



CONSERVATION COMMISSION

PUBLIC MEETING

131 Pleasant Street
Nantucket, Massachusetts 02554
www.nantucket-ma.gov

Thursday, February 10, 2022 – 5:00 p.m.

This meeting was held via remote participation using ZOOM and YouTube.

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; Thais Fournier, Terry Norton, Town Minutes Taker
Attending Members: Erisman, Golding, Engelbourg, Phillips, Beale, Williams
Absent Members: LaFleur

*Matter has not been heard

I. PUBLIC MEETING

A. Announcements

B. Public Comment

1. **R.J. Turcotte**, Nantucket Land Council – Asked for an update on SBPF quarterly report and sand tickets.
2. **Sam Kefferstan**, Mass Audubon – Asked for an update on unauthorized construction on the Polpis Road Audubon property. We requested an update on July 27, 2021 and there has been none. The situation is worsening at Sesachacha Pond by the road.

II. PUBLIC HEARING

A. Notice of Intent

1. Lower Pocomo Nominee Trust – 88 Pocomo Road (15-42) SE48-3432 (**Cont. to 2/24**)
2. Pocomo Point Realty Trust – 90 Pocomo Road (15-43) SE48-3438 (**Cont. to 2/24**)
3. Tsunami Realty Trust – 283 Hummock Pond Road (83-6) SE48-3497

Sitting Erisman, Golding, Engelbourg, Phillips, Beale, Williams

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

Representative Brian Madden, LEC Environmental

Public None

Discussion (5:06) **Madden** – Reviewed the project and resource areas. We were waiting for the Massachusetts Natural Heritage (MNH) letter; they ruled no take and no adverse impact; they recommend that for the driveway layout and dwelling area to be abandoned, use the displaced soil from new construction to restore those areas.

Erisman – Regarding the property beyond, asked if they will be able to get their house out of there once the driveway is changed.

Madden – That is a good question.

Staff recomm. Have everything needed to close.

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

Roll-call Vote Carried 6-0//Beale, Engelbourg, Erisman, Golding, Phillips, and Williams

4. *Town of Nantucket – Sesachacha Pond SE48-

Sitting Erisman, Golding, Engelbourg, Phillips, Beale, Williams

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

Representative Thais Fournier, Water Resource Specialist Natural Resources

Public Karen Beattie, Nantucket Conservation Foundation (NCF)

Discussion (5:10) **Fournier** – This is to mitigate widgeon grass growing in and around the pond with a non-aggressive form of mitigation using pond mats. This will improve a swimming area. We’ve had problems with algae congregating in the grass; some of these algae can produce toxins. This is a swimmer safety and water quality issue. Over the past summer, we saw fish kills and dead birds along the water; these are associated with toxic algae. NCF is working on a larger management plan for mitigating nutrients going into the water.

Beale – It seems a modest start for a large pond.

Fournier – She wanted to try a small ecologically friendly project first.

Golding – Asked if she read Mr. Engelbourg’s letter.

Fournier – She tried to address many concerns in her response letter. She’s aware of reasons to keep widgeon grass but the area being discussed is only 0.02% of the pond. She understands it can be hard to find a balance between nutrient management and public enjoyment of the resource.

Erisman – She understands the toxins, but when talking about fish kills, removing the grass could add to the fish kill because it would release oxygen into the water.

Fournier – There are many interconnected parameters involved. When you get a dense amount of plants, it can become cover for predatory fish. They can act as pumps taking up nutrients but can also release that back into the water column. Decaying plants pull oxygen out of the water.

Engelbourg – This and creating a nature trail are not equivalent; this is entirely within the resource area. Recreation is being brought to the fore as something to be protected; however, it is a broad topic that includes swimming, boating, fishing, shell fishing, hunting, and wildlife observation. By doing this, wildlife observation could be reduced; it’s also a nursing area for shellfish and fish. There are reasonable alternatives to this project. We should encourage the native vegetation. There is a water quality issue the Town is looking into; however, this proposal should be encompassed in a larger water management program. Also, this is a short-term solution.

