



CONSERVATION COMMISSION

PUBLIC MEETING

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

Thursday, December 1, 2022 – 5:00 p.m.

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

Commissioners: Ashley Erisman (Chair), Ian Golding (Vice Chair), Seth Engelbourg, Mark Beale, Linda Williams, Mike Misurelli, and Joe Plandowski

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

Staff in attendance: Jeff Carlson, Natural Resources Director; Will Dell’Erba, Conservation Agent; Terry Norton, Town Minutes Taker

Attending Members: Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, and Plandowski

*Matter has not been heard

I. PUBLIC MEETING

A. Announcements

B. Public Comment – None

II. PUBLIC HEARING

A. Notice of Intent

(Cont. 05/28/2020)

1. Steven L. Cohen, Trustee – 6 & 11 East Hallowell Lane (30-98 & 17) SE48-3594

Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, Plandowski

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

Representative Mark Rits, Site Design Engineering
Steven Cohen, Cohen & Cohen Law P.C

Public None

Discussion (5:01) **Rits** – At the last meeting there were issues about the proposed deck versus existing conditions. Reviewed the proposal. We could keep the existing deck in place; it’s about 33’ from top of bank. We will reconfigure deck to be 39’ from top of bank and structural footprint reduced to 245sf. This is a net improvement over the existing.

Beale – Asked for the construction details for building a new deck within the 50’ buffer.

Rits – Will remove existing decking and dig new holes and construct decking in previously disturbed are. The cleared area will be replanted with beach grass.

Cohen – We’ll be happy to have conditions that construction takes place outside the 50 and silt fence is in place.

Staff recomm. Have everything needed to close.

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

Vote Carried 7-0//Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye

2. 34B Walsh Street Nominee Trust – 34B Walsh Street (29-104) SE48-3586

Sitting Erisman, Golding, Engelbourg, Beale, Misurelli, Plandowski

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

Representative Brian Madden, LEC Environmental
James Krapp, Studio Ppark

Public Aileen & Maureen Murphy, 40 Walsh Street

Discussion (5:08) **Madden** – We continued this to allow ConCom members to visit the site.

A.Murphy – She and her sister are still opposed to this: we do not believe the 50’ buffer has been properly delineated. Part of the existing is already within the 50’ buffer. We contend this is new construction. We submitted a letter enumerating our concerns. The lawn was maintained for decades and only converted back to wetland vegetation before this NOI was submitted.

M.Murphy – This is a substantial expansion doubling the size of the home within the 50’ buffer. This house could be scaled back and be kept out of the 50’ buffer. We are opposed to granting the waiver for the foundation’s 2’ separation from high groundwater.

Erisman – We received the Murphy’s letter and can condition the project to mitigate concerns.

Krapp – Spoke to the requirement that the structure must be raised. The foundation will be on top of the existing foundation and using helical piers where necessary.

Golding – Asked if the new construction is outside the buffer.

Madden – It is outside the 50’ buffer.

M.Murphy – Regarding Mr. Krapp’s contention it’s outside the buffer, asked how the existing steps, which are within the 50’ buffer, are no longer within the 50’ buffer when this structure now sits much higher.

