



# CONSERVATION COMMISSION

## PUBLIC MEETING

2 Bathing Beach Road  
Nantucket, Massachusetts 02554

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

Wednesday, January 22, 2020

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

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

Called to order at 5:02 p.m.

Staff in attendance: Jeff Carlson, Natural Resources Director; Joanne Dodd, Natural Resources Coordinator

Attending Members: Golding, LaFleur, Topham, Engelbourg, Phillips, Beale

Absent Members: Erisman

Earlier Departure:

Agenda adopted by unanimous consent

\*Matter has not been heard

### **I. PUBLIC MEETING**

#### **A. Announcements**

#### **B. Public Comment – None**

### **II. PUBLIC HEARING**

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

1. \*Chuckrow Nominee Trust – 25 Quaise Road (26-12) SE48-3241

Sitting Golding, LaFleur, Topham, Engelbourg, Phillips, Beale

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

Representative Art Gasbarro, Nantucket Engineering & Survey

Public Lucy Dillon, Quaise property owner

R.J. Turcotte, Nantucket Land Council

Discussion

(5:05)

**Gasbarro** – This is for the installation of a new steel bulkhead inserted directly in front of the existing timber bulkhead with a return along the easterly side of the property. No waivers are required because it’s a water-dependent use. Construction access will be from the west side of the house to minimize impact. Explored alternatives to remove and rebuild the timber bulkhead would cause greater disturbance than inserting the steel sheeting. Work will be from a platform hung off the top of the bulkhead rather than from the beach. Disturbed areas will be replanted with American Beach Grass.

**Engelbourg** – Our performance standards for coastal beach state bulkheads can’t be rebuilt if there is a more environmentally friendly alternative. Urged the applicant to research the Living Shoreline technique.

**Gasbarro** – He saw that information last night and will respond more fully after a chance to review it. Pointed out that the living shoreline requires some level of fill onto the beach and into the water body to raise the grade; he has concerns about how that grade change would be stabilized. Cited an example that didn’t work. We would have to cut the bank quite a bit that could impact the pre-1978 structure, which has not been substantially improved. We also cannot transfer one resource area for another and for the living shoreline a substantial portion of the bank would have to be removed since they can’t extend toward the water. Reviewed alternatives he has looked into at the family’s request. The bulkhead has been in place for decades and this is responsible maintenance for a failing structure.

**Engelbourg** – He would like to see a formal analysis that the alternatives considered. There’s a whole list of decision points and possibilities; none might be feasible, but he’d like to see that analysis.

**Topham** – He doesn’t think what’s proposed works here for various reasons.

**Golding** – His reservation is the peninsular effect from more and more bulkheads; pointed out 1975 aerial showing a continuance, walkable beach. The latest aerial shows the peninsular effect. A 1991 survey shows enough room to move the house back; asked the client to consider that. Asked the commission that if we allow this to go forward that we insist on public access for people walking the beach; that is part of our purview under 2.20.

**Engelbourg** – We’re at a critical point. We will be going through regulation update to plan for the future in the face of rising sea level. He thinks bulkheads are an outdated technology. There are more fiscally and environmentally appropriate ways to protect property.

**Dillon** – To the west there is a landbank access and lot and to the right another access to the beach. She would like to point out that to the east, the property is the most pristine piece on the harbor.

**Turcotte** – The proposed return on this is significant and extends beyond the existing timber; it is not grandfathered as is the rest of the bulkhead. That should be considered as a separate structure from the rest; it’s not a replacement.

**Phillips** – Asked about the condition of the existing bulkhead on the Nantucket Islands Land Bank property.

**Gasbarro** – That was permitted in 2004-2006; it’s in pretty good shape and not in need of repair. Asked for a 2-week continuance.

Staff None

Motion Continued to February 5 by unanimous consent.