Fournier – Those are valid points. Sometimes, it will affect other things; this is a small area, and the benefits outweigh the costs. She has concerns about this problem continuing and expanding. Some water bodies are so far gone we have to do in-pond management. This pond is a very diverse habitat; she feels that with this very small area, there will not be any significant decrease in the water quality.

Phillips – In reading the application and the letters of response, and since widgeon grass is a good thing, she is trying to understand if the widgeon grass is too successful because of what we’ve done with adding more nutrients and if this is something we have to manage differently as time goes on or is there an amount of grass that would be beneficial for water quality but not have the bad impacts. Trying to balance everything there is tough. There is a long history of using of the pond for recreation and it’s an important resource for people; it would be a great loss as a recreational area. If it were decided a more significant process were to be taken, asked what the ultimate goal would be and does it matter that this pond isn’t regularly flushed to the ocean.

Fournier – She doesn’t want to remove all the grass. It became an issue between 2018-2019. Usually, submerged widgeon grass in in deeper water and doesn’t cause problems. It has increased into shallower water and the nutrients from it have increased. This is a small area to try a mitigation program. The mats are submerged. There are non-viable shellfish there that don’t grow because of the substrate of the pond.

Engelbourg – He wonders about the anecdotal evidence in the application that the algae blooms are localized to that area. Asked if it’s possible to collect more data and do better monitoring to confirm it is the result of the widgeon grass. Widgeon grass is a beneficial native species and it’s being blamed for a larger process creating water quality issues. He wants to see the correlation between the widgeon grass and the algae.

Fournier – There comes a point where a beneficial species can become a detriment. She’s not blaming the widgeon grass; its growth is the result of a larger problem. The Town does in depth testing from June to September and ship the samples out for testing. If she were to test now, it wouldn’t show what’s really happening. We are in the process of mitigating the larger problem, which in part has a human factor.

Golding – Asked if the Widgeon grass is throughout the pond and how would she quantify its harm.

Fournier – Toxic algae blooms happen from time to time usually around the shoreline and can normally be dispersed by wind. The widgeon grass can hold the blooms. She can provide documentation of summer events.

Golding – He’s getting the impression there’s a lot of grass; in fact, we’d be dealing with a small amount. In terms of oxidation, we are dealing with a small amount. He thinks we should try this non-chemical approach.

Erisman – Asked if the mats would have a rope to designate a non-swimming area.

Fournier – Her idea is to have a buoy either side of the mats, so people are aware. Boats can tear up the mats.

Erisman – In the application, you mentioned a rain garden component; asked for a description of that.

Fournier – That is a separate project in conjunction with the Quidnet-Squam Association.

Engelbourg – We can’t tie the permitting of this to another project. However, he’s glad the raingarden in is the pipeline and feels it is more important than this.

Beattie – At Pest House Pond, which is very small, we are experiencing huge blooms of widgeon grass that started around the same time as here. We have noticed the harmful algae blooms intertwined with the widgeon grass masses. She sees both sides but NCF is still very interested in seeing how this works.

Erisman – We have letters in the record regarding this. We are waiting for a DEP number and MNH letter.

Fournier – Asked for a 2-week continuance.

Staff recomm. He’s working on the rain garden project, which would mitigate runoff.

Motion Continued to Feb 24

Roll-call Vote N/A

- 5. *Linda Loring Nature Foundation – 90,110,124,130&136 Eel Point Road (39;32;33;38-&2;33;18;4,3,6,&41) SE48-3500 (Cont. to 2/24)

B. Amended Order of Conditions

- 1. Philips, Trustee – 19 East Tristram Avenue (31-4.1) SE48-3304 (Cont. to 2/24)