	A. Murphy – Mr. Krapp’s plans submitted to the Historic District Commission (HDC) showed incorrect buffer zones.
	Erisman – Received assurance that staff looked at the buffer zones and confirmed them.
	Engelbourg – It’s evident that any structural components are outside the 50’ buffer. The existing deck and stairs are clearly slated for removal. Stone pavers aren’t structures and don’t fall under our regulations. Our job is to protect wetlands; if something is suspended over the wetland and doesn’t drain into the wetlands, there is no impact.
	Madden – Reviewed the site plan showing the proposed steps outside the 50’ buffer.
	Erisman – The site plan shows the stairs outside the buffer.
Staff recomm.	We reviewed the wetland boundaries with Mr. Madden on site and reconfigured a couple of flags; the plan in front of you accurately depicts the buffer zones.
	Have everything needed to close.
Motion	Motion to Close. (made by: Engelbourg) (seconded)
Vote	Carried 6-0//Beale, Engelbourg, Erisman, Golding, Misurelli, and Plandowski-aye; Williams recused
3. Kaschuluk	– 27 North Liberty Street (41-453) SE48-3595
Sitting	Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, Plandowski
Documentation	Site and topographical plans, photos, requisite departmental reports, and correspondence.
Representative	Art Gasbarro, Nantucket Engineering & Survey
Public	Margot Montgomery, 33 North Liberty Street Joan Hoyt, 30 North Liberty Street
Discussion (5:28)	Gasbarro – The Commissioners requested additional information; we provided a revised plan showing the species of trees to be removed and the proposed replacement tree for the one closest to the resource area. Erisman – She was surprised to see the proposed structure on 27 North Liberty Street; that wasn’t on the plans at the last hearing. Gasbarro – That is a garage-storage structure. Golding – He had asked if the owners had plans to plant new trees. It bothers him that basically every tree will be removed. Gasbarro – Explained the replacement of the tree closest to the resource area. Beale – He supports removing invasive species, but they are beautiful and mature. Asked if they will be replaced with native trees. Gasbarro – At this time, no. Engelbourg – There are protected interests that must be adhered to; mature trees provide habitat and absorb and contain flood waters. We are within our rights to require replacement plantings to support those interests. Beale – Some of those trees are within the 25’ buffer and removing those big trees will be very disruptive to the resource area. He’s not happy with this plan. Williams – Lately she’s had occasion to run into sycamore maples; they have a short lifespan and are invasive. When they come down, they have to be destroyed entirely. She has no concern with removing them. Erisman – Agrees with Mr. Engelbourg and there is a need for trees to provide habitat and infiltration. Gasbarro – The owner is amenable to replacing the trees on a 1-to-1 basis with 3” caliper trees. Beale – Mr. Gasbarro just alleviated his concerns. Montgomery – The mature trees are a big concern for the neighborhood. The cherry trees are beautiful, and their placement might be more of the problem. Replanting them would help but you’re tearing out mature trees. She’s confused about the designated lots involved. Erisman – There are 2 submittals to us as 27 North Liberty Street and 29 North Liberty Street. Montgomery – She sent photos of the back area of 27 North Liberty Street; it shows that the delineated wetland goes around the wet part of the property. Asked where that 50’ line comes from. Gasbarro – We’re taking the buffer zone from the line shown on the plans. Explained why he doesn’t think an expansion of the wetland would be a material difference. Montgomery – The garage seems to be visually invasive. Erisman – We don’t look at aesthetic; we protect the resource areas. We would like to see invasive trees replaced with native trees. Explained why the cherry trees are not appropriate. Hoyt – The back of the property is very wet. A previous owner tried to fill in the wet area and get more lawn. Asked that the Commission to look at the historic wetland boundaries; thinks they will find that what is now labeled as lawn is in fact wetland. Erisman – Wetlands do shift. Nantucket also has a history of filled land; that’s why we look at soil. Asked if staff has confirmed the wetland boundaries. Hoyt – The idea of cutting down all those trees is very disturbing. It will change the character of our historic neighborhood. Regarding what is and is not wet, she would verify that it’s a pond whenever there is any rain.
Staff recomm.	We assessed the wetland boundary, and everything is accurately portrayed on the plans.
	Have everything needed to close.
Motion	Motion to Close. (made by: Williams) (seconded)
Vote	Carried 7-0//Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye

4. Nanticut Realty Trust – 29 North Liberty Street (41-486) SE48-3596
- Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, Plandowski
- Documentation Site and topographical plans, photos, requisite departmental reports, and correspondence.
- Representative Art Gasbarro, Nantucket Engineering & Survey
- Public None
- Discussion (5:55) **Gasbarro** – Much of this was covered in the discussion for 27 North Liberty Street. No additional comments.
- Staff recomm. Have everything needed to close.
- Motion **Motion to Close.** (made by: Golding) (seconded)
- Vote Carried 7-0//Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye
5. * Easton Street, LLC – 55 Easton Street (42.4.1-86) SE48-3590
- Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, Plandowski
- Documentation Site and topographical plans, photos, requisite departmental reports, and correspondence.
- Representative Brian Madden, LEC Environmental
- Public R.J. Turcotte, Nantucket Land Council
- Discussion (5:56) **Madden** – This is to raise and relocate an existing structure with an addition and decks and stairs with flood vents. Flood zone elevation is 7. This is within land subject to coastal storm flowage and an isolated vegetated wetlands on the property to the north. Portions of the structure occur within the 50’ buffer and a waiver has been requested. It is likely the foundation will be within 2’ of high ground water. Have proposed perimeter infiltration areas. Previously disturbed areas will be returned to existing conditions.
- Golding** – There are no delineations of the wetland boundaries.
- Madden** – The isolated vegetated wetlands was picked up after the initial submission and added. It’s a pocket wetland filled with phragmites.
- Golding** – We are going back and forth about construction within the 50. Asked what the mitigating factors are.
- Madden** – Conditions are outside the control of the applicant. The structure is being moved away from the isolated vegetated wetlands and will comply with flood-zone standards.
- Engelbourg** – In terms of the shed, asked if it will be elevated as well; if not, it should be.
- Madden** – Not sure how the building code handles that; it might just have flood vents. Will accept a condition that there be no storage of hazardous materials. It will be slightly elevated on sono-tubes.
- Engelbourg** – It should not inhibit absorption or flow of flood waters. He’s not sure the waiver under Section B is applicable; that seems to pertain to roadways. He’s concerned it might set an example for all off-site wetlands that an altered buffer doesn’t apply to their property.
- Madden** – If the commission is uncomfortable with that waiver, long-term net benefit could be applied.
- Beale** – Our plan doesn’t have the wetland delineations on it. Asked if they considered moving the house forward out of the 50’ buffer.
- Madden** – You might run into HDC issues moving the house closer to the road; as proposed it lines up with abutting structures to the west and east.
- Beale** – It might be hard to allow such substantial construction within the 50’ buffer.
- Turcotte** – Asked if this will result in a reduction of structure within the buffer.
- Madden** – It is moving farther away from the northerly jog in the buffer.
- Erisman** – She’s interested in the dimensions of reduction to help ascertain the amount of reduction.
- Golding** – He shares that concern. He’d like to see justification for the waiver.
- Madden** – Asked for a continuance to allow the comparison.
- Staff recomm. They could probably make a case under all three waiver exemptions.
- Motion Continued to December 22.
- Vote N/A
6. *36B Lily Street, LLC – 36B Lily Street (42.4.3-94) SE48-3597
- Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, Plandowski
- Documentation Site and topographical plans, photos, requisite departmental reports, and correspondence.
- Representative Brian Madden, LEC Environmental
- Sarah Alger, Sarah F. Alger P.C
- Dan Bailey, Pierce Atwood
- Public Arthur Reade, Reade, Gullicksen, Hanley, & Gifford LLP, for the Loweys at 40 Lily Street
- Sarah McLean, 6 Gull Island Lane
- Rachel Freeman, Nantucket Islands Land Bank
- Tom Lowey, 40 Lily Street
- Discussion (6:13) **Madden** – This is for a new single-family dwelling, secondary structure, and appurtenances. Reviewed the permitting history of 36 Lily Steet. Presented this new proposal. This is observed land subject to flooding, not a FEMA designated flood zone. Proposing mono-slab foundation with helical piles. Proposed runoff will be redirected to subsurface infiltration. Allocated a 15’ buffer between the structure and the property line to allow for an easement. We have pre-developed conditions between he resource areas and proposed work. Conditions will be an improvement. Submitted a landscape plan. This has been designed to avoid negative impact to the resource areas; alternatives were ascertained to be more intrusive to high ground water.

Engelbourg – Reminded everyone that no prior decisions ties the current commission into a way of acting. The realities of this site have changed since 2017, given the updated wetland delineation. He objects to the structure proposed within the 50’ foot buffer; it should be redesigned outside the buffer. Regarding the possible renovation of the existing structure, it’s in a very dilapidated state; he has concerns that trying to move it could result in a wholesale rebuild. The site is being almost completely built out including paving and decking at grade. It will influence the property’s ability to retain water. Doesn’t see the justification for a gravel driveway; there’s a benefit to considering alternative technologies.

Golding – Asked if the Way was temporary and has become permanent. At one time there was just a car track going down there. When it was sold, it was leveled, and crushed material put laid down.

Beale – He too is concerned about the density of build out especially within the 50’ buffer. This needs to be scaled back and pulled out of the 50’ zone.

Erisman – Agrees with concerns about it being within the 50’ buffer and the density exacerbating issues. She’d like to see a reduction in scope and keeping the wetland buffers intake.

Engelbourg – Appreciates the landscaping plan; however, the quantity needed to offset the loss of the land’s ability to infiltrate water is nowhere close to what would be needed.

Reade – Mr. Engelbourg’s initial comments laid out his clients’ concerns. This is a new application and should be so treated, especially with what we know about the wetlands. The area, which is to be used to access the lot during construction, is entirely within the 50’ buffer and could extend into the 25’ buffer; that is also where any staging of material would take place. We’re looking at a site with difficult hydrology; work in this area will have a negative impact on that. There’s room enough for a smaller project outside the 50’ buffer.

McLane – Regarding the crushed stone, the applicant put that in, and there was a requirement that it all be removed. Dewatering on this site has been and will be a problem. We would like a smaller scale project that doesn’t encroach.

Freeman – Similar to what’s been said, we feel that this is a full build out where the area is not good for that. Putting any structure within the 50’ buffer to the isolated vegetated wetlands isn’t a good idea. Agree that gravel is not as pervious as grass. Request the Commission not allow the waivers.

Lowey – Agrees with everything said in objection to this project. Since the foundations and hard-packed surface went down, our property has gotten wetter.

Bailey – The commission previously approved this exact project; though you aren’t bound by the prior board, you can’t ignore them. Delineations have changed; there’s 170-something feet within the 50’ buffer. There’s no final resolution to the litigation pending in court. Nothing has changed from the prior approval.

Golding – The difference between the old and new wetland boundaries is significant.

Alger – The Way has always been something that would remain for access. My clients didn’t create the wetland problem; it is an on-going issue and we worked with the Town to ameliorate the issues.

Madden – Asked for a continuance.

Staff recomm. The Way leading down has always been in place and been some mixture of dirt and gravel.

Motion Continued to December 22.

Vote N/A

7. *Sylvia – 63 Tennessee Avenue (59.4-103) SE48-3599

Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, Plandowski

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

Representative David M. Haines, Haines Hydrogeologic Consulting

Public None

Discussion (6:50) **Haines** – This is to replace the septic with a new leach field and I/A system. All work is outside the 100’ buffer to a bordering vegetated wetlands across Tennessee and North Cambridge Street. The lot is entirely within land subject to coastal storm flowage. The leach field will have to be mounded. Tanks have to go in at or near the seasonal high-water table and will probably require dewatering during construction. Asking for a waiver for placement of the septic within land subject to coastal storm flowage with overall net benefit.

Staff recomm. Staff has reviewed the site.

Have everything needed to close.

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

Vote Carried 7-0//Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye

8. *Halle & Lamm – 24 Pilgrim Road (41-94) SE48-3600

Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, Plandowski

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

Representative Leo Asadoorian, Blackwell & Associates

Public None

Discussion (6:54) **Asadoorian** – This is an extension of a previous NOI for an in-fill addition, a 10X16.5 cedar pergola over a stone patio, and a 24X10 privacy fence. We aren’t going any closer to the wetland.