Vote N/A

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

Sitting Golding, LaFleur, Topham, Engelbourg, Phillips, Beale

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

Representative Dan Bailey, Piers Attwood, LLP  
Art Gasbarro, Nantucket Engineering & Survey  
Jack Vaccaro, Epsilon Associates, Inc.

Public Steve Anderson, Shimmo Association  
R.J. Turcotte, Nantucket Land Council (NLC)  
Bea Gonnella, 14 South Valley Road  
Andy Lowell, Shellfish and Harbor Advisory Board (SHAB)  
Kevin Kuester, Nantucket Shellfish Association  
Yvonne Vaillancourt, Director Massachusetts University Field Station  
Edie Ray

Discussion (5:26) **Bailey** – Addressed Zoning, which he says is the “elephant in the room”; the ConCom bylaw prohibits new docks and piers but State Zoning 40A Sec 6 provides protections for grandfathered structures. Want feedback on technical issues before going to the Zoning Board of Appeals.

**Gasbarro** – Provided an overview of the project: alter and extend the existing pier 280 feet from the mid-point of the existing resulting in being over 300 feet; it will be no more than 3 feet wide with railings. 1-foot tapered piles will be driven, and the pier constructed from a barge. About 290 square feet of the existing pier will be removed. The design is based upon examining studies and alternatives. The extension is to accommodate a boat with 1.5- to 2-foot draft. Set stakes for the ConCom’s viewing.

**Vaccaro** – The site is subject to a northwest fetch and has seen a lot of erosion. Resource areas include: land subject to coastal storm flowage, Zone A flood zone, coastal bank, low-gradient coastal beach, land under the ocean, land containing shellfish, and historic eel grass area. CR Environmental did the eel grass surveys, which informed the configuration of the dock; reviewed the results from the surveys. The dogleg in the dock is to take advantage of an area where there is no eel grass. We made a lot of effort to minimize the extent of impact on eel grass to include shading. This will be elevated at about 5 feet above mean high water; alignment allows more sunlight to get under it. The maximum separation in the spacing of the piles is also significant. Reviewed the potential impacts of the dock on the resource areas. The seaward end will encroach into an area of rare species habitat; the NOI was sent to Massachusetts Natural Heritage Endangered Species Program to ensure the project will not impact that area. Reviewed the project against the ConCom performance standards to show it will not be in violation of those standards and have no adverse effect on the existing resources. Trying to obtain Town records to ensure the dock will not displace any existing moorings.

**Phillips** – The moorings are being used; theoretically you know where they are since they are shown in aerial photos. It would also be useful to know the draft of the boats using those moorings.

**Vaccaro** – Before piles are driven, we will remove any shellfish in harm’s way and relocate to a safe spot approved by the Department of Marine Fisheries.

**Bailey** – We will take in all questions and respond in writing before the next hearing.

**Topham** – He’s opposed; the impact of putting in the pier and shadowing from the dock and the boat along with top wash will have an impact.

**Golding** – Shares Mr. Topham’s concerns.

**Phillips** – Since the eel grass isn’t will established to her mind it is like having a patient who is already sick; you don’t want to make it worse. This is a spot that once was in better shape; now the concern is how much more will it take to put it over the edge. It’s hard to balance the recreational use of a permanent dock with the potential damage.

**Engelbourg** – He’s trying to get the concept of how ecological restoration works; shellfish recruitment doesn’t work the way that is being implied. If you remove all adults from the area and degrade the area, you will never get shellfish recruitment there again. This area would be left permanently degraded and will never have shellfish again. They aren’t considering the shading from the boat, propeller wash, travel from the boat, and other uses of the dock such as diving and swimming. This area will see increased impact from the use, not decreased impact.

**LaFleur** – His concern is the eel grass. Didn’t hear mention of the barge sitting on the bottom during construction.

**Beale** – Having a 3<sup>rd</sup> 200-foot protrusion into the harbor will have an impact on recreational use of the area. He’d like to see the history of the existing dock; it looks new.

**Golding** – Referred to a letter from the Dyers that said there wasn’t a dock there before.

**Beale** – Asked what the end would look like.

**Gasbarro** – There would be two outhaul pilings off the end.

**Engelbourg** – The Chapter 91 license was filed in 2019; asked if it was licensed before.

**Gasbarro** – It was licensed based upon a pre-existing pier; it was unlicensed structure but there is a history of repairs.

**Engelbourg** – His understanding is a significant change to a structure requires a new Chapter 91 license.

**Bailey** – This would require a refiling for Chapter 91.

**Engelbourg** – We have a provision that any project causing detrimental effect to bay scallops requires a waiver. This is one of the most productive areas for bay scallops. In this area we see eel grass that is already stressed being additional stressed; that will decrease production and feels a waiver needs to be submitted.

**Anderson** – The Shimmo Association owns about .5 acres on the waterfront; the association voted unanimously to oppose this project. The pier at 42 Shimmo Pond Road was built in the 1920s is to the left of our property; 46 Shimmo Pond Road is to the right. The location of the proposed pier is about 400 feet right of the existing pier and a mooring field with about 20 moorings plus dingy racks on the beach holding 20 small craft. The proposed dock will have a significant adverse impact to the recreational use of this area; recreational use is within ConCom jurisdiction. The amount of shellfish has decreased substantially and to recover would require planting of additional eel grass. The pier on the beach doesn't meet the definition for a dock or pier; the April 2019 Chapter 91 license allows the owner to maintain the existing pier; he questions if that was ever a pier or dock since it is out of the water most of the time. Feel approving this would set an undesirable precedent.

**Turcotte** – Referred to the NLC letter. Eel grass starts with a patchy distribution and spreads out; this area is fighting to grow back after being sanded over; it is fighting algae for sunlight. Inhibiting growth of grass species will impact all other species. The applicant hasn't applied for waivers; NLC doesn't feel they can meet the requirements for waivers. There is a large group working to get this area back to health; the pier would have an adverse impact and be a reversal of what we are trying to accomplish here.

**Gonnella** – By definition a pier goes out over the water; the existing has never been anything other than a boardwalk and never extended into the water; in the 1940s it was built and used to stage for getting stones out of the water. Now you can't walk along the beach unless you climb over the existing structure.

**Lowell** – It is our mission and duty to make proper recommendations for use of the harbor. This proposal was discussed at two SHAB meetings resulting in a unanimous vote to issue a letter of opposition. We have no regulatory power; that lies in the hands of ConCom. He hasn't heard anything about boater safety which needs to be taken into consideration; this structure will threaten lives. Cited how this structure would threaten lives.

**Kuester** – Pointed out the reference to bay scallops, which are in fact Nantucket bay scallops; this is the only place in the world where you can get Nantucket bay scallops and this dock threatens them. We have 400 members who are unanimously opposed to this. This is important to the fishery and the citizens.

**Vaillancourt** – Agrees with all concerns raised and opposes this. Doesn't believe you can mitigate the effects of photo-fragmenting. A biological reality is that some shade will be produced which will benefit organisms which grow on piers; those organisms, such as sponges, could end up growing on the eel grass. She could also envision how the water would come along the pier and blast into the shoreline increasing erosion.

**Ray** – Her experience with diving and swimming in this area is that this area is very silty with low visibility. She can't imagine the impact of the barge shading and turbulence created by putting in piling as well as divers picking up shellfish. That turbulence will extend along the shoreline due to wind and tide; she thinks tidal flow needs to be considered due to that extended impact.

**Engelbourg** – His background is water birds; that area is a productive water bird area. When you remove the eel grass, which provides forage and cover for food, you will reduce the productivity for the birds that eat them causing an ecological cascade. It seems the applicant is using the information from the survey to play the site off as an area in poor condition for eel grass; that isn't true – pointed out the healthy areas in the photos and areas where eel grass is trying to recolonize. If we let the environment maintain its natural state in conjunction with the replanting program, we will have a more connected eel grass resource; the pier will do the exact opposite.

