



CONSERVATION COMMISSION

PUBLIC MEETING

2 Bathing Beach Road
Nantucket, Massachusetts 02554

www.nantucket-ma.gov

Thursday, October 15, 2020 – 5:00 p.m.

*This meeting was held via remote participation using ZOOM and YouTube,
Pursuant to Governor Baker’s March 12, 2020 Order Regarding Open Meeting Law*

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

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

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

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

Absent Members: Topham

Earlier Departure: Golding, 8:27 p.m.

Agenda adopted by unanimous consents

*Matter has not been heard

I. PUBLIC MEETING

A. Announcements

B. Public Comment

1. Burton Balkind – Asked for an update on 289 Hummock Pond Road.
Carlson – Continued to work with the applicant to get the site back together; had issues with equipment access to remove the concrete. We’re out there 2 to 3 times a week.
2. Burton Balkind – Asked if ConCom review the Pond Coalition phragmites removal.
Carlson – We review the monitoring reports and inspection reports.

II. PUBLIC HEARING

A. Notice of Intent

1. Eli Zabar – 47 Squam Road (13-22) SE48-3253 (**Cont. 10/29/2020**)
2. Nantucket Point of View, LLC – 9 Lincoln Avenue (30-137) SE48-3278

Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale

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

Representative Brian Madden, LEC Environmental
Don Bracken, Bracken Engineering
Sarah Alger, Sarah F. Alger P.C.

Public None

Discussion (5:10) **Madden** – Requested a continuance to October 29.

Staff None

Motion Continued to October 29, 2020

Roll-call Vote N/a

3. *Marica Kleinberg – 18 Quidnet Road (21-117.5) SE48-3348 (**Cont. 10/29/2020**)
4. Shawkemo I, LLC- 36 Shawkemo Road (27-3) SE48-3344

Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale

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

Representative Brian Madden, LEC Environmental
Don Bracken, Bracken Engineering

Public None

Discussion (5:11) **Bracken** – Have Massachusetts Natural Heritage letter – no take. No waivers are being requested.

Staff Have everything needed to close.

