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CONSERVATION COMMISSION MINUTES

131 Pleasant Street
Nantucket, Massachusetts 02554
www.nantucket-ma.gov
Thursday, June 5, 2025 – 5:00 p.m.

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

<https://youtube.com/live/mFKIKKWiPcQ>

Commissioners: Seth Engelbourg (Chair), Linda Williams (Vice Chair), Tim Braine, Mike Misurelli, Joe Plandowski, John Schafer, and RJ Turcotte

Called to order at 5:00 p.m. by Chair Engelbourg

Staff in attendance: Jeff Carlson, Natural Resources Director, Will Dell'Erba, Conservation Agent
Attending Members: Engelbourg, Braine, Misurelli, Schafer, Turcotte, and Williams, Plandowski (arrives at 5:18pm)
Absent Members: Plandowski
Members Left Early: -

I. Acceptance of the Agenda

Motion	Motion to accept Agenda (Made by: Misurelli) (Seconded by: Schafer)
Vote	Vote Carried: 7-0 Engelbourg, Braine, Misurelli, Schafer, Turcotte, and Williams (aye)

II. Public Comment

Chair Engelbourg called for public comment

Public Comment (00:02:33)	none
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III. Public Hearing

A. Notice of Intent- No Waiver Required: Pre-January 1st Submissions (none)

B. Notice of Intent- No Waiver Required

1. Nantucket Islands Land Bank- Smooth Hummocks Way (82-30) SE48-3893

Action:	CONTINUED UNTIL JUNE 26TH
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2. *East Lincoln Ave Realty Trust- 16 Walsh Street & 2 East Lincoln Avenue (42.4.1-50 & 50.1) SE48-3906

Motion:	Motion to close (Made by: Braine) (Seconded by: Williams)
Vote:	Carried://6:0 Engelbourg, Braine, Misurelli, Schafer, Turcotte, and Williams (aye)

3. *Town of Nantucket & Nantucket Pond Coalition- Hummock Pond (various) SE48-

Action:	CONTINUED UNTIL JUNE 26TH
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C. Notice of Intent- Waiver Required: Pre-January 1st Submissions

1. Sconset Beach Preservation Fund- 59-83 Baxter Road (various) SE48-3759

Action:	CONTINUED UNTIL JUNE 26th
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2. The Summer House of Nantucket Realty Trust- 10 & 16 Ocean Avenue (73.2.4-15, 23, & 21) SE48-3824

Action:	CONTINUED UNTIL JUNE 26TH
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3. West Ashored LLC- 62 Wanoma Way (92-16) SE48-3869

Action:	CONTINUED UNTIL JUNE 26th
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D. Notice of Intent- Waiver Required

1. *ACK TU LLC- 14 Plover Lane (12-53) SE48-3905

Sitting:	Engelbourg, Braine, Misurelli, Schafer, Turcotte, and Williams
Recused:	---
Representatives:	Brian Madden, LEC Environmental
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Public Comment:	Glenn Wood, Rubin and Rudman LLP
Discussion: (00:05:12)	Madden - This project is the coalition of bringing forward the restoration plantings into a Notice of Intent. We've presented the restoration plan to other prior meetings. - All of the plantings have been installed, and the deer fencing has mostly been installed along with the irrigation set up. - The purpose of this NOI is to memorialize the monitoring obligations and the survivorship of the expectations of the plantings. - The applicant had submitted a monitoring schedule along with invasive species management. Engelbourg - Doesn't have any issues with what's been presented in the narrative or plans for the Notice of Intent. - Encourages the Commission to think about any additional conditions needed to satisfy appropriate adherence to the performance standards for this project. Schafer - Asks Madden if this NOI is also encompassing the encroachment on the neighboring properties. Madden - The NOI was filed specifically for 14 Plover Lane; however, the Enforcement Order is inclusive of the encroachments of the neighboring properties for 12 and 16 Plover. - The plans have all been consistent, showing the plantings on the adjacent properties to account for the encroachment. Wood - Wood was in touch with Dan Bailey, representing the neighbors and his clients, didn't want to be included in the NOI and could be done under the Enforcement Order. Madden - If the Commission is interested in conditioning a restriction on the property, the applicant is amendable to a deed restriction similar to what is occurring on neighboring properties.
Motion:	Motion to close (Made by: Williams) (Seconded by: Misurelli)
Vote:	Carried://6:0 Engelbourg, Braine, Misurelli, Schafer, Turcotte, and Williams (aye)

2. *Nantucket Islands Land Bank- 70, 72, & 74 Washington Street (42.2.3-16, 17, & 18) SE48-3907

Sitting:	Engelbourg, Braine, Misurelli, Schafer, Turcotte, and Williams
Recused:	---
Representatives:	Elizabeth Phelps, Nantucket Islands Land Bank
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Public Comment:	There were no public comments.
Discussion: (00:13:23)	Phelps - Describes the proposed project to prune a groundsel tree to keep control of the vegetation and maintain public access. Engelbourg - There are 5 public access onto Washington Street beaches but when looking at pictures and making a site visit, the groundsel trees were very small. - I'm responsible for pruning of pruning vegetation but discusses the impact on doing so.

	- Thinks it's unnecessary work causing impacts to the vegetation. - Recommends that the appropriate thing to do is to wait and see until they develop into the 12–15-foot shrubs. Williams - Agrees with Engelbourg that it's premature and unnecessary. Misurelli - I think when groundsel trees become invasive, I see the argument for removal for the sake of not spreading. Engelbourg - Clarifies that the application is for pruning and not removing. Braine - Asks if pruning would prevent them from spreading seeds Misurelli - Doesn't think so, there may be less seeds depending on the time of year they're pruning but they're going to grow back. Turcotte - Woody vegetation is going to hold the dune better, and we have seen some interesting possibilities for this site. - I wouldn't be opposed to just letting the groundsel be there considering that they're planning public access, bike paths, raising and doing other planning there in the future. Engelbourg - Agrees with Turcotte but reminds the Commission to only consider this application on what's presented and not what is possible for the future. - That area is subject to significant coastal flooding, sea level rise and things that the applicant's organization is actively working to mitigate and adapt for. - It makes sense to have as much natural barriers to erosion and sea level rise and flooding in place until such time as some project is proposed there. Phelps - The applