



CONSERVATION COMMISSION

PUBLIC MEETING

2 Bathing Beach Road
Nantucket, Massachusetts 02554
www.nantucket-ma.gov
Thursday, July 8, 2021 – 5:00 p.m.

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

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

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

Attending Members: Erisman, Golding, LaFleur, Phillips, Beale, Williams

Absent Members: Engelbourg

*Matter has not been heard

I. PUBLIC MEETING

A. Appointment of Officers:

1. Chair

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

Vote Carried unanimously

2. Vice Chair

Motion **Motion to appoint Ian Golding as Vice Chair.** (made by: Phillips) (seconded)

Vote Carried unanimously

B. Public Comment:

Joe Topham – Thanked the board for his time with ConCom.

II. PUBLIC HEARING

A. Notice of Intent

1. *Lower Pocomo Nominee Trust – 88 Pocomo Road (15-42) SE48-3432

2. *Pocomo Point Realty Trust – 90 Pocomo Road (15-43) SE48-3438

Sitting Erisman, Golding, LaFleur, Phillips, Beale, Williams

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

Representative Art Gasbarro, Nantucket Engineering & Survey
Arthur Reade, Reade, Gullicksen, Hanley, & Gifford LLP

Public R.J. Turcotte, Nantucket Land Council

Discussion (5:04) **Gasbarro** – These properties will have the same coastal stabilization project using the so-called Wilkinson array. We will remove the fence and follow the same protocol as for other arrays along this bank. There is equipment access at the end of the point on 90 Pocomo Road. The last piece we are asking to be added is permission to replace the set of stairs at 90 Pocomo Road; he will have details for the next meeting. Explained the placement of the coir rolls using a “tanned lift”.

Golding – Neither structure falls under the protection of the wetlands act. He didn’t see a solution to compensate for erosion.

Gasbarro – The expectation is there would be a minimum annual contribution of sand based upon the height of the bank and long-term erosion rate.

Williams – Asked where the sand comes from. Asked if anchors destabilize the bluff.

Gasbarro – Sand comes from a local pit with samples provided to Staff prior to placement to ensure compatibility. Anchors we used don’t destabilize the blank; explained the anchors.

Beale – Asked about the future of the existing sand-drift fence.

Gasbarro – That would be removed; if someone can use that sand, it would be available. The sand drift fence helps collect wind-borne sand but doesn’t serve to stabilize the toe enough to support a vegetated bank.

Erisman – Asked if they have been able to quantify how much material would have to be removed to prevent grade change.

Gasbarro – We don’t remove material; we will use it to create the tanned lift. We can come up with an estimated volume of the sand we use.

Erisman – She saw bank swallows just north of the defunct stairs in spring and early summer. Asked if they’ve done any surveys for bank swallows. Their homes are being lost and this is an active sight.

Gasbarro – We will look into that.

Williams – The structure had been approved to be moved and that hasn’t happened. Asked if there has been discussion about moving the house farther back; there is plenty of room to do that.

Gasbarro – It has been relocated.

Beale – Asked the history rate of erosion of the bank.

Gasbarro – He’ll provide that information; typically, his experience is that it’s about 10” per year.

Golding – Asked them to address moving the structure back again; there’s about 40’ or 50’.
Erisman – About the access point, she’s concerned about heavy machinery turning at the bottom of the access to get to the site. Wants the beach profiled and monitored to ensure no damage to the beach.
Turcotte – There are bank swallows there; need to be careful about long-term net benefit.
Gasbarro – Asked to continue to next meeting.

Staff recomm. None
 Motion Continued to July 22, 2021
 Vote N/A

3. Sconset Trust, Inc – Linden Avenue Right-of-Way (N/A) SE48-3433 **Withdrawn**

Sitting Erisman, Golding, LaFleur, Phillips, Beale, Williams
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative None
 Public None
 Discussion (5:26) None
 Staff recomm. None

Motion **Motion to Approve the withdrawal.** (made by: Beale) (seconded)
 Vote Carried unanimously

- 4. *NISDA – 55 Wauwinet Road (14-23) SE48-3441 **(Cont. 07/22/21)**
- 5. *Nantucket Conservation Foundation – Ram Pasture (57-12) SE48-3443 **(Cont. 07/22/21)**
- 6. *Ten Moors End Lane Realty Trust – 10 Moors End Ln (43-214) SE48-3450

Sitting Erisman, Golding, LaFleur, Phillips, Beale, Williams
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Art Gasbarro, Nantucket Engineering & Survey
 Public R.J. Turcotte, Nantucket Land Council

Discussion (5:26) **Gasbarro** – This is for work within 100’ to a bordering vegetated wetland delineated by Brian Madden, LEC Environmental to install a pool with landscaping. All structural elements are outside the 50’ buffer. No work is within the 25’ buffer.

Turcotte – Asked about the pool fence.

Gasbarro – The pool has an autocover so a fence isn’t required. Any fencing would be outside the 50’ buffer.

Staff recomm. Have everything needed to close.
 Motion **Motion to Close.** (made by: Williams) (seconded)
 Vote Carried unanimously

7. *Honey & Modenhauer – 71 Baxter Road (49-26.1) SE48-3449

Sitting Erisman, Golding, LaFleur, Phillips, Beale, Williams
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Paul Santos, Nantucket Surveyors
 Public None

Discussion (5:29) **Santos** – The prior owner, John Merson, had sought approval to move and subsequently moved this farther from the bluff and closer to the road. The current owners have received an enforcement order for irrigation system and stand of privet within the buffer to the Coastal Bank. There has been no change to the property since Mr. Merson’s ownership. Pointed out that the Bluff Walk no longer exists at this property. There is a 30’ wide common way north of the property to the Bluff with an open area at the drive for public access; however, privet separates it from the lawn. There is a privet stand on the property about 20’ to 30’ from the bluff. Feel the privet doesn’t harm the resource area.

Golding – His understanding is that Mr. Merson kept the common way completely open; a later owner has planted privet, so people don’t know the way is there.

Santos – The privet at Baxter Road around the shell drive has not change. Privet on the west side was added. The privet at the east side Mr. Merson added.

Williams – The privet at the Baxter Road end was there when Mr. Merson owned it. Asked if ConCom can require the privet at the bluff end of the way be kept opened (yes). Asked about restrictions on the irrigation.

Erisman – The privet within the 25’ is non-native and normally we would not allow it in this location. The irrigation should be outside the 25’ buffer. She’s concerned about the privet, which is not native and requires a fair amount of maintenance as well as trimming on both sides adding to the destabilization. The older privet hedge is now within the 25’ buffer.

Santos – This privet was previously installed. His client only added 30’ along the common way. Sprinkler heads are also outside the 25’ buffer.

Staff recomm. A similar project required modifications a 15’
 Have everything needed to close.
 Motion **Motion to Close.** (made by: Williams) (seconded)
 Vote Carried unanimously

8. *Colby Crenshaw – 24 Almanack Pond Road (25-37) SE48-3447
- Sitting Erisman, Golding, LaFleur, Phillips, Beale, Williams
Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
Representative Brian Madden, LEC Environmental
Public None
Discussion (5:43) **Madden** – This is to address unauthorized cutting activities; the property abuts the wind-swept bogs and bordering vegetated wetlands. Most cutting was to remove green briar and fox grate; no mature trees were cut. There was some level of grubbing that took place. He’s monitoring the regrowth; we will continue to monitor and submit a report in September and provide an enhanced planting plan. There was some cutting within a Tupolo grove but no Tupolo were cut. Restated no mature trees were cut.
Erisman – He’s glad they are waiting before putting in new brush.
Williams – She was alarmed at how much cutting was done; it was clear cut to the dirt. Asked if a silt fence would have been required (yes).
- Staff recomm. Have everything needed to close.
Motion **Motion to Close.** (made by: Williams) (seconded)
Vote Carried unanimously
9. *DeBiasio – 39 Meadowview Drive (56-133) SE48-3448
- Sitting Erisman, Golding, LaFleur, Phillips, Beale
Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
Representative Jeff Blackwell, Blackwell & Associates
 Arthur Reade, Reade, Gullicksen, Hanley, & Gifford LLP
Public Terry and Martha Carleton McGovern, 37 Meadowview Drive
Discussion (5:52) **Blackwell** – This is to remove a shed within the buffer to a wetland; the area will be replanted with grass.
McGovern – We thought this was to remove a house 5’ from our property line and closer to the wetland. Asked what will happen with that structure, which they believe doesn’t have a permit.
Erisman – We’ll look into the permitting history for that structure. Asked if they would be willing to move the shed that crosses the wetland line.
Reade – From what we know through discussions with the owner, that pre-dates the wetlands regulations. The one we are proposing to remove we know was built without permit.
McGovern – The structure they are talking about wasn’t visible until very recently.
Erisman – Suggested looking into vegetation having been cut without a permit if the structure wasn’t visible until recently.
Blackwell – He’s not aware of any cutting.
Reade – We aren’t trying to establish the wetland buffer; asked for a finding that the boundaries aren’t being established with this permit.
Golding – Asked when the wetlands were delineated.
Blackwell – David M. Haines, Haines Hydrogeologic Consulting delineated the wetlands this year for inclusion in this application.
- Staff recomm. Given what he knows of this property, we could not take substantial action without a voluntary “want” from the property owner.
 A 595sf structure was permitted in 2012; at that time, the wetland line was farther away.
 We can have a finding that the resource boundaries aren’t established by the Order of Conditions.
 Have everything needed to close.
- Motion **Motion to Close.** (made by: Golding) (seconded)
Vote Carried 5-0//Williams recused
- B. Amended Order of Conditions**
1. Bayliss – 50 Eel Point Road (32-25.1) NAN-122
- Sitting Erisman, Golding, LaFleur, Phillips, Beale, Williams
Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
Representative Mark Rits, Site Design Engineering
Public R.J. Turcotte, Nantucket Land Council
Discussion (6:06) **Rits** – This is to reconfigure the development so that the driveway and second dwelling are outside the 100’ buffer to a small isolated vegetated wetland and construct a pool and small structure in their place.
Golding – Asked about the wetland as it relates the pool.
Rits – The wetland is in a hole surrounded by a clay lens with the pool up at elevation 16. We’ve never noticed any ponding in the wetland.
Phillips – It looks like the retaining wall is right on the 50’ buffer; asked it be pulled back.
Rits – We left extra room to allow for footings for the wall to ensure we don’t cross the 50’ line.
Turcotte – Asked if someone would look at the isolated vegetated wetlands as a possible vernal pool.
- Staff recomm. We’ve tended to see a runnel of clay where water sits long enough to impact hydrology; he’s never seen standing water or the requisite plants.
 Recommend issue
- Motion **Motion to Issue.** (made by: Beale) (seconded)
Vote Carried unanimously

2. Nantucket Pond Coalition – Eastern Shore of Hummock Pond (81/85-N/A) SE48-3004
- Sitting Erisman, Golding, LaFleur, Phillips, Beale, Williams
- Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
- Representative Sam Kefferstan, Mass Audubon
- Public Christina Knopp, 142 Miacomet Road
- Discussion (6:15) **Kefferstan** – In conjunction with the Nantucket Pond Coalition, we are asking for invasive species removal along the northeastern shore of the pond. We have an existing order for work on the lower eastern shore. Reviewed the process of removal as currently used and would be employed here. In addition to the extended work area, we are also requesting to use Clearcast in lieu of AquaPro.
- Erisman** – She had been skeptical of these projects, but she’s seen the benefit of the returning native eco systems.
- Knopp** – Her concern is how this might or might not affect bees; she and several neighbors keep bees. AquaPro has glyphosate in it. Asked that the work be done when bees aren’t foraging.
- Erisman** – From what she knows, pollinators have to actively foraging on the treated flower; she thinks Phragmites are pollinated by wind, so the herbicide shouldn’t impact the bees. The marshmaster is right over the plants to prevent the herbicide from being blown about.
- Kefferstan** – Work is late August early September. Ms. Knopp’s concerns were the reason they are asking for Clearcast.
- Staff recomb. Every Pond Coalition project has provided monitoring reports on time.
Recommend issue.
- Motion **Motion to Issue.** (made by: Williams) (seconded)
- Vote Carried unanimously

III. PUBLIC MEETING

C. Requests for Determination of Applicability

1. Charles W. Moore’s & Harriet K. Moore’s, Trustees – 14 Tautemo Way (83-13)
- Sitting Erisman, Golding, LaFleur, Phillips, Beale, Williams
- Representative Jeff Blackwell, Blackwell & Associates
- Staff recomb. The board can allow the septic work to go forward.
Recommend issue Negative 3 for septic work and find a NOI needs to be filed for the unpermitted patio.
- Discussion (6:27) **Blackwell** – This is to abandon a 1980 conventional septic and leach field within 25’ buffer to wetlands and replace it with an enhanced I/A system; the new leech field would be outside the 100’ buffer. A septic inspection revealed that a patio with pavers had been installed without a permit and there has been extensive damage to a bulkhead, which is over 40 years old. Provided a letter from Mr. Moore about his intent to apply for a NOI for the patio and bulkhead. Wants to go forward with the RDA for the septic removal and upgrade.
- Motion **Motion to Approve as recommended.** (made by: Golding) (seconded)
- Vote Carried unanimously

D. Certificates of Compliance

1. Mscisz – 51 Crooked Lane (41-531) SE48-2737 **(Cont. 7/22/2021)**
2. 2.*Barbieri – 48 West Miacomet Road (86-4) SE48-2945 **(Cont. 7/22/2021)**