**Bailey** – Asked for a continuance to March 18<sup>th</sup>.

Staff None

Motion Continued to March 18, 2020 by unanimous consent.

Vote N/A

3. \*Great State Properties, LLC – 92 Washington Street Ext (42.2.3-22) SE48-3268

Sitting Golding, LaFleur, Topham, Engelbourg, Phillips, Beale

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

Representative Leo Asadoorian, Blackwell & Assoc.

Arthur Reade, Reade, Gullicksen, Hanley, & Gifford LLP

Public None

Discussion **Asadoorian** – This is for removal of an existing structure and construction of a new building shifted back from the bulkhead; the integrity of the existing structure is such that it needs to be razed. Plan shows an ADA-accessible ramp to the beach but there is one at GHYC. The new building will have an increased footprint of about 900 square feet. The foundation will have breakaway panels to allow floodwaters to go through; the foundation will be piers.

(6:42)

**Topham** – His concern is the rate at which water can pick up speed; he believes the panels will be a benefit.

- Staff Have everything needed to close.  
 Motion **Motion to Close.** (made by: LaFleur) (seconded by: )  
 Vote Carried unanimously
4. 53 West Chester Street, LLC – 53 West Chester Street (41-614) SE48-3269  
 Sitting Golding, LaFleur, Topham, Engelbourg, Phillips, Beale  
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.  
 Representative Art Gasbarro, Nantucket Engineering & Survey  
 Public None  
 Discussion (6:47) **Gasbarro** – Second hearing for landscaping within the buffer to a wetland. There were concerns about a retaining wall, curb, and patio; a revised plan shows no retaining wall. Will keep the invasive species work. Squaring the lawn intrudes slightly into the 25-foot buffer. Modified the stone patios to keep them outside the buffer zone. Submitted a letter with the revised plans.  
**Engelbourg** – Appreciates removal of the retain wall and curb. Regarding the lawn layout, asked if the area extending into the buffer is proposed as new lawn area.  
**Gasbarro** – It is actually a reduction in lawn within the buffer; she wants the lawn to be more formal in terms of geometry.  
**Engelbourg** – Asked if there will be permanent representation of the 25-foot buffer.  
**Gasbarro** – No, except on the landscape plan. The restored area will be replanted with wetland-meadow seed mix.
- Staff Have everything needed to close.  
 Motion **Motion to Close.** (made by: LaFleur) (seconded by: Phillips)  
 Vote Carried unanimously
5. 17 BR Rosaly Nominee Trust – 17 Baxter Road (60.3.1-132) SE48-3267  
 Sitting Golding, LaFleur, Topham, Engelbourg, Phillips, Beale  
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.  
 Representative Brian Madden, LEC Environmental  
 Public None  
 Discussion (6:52) **Madden** – Submitted additional information requested on the design of the proposed stairs: provided a representative photo and details depicting contextual design and revised plans showing a middle landing. Limit of work has been delineated and disturbed areas will be reseeded or allowed to fill in naturally.
- Staff Have everything needed to close.  
 Motion **Motion to Close.** (made by: Engelbourg) (seconded by: Beale)  
 Vote Carried unanimously
6. \*Margeret Zarcone – 16 Cherry Street (55-379) SE48-\_\_\_\_  
 Sitting Golding, LaFleur, Topham, Engelbourg, Phillips, Beale  
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.  
 Representative Paul Santos, Nantucket Surveyors  
 Public Edie Ray  
 Discussion (6:54) **Santos** – This is for a shallow-depth, in-ground pool; no resource areas on the site. South property, 20 Cherry Street, has an historic isolated vegetated wetland depicted in the late 1980s. The area for the pool is existing lawn elevated above the isolated vegetated wetland. Based upon mapping and auguring, there is enough room to maintain the 2-foot separation from ground water. Outside any NHESP areas or in a flood zone.  
**Engelbourg** – Asked that the 50-foot buffer that is against the corner of the pool be clearly marked so all contractors know not to intrude upon it.  
**Santos** – He will have a silt fence along the back of the construction area. The area between this property and the isolated vegetated wetland is very sandy.  
**Phillips** – Pools sometimes the way they are measured are wider than anticipated.  
**Santos** – No part of the pool or the surround will intrude.  
**Topham** – Asked if there will be an autocover and where the equipment will go.  
**Santos** – He believes so. Equipment will be either up along the side of the house or under the porch.  
**Ray** – Pools are required to have fences; asked if the fence will fall into the resource area.  
**Topham** – You don’t need a fence if you have an autocover.  
**Santos** – Asked for a 2-week continuance.
- Staff None  
 Motion Continued to February 5 by unanimous consent.  
 Vote N/A
7. \*Amy M. Ambrecht – 13 Giny Lane (41-850) SE48-3273  
 Sitting Golding, LaFleur, Topham, Engelbourg, Phillips, Beale  
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.  
 Representative Mark Rits, Site Design Engineering  
 Public None  
 Discussion (7:02) **Rits** – this is for a revised retaining wall (approved under an RDA) and a structure inside the 100-foot buffer, a small pool/spa with patio and equipment. all structural components will be outside the 50-foot buffer to an off-site wetland. The secondary dwelling was already approved under a previous filing.

