantucket Property Trust – 13 Hallowell Lane (30-11) SE48-_____

Sitting Erisman, Golding, Steinauer, LaFleur, Engelbourg, Phillips
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Art Gasbarro, Nantucket Engineering & Survey
 Lee Weisher, Woods Hole Group, Inc.
 Public None
 Discussion (5:15) **Weisher** – Asking to repair 125 feet of existing bulkhead with sheathing and cap and repair one groin; the other groin was previously repaired. Access will be from Hollowell Lane with a sand ramp over the bank.
Golding – Asked if the height of the bulkhead is being raised.
Weisher – No.
Steinauer – Thinks this is an opportunity to add mitigation between the groins.
Weisher – The sand from the ramp will be left for sand nourishment.
Gasbarro – Doesn’t believe there is much erosion here. He’s noticed there’s a small bit of erosion due to height but not enough to calculate the annual erosion. Because of the groins, the beach is fairly high.
Golding – Suggested measuring the mean high tide for a couple of years to ascertain a possible erosion rate.
Gasbarro – A 1930s land-court plan showing a mean high tide line indicates almost the same shore line as 2019.
Phillips – Agrees with Mr. Steinauer about taking this opportunity to monitor and mitigate.
Gasbarro – Looking at the context of this property, we’re in the middle of a groin field, so doesn’t think there is the possibility of end scour. We will provide pre- & post-construction surveys and reports.
Engelbourg – Asked about the construction protocol for replacing timber pilings.
Weisher – Vibrate pylons loose then lift out then vibrated into place. No debris should be generated.
Gasbarro – Having monitored repair of other groins, the piles aren’t hammered. They go in easily due to the sandy conditions. We have a file number but waiting on Massachusetts Natural Heritage so need a continuance.
 Staff The land court map Mr. Gasbarro referenced is from 1933.
 Motion Continued to August 28 by unanimous consent.
 Vote N/A

9. *Ceylon Elves, LLC – 3 Wyers Way Lot A (41-380) SE48-3230

10. *Ceylon Elves, LLC – 3 Wyers Way Lot B (41-380) SE48-3229

Sitting Erisman, Golding, Steinauer, LaFleur, Engelbourg, Phillips
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative David M. Haines, Haines Hydrogeologic Consulting
 Public Michael Giaimo, 54 West Chester Street
 Discussion (5:30) **Haines** – This is for removal of an existing structure and redevelopment of the two lots with pools and driveways. The wetland boundary was approved in an RDA from 2018 and is still valid. Existing lawn along the boundary has been encroached upon with Japanese Knotweed. Site has a high-water table at elevation 14. Both lots will be filled with 2-feet of fill to maximize separation from the water table. Houses will have crawl spaces but there will still be a need for a waiver for the 2-foot separation; he hopes they won’t have to dewater. Been monitoring the water table since November 2018. A silt fence will be installed and monitored. Proposing to remove the knotweed by cutting in the non-growing season then the following year rotor the sprouts; lastly remove the top soil, resod, and replant the 25-foot buffer with native vegetation. Asking for a waiver for the work within the buffer zone based upon a net benefit.
Steinauer – Suggested letting the knotweed die this year then mow and tip into the soil; it won’t resprout this year. When it comes back up in the Spring, treat it with triclopyr then keep mowing it down until about August; at which time let it get leaves so that it can be treated again. It’s better to kill it from the top rather than digging it out.
Erisman – She appreciates restoring the buffer but can’t justify this level of development with the groundwater level and so little restoration.
Engelbourg – He’s concerned about that as well but doesn’t understand how the proposal would be a long-term net benefit. There will be disturbance of the 25-foot buffer doing the restoration work then there’s the work within the 50-foot buffer; in his mind that is a net loss. The area of the proposed mitigation is insufficient to justify the area of the driveway.
Haines – The driveway isn’t a structure; he can come back with the exact area of the driveway and mitigation.

Golding – A lot of the groundcover is outside the 100-foot. However, there is a staggering amount of development and doesn't know how it will impact the wetland going forward.

Gaiimo – His concern is the amount of fill ending up higher than his property causing runoff.

Erisman – We could request monitoring of the rain runoff.

Engelbourg – Asked if there is way to eliminate the issue about 2-foot separation.

Golding – Asked about the grade change.

Haines – Currently the grade is around elevation 15 and bringing it up to elevation 17.5; don't want to bring it higher than the surrounding properties. Asked for a 2-week continuance.

Staff None

Motion Continued to August 28 by unanimous consent.

Vote N/A

11. *Phil Pastan – 111 Eel Point Road (32-3) SE48-3231

Sitting Erisman, Golding, Steinauer, LaFleur, Phillips (Engelbourg Recused)

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

Representative Stan Humphries, Environmental Consulting & Restoration, LLC

Public R.J. Turcotte, Nantucket Land Council

Discussion (5:56) **Humphries** – Resource areas are all coastal dune and coastal bank. The structure was built in 1978. Explained the erosion situation. Propose 2 protections in place: sand-drift fences and sand-filled coir rolls for about 165 feet of the property.