III. PUBLIC MEETING

C. Requests for Determination of Applicability

1. Nantucket Conservation Foundation – Windswept Bogs (25-38)
 - Sitting Erisman, Golding, Engelbourg, Phillips, Beale, Williams
 - Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 - Representative Karen Beattie, NCF
Jessica Cohn, Ecologist Mass Department Ecological Restoration (DER)
 - Public None
 - Discussion (5:54) **Beattie** – We are working with DER on restoration of the Windswept bogs. This proposes a pilot project within an area of disturbance that’s described as a wetland. The project would inform our large-scale restoration work to turn the bogs back into wetlands. We want to test a low-cost, less-expensive process than using an excavator. Each of the 6 test plots is 50X50; that’s small but allows for the equipment. Two we propose to plow, 2 will use harrowing, and 2 will be a combination of both.
Cohn – The demand on restoration of retired cranberry bogs has increased. We found if you do nothing to the abandoned or retired bog, they go toward upland habitat. We want to test simpler, less aggressive and lower cost methods to restore wetlands within retired bogs. We want to uncompact the top layer and get down to the peat; we will use mowing and plowing to uncompact the soil and prepare it to better hold the hydrology. Anthropogenic sand fill will be removed.
Golding – When you talk about the bogs being productive, in the mid-1960s, there were about 60 contiguous bogs creating amazing wildlife habitat. He’s curious if the ground penetrating radar showed the old lanes and if there’s any thought to restoring those lanes. He’s pleased this is being taken in hand.
Beattie – The radar looks for peat and evidence of wetlands prior to the bogs construction. She doesn’t think the radar is designed to pick up the old lanes. We’re currently working on a submission to address algae blooms at the Windswept bogs; we are not giving up on growing cranberry there
Williams – She’s glad this is being dealt with. However, she’s upset to see the bogs go fallow when they’ve been such a part of Nantucket history.
Cohn – The loss of cranberry farming is driven through economics and out-of-state competition. Feels it’s better than the bogs becoming developments.
Erisman – Knowing the unique wetland species will have a chance to grow is exciting.
 - Staff recomm. Recommend a Negative 2 allowing work.
 - Motion **Motion to Issue as a Negative 2.** (made by: Beale) (seconded)
 - Roll-call Vote Carried 6-0//Beale, Engelbourg, Erisman, Golding, Phillips, and Williams

D. Minor Modifications

1. Land Bank – 63 Madaket Road (41-480.1) SE48-2147
 - Sitting Erisman, Golding, Engelbourg, Phillips, Beale, Williams
 - Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 - Representative None
 - Public None
 - Discussion (6:13) None
 - Staff recomm. They’ve requested a withdrawal
 - Motion **Motion to Accept the withdrawal.** (made by: Williams) (seconded)
 - Roll-call Vote Carried 6-0//Beale, Engelbourg, Erisman, Golding, Phillips, and Williams

E. Certificates of Compliance

1. Salvatore – 13 Old Westmoor Farm Road (41-826) SE48-3275
 - Sitting Erisman, Golding, Engelbourg, Phillips, Beale, Williams
 - Representative None
 - Staff recomm. This was for work on the structure and yard work; it’s in compliance. Recommend issuing.
 - Discussion (6:14) None
 - Motion **Motion to Issue.** (made by: Engelbourg) (seconded)
 - Roll-call Vote Carried 6-0//Beale, Engelbourg, Erisman, Golding, Phillips, and Williams

F. Orders of Condition

1. Tsunami Realty Trust – 283 Hummock Pond Road (83-6) SE48-3497 (Madden)
 - Sitting Erisman, Golding, Engelbourg, Phillips, Beale, Williams
 - Documentation Draft Order of Conditions
 - Staff Has our fill condition. The MNH recommendations will be attached that to the order.
 - Discussion (6:15) None
 - Motion **Motion to Issue as drafted.** (made by: Williams) (seconded)
 - Roll-call Vote Carried //Beale, Engelbourg, Erisman, Golding, Phillips, and Williams

G. EXTENSION REQUEST

1. None

H. Other Business

1. Approval of Minutes 01/27/2022:

Motion **Motion to Approve.** (made by: Williams) (seconded)
 Roll-call Vote Carried 6-0//Beale, Engelbourg, Erisman, Golding, Phillips, and Williams-aye

2. Monitoring Reports: None

3. Project Operation Discussion – Pocomo Neighbors SE48-2474

Sitting Erisman, Golding, Engelbourg, Phillips, Beale, Williams

Documentation Shapiro’s packet of data and photos

Speakers Sarah Alger, Sarah F. Alger P.C for abutters

Jeff & Michael Shapiro, 57 Pocomo Road

Stephen St. Pierre, 56 Pocomo Road

Art Gasbarro, Nantucket Engineering & Survey for Pocomo Neighbors

Seth Wilkinson, Wilkinson Ecological, for Pocomo Neighbors

Arthur Reade, Reade, Gullicksen, Hanley, & Gifford LLP, for Pocomo Neighbors

Discussion (6:18) **Erisman** – We had a long discussion about the access and impact to the resource areas.