Staff The RDA retaining wall was appealed; our decision was upheld. This applicant and the other party decided this plan satisfies all concerns.  
Have everything needed to close.

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

Vote Carried unanimously

**III. PUBLIC MEETING**

**C. Requests for Determination of Applicability**

1. Mid-Island Service Limited Partnership – 41 & 43 Sparks Avenue (55-267.4&267.3) **(Cont. 2/05/2020)**

**D. Certificates of Compliance**

1. Hardman – 51B Madaket Road (41-325.1) SE48-3110 **(Cont. 2/19/2020)**

2. Rock Gonnella, Trustee of the North Nominee Trust – 73 Easton Street (42.4.1-109) SE48-2994

Sitting Golding, LaFleur, Topham, Engelbourg, Phillips, Beale

Staff Work completed in compliance and recommend issuance.

Discussion (7:07) None

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

Vote Carried unanimously

3. Madaket Wheelhouse, LLC – 13 Massachusetts Avenue (60-75) SE48-2893 **(Cont. 2/19/2020)**

4. John J. Moller – 10 Monomoy Creek Road (54-54.2) SE48-2797

5. John J. Moller – 10 Monomoy Creek Road (54-54.2) SE48-2801

6. Monomoy Creek Nominee Trust – 12 Monomoy Creek Road (54-54.1) SE48-2665

Sitting Golding, LaFleur, Topham, Engelbourg, Phillips, Beale

Staff The sites are now in compliance and recommend issuance with on-going restoration work. 12 Monomoy Creek recommend issuance with on-going Conditions 21, 22, 23, 24, 25 & 27.

Discussion (7:08) Engelbourg – Asked if there are any on-going conditions.

Motion **Motion to Issue SE48-2797, SE48-2801, and SE48-2665 as recommended.** (made by: Engelbourg) (seconded by: Topham)

Vote Carried unanimously

7. Alice Rochat – 100 Low Beach Road (75-27) SE48-1818

Sitting Golding, LaFleur, Topham, Engelbourg, Phillips, Beale

Staff This order is currently in compliance and recommend issuance with no on-going conditions.

Discussion (7:11) None

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

Vote Carried unanimously

8. Dina & Allan Schwartz – 62 West Chester Street (41-373) SE48-3111

Sitting Golding, LaFleur, Topham, Engelbourg, Phillips, Beale

Staff This was for an unpermitted pool and restoration work. Work is done and in compliance. Recommend issuance with on-going Conditions 19, 22, 26, 27, 28, 29, & 30.