Phillips – Asked if the property extends beyond the coir rolls.

Humphries – They will tie into an adjacent set of rolls on one side and return 15 feet before the end of the property on the other side. The dunes contribute about 250 cubic yards (CY) of sand nourishment.

Erisman – Asked if the structures have been moved back.

Humphries – There are two old foundations; the building has been moved landward twice. Issues with moving farther landward include: loss of ocean view, puts the septic higher than the house, and the cost. For construction of the rolls, we will use the same contractor as the neighbor into which the array will tie.

Erisman – Asked if there is still a coastal dune.

Humphries – There are photos indicating dunes have come back.

Turcotte – The dune is at the foot of the bluff along the beach and this is a CES. Ensured the posts would not be run into the dunes since the coastal erosion structure can't be on top of the dune. The cost of moving the structure landward isn't within ConCom jurisdiction.

Golding – Argues since it is registered as built in 1978, it doesn't qualify for protection. He feels very wary about this. The bottom line is the house can be moved back. Takes issue with the cost of moving being an issue.

Steinauer – We should get a specific date on the completion of the building and the enactment of the law.

Humphries – State regulations specify the NOI file by date or the date construction began.

Golding – Moving is definitely an alternative when we are trying to protect the environment.

Erisman – Her problem hinges on how this CES will interact with the coastal dune.

Steinauer – If this dune has been stable for a period of time then there's one storm, the erosion could be an anomaly. Also wonders if the dune is there because of the sand drift fence or has it always been there.

Pastan – We built the house in the 1970s; at that time there was no dune; it built up over the years then about 7 years ago disappeared. Every year we've put in the snow fence to hold sand; last year it worked well.

Humphries – There will be 200 CY of sacrificial sand.

Steinauer – We need to look at the long-term average erosion rate.

Erisman – Read Performance Standard 6 concerning coastal dunes.

Steinauer – Suggested removing the fence to prove it isn't an artificial dune; if the dune disappears, calculate the loss and come back for protection. Pointed out that a dune is usually covered with dune grass; this is sand piled up around the fence.

Golding – He feels this is at best an artificial dune and doesn't qualify for protection. To him it doesn't look like a dune.

Erisman – She wants to see if a dune is going to establish itself; that takes time. If we permit the protection, we prevent that bank from coming back. Also, the dune is 10 feet wide, which is significant.

Steinauer – Asked what the abutting structure is; doesn't recall permitting rolls in a long time. The combination of the fence and envelops is a structure; individually they are not.

Humphries – Asked for a 4-week continuance.

Staff Most projects along that stretch have converted to the Wilkinson array.

Motion Continued to September 11 by unanimous consent.

Vote N/A

12. *Constance & Thomas Cigarran – 25 East Tristam Avenue (31-1) SE48-____
 Sitting Erisman, Golding, Steinauer, LaFleur, Engelbourg, Phillips
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Art Gasbarro, Nantucket Engineering & Survey
 Public None
 Discussion (6:30) **Gasbarro** – This is for seasonal beach stairs from top of a timber bulkhead to beach. Owner did not realize they needed a permit. There is no cutting involved.
Steinauer – It seems permittable.
Gasbarro – Asked to continue for a Department of Environmental Protection file number
 Staff He'll draft a positive order for this.
 Motion Continued to August 28 by unanimous consent.
 Vote N/A

13. *Sara & Thomas D.C. Brown & Little – 9 North Avenue (42.4.4 – 58) SE48-____
 Sitting Erisman, Golding, Steinauer, LaFleur, Phillips (Engelbourg recused)
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Art Gasbarro, Nantucket Engineering & Survey
 Public None
 Discussion (6:33) **Gasbarro** – This is for residential redevelopment within land subject to coastal storm flowage and a bordering vegetated wetland buffer. Detailed the proposed work: move structures out of the zoning setback, renovate, raise, main-house addition, replace asphalt with pervious surface, and install subsurface propane tank. This is a long-term net benefit with the removal of the asphalt.
Erisman – Without defined parking, she's concerned about vehicles ending up parking in the wetland buffer.
Gasbarro – He'll check with the applicant about that. Asked for a 2-week continuance
 Staff When we did our field visit, noted there was some parking on the lawn adjacent.
 Motion Continued to August 28 by unanimous consent.
 Vote N/A