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

Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, and Phillips-aye

5. Nantucket Islands Land Bank – All Land Bank Properties (Various) SE48-3337 (**Cont. 10/29/2020**)

6. Tina Eger McGoldrick Trust – 33 Quidnet Road (21-27.2) SE48-3327
- Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale
- Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
- Representative David M. Haines, Haines Hydrogeologic Consulting
- Public None
- Discussion (5:13) **Haines** – We addressed comments from Massachusetts Natural Heritage: a revised plan, driveway, grading, and fencing. There is a small area where the driveway hooks into the 50-foot buffer; all structures are outside the 50. No waivers requested.
- LaFleur** – Asked about the retaining wall along the east side of the driveway.
- Haines** – It hasn’t been designed; he envisions a timber wall a couple of feet tall.
- Phillips** – Regarding the existing asphalt driveway, asked what will happen to that.
- Haines** – His client wants to keep it for emergency vehicles and fuel trucks; because of sensitive plants the proposed driveway will be only 8 feet will
- Staff Have everything needed to close.
- Motion **Motion to Close.** (made by: Beale) (seconded)
- Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, and Phillips-aye
7. *Sixty-Four Pocomo Road R.T – 64 Pocomo Road (15-30) SE48-3351
- Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale
- Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
- Representative David M. Haines, Haines Hydrogeologic Consulting
- Public None
- Discussion (5:18) **Haines** – This is for construction of a swimming pool, retaining wall, porch, and pool house; resource areas are a policy coastal bank and an isolated vegetated wetland. All structures will be outside the 50-foot buffer. The canister filter does not require any discharge into the buffer.
- Staff Have everything needed to close.
- Motion **Motion to Close.** (made by: Phillips) (seconded)
- Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, and Phillips-aye
8. Abramson – 80 Millbrook Road (40-79.1) SE48-3340
- Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale
- Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
- Representative Mark Rits, Site Design Engineering
- Public None
- Discussion (5:21) **Rits** – At the last hearing, there was concern about trees within jurisdictional areas and asked for a site plan with a current aerial photo showing trees within the limit of work. Also provided detail for the retaining walls and vanishing-edge pool wall. Noted some pitch pines looked dead; about 20 will be removed with caliper 4 to 12 inches; will plant 40 pitch pines along the northern edge.
- Beale** – Asked how the pool will be cited in terms of the grade.
- Rits** – The elevation of the pool will be at 20; a cross section shows a double retaining wall including a 4-foot tall pool wall with a second 4-foot wall set lower about 4 feet away. We are proposing grading in the 25-foot buffer; there will be no construction. Just north of the pool, the path will have some interspersed pavers for a step effect; the portion west of the pool will be grass; the existing path into the wetlands will be elevated walkway.
- Engelbourg** – Asked that before the trees are cut, he’d like to have an aerial depiction of the trees to be removed; and an aerial of trees once they are planted. Having the specifics of what is cut and what is put in will provide benchmarks for future projects in this area.
- Rits** – We would comply with that as a condition; asked if the Commission would be willing to condition that. We threw a range in there between a 1.5 and a 2X mitigation. The larger area allows for more robust planting. The hope is work will start late this season.
- Engelbourg** – He’s okay with the conditioning but would prefer to have it before works start.
- Erisman** – She has concerns; trees within the buffer have a habitat value than those outside. Also look at the plan, she doesn’t think the 22 trees are all within our buffer zone; also concerned trees will be cut for construction that are outside our jurisdiction.
- Rits** – There is an existing rough vehicle access and the existing pool on the north side is going away; those will provide access. In terms of work in non-jurisdictional areas, he was give the plan in front of the Commissioners.
- Erisman** – Would prefer they look for an alternate location for the pool and 2nd dwelling.
- Golding** – He agrees with Ms. Erisman. This will be disruptive in many ways; the tennis court location is a good alternative location. He’s opposed as proposed.
- Rits** – The replanting area would be required under the Order of Conditions to plant, monitor, and maintain those plants. In terms of putting the pool in another location, it would go southeast of the driveway; that is a considerably larger stand of pines than the 20-or-so trees within the 100-foot buffer. He perplexed by the resistance to the project and is routinely permitted outside the 50-foot buffer around the Island. We’ve provide a robust mitigation program.
- Erisman** – In viewing this, there are better choices for the resource areas.

Engelbourg – He believes our regulation and local bylaws, what is considered rare species is very specific. Agrees that pitch pine is an important habitat for northern long-eared bats and other species.

Erismán – Massachusetts Natural Heritage tends to be understaffed and doesn't review these applications as thoroughly as they should.

Phillips – She had similar concerns to Mr. Beale's, especially about how this pool will be maneuvered into there without causing too much disturbance to the resource area. The pool is perched on the edge of the 50-foot buffer. Asked if it can be conditioned to monitor construction to ensure there is no impact on the buffer and pond. She could then reluctantly approve this application.

Beale – Suggested moving the pool north and east; construction vehicles should access the property only from the site of the abandoned pool at the north side.

Rits – Provided the construction sequencing; 1" equals 30 feet to the retaining wall will be 1 to 2 feet off the 50-foot buffer. Everything else will be inbound of that lower wall. We feel with proper staking that work will stay outside of the 50-foot buffer and ensure that is the case. There is grading within the 50-foot buffer; that is typically permitted. Could accept the condition that all access is from the north over the abandoned pool site.

LaFleur – Having installed these pools, he has no concerns if there is proper conditioning and proper supervision by the contractor. He's concerned about the pitch pine but comfortable with the mitigation being provided.

Engelbourg – The pitch pine mitigation is nice, but if the applicant is willing to plant 3 to 1, that would better off set the development.

Rits – We are happy to provide a revised plan stating we will plant 60 trees.