Engelbourg – He is concerned about the proposed fence that extends south past the 50’ buffer zone; a board fence is considered a structure and should end before the 50’ buffer.

Staff recomm. Have everything needed to close.

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

Vote Carried 7-0//Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye

9. *Kaizer Realty Trust – 43 Millbrook Road (56-233) SE48-3601	
Sitting	Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, Plandowski
Documentation	Site and topographical plans, photos, requisite departmental reports, and correspondence.
Representative	Brian Madden, LEC Environmental
Public	None
Discussion (7:00)	Madden – This is for construction of a garage with 130 sf within the 50’ buffer to a wetland. The limiting factors are the side property line and 10’ separation for the existing leach field. Proposing subsurface infiltration and a 1040 sf invasive species management area with planting of high-bush blueberry and bayberry. There is no habitable space; it’s for storage only. Golding – It looks like it’s 30’ from the west boundary rather than 10’. He thinks it could be fully outside the 50’ buffer. Madden – There is a soil absorption system; doesn’t think there’s any other place for it. Golding – The aerial photo shows cars parked on top of the absorption system. He’s getting frustrated with constant requests to build within the 50’ buffer. Engelbourg – He agrees. The setback is 10’ minimum to the soil absorption system, asked whose requirement that is. Madden – Title V and Board of Health (BOH). Engelbourg – Asked they consider a different foundation system or ask for a waiver. The mitigation proposed is nice but it’s the result of historic mismanagement of the property. He objects to the proposed location. Erisman – She agrees with Mr. Engelbourg and Mr. Golding. Asked if they considered revegetating the wetland where there appears to be a lot of lawn area. Madden – Asked for a continuance.
Staff recomm.	None
Motion	Continued to December 22.
Vote	N/A
10. *Purcell – 32 Dukes Road (56-188) SE48-3602	
Sitting	Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, Plandowski
Documentation	Site and topographical plans, photos, requisite departmental reports, and correspondence.
Representative	Brian Madden, LEC Environmental
Public	None
Discussion (7:09)	Madden – This is for a secondary structure, reconfigure the driveway, and landscape improvements. A portion of the proposed structure occurs within the 50’ buffer to an isolated vegetated wetlands on the easterly abutting property. Requesting a waiver under Section B. Footing will be within 2’ separation to high groundwater. As designed, we feel it will not pose a negative impact to the resource area. Engelbourg – He’s not sure the specific waiver request is applicable. He has concerns about the proposed northerly retaining wall which is entirely within the 50’ buffer; it would be easy to have a non-structural element there. He’s not pleased with the location of the proposed dwelling; there is suitable space to build a similar dwelling outside the 50’ buffer. Golding – Agrees with Mr. Engelbourg. Appreciates that the plans are drawn very comprehensively. Madden – The applicant would be willing to remove the retaining wall at the end of the driveway. Engelbourg – Appreciates removing that wall. He reiterates his point that there’s suitable space to change the secondary dwelling layout. If they are unwilling to do that, we need to delve into the applicability of the waiver request or a more appropriate waiver. Madden – We can offer that along the east property line where there’s Japanese knotweed and porcelain berry, we can remove that and replace it with native species. Golding – The basement stairs will have walls; that is construction within the 50’ buffer. Engelbourg – He assumes the elevation of the neighboring parcel is lower than the subject property. Any blockage of water movement will affect those wetlands. They can prevent impact to that wetland and need to justify that. Madden – We can bolster the no reasonable alternative/net benefit waiver. About the basement access, that will have a gravel base to it with a perimeter wall; rainwater will be able to infiltrate. Asked for a continuance.
Staff recomm.	Regarding the Section B waiver, we’re looking at how impacts affect the resource areas; if something impacts directly, we look at the Section B waiver. That is something the Commission needs to assess.
Motion	Continued to December 22.
Vote	N/A
11. *Garran – 36 Pocomo Road (14-79) NAN-137	
Sitting	Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, Plandowski
Documentation	Site and topographical plans, photos, requisite departmental reports, and correspondence.
Representative	Brian Madden, LEC Environmental
Public	None
Discussion (7:23)	Madden – This is for a pool with an autocover and landscaping: retaining wall and adjoining patio. Work is within existing lawn area and outside the 50’ buffers. The bottom of the 6’ deep pool will maintain a 2’ separation from groundwater. No waivers requested.
Staff recomm.	Have everything needed to close.

Motion	Motion to Close. (made by: Williams) (seconded)
Vote	Carried 7-0//Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye
12. *Trustees of Eel Point Nominee Trust – 77 Hummock Pond Road (56-311) SE48-3603	
Sitting	Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, Plandowski
Documentation	Site and topographical plans, photos, requisite departmental reports, and correspondence.
Representative	Paul Santos, Nantucket Surveyors
Public	None
Discussion (7:26)	Santos – Original home is circa 1961. Resource area is a bordering vegetated wetlands flowing westerly along the site. The proposal is to demolish the existing and construct a similarly sized dwelling. We would remove about 100 sf within the no-build, reconfigure the driveway outside the no-build, and hand remove all debris within the 25' no disturb and allow that area to naturally revegetate. It's connected to existing septic; the intent is to abandon that system and connect to Town sewer. Groundwater is at 4.5'; we do not intend to ask for a basement. Asked for Waivers for work within the 50' setback, removal of debris within the 25' buffer with long-term net benefit. Golding – You are asking for about 400sf and 500 sf of construction within the no-build; he would have to say no. Engelbourg – Agrees with Mr. Golding. We aren't bound by past decisions. Raze and rebuild projects qualify as new construction. There seems to be a way to put the new dwelling outside the 50' buffer. He would allow debris removal from within the 25' buffer; but since it was historically a garden, he thinks it should be restored with native species rather than be allowed to revegetate itself. Beale – This is a challenging one for us; there might be a case to consider a waiver from Zoning for a minor intrusion into the front-yard setback. Erisman – She echoes the concern of new development within the 50' buffer. Maybe the garage should be eliminated so the main dwelling can be shifted outside the 50' buffer. Santos – This would be replacement of an existing structure already within the 50' buffer; I could renovate it in its current spot, but it that might not be possible. The zoning setbacks leave a limited amount of area; there would still be some portion of this within the 50' buffer. Suggested adding this to the site visit list. Engelbourg – He'd be happy to go look at it. If the current structure is renovated in place, that falls under pre-existing use. A raze and rebuild is considered new construction and so no new construction within the 50 comes into play. You can renovate it in place or build a compliant structure outside the 50'. Beale – Asked how many square feet are outside the 50 discounting the area east of the eastern garage wall. Santos – We have some feedback now. There are different options to look at. Asked for a continuance.
Staff recomm.	None
Motion	Continued to December 22.
Vote	N/A
13. * Westmoor Club, LLC – 10 Westmoor Lane (41-809) SE48-3604	
Sitting	Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, Plandowski
Documentation	Site and topographical plans, photos, requisite departmental reports, and correspondence.
Representative	Paul Santos, Nantucket Surveyors
	Steven Cohen, Cohen & Cohen Law P.C
Public	Anne Farrell, 94 Cliff Road
	Jane Ibrahim Gaito, 92 Cliff Road
	Randy Holland, 30 Pilgrim
Discussion (7:45)	Santos – This for construction of a SFD for use by Club management with a small garage/maintenance building. Resource areas are BVW and the limit of a certified vernal pool; we've delineated those. The vernal pool has a 75' no build and 50' no disturb setbacks. This would be connected to municipal sewer and water. We do not believe we need a waiver for groundwater separation. Site elevation is 22 at the highest with the vernal pool at elevation 8 and groundwater at 10. Might have to remove a black locust. Some abutters reached out to staff and my office; we provided information and plans. Farrel – Mr. Santos didn't describe the grade drop between Westmoor Club and Cliff Road; any disturbance will force water into my property. There is no access road to this site. They have a fence around this that runs through the wetlands. The vernal pool was mapped when 96 Cliff Road was built 10 years ago; water has increased in my back yard in just 4 years. Santos – Access will be via a driveway from Westmoor Lane and run right of the clubhouse. The silt fence is a construction measure to protect the wetland from erosion. We marked the mean high water for the vernal pool to establish its limits. We also delineated the bordering vegetated wetlands. Gaito – She has the same concerns as Ms. Farrell. The water has changed significantly; construction impacts the water table. Golding – The aerials show a lot of mature trees; asked if they will be cut down. Santos – No, they are at the edge of the lawn; the only one that might be compromised is the black locust to the north. Engelbourg – Regarding water runoff, we can condition that is directed away from the resource area or require plants to eliminate some concerns.