14. *Nantucket Islands Land Bank – Long Pond (N/A-N/A) SE48-3228
 Sitting Erisman, Golding, Steinauer, LaFleur, Engelbourg, Phillips
 Documentation Site and topographical plans, photos, requisite departmental reports, correspondence and video.
 Representative Rachael Freeman, Nantucket Islands Land Bank
 Bob Williams, Nantucket Pond Coalition
 Public None
 Discussion (6:39) **Freeman** – This is for phragmites control on east side of Long Pond. This is a continuance of the on-going Pond Coalition control project.
Erisman – We've required mapping of where native plants come back.
Williams – Introduced the video.
Phillips – The work thus far has really opened up Long Pond access.
 Staff They provided a side-by-side video monitoring of the Pond Coalition treatment areas. He will post the video link.
 Motion **Motion to Close.** (made by: LaFleur) (seconded by: Phillips)
 Vote Carried unanimously

B. Amended Orders of Conditions

1. The Estate of Lee Rand Burne – 55 Grove Lane (41-419) SE48-3155
 Sitting Erisman, Golding, Steinauer, LaFleur, Engelbourg, Phillips
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Mark Rits, Site Design Engineering
 Public None
 Discussion (6:48) **Rits** – This amendment is for a final house design, plot reconfiguration, and addition of a shed.
 Staff A lot of this qualifies as a minor mod; the shed makes it an amendment since it's new.
 Motion **Motion to Close and issue.** (made by: Steinauer) (seconded by: Phillips)
 Vote Carried unanimously

III. PUBLIC MEETING

C. Requests for Determination of Applicability

1. National Grid – 283, 287, 289 Hummock Pond Road (83-6,39,4)
 Sitting Erisman, Golding, Steinauer, LaFleur, Engelbourg, Phillips
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Amanda Houle, Environmental Scientist, Tighe & Bond, Inc.
 Public None
 Discussion (6:52) **Houle** – Relocation of utilities away from the water; work will be within buffer to a beach, coastal bank and on a barrier beach.
 Discussion about how to condition removal of the existing electrical lines.
Steinauer – We need to see the restoration plans for the areas where lines are removed.
 Staff Recommend this be issued as a Negative 2 and Negative 3 for work within resource area.
 The board can add a comment that says all existing electrical lines to be removed upon exposure.

Motion **Motion to Approve as recommended and the line to be removed when there is 4-feet of exposure.**
(made by: Steinauer) (seconded by: Engelbourg)

Vote Carried unanimously

D. Minor Modifications

1. Ivanov – 139 Polpis Road (44-7.2) SE48-3082

Sitting Erisman, Golding, Steinauer, LaFleur, Engelbourg, Phillips

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

Representative Art Gasbarro, Nantucket Engineering & Survey

Public None

Discussion (7:04) **Gasbarro** – This is for revised grading and a 1-foot-high earthen berm to direct water flow into a man-made pond; work is within buffer to a bordering vegetated wetland.

Erisman – Would prefer use of more plants to absorb water rather than push it away.

Staff None

Motion **Motion to Approve as a minor modification.** (made by: LaFleur) (seconded by: Engelbourg)

Vote Carried unanimously

E. Certificates of Compliance

1. Jennifer Silver – 45 Starbuck Road (59.3-50) SE48-2571

Sitting Erisman, Golding, Steinauer, LaFleur, Engelbourg, Phillips

Staff Work was completed in compliance. Recommend issue.

Discussion (7:11) None

Motion **Motion to Issue.** (made by: Steinauer) (seconded by: Engelbourg)

Vote Carried unanimously

2. Bradley & Jeanmarie Brewster, Trustees – 29 Walsh St (29-81) SE48-3143

Sitting Erisman, Golding, Steinauer, LaFleur, Engelbourg, Phillips

Staff Work was completed in compliance. Recommend issue.

Discussion (7:12) None

Motion **Motion to Issue.** (made by: Engelbourg) (seconded by: Steinauer)

Vote Carried unanimously

3. David Kowitz – 323 Polpis Road (25-9.2) SE48-3001

Sitting Erisman, Golding, Steinauer, LaFleur, Engelbourg, Phillips

Staff Recommend issue with on-going conditions related to the pool

Discussion (7:12) None

Motion **Motion to Issue as recommended.** (made by: Golding) (seconded by: Steinauer)

Vote Carried unanimously

4. Monomoy, LLC – 20 Monomoy Road (54-145) SE48-2952

Sitting Erisman, Golding, Steinauer, LaFleur, Engelbourg, Phillips

Staff Asked for a continuance to August 28.

Discussion (7:13) None

Motion Continued to August 28 by unanimous consent.

Vote N/A

5. Lane – 74 West Chester Street (41-478) SE48-432 **(Reissue)**

Sitting Erisman, Golding, Steinauer, LaFleur, Engelbourg, Phillips

Staff Recommend this be reissued.

Discussion (7:13) None

Motion **Motion to Reissue.** (made by: LaFleur) (seconded by: Steinauer)

Vote Carried unanimously

6. Town of Nantucket – 54 Low Beach Road (74-4) SE48-3079

Sitting Erisman, Golding, Steinauer, LaFleur, Engelbourg, Phillips

Staff Recommend issue.