Erismán – Asked if ConCom can require the pool company provides their name so we know they are aware of the rules.

LaFleur – Ms. Erismán's suggestion is an excellent one.

Carlson – R.J. Turcotte, Nantucket Land Council, Inc. asked if the trees would continue to be protected under an on-going Order of Conditions. We've seen other applicants try to distance themselves once the owners are involved.

Staff You always have the ability to put on conditions to protect the resource area as long as they are within the Performance Standards.

It would be useful to have a pre-construction meeting with the landscaper and contractor and owner. The 50-foot buffer should be marked by some fence to ensure the line isn't crossed.

You can require the owner to provide the name of whoever is doing the pool work just like we require the names of landscapers.

The trees would be protected should the property changes hands since to Order of Conditions is recorded against the title.

Have everything needed to close.

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

Roll-call Vote Carried unanimously//Beale, Engelbourg, Erismán, Golding, LaFleur, and Phillips-aye

9. 46 Shimmo Pond Road N.T – 46 Shimmo Pond Road (43-77) SE48-3343 **(Cont. 10/29/2020)**

10. *Peter E. Halle and Carolyn B. Lamm – 24 Pilgrim Road (41-94) SE48-3347 **(Cont. 10/29/2020)**

11. *Mary Jo Buckland – 113 Hummock Pond Road (546-59) SE48-3330 **(Cont. 10/29/2020)**

12. *Cheryl Gilbert- 16 D Street (60.2.1-2) SE48-3350

Sitting Erismán, Golding, LaFleur, Engelbourg, Phillips, Beale

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

Representative Don Bracken, Bracken Engineering

Public None

Discussion (5:55) **Bracken** – This is a septic upgrade on an existing property, which is a Title 5 tight tank and leach pit. Resource area is a coastal bank to Hither Creek. Explained the new system. Property is connected to Town water. All work is within existing lawn. There will be an impervious area on the coastal bank side to prevent breakout.

Staff Have everything needed to close.

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

Roll-call Vote Carried unanimously//Beale, Engelbourg, Erismán, Golding, LaFleur, and Phillips-aye

13. *Jean-Francis Formela – 8 Old Westmoor Farm Road (41-822) SE48-3353

- Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale
 - Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 - Representative Paul Santos, Nantucket Surveyors
 - Public None
 - Discussion (6:00) **Santos** – This is for redevelopment of the property within resource areas are bordering vegetated wetland and vernal pool. The two structures to be demolished are outside the 100-foot buffer; the gazebo to be demolished falls within the no-build setback for the vernal pool. Will construct a small garage within the enlarged setback, 75-feet, to the vernal pool. The driveway will be reconfigured to accommodate the relocated dwelling and garage. No waivers are required.
 - Staff Have everything needed to close.
 - Motion **Motion to Close.** (made by: Engelbourg) (seconded)
 - Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, and Phillips-aye
14. *Eleven Crooked Lane, LLC – West Chester Street Extension (41-Various) SE48-3352
- Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale
 - Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 - Representative Art Gasbarro, Nantucket Engineering & Survey
 - Public None
 - Discussion (6:04) **Gasbarro** – This is for a low-pressure sewer main; resource areas are bordering vegetated wetlands. Pipe will be installed in a 4X3 trench. The force main will replace on-site septics; have a permit from the Sewer Department. Waiting for Massachusetts Natural Heritage review so will need a continuance.
 - Staff Asked if the commissioners want him to draft a positive order (yes).
 - Motion Continued to October 29.
 - Roll-call Vote N/A