	Erisman – A YouTube question from Kara I& Cabell Madux, 26 Pilgrim Road, they ask if the dwelling is 50’ away and the purpose of the garage and if there hedging plans for screening.
	Holland – He too is concerned about the purpose of this development and how it will impact the wetland. If you visit the site, you will see there is very little room between the trees. We count on those trees to protect us from the Club’s outdoor activities. There was cursory mention of regrading and landscaping.
	Erisman – We can condition against use of fertilizer around this structure.
	Santos – Explained to the north the grade would be manipulated for construction of the home. We do have subsurface drainage to handle runoff from the court; we will do that for any roof runoff.
	Holland – there is a large difference between the elevation of the house and the wetland and surrounding homes. Asked if the landscape would dominate.
	Santos – Everyone who got notices for this meeting got notice for the Planning Board and the HDC. The mean high water is at elevation 8, which is the elevation of the vernal pool; the wetland is at elevation 10.5; the court is at elevation 22, which is very close to the elevation of the street. The house will be around elevation 24.
	Farrell – They are planning to move the tennis court fence in 3.5’ to allow room for the house.
Staff recomm.	The setback is the 75’ vernal pool setback. This project is outside the 75’ setback Have everything needed to close.
Motion	Motion to Close. (made by: Williams) (seconded)
Vote	Carried 7-0//Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye
14. *Siasconset	Beach Preservation Fund – 41-119 Baxter Road (multiple) SE48-3598
Sitting	Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, Plandowski
Documentation	Site and topographical plans, photos, requisite departmental reports, and correspondence.
Representative	Steven Cohen, Cohen & Cohen Law P.C Vince Murphy, Natural Resources Town of Nantucket
Public	None
Discussion (8:16)	Erisman – It’s important for the commission to discuss hearing limits. We have dueling opinions from different counsel; Select Board hasn’t authorized ConCom Special Municipal Counsel. She’d like us to have counsel for that discussion. Golding – He would like to discuss Dennis Murphy’s letter; it seems he makes it clear why we shouldn’t hear this at all. The removal order’s final date is December 5 th . The Select Board has so far ignored pressing matters for which we need counsel. Williams – She doesn’t agree with Mr. Murphy’s letter. If the application has materially changed, then it is not barred from being heard. She would like to take a position to extend the removal period. We would have to make a Finding that it is materially different. She’s confused: when we sued for non-compliance, it was never a denial so she’s not sure the rehearing issue has validity. Would like to discuss this in a special meeting. Engelbourg – He didn’t watch the Select Board meeting. Asked for a synopsis of what occurred regarding counsel. Erisman – They didn’t say no but asked for specific questions that require us to have special counsel. Engelbourg – It’s important to keep discussion related to new notice and the enforcement separate; they could play out to one or separate conclusions. Regarding the rehearing limit, he reread the Wetland Bylaw and he doesn’t think the rehearing limit applies in this case; it applies only to application permit waivers. Plandowski – We’re being told the Select Board didn’t approve us to have special counsel for the NOI. Not having counsel could lead to problems. Erisman – They didn’t say no nor did they say yes. Golding – The letter, which we sent asking for Ben Tyman to continue as our counsel, said that we would consider an extension of the removal if SBPF and Town came forward with an application that didn’t include an extension. They did the opposite and the letter was ignored. Beale – We have conflicting legal opinions; he doesn’t think we can hear it without legal counsel on the repetitive issue. Misurelli – Ms. Erisman did an excellent job at the Select Board meeting; recommend everyone watch it. Engelbourg – He would love counsel’s opinion on a rehearing. We have a regulatory responsibility to hear applications that come in. If we choose not to open the hearing, he wants to be sure we are not setting up for a constructive approval. Williams – Anybody can make an application for what they want whether you like it or not. She’s upset about comments that if they didn’t do XYZ, they can’t put in an application because that’s illegal. Erisman – She sees a valid argument in Dennis Murphy’s letter. It has nothing to do with the extension of the removal order. We have a conflicting letter from the other side. That is worthy of discussion; it’s also why independent counsel is necessary. Cohen – On behalf of the applicant, the idea of a continuation to resolve the issue of counsel and have a hearing in December is acceptable to the applicant. Review of the open dates for special meetings. Golding – Asked what the removal schedule is at this point. Erisman – We should talk about that under its posted item. Engelbourg – We have to make sure that the request to continue comes from the applicant. Erisman – January 12 th would give reviewers enough time. Asked if that date would be okay with Mr. Cohen.

	Cohen – Administratively it would make sense to meet in December to set the schedule. Okay with January 12 th for a substantive discussion.
	Murphy – That’s okay from the Town’s point.
	Engelbourg – Asked if we could tell the Select Board that in light of a meeting on December 15 th , we need a decision on independent counsel by December 14 th .
Staff recomm.	This is the point at which you could discuss a hearing limit and all the special hearing dates. This is exactly the kind of question that the Select Board wanted. There’s a little bit of middle ground. We can get a legal opinion if the hearing limit applies, a 3rd-party review, and continuing this discussion at the applicant’s request to a date certain; we can compile both the legal opinion and a full technical review to have a more well-rounded discussion. At this point, we’ve heard concern about the rehearing limit. It would be wise to schedule a special meeting set to a date certain and have a complete discussion. He has the off weeks through April. Reviewed those dates. January 12 th would be good for a substantive hearing. Suggested a special meeting on December 15 th . One option we have is that he can put together a supplementary request and ConCom could authorize the chair to review and send to Town Administration and Select Board by Monday, December 5 th at the latest. It would get on their radar and let them know what the dates are. You could authorize the drafting to impress upon them that it would be good to have that opinion for a hearing on December 15 th .
Motion	Motion to Authorize staff to draft a letter to the Select Board and Town Administration explaining ConCom’s need for independent counsel by December 14th. (made by: Beale) (seconded)
Vote	Carried 7-0//Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye Erisman – Opened the SBPF hearing at 8:46 pm. Dunk – We agree to the continuance as discussed to December 15 th .
Staff recomm.	Asked that anyone with comments get those in in writing as early as time so they can be distributed and reviewed.
Motion	Continued to December 15 th .
Vote	N/A
	B. Public Hearing
	1. SE48-2824 SBPF Geotube Removal Enforcement Order – Discussion of Extension Request
Sitting	Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, Plandowski
Documentation	Letter, requisite departmental reports, and correspondence.
Representative	Dwight Dunk, Epsilon Associates Inc. Vince Murphy, Town of Nantucket
Public	None
Discussion (8:51)	Carlson – The original removal order required a 60-day limit for removal; that date is December 5 th , which is 4 days away. SBPF has filed for an extension. Williams – Asked if this is where we would give them 60 days while we work through issues. Asked if there was a list of what SBPF would have to produce before we granted an extension. Erisman – That would merit an extension. Carlson – Summarized the terms of conditions for extension. Term Nr. 2 included the provision that any applicant could submit an NOI. Engelbourg – Since the applicant hasn’t submitted an NOI, which meets the classification laid out in the letter, we should require them to submit the plan indicating how the removal process would proceed. The other NOI process can be carried out separately, but we still need that plan from SBPF in place with proper geotechnical assessment and removal protocols. He does support limited time extension to produce that document. He wants to ensure safe removal should the array have to be removed. He doesn’t support a 60-day extension. Plandowski – He doesn’t support 60-days or more either. Golding – He agrees. Erisman – Also agrees; a 30-day extension is warranted for SBPF to come up with the removal plan. Williams – Asked if past the proposed January 12 th meeting date would be okay. Misurelli – With the holidays, 30 days could be difficult to meet. Carlson – Suggested this be an agenda item for progress review. Engelbourg – He’s amenable to a January 12 th continuance but not for a check in; the document must be presented at that time. Carlson – It might be good to ask those present where they are in that process. Murphy – The Town has been working on this with SBLPF and required they develop this document. It’s difficult to get this planning under way. SBPF has engaged a geotechnical engineer; he understands the risk to the road should removal happen. Cohen – The comment that you could cut the bags open, have the sand come out, and remove the bags was made in comparison to a rock revetment. Simply ripping out the geo-tubes is not advisable. We want to remove them safely, prudently, and without undermining the road and houses. Mark Haley from Haley and Aldridge has been retained to undertake a geotechnical assessment; he’s already familiar with the Town. Engelbourg – It’s important to move forward with this document independent of what happens in the future.