Carlson – The commission made a site visit 2 weeks ago, pre-storm. Mr. Gasbarro submitted a planting plan for the Proprietors Way. Ms. Alger submitted photos of construction and maintenance.

Phillips – Having dates on the photos would have been helpful in seeing the progression.

Engelbourg – Regarding the planting plan and the road layout, asked if there is a way to improve groundcover to protect the grass and if the existing straw wattles will remain and if there are alternative draining proposals.

Erisman – We are focused on our resource areas and impact within our jurisdiction.

Alger – One of the photos was taken within the last two weeks during the storm from a distance; you can see all the structures are exposed. The wattles weren’t permitted and, in some cases, divert water onto abutting properties and doing damage. There have been several violations to the Order of Conditions and maintenance. It feels there is no check on what’s being done there; reviewed those violations: sand delivery or lack thereof, and destruction of vegetation within the Proprietors Way. We have no control over much of what’s happening regarding maintenance and creating damage.

J. Shapiro – Mr. Carlson pointed out erosion to our bluff adjacent to the project. We were involved in the original application but decided during the process to withdraw and let nature take its course. Trauma from sand delivery to the bluff and beach isn’t being addressed. Landscaping won’t address that.

Erisman – We had an opportunity to review the information submitted by the Shapiros.

M. Shapiro – This can be buffed up for a while but with a big storm, we’re back to square one. Reviewed his before and after photos. It looks like the wattles were driven over by the excavator and are ineffective in stopping water runoff. Erosion from the runoff is undermining the bank on our property. He’s observed heavy equipment right on the top edge of the bluff. We’d like the Commission to change the point of sand deliver to a Proprietors Way flanked by project participants. After the most recent storm, all the logs were exposed. We now have to live with a hard solution that seems to have no end date.

Erisman – Those coir rolls are much more forgiving than any true hard structure; though they aren’t giving up sand.

St. Pierre – This problem has been going on since its inception and is creating hard feelings. He feels there are other alternatives. None of the photos show the 10-wheel dump trucks delivering the sand; they could be using bobcats. They had proposed a drywell; he thinks that would divert water underground and weaken the bluff more. He has photos of the stuff they threw down to mitigate their travel; within a short time, it was gone. He doesn’t think they are following best practices to mitigate nitrogen and phosphorous getting into the water.

Gasbarro – Disagrees with some of the assertions made; a lot of the photos were quite dated. The runoff that caused the “canyon” was several years ago before the wattles were installed. The wattles aren’t directing water over the banks; they are holding water off the bluff. He has a number of photos showing the stairs encompassed by ice. The project is being maintained in compliance. There was no damage from the storm; he was out there the day after and was in touch with the contractor to recover the project. All of the bank above the rolls is heavily vegetated and performing as they should. We think the planting plan will help and soften the impact of the activity. DEP has repeatedly ruled that this is not hard armoring. We’ve provided the annual sand required and maintained the cover. To the questions about the wattles, most are out of ConCom jurisdiction and they are effective at controlling storm water.

Wilkinson – He too was concerned with the number of misrepresentations which were only opinions, not facts. The is not a hard structure. The seed mixture is a native mix. There was an incorrect assertion about the mulch, it is completely biodegradable and doesn’t contribute nutrients to the water. This project is in full compliance. Not wanting trucks going by is not a ConCom issue. Contends the erosion on the Shapiro property has nothing to do with this project; it’s natural erosion. The way the project was designed and conditioned was with annual sand nourishment between March and May.

Reade – It’s frustrating to keep having to justify a permitted project that has a Certificate of Compliance, and that we are operating within the confines of our conditions.

Golding – The reference that we ruled this as not hard armoring, we wanted to make that finding but were overruled by CZM (Coastal Zone Management). This is behaving like hard armoring. He doesn’t understand why they aren’t considering the alternative sand delivery points.