III. PUBLIC MEETING

C. Requests for Determination of Applicability

1. Alan B. Myers – 28 Kelley Road (54-104)

- Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale
 - Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 - Representative Don Bracken, Bracken Engineering
 - Public None
 - Discussion (6:06) **Bracken** – This is for a sewer force main within the existing roadway and driveway; existing septics will be replaced.
 - Staff Wetland line is fairly accurate. Recommend Negative 3.
 - Motion **Motion to Issue as Negative 3 allowing work without notice.** (made by: Beale) (seconded)
 - Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, and Phillips-aye
2. Doerte Neudert – 18 Dukes Road (41-62)
- Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale
 - Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 - Representative Don Bracken, Bracken Engineering
 - Public None
 - Discussion (6:09) **Bracken** – Similar to the last: tying into a sewer force main within disturbed areas of the lot. Wetland resource area is off site.
 - Staff Recommend Negative 3.
 - Motion **Motion to Issue as Negative 3 allowing work without notice.** (made by: Engelbourg) (seconded)
 - Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, and Phillips-aye

3. Sea Hero, LLC – 7 Pilgrim Road (41-216)

- Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale
- Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
- Representative Mark Rits, Site Design Engineering
- Public None
- Discussion (6:10) **Rits** – Did a previous RDA for the main dwelling. Resource is an off-site wetland. The house and other elements have been slightly reconfigured so need to ask for another RDA. All site alterations have been completed.
- Staff Recommend Negative 3 for the work.
- Motion **Motion to Issue as a Negative 3 allowing work without a notice.** (made by: Engelbourg) (seconded)
- Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, and Phillips-aye

4. 2 John Adams Realty Trust – 97 Cliff Road (30-636)

Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Mark Rits, Site Design Engineering
 Public None
 Discussion (6:13) **Rits** – The wetland resource area is a ditch between the property and bike path. The work is for enlarging an existing shed with outdoor shower outside the 50-foot buffer.
 Staff Recommend Positive 2 and Negative 3.
 Motion **Motion to Issue as a Positive 2 and Negative 3.** (made by: Beale) (seconded)
 Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, and Phillips-aye

B. Minor Modification

1. Trust of Richard Phillips – 19 East Tristram Avenue (31-4.1) SE48-3304

Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Paul Santos, Nantucket Surveyors
 Public None
 Discussion (6:15) **Santos** – The NOI was for construction of a driveway abutting the bordering vegetated wetland; this moves the driveway slightly east and the garage moved more south. The garage is outside the 100-foot buffer.
 Staff Recommend issue as Minor Modification.
 Motion **Motion to Issue the Minor Modification.** (made by: Engelbourg) (seconded)
 Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, and Phillips-aye

D. Certificates of Compliance

1. Nancy(Colson) Seaman – 9 Hallowell Lane (30-14,15 & 257) SE48-2916

Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale
 Representative Art Gasbarro, Nantucket Engineering & Survey
 Staff Agree work is in compliance.
 Discussion (6:17) **Gasbarro** – This was a redevelopment and septic upgrade; work is substantially in compliance.
 Motion **Motion to Issue.** (made by: Beale) (seconded)
 Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, and Phillips-aye

2. 34Walsh St LLC - 34 Walsh Street (29-108) SE48-3053

Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale
 Representative Mark Rits, Site Design Engineering
 Staff Agree work is in compliance. Recommend carry forward Condition 19 requiring photo monitoring of the areas.
 Discussion (6:19) **Rits** – This was for modification of existing residence with a requirement to fence off a portion of lawn within the buffer; work is completed in substantial compliance.
 Motion **Motion to Issue with on-going Condition 19.** (made by: LaFleur) (seconded)
 Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, and Phillips-aye