E. Orders of Condition

1. Ten Moors End Lane Realty Trust – 10 Moors End Lane (43-214) SE48-3450
- Sitting Erisman, Golding, LaFleur, Phillips, Beale, Williams
- Documentation Draft Order of Conditions
- Staff Included standard pool conditions.
- Discussion (6:36) None
- Motion **Motion to Issue as drafted.** (made by: Williams) (seconded)
- Vote Carried unanimously
2. Honey & Modenhauer – 71 Baxter Road (49-26.1) SE48-3449
- Sitting Erisman, Golding, LaFleur, Phillips, Beale, Williams
- Documentation Draft Order of Conditions
- Staff After tonight’s discussion he recommends adding Condition 19 requiring the common way be marked and maintained open and Condition 20 that any irrigation heads and piping have to be removed when they become within 15 feet of the bluff. He will add Condition 21 to address the height of the privet on the common way.
- Discussion (6:38) **Golding** – Asked for a limitation to the height of the privet along the common way.
- Motion **Motion to Approve as amended.** (made by: Golding) (seconded)
- Vote Carried unanimously
3. Colby Crenshaw – 24 Almanack Pond Road (25-37) SE48-3447
- Sitting Erisman, Golding, LaFleur, Phillips, Beale, Williams
- Documentation None
- Staff He will draft a standard monitoring conditions for restoration areas and schedule a walk-through with staff.
- Discussion (6:39) **LaFleur** – Need to have clear markings for scope of work.
- Motion Continued to July 22
- Vote N/A

- 4. DeBiasio – 39 Meadowview Drive (56-133) SE48-3448
- Sitting Erisman, Golding, LaFleur, Phillips, Beale
- Documentation Draft Order of Conditions
- Staff He'll include the finding regarding delineation of boundaries.
- Discussion (6:41) None
- Motion Continued to July 22
- Vote N/A

F. Extension of Conditions

- 1. Nantucket Land Council – Nantucket Harbor (N/A) SE48-3092 **(Cont. 08/12/21)**

G. Other Business

- 1. Approval of Minutes 6/24/2021:

Motion **Motion to Approve as drafted.** (made by: LaFleur) (seconded)
 Vote Carried 5-0//Williams abstain

- 2. Enforcement Update: Siasconset Beach Preservation Fund (SBPF) 87-105 Baxter Road (48-Variou) SE48-2824

Sitting Erisman, Golding, LaFleur, Phillips, Beale, Williams
 Discussion (6:43) **Carlson** – He was unable to get the draft to the Commission; he's sent it off to Massachusetts Department of Environmental Protection for their review.
Beale – Someone asked if the Escrow Account was funded.
Carlson – He's asked for copies of that. He will get that information.

Motion N/A
 Vote N/A

- 3. Reports:
 - a. CRAC, Golding
 - b. CPC, Williams
 - c. Appoint to CRAC

Motion **Motion to appoint Mr. Golding to CRAC.** (made by: Beale) (seconded)
 Vote Carried unanimously

- d. Appoint to CPC

Motion **Motion to appoint Mr. Beale to CPC.** (made by: Williams) (seconded)
 Vote Carried unanimously

- e. Appoint to NP&EDC: Williams and Phillips want to be on the NP&EDC

Motion **Motion to Appoint Ms. Phillips to NP&EDC.** (made by: Beale) (seconded)
 Vote Carried unanimously

- 4. Monitoring Reports:
 - a. 72 Pocomo Road, LLC – 72 Pocomo Road (15-37) SE48-3188
 - b. Garran – 36 Pocomo Road (14-79) SE48-3442
 - c. Nantucket Land Council – Nantucket Harbor (N/A) SE48-3092
- 5. Commissioners Comment

- a. Phillips – Called out offensive comments in today's I&M made by SBPF and supporters against the ConCom.
- b. Golding – Asked about the protocol regarding a letter Staff received yesterday asking to rescind our decision.
 Carlson – He can add that as an agenda item for discussion. When you deliberate findings from previous discussion, you can discuss it then. He would ask counsel to draft an enforcement order. The letter doesn't require any action from the Commission.
- c. Erisman – Welcomed Ms. Williams to her first meeting.
- d. Erisman – We need to address projects within our jurisdiction when plants are installed at the wrong time of the year and require heavy watering. The right plants need to go in at the right time.

- 6. Administrator/Staff Reports
 - a. Moved to new offices but phone and emails are the same. We're on the 2nd floor of the old fire station.

H. Adjournment

Motion **Motion to Adjourn at 7:07 p.m.** (made by: Golding) (seconded)
 Vote Carried unanimously

Submitted by:
 Terry L. Norton