Erisman – We as a Commission need to figure out how to mitigate what’s happening. Moving the sand delivery point is a suggestion as well as planting beach grass at the base of the bluff. The current delivery point was set when the Shapiros were part of the project.

Carlson – We talk about impact; a lot of this is incumbent upon the original applicants to review their delivery plan as a group. Instead of this battle being public, give them a set time to update the delivery protocol. The permit has expired, and the burden should go back upon the applicant, Pocomo Neighbors

Engelbourg – Mr. Carlson’s recommendation makes sense; and the Order of Conditions is closed. He views this project as operating within how it was permitted. Many of the issues could be ameliorated among the neighbors. If a new permit were filed, it could eliminate the Shapiros as stakeholders. Currently they are on the permit and they bear the benefits and detriments as all other stakeholders.

Erisman – Asked Mr. Gasbarro and Mr. Reade could work with the group to come up with a alternate delivery point.

Gasbarro – He feels that’s what he and the applicant have been doing with the planting plan; they have a contractor secured this year. The best course of action is to give the residents a chance to improve the path. It’s a significant expense on his clients’ part in an attempt to be a good neighbor.

Erisman – Asked if ConCom should be reviewing the state of the rolls annually.

Carlson – If they want to deal with the permit differently, they can file for a maintenance plan and make it include provisions on what steps will be taken regarding various impacts. That group has to come together to decide what is best for them and the array.

Engelbourg – Asked why the change was made if the permit said annual mitigation to mitigation after every storm. If we have no requirement they be covered after storms, he doesn’t know what the justification is to do that.

Erisman – Generally we require the structures be covered at all times; she doesn’t know if that’s written into this permit.

Carlson – He’d have to pull some of the correspondence and meeting minutes to ascertain if that is the case.

Golding – Condition 33 prohibited work seaward of the mean high-water (MHW) line; we saw photos that is happening.

Erisman – Those lines aren’t regularly updated; we don’t set that line.

Carlson – That’s why we now required that line be staked; that number is jurisdictionally set and can change day to day.

Gasbarro – MHW is established by elevation; as the beach moves, the line moves. We are working with the data from 1988, which established it at elevation 1.2.

Beale – The permit is closed; questions if we have the authority to ask them to move the access road.

Carlson – No. Suggested, given the proposal for mitigation work, setting a time limit when the group comes back to us after they’ve had some internal discussion. They can file a permit to move the access point. He hasn’t heard of any impact that would warrant an enforcement action.

Erisman – They are working within their permit, but she does want to see these impacts resolved. If the new planting plan doesn’t work, we need to consider moving the sand delivery point. When an impact is noticed, Natural Resources should be notified immediately.

Motion No action at this time.

Roll-call Vote N/A

4. Enforcement Actions/Potential Enforcement Actions

a. None

5. Reports:

a. CRAC, Golding

b. NP&EDC, Phillips

6. Commissioners Comment

a. Erisman – There was public comment about SBPF missing quarterly reports and a request for an update on what’s happening Mass Audubon property along Polpis Road.

7. Administrator/Staff Reports

a. He will compiel information on SBPF and Sesachacha pond for an update at the next meeting.

b. There’s an upcoming Coastal Resiliency workshop. We need a second representative. as Vice Chair, Mr. Golding said he’d be happy to attend.

c. When we go into Executive Session, discussion is limited to litigation revolving around the removal enforcement.

I. Executive Session

Motion **Motion to go into Executive Session Pursuant to MGL C. 30A § 21(A) 1. Purpose 3: To Discuss Strategy with Respect to Litigation with Regard to Siasconset Beach Preservation Fund (SBPF) Geotextile Tube Project Removal Order (SBPF v Nantucket Conservation Commission), where an Open Meeting May have a Detrimental Effect on the Litigation Position of the Conservation Commission at 7:26 pm. With no intent to return to open session.** (made by: Engel) (seconded)

Roll-call Vote Carried 6-0// Beale Engelbourg, Erisman, Golding, Phillips, and Williams-aye

Submitted by:
Terry L. Norton