3. ~~247 LLC – 7 Walsh Street (42.4.1-55) SE48-3120~~ **(Issued 10/01/2020)**

E. Orders of Condition

1. Kim Glowacki – 46 Easton Street (42.4.1-22) SE48-3285

Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale
 Documentation Positive and Negative Drafts Order of Conditions
 Staff Must correct the filing date. Reviewed the positive order applying both State and local bylaws – italics are specific to local bylaws. Suggested reviewing it first through State laws then local bylaws.
 The negative order is specific to local bylaws: Condition 26 would address lighting.
 Reviewed findings and conditions against State laws. Reviewed conditions and waivers per local bylaws.
 Discussion (6:21) REVIEW OF POSTIVE ORDER
Erisman – If we go with positive, asked if lighting should be conditioned away from the resource area.
Engelbourg – It mentions the new structure is not pre-1978; asked if we looked at the renovation to the old structure as a substantial improvement.
Carlson – If we issue a positive order, we can add a finding that the building was substantially improved under the local bylaws.
Engelbourg – Asked if the existing has to be called out as a coastal bank resource area.
Carlson – Noted that the second referenced coastal beach should be a costal bank.
Engelbourg – The rainfall infiltration system directing rain water under the houses, asked if we need a survival condition for plants associated with that aspect of the project.
Erisman – Condition 23 might cover native species for the whole site or just the planting area.
Carlson – We can specify that condition that sets survivability be maintained at 90%. We can add a new condition requiring all impervious runoff be directed into the infiltration system.
Golding – Asked to memorialize the 5-foot pedestrian access and add it be marked so as the public is aware that easement is there.
Carlson – That is within our jurisdiction; can add Condition 28 requiring the access is clearly marked.

Golding – On reflection of Mr. Bailey’s argument and listening to Mr. LaFleur and Mr. Topham, he decided there is sufficient net benefit to approve this.

REVIEW OF THE LOCAL DENIAL.

Carlson – The discussion should revolve around whether or not the burden of proof has been adequate regarding the waiver. Findings 1-8 address each resource areas: coastal beach, coastal dune, excavation and work adjacent to the dune, destabilizing the dune, no activity permitted on construction of a coastal dune, sediment source, buffer zone, land subject to coastal storm flowage, and failed to meet burden of proof for waivers under no adverse impact/no reasonable alternative and long-term net benefit.

Golding – He considers public access to the beach as a significant benefit; asked where we’ve opened the door based upon public access.

Carlson – That is how the interest is applied; public access is to recreation. The real question is would it be related to completely new construction within the 50-foot set back to the bank, dune, and beach and how that relates to moving the existing structure. The interesting aspect here is that the existing structure is being moved onto a new lot with new construction on a vacant lot and how that meets or does not meet the regulations.

Beale – He disagrees about public access being a lynch pin; there is public access at White Elephant and yacht club. He doesn’t see this as being important public access. We should not allow building within the resource area.

Engelbourg – In his mind, all of this falls into the waiver in Section C - long-term net benefit. He feels a reasonable alternative exists for this property. Feels no adverse impact hasn’t been proven.

Phillips – She has tried to be aware that the move reduces coverage in the 50-foot buffer and the existing house getting moved would go onto footings mitigating. She can’t get past allowing no new construction. It isn’t clear to here there will be a long-term net benefit for this property. She understands why the owner wants the new building but can’t support it. Condition 13 is critical. Condition 16 that they haven’t met burden of proof; she feels they haven’t proved that. Allowing new construction within the 50-foot buffer would not be a good precedent to set; the applicant’s attorney did not provide examples where we allowed new construction within the 50-foot buffer.

Erisman – She agrees with Mr. Engelbourg; it doesn’t meet no reasonable alternative waive and doesn’t feel she could grant long-term net benefit. The restoration would have to be more robust and the new construction within the 50 without that in her mind does not provide a long-term net benefit.

Carlson – Feels the Commission should discuss whether or not relocating the existing onto piles if that meets long-term net benefit. You need to look at specific waivers to be granted.

Phillip – She doesn’t think the positive - moving and raising the existing - outweighs the negative - new construction. It would be a benefit to have a less-developed lot.

Golding – Ms. Phillips and Mr. Beale brought up issues he’s wrestled with. If the public access tied into the White Elephant access, asked if Mr. Beale would consider it a net benefit. This is a highly developed area. When Mr. Carlson talks about how a decision would be used, he wouldn’t want to set a precedent for new construction within the 50-foot buffer that could be argued in a court of law; that could open the flood gates.