Discussion (7:14) None

Motion **Motion to Issue.** (made by: Steinauer) (seconded by: LaFleur)

Vote Carried unanimously

F. Orders of Condition

1. Andrew O' Brien Living Trust and Sonja Anderson Living Trust – 13 C Street (60.1.2-76) SE48-3227

Sitting Erisman, Golding, Steinauer, LaFleur, Engelbourg, Phillips

Documentation Draft Order of Conditions

Staff Will add Condition 20 no irrigation & no fertilizer.

Discussion (7:14) **Golding** – Need to add no fertilizer & no irrigation.

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

Vote Carried unanimously

2. 102 Wauwinet Road Nominee Trust – 102 Wauwinet Road (11-24.2) SE48-3222

Sitting Erisman, Golding, Steinauer, LaFleur, Engelbourg, Phillips
Documentation Draft Order of Conditions
Staff Simple and straight forward.
Discussion (7:17) None
Motion **Motion to Approve as submitted.** (made by: Golding) (seconded by: LaFleur)
Vote Carried unanimously

3. Nantucket Islands Land Bank – Long Pond (N/A-N/A) SE48-3228

Sitting Erisman, Golding, Steinauer, LaFleur, Engelbourg, Phillips
Documentation Draft Order of Conditions
Staff Condition 26 addresses proving native species survival; explained how that requires data collection.
Discussion (7:18) **Golding** – Would like data collection added.
Steinauer – Need something about revegetation.
Motion **Motion to Issue as drafted.** (made by: Steinauer) (seconded by: Golding)
Vote Carried unanimously

G. Extension Requests

2. 78 Wauwinet Road, LLC – 78 Wauwinet Road (14-18) SE48-2900

Sitting Erisman, Golding, Steinauer, LaFleur, Engelbourg, Phillips
Documentation SE48-2900
Staff Asking for a 1-year extension
Discussion (7:22) None
Motion **Motion to Issue the 1-year extension.** (made by: Steinauer) (seconded by: Phillips)
Vote Carried unanimously

H. Other Business

1. Approval of Minutes, 07/31/2019: Engelbourg – Under Commissioner comments, believes he asked for a discussion on the source of restoration planting seeds, plugs, saplings, etc.

Motion to Approve as amended. (made by: Steinauer) (seconded by: Phillips) Carried unanimously

2. Monitoring Report: None

3. Discussion of Select Board comments related to ‘Sconset Beach Preservation Foundation (SBPF)

Sitting Erisman, Golding, Steinauer, LaFleur, Engelbourg, Phillips
Discussion (7:25) **Carlson** – At the last Select Board meeting, they discussed appeal process. It evolved into discussion about what procedures and how active the Board wants to be. He informed Town Administration that this discussion would be on this agenda as a courtesy to the Select Board for them to attend and make comments. Their chair reached out to our chair. Their executive session is September 12 at 9 a.m. and requested the presence of our chair and/or Vice chair. He will be attend that session.
Erisman and Golding said they will both attend the Select Board executive session.
Steinauer – He believes there are members of the Select Board who will take this as far as they can go.
Phillips – She is concerned about the new Select Board members making decisions without a thorough review of the previous Select Board deliberations and the ConCom deliberations; she’s is glad they have requested the presence of the ConCom chair.
Carlson – Explained the Department of Environmental Protection appeal process and testimony they review and what Town Counsel, George Pucci, was seeking from the Select Board.
Golding – He was surprised when the Select Board agreed for Mr. Pucci to attend the Department of Environmental Protection on-site visit but not prepare a brief.
Carlson – He’s not convinced a brief is necessary prior to the on-site visit. There is no discussion during the visit; everyone signs in, Department of Environmental Protection sets the ground rules, and they stick to the rules. To discuss the executive session; ConCom would have to go into executive session.

4. Reports: None

5. Commissioners Comment

- a. Golding – He had to watch a video and the audio was very weak.
- b. Engelbourg – Along Nobadeer Avenue, there is parking on the left side of the road; in order to not get a ticket, people have to turn around. People are getting lazy and pulling in perpendicular into the vegetation. Asked if it is within ConCom jurisdiction. He asked police if they could ticket the vehicles and was told as long as the vehicles were perpendicular they couldn’t ticket the vehicles.
Carlson – We actually might have jurisdiction. Asked Mr. Engelbourg to email the photos to him. Enabling legislation does include protecting open space; he’ll send it to everyone.
Motion to Have Mr. Carlson call the Landbank to discuss the situation. (made by: Steinauer) (seconded by: Golding) Carried unanimously

6. Administrator/Staff Reports

- a. None

Adjourned at 7:54 p.m. by unanimous consent.

Submitted by:
Terry L. Norton