Motion	Motion to Extend the removal deadline to January 12, 2023 pursuant to a requirement that a proper removal document including a removal protocol showing a safe way to remove the tubes safely and in a timely manner be provided to the Commission before that hearing date. (made by: Engelbourg) (seconded)
Vote	Carried 7-0//Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye
C. Amended Order of Conditions	
1. Stark Point, LLC – 16 Easton Street (42.1.4-11) SE48-3566	
Sitting	Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, Plandowski
Documentation	Site and topographical plans, photos, requisite departmental reports, and correspondence.
Representative	Paul Santos, Nantucket Surveyors
Public	None
Discussion (9:11)	Santos – This is for justification for a subsurface vault within the foundation system in land subject to coastal storm flowage. Reviewed plans to mitigate the 274sf vault. The expanded gravel area would be below an elevated deck; it would normally be grass but will be 12” thick gravel; that area is what would be displaced for the vault area.
Staff recomm.	Recommend issuing.
Motion	Motion to Issue. (made by: Golding) (seconded)
Vote	Carried 7-0//Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye
2. Phillips – 19 East Tristram Avenue (31-4.1) SE48-3304	
Sitting	Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, Plandowski
Documentation	Site and topographical plans, photos, requisite departmental reports, and correspondence.
Representative	Paul Santos, Nantucket Surveyors
Public	Brian Madden, LEC Environmental, for 2 & 4 Thresher Way
Discussion (9:20)	Santos – The dwelling was recently lost to fire; the foundation will need to be replaced. We still have a valid Order of Conditions and will have to request an extension. This amendment is for adding a subsurface drainage system within the driveway and to extend an existing drainage pipe by 10 feet for improved vehicle access. This is within buffer to an off-site bordering-vegetated wetlands. There is a non-jurisdictional ditch. Explained mitigation steps and incorporated those into the plan to mitigate neighbor’s concerns. Madden – Thanked Mr. Santos for including drainage improvements his clients requested.
Staff recomm.	Recommend issuing.
Motion	Motion to Issue. (made by: Williams) (seconded)
Vote	Carried 7-0//Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye
III. PUBLIC MEETING	
C. Minor Modifications	
1. None	
D. Requests for Determination of Applicability	
1. None	
E. Certificates of Compliance	
1. Holdgate – 26 Monomoy Road (54-16) SE48-3403 (Santos)	
Sitting	Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, Plandowski
Representative	Paul Santos, Nantucket Surveyors
Staff	Recommend with on-going conditions for maintenance and operation of a pool.
Discussion (9:27)	None
Motion	Motion to Issue with ongoing conditions relating to pool. (made by: Plandowski) (seconded)
Vote	Carried 7-0//Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye
F. Orders of Condition	
1. Steven L. Cohen, Trustee – 6 & 11 East Hallowell Lane (30-98 & 17) SE48-3594	
Sitting	Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, Plandowski
Documentation	Draft Order of Conditions
Staff	Conditions 18, 19, 20, & 21
Discussion (9:29)	Engelbourg – That isn’t the updated Condition 19; we’ve been adding that invasive species must be removed and disposed of properly.
Motion	Motion to Issue as amended. (made by: Williams) (seconded)
Vote	Carried 7-0//Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye
2. 34B Walsh Street Nominee Trust – 34B Walsh Street (29-104) SE48-3586	
Sitting	Erisman, Golding, Engelbourg, Beale, Misurelli, Plandowski
Documentation	Draft Order of Conditions
Staff	Conditions 18, 19, & 20.
Discussion (9:33)	Misurelli – Asked if we should add monitoring. Erisman – Asked if we could have Condition 20 as on-going. Engelbourg – He’s not sure that’s how the process works; the Order of Conditions has 3-years then the Certificate of Compliance covers on-going conditions. Asked to add a condition about lighting.
Motion	Motion to Issue as amended. (made by: Misurelli) (seconded)
Vote	Carried 6-0//Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski-aye; Williams recused