Carlson – You need to consider when interpreting the Act and local bylaw, the buffers are set forward because it is presumed work would have adverse impact within those buffer zones. Another decision to be made is if the benefit of moving a structure farther away from the resource area allows for construction of a new structure.

Golding – In this situation, there are houses either side right up to the water, Condition 28 about an eroding bank, this isn’t an eroding bank. You could argue that mitigation circumstances – the access tying into the White Elephant – could not be used as a precedent.

Carlson – You have to look at all aspects individually. The public already has a right to access. Whether or not they can scramble up the White Elephant bulkhead is not our purview. It’s a fine line to balance one activity against another; it sets up an endless cycle.

Golding – He doesn’t want to undermine the ConCom’s legal standing.

Engelbourg – Suggested carefully consider what long-term net benefit means: the benefit of the existing building being moved and raised, in-ground infiltration, public access against allowing a new structure in the buffer, increasing square footage of the existing structure, increasing the total amount of structure within the 100-foot buffer. There is a robust restoration of an existing dune and knotweed mitigation.

Erisman – Sees adding the new structure as a huge cost; both have separate utilities in the event of a large storm and proximity to the resource areas.

Phillips – Asked when we have allowed moving an existing structure out of the 50 and raising it; those would be benefits. If we were being asked to only move the existing building, she could support that. As long as there is an alternative for a new building to be outside the 50, she couldn’t support it going within the 50. The rebuttable harm to the resource area has not been overcome.

LaFleur – He thinks the net benefits are justifiable and can be waived because of removal out of the 25, reduction in the 50 and raising the structure. He’s concerned that if this is not approved, nothing will be done with flood flow continuing to be inhibited.

Carlson – If you issue the positive order, you have to decide whether under State or local. Discussion on the motion to issue an approval.

Golding – Listening to his fellow commissioners, he would be loath to establish any precedent that would undermine the 50-foot requirement.

Motion Motion to Issue the approval under State and Local bylaws. (made by: LaFleur) (not seconded)

Roll-call Vote Motion failed, no second

Motion Motion to Issue the positive order under the State Act and removing the italicized wording. (made by: Engelbourg) (seconded)

Roll-call Vote Not Carried 3-3// Engelbourg-aye, LaFleur-aye, and Phillips-aye/ Beale-nay, Erisman-nay, Golding-nay, **Carlson** – Without a majority, that motion does not carry.

Motion **Motion to Issue the denial under Local bylaws only.** (made by: Engelbourg) (seconded)

Roll-call Vote Carried 5-1//Beale, Engelbourg, Erisman, Golding, and Phillips-aye/LaFleur-nay

Carlson – Have to issue a decision on the State Act.

Golding – Asked if it is appropriate to ask if this is approved at the State level that we are setting it up for a legal challenge.

Carlson – There would be two separate appeal tracks. Under the State the appellant body is the Department of Environmental Protection (DEP); an appeal of the local is handled at Superior Court. You can condition through the State Act where waivers aren't applicable. Your job is to apply the standards of both. Reviewed the determinations that need to be made and if the project meets the standards for the State Act.

Engelbourg – One provision is that a structure could interfere with landward migration of the dune.

Erisman – She saw the lateral movement being impacted.

Golding – He doesn't think that dune is going anywhere at this point. He doesn't think it good to hinge an argument on that if it isn't going to move.

Erisman – That provision allows dunes to be mobile. Over time, she thinks movement of the sand would be impeded. Under the buildings, the grasses a normal dune would grow can't in the shade.

Engelbourg – It will be gravel under the buildings, so it would be very difficult for plants to grow unless there was significant sand build up; however, the shade would preclude growth of plants. Over the last 100 years, this dune did build up landward overtopping the bulkhead; that is supported by aerial photos.

Carlson – The question now is there a way to condition the project to monitor and mitigate the impact.

Erisman – If the dune starts migrating landward and a structure is in the way, we can't ask for the structure to be removed; they are too close to the resource area.