Discussion (7:12)

Motion **Motion to Issue with on-going Conditions 19, 22, 26, 27, 28, 29, & 30.** (made by: Topham) (seconded by: Engelbourg)

Vote Carried unanimously

**E. Orders of Condition**

1. Great State Properties, LLC – 92 Washington Street Ext (42.2.3-22) SE48-3268

Sitting Golding, LaFleur, Topham, Engelbourg, Phillips, Beale

Documentation Draft Order of Conditions

Staff Did not draft.

Discussion (7:13) None

Motion Continued to February 5.

Vote N/A

2. 53 West Chester St, LLC – 53 West Chester Street (41-614) SE48-3269

Sitting Golding, LaFleur, Topham, Engelbourg, Phillips, Beale

Documentation Draft Order of Conditions

Staff Did not draft.

Discussion (7:13) None

Motion Continued to February 5.

Vote N/A

3. 17 BR Rosaly Nominee Trust – 17 Baxter Road (60.3.1-132) SE48-3267

Sitting Golding, LaFleur, Topham, Engelbourg, Phillips, Beale

Documentation Draft Order of Conditions

Staff Reviewed conditions.

Discussion (7:14) **Engelbourg** – Arrowood has a number of cultivar subspecies.

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

Vote Carried unanimously

4. Amy M. Ambrecht – 13 Giny Lane (41-850) SE48-3273

Sitting Golding, LaFleur, Topham, Engelbourg, Phillips, Beale  
 Documentation Draft Order of Conditions  
 Staff Did not draft.  
 Discussion (7:17) None  
 Motion Continued to February 5.  
 Vote N/A

**F. Extension Requests**

1. Pocomo Point Realty Trust – 90 Pocomo Road (15-43) SE48-2946

Sitting Golding, LaFleur, Topham, Engelbourg, Phillips, Beale  
 Documentation SE48-2946  
 Staff This is in compliance for the state of construction it's in.  
 Discussion (7:18) **Paul Santos**, Nantucket Surveyors – This is for an extension for 2 years to complete work. House was picked up and moved; work has started.  
 Motion **Motion to Grant two one-year extensions.** (made by: LaFleur) (seconded by: Engelbourg)  
 Vote Carried unanimously

**G. Other Business**

1. Approval of Minutes January 8, 2020: Approved by unanimous consent.
2. Monitoring Report: None
3. Enforcement Actions
  - a. SE48-2824 'Sconset Beach Preservation Foundation (SBPF) – Baxter Road: Nourishment Material, Sand Sampling Protocol, Special Condition #28.

Sitting Golding, LaFleur, Topham, Engelbourg, Phillips  
 Documentation Draft Chem/Bio testing protocol; correspondence; Enforcement Order; Order of Conditions for SE48-2824  
 Rep Jay Maroney, Cohen & Cohen Law P.C  
 Public Edie Ray

Discussion (7:21) **Carlson** – We haven't received the nourishment material tests and sand sampling protocol; recommend carrying this forward again. The commission has asked for daily logs of daily inspections including documentation of the man-made material spread throughout the template; they have been keeping up with providing that requested information.

**Engelbourg** – There was an issue with December 21 and 24 daily logs showing the same photo; that has since been switched out. Also, the inspector on December 24 wasn't Jamie Feeley when he said he would be doing all the surveys. He'd like all the designated inspectors at these meetings.

**Phillip** – There are three different people doing those.

**Engelbourg** – We had also requested weekly photos of uncovered tubes of the whole length; in the last packet of logs, there are some photos lumped in with the cleanup. We had requested they be separate.

**Phillips** – In terms of looking at totals day by day, it's important to have that so we can see at the end of the month how much has come out of the template.

**Carlson** – He can get that total and post on line where to find it.

**Ray** – Confirmed the test haven't been received. Asked if the tests had been conducted; her concern is if the samples haven't been taken, there have been a lot of storms.