3. Kaschuluk – 27 North Liberty Street (41-453) SE48-3595
 - Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, Plandowski
 - Documentation Draft Order of Conditions
 - Staff Conditions 18, 19, 20, 21, & 22. You talked about the 1-to-1, 3” caliper replacements. Will add a stump-griding condition.
Could condition that all cut trees are replaced by a Tupelo or similar native species; that gives them the option for variety.
 - Discussion (9:38) **Erisman** – We want the sycamores removed but the mature trees require replacement.
Misurelli – Mr. Rits made a point about removing the stumps.
Engelbourg – Debris should be removed, or stumps should be cut to ground level. With the 1-to-1 replacement, should require a 3” caliper minimum. In terms of survivability, should call out survival monitoring and replant trees that don’t survive.
Discussion about asking for diversity of trees.
 - Motion **Motion to Issue as amended.** (made by: Golding) (seconded)
 - Vote Carried 7-0//Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye
4. Nanticut Realty Trust – 29 North Liberty St (41-486) SE48-3596
 - Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, Plandowski
 - Documentation Draft Order of Conditions
 - Staff None
 - Discussion (9:45) **Erisman** – We want the same conditions and amendments as for 27.
 - Motion **Motion to Issue as amended.** (made by: Misurelli) (seconded)
 - Vote Carried 7-0//Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye
5. Sylvia – 63 Tennessee Avenue (59.4-103) SE48-3599
 - Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, Plandowski
 - Documentation Draft Order of Conditions
 - Staff Conditions 18 & 19.
 - Discussion (9:46) None
 - Motion **Motion to Issue as drafted.** (made by: Plandowski) (seconded)
 - Vote Carried 7-0//Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye
6. Halle & Lamm – 24 Pilgrim Road (41-94) SE48-3600
 - Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, Plandowski
 - Documentation Draft Order of Conditions
 - Staff Conditions 18 & 19 with 19 amended for debris being properly disposed of offsite. Add a Condition keeping fence out of 50’ buffer
 - Discussion (9:47) **Engelbourg** – The fence was not supposed to extend into the 50’ buffer
 - Motion **Motion to Issue as amended.** (made by: Engelbourg) (seconded)
 - Vote Carried 7-0//Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye
7. Garran – 36 Pocomo Road (14-79) NAN-137
 - Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, Plandowski
 - Documentation Draft Order of Conditions
 - Staff Conditions 18, 19, 20, 21, 22, & 23.
 - Discussion (9:49) **Erisman** – In the Permit Overview, we could say this permit doesn’t allow landscape changes.
 - Motion **Motion to Issue as amended.** (made by: Misurelli) (seconded)
 - Vote Carried 7-0//Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye
8. Westmoor Club, LLC – 10 Westmoor Lane (41-809) SE48-3604
 - Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, Plandowski
 - Documentation Draft Order of Conditions
 - Staff Conditions 18 & 19. Will include the vernal pool into the overview. Will add conditions regarding roof runoff and no fertilizer.
You could add a Finding that the mature trees and canopy are important to wildlife habitat and maintenance of wetland scenic views.
 - Discussion (9:51) **Golding** – Need to include the roof runoff.
Misurelli – Asked if we could condition replacing the foliage.
 - Motion **Motion to Issue as amended.** (made by: Wililams) (seconded)
 - Vote Carried 7-0//Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye
- G. EXTENSION REQUEST**
 1. None
- H. Other Business**
 1. Approval of Minutes 11/10/2022:
 - Motion **Motion to Approve as drafted.** (made by: Engelbourg) (seconded)
 - Vote Carried 7-0//Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye

2. Discussion of Regulatory Update

Discussion (9:57) **Carlson** – Got input from Island watermen; we can go over land under the ocean at the next discussion. He’s been asked to attend the next Select Board meeting to update them on the regulations update.

Erisman – Suggested adding something about how our bylaws are constructed to forego any manipulation of our process.

Engelbourg – The one thing that he hasn’t seen updated is the discussion of extending buffer zones out: 25 to 50 no disturb and 50 to 75 no build. He’s advocated for that several times with scientific reasoning. It should be part of the Select Board presentation.

3. Enforcement updates

Sitting Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, Plandowski

Discussion (10:02) **Carlson** – Sent out to property owners notifications about snow fences on the beach.

Motion No action at this time.

Vote N/A

4. Reports:

a. CRAC, Golding

5. Commissioners Comment

a. None

6. Administrator/Staff Reports

a. None

I. Adjournment

Motion **Motion to Adjourn at 10:07 pm.** (made by: Williams) (seconded)

Vote Carried 7-0//Beale, Engelbourg, Erisman, Golding, Misurelli, Plandowski, and Williams-aye

Submitted by:

Terry L. Norton