Engelbourg – If the dune migrates landward, we end up with structures in the dune field. We need to go through the rest of the provisions.

Carlson – We can determine the coastal bank is not a sediment source; it is a buffer to storm water. The condition is the structures would have no impact on the coastal bank. This has no impact on species.

Erisman – Doesn't see the project impacting the little bulkhead.

Carlson – Coastal beach is significant to storm damage, flood control, habitat; project should not have an impact increasing erosion. The last standard is any beach nourishment with compatible sand would be allowed.

Erisman – We agree this doesn't have an impact to the beach.

Golding – Under Chapter 91, you could have some impact on the beach.

Carlson – The standards of Chapter 91 are not applicable here. Land subject to coastal storm flowage doesn't have standards under the State Act.

Engelbourg – Given the review, the specific resource impacted is the coastal dune.

Carlson – Reviewed the standards for a coastal dune: structure within 100 feet of the dune will not have significant impact to storm damage prevention, flood control, flood storage, and habitat.

Engelbourg – In his mind there is no way to condition to protect landward migration of the dune.

Phillips – She thinks it's a good idea to pick this apart like this. In her mind there is no way to condition against impact on landward mobility.

Erisman – Agrees there is no way to mitigate landward migration.

Carlson – Even if you tried to condition that with should the migration move the dune within 25 feet of the structure, an NOI must be applied for regarding mitigation to allow the migration to continue. There really is no possible way to do that.

Erisman – There would be no way to allow the dune to continue moving landward except by removing the structures. If the eastern lot were left open, the dune could migrate through there. We expressed these concerns frequently to the applicant; they were clear they were unwilling to shift their structures back.

Golding – Mr. Bailey said they would not be willing to move the structure outside the 50-foot buffer.

Engelbourg – The final plan on record shows the structures take up the lots fully from east to west with a very small portion between leaving only a narrow path for the dune sand to move.

Phillips – She wants to be clear regarding the discussion of landward movement of the dune, that would be impacted by these structures and there is no adequate way to condition the second structure, unless it was moved out of the 50-foot buffer. She feels this should be denied under the Stat Act.

Carlson – This was closed on October 1st and would have to be approved next Thursday. A special meeting for this wouldn't take long. That would be better than trying to wing it here. He and Ms. Dodd to find a time on Wednesday or Thursday and let the commissioners know. Special meeting Tuesday at 5 p.m.

Motion Continued to a Special Meeting Tuesday, October 20 at 5 p.m.

Roll-call Vote N/A

2. Shawkemo I, LLC- 36 Shawkemo Road (27-3) SE48-3344

Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale
 Documentation Draft Order of Conditions
 Staff No waivers were required. Couldn't come up with special conditions.
 Discussion (8:01) None
 Motion **Motion to Approve as drafted.** (made by: LaFleur) (seconded)
 Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, and Phillips-aye

3. Tina Eger McGoldrick Trust – 33 Quidnet Road (21-27.2) SE48-3327

Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale
 Documentation Draft Order of Conditions or waivers
 Staff No special conditions.
 Discussion (8:02) **Erisman** – Massachusetts Natural Heritage changed the driveway and added the retaining wall.
 Motion **Motion to Approve as drafted.** (made by: Golding) (seconded)
 Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, and Phillips-aye

4. Sixty-Four Pocomo Road R.T – 64 Pocomo Road (15-30) SE48-3351

Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale
 Documentation Draft Order of Conditions
 Staff Standard pool conditions; recommends adding Condition 23 requiring contact information for the pool maintenance company and a plan regarding pool drainage.