**Carlson** – At the Jan. 8 meeting, they announced all sampling had been completed and sent for processing. We are just waiting for results.

**Ray** – With the time that's passed, asked if there would be further testing.

**Engelbourg** – We asked SBPF to have the lab keep the samples for any additional testing.

**Carlson** – Looked into Special Condition 28. If we reference back to November 15, 2019, we should have addressed this at that time. At that time, we were addressing other incomplete reports and when that enforcement was issued should also have sent an Enforcement Order (EO) recognizing they had missed the two reports required by Special Condition (SC-) 28.

**Maroney** – We asked that this issue be combined with the other EO, so it doesn't look like yet another EO is being issued. We don't think it fair to be dinged again. In our letter dated November 15, 2019, we admitted to three errors subject to enforcement action.

**Carlson** – We can't issue an amended EO. However, under Nr. 2 of the EO he explained that SC-28 should have been noted at the time of issuance. We can agree that it's most important to issue it out.

**Engelbourg** – For the process, he'd like Mr. Pucci to review this. Asked if we need to make a finding.

**Carlson** – Yes you can motion to make a finding based upon the EO. We'll get Mr. Pucci to help us.

**Golding** – Thinks separating them would be more descriptive than punitive.

**Maroney** – It makes it look like SBPF is making recurring errors rather than having missed a group of reports at the same time.

**Carlson** – The required Fall reports have been completed and received.

**Golding** – Opened to public comment.

**Atherton** – Her recollection that the reason for not finding a failure with SC-28 was because information was provided by Dwight Dunk that they were related and it was the same thing. We raised that issue of that time. In

our letter of December 3, 2019, we pointed out which reports were not related and included the text of SC-27 and SC-28, which relates to underwater video with a different time frame. Failure to meet monitoring reports constitutes a failure as stated in SC-34. Request they take formal action to find they did not meet the criteria of SC-28 which is a failure and issue an EO.

**Carlson** – He is asking the board to find they did not meet the Spring survey window for 2019.

**Atherton** – Asked if they are up-to-date.

**Carlson** – They completed the survey for Fall 2019 window and they are supposed be issuing those reports.

**Atherton** – SC-28 states the report is supposed to be issued within 30 days of completion of the survey.

**Carlson** – We will confirm that date and take up that issue at that time.

**Engelbourg** – It is important that we find that only SC-28 was not met. In SC-34, that is bathymetric off-shore monitoring.

Motion **Motion to Find that Special Condition 28 was not met for the Spring of 2019 related to the bathymetric and under water survey.** (made by: Engelbourg) (seconded)

Vote Carried 5-0//Beale abstain

4. Reports:

- a. CRAC, Golding
- b. CPC, Topham

5. Commissioners Comment

a. Topham – Noted that there seems to be more runoff than before coming from the car wash on Sparks Avenue.

Carlson – They have filed an application for a collection system at the end of the driveway. There have been a couple of chemical-spill incidents filed with DEP; that culminated in the Fire Chief collecting the material and sending it to DEP. DEP reviewed and tested the material; they are working with the car wash.

b. Engelbourg – Related to SBPF, he had requested a more in-depth discussion on the aerial survey. He doesn't know if it should be a separate agenda item or included with the annual review. There was an issue starting in 2016 & 2017, data was collected using two different surveying strategies: aerial photogrammetry and the second was Lidar.

Carlson – He will make it a separate agenda item and compile and send out the information.

6. Administrator/Staff Reports

a. The ratification for the authorization for moving 29 Sheep Pond Road needs to be signed.

b. We've been informed by DEP to expect the SBPF superseding order. He's assuming that regardless of the decision the commission would like to discuss it with Mr. Pucci in Executive Session.

Adjourned at 8:01 p.m. by unanimous consent.

Submitted by:

Terry L. Norton