Discussion (8:04) None
 Motion **Motion to Approve as amended.** (made by: Beale) (seconded)
 Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, and Phillips-aye

5. Abramson – 80 Millbrook Road (40-79.1) SE48-3340

Sitting Erisman, Golding, LaFleur, Engelbourg, Phillips, Beale
 Documentation Draft Order of Conditions
 Staff Added Condition 23 as noted previously. Condition 27 requires the number and basal area of pitch pine being removed and requiring 3 times the basal area and number of trees to be planted. Added Finding 2 requiring pitch pines to be maintained in perpetuity. He has a condition for access from the north and a condition requiring a pre-construction meeting. Condition 31 requires a fence along the 50-foot buffer while the retaining walls are being installed. Will add Finding 3 regarding no further alteration to the existing native vegetation.

Discussion (8:07) **Golding** – We requested 3 times the number of pine trees.
Engelbourg – In terms of mitigation, his ask was for the area of trees to be cut and trees to be planted to be sent to the Commission.
Golding – Theoretically, couldn't they argue that since it is outside our jurisdiction, they don't have to honor the condition.
Carlson – Since it was part of their proposal, he believes they are bound to honor it.
Golding – There was also to be a preconstruction protocol meeting.
Beale – He wants all construction access to be limited to the north side of the house.
Erisman – She is concerned because that is outside our jurisdiction.
Engelbourg – Asked if we can condition photo monitoring and a survivability criterium for the pitch pine planting area outside our jurisdiction.
Erisman – Asked if it could be called out that they have maxed out alteration within resource buffers and no further construction would be allowed.

Motion **Motion to Approve as amended.** (made by: Engelbourg) (seconded)
 Roll-call Vote Carried 4-2//Beale, Engelbourg, LaFleur, and Phillips-aye/Erisman and Golding-aye

6. Jean-Francios Formela – 8 Old Westmoor Farm Rd (41-822) SE48-3353

Sitting Erisman, LaFleur, Engelbourg, Phillips, Beale
 Documentation Draft Order of Conditions
 Staff Finding is pool is outside ConCom jurisdiction.
 Discussion (8:28) None
 Motion **Motion to Approve as drafted.** (made by: LaFleur) (seconded)
 Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, LaFleur, and Phillips-aye

F. Extension Request

1. Locke – 34B Grove Lane (41-433) SE48-2416

Sitting Erisman, LaFleur, Engelbourg, Phillips, Beale
 Representative Paul Santos, Nantucket Surveyors
 Staff None
 Discussion (8:31) **Santos** – This is the last extension we can request for this order.
 Motion **Motion to Issue one 1-year extension.** (made by: Beale) (seconded)
 Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, LaFleur, and Phillips-aye

G. Public Hearing

1. Amendment of the Town of Nantucket Conservation Commission Wetland Protection Regulations (**Cont. 10/29/2020**)

H. Other Business

- 1. Approval of Minutes 10/01/2020:

Motion (8:31) **Motion to Approve.** (made by: LaFleur) (seconded)

Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, LaFleur, and Phillips-aye

- 2. Discussion of SBPF – 77-122 Baxter Road SE 48-1659; SBPF - 65-67 Baxter Road SE48-1602 **(Cont. 10/29/2020)**

- 3. Reports:

- a. CRAC, Phillips – attended the CRAC meeting for Mr. Golding.

- 4. Commissioners Comment

- a. Erisman – Asked about the Holly Wood Farm property.

- Carlson – We drafted up a letter Town Counsel is looking at and to be served by the sheriff; daily fines will be issued.

- 5. Administrator/Staff Reports

- a. He and Ms. Dodd have a number of enforcement orders to issue out; he'll prepare a mini-packet. Had an incident at 41 Millbrook where a pool was improperly drained. Told the pool company they were no longer allowed to discharge the pool. The Health Department fined them for not wearing masks. Natural Resources and Health Department drafted a discharge regulation in 2017 and been pushing to have those adopted since. That property owner will be issued an enforcement action to bring them before the Commission.

I. Adjournment

Motion **Motion to Adjourn at 8:37 p.m.** (made by: LaFleur) (seconded)

Roll-call Vote Carried unanimously//Beale; Engelbourg; Erisman; LaFleur; and Phillips-aye

Submitted by:

Terry L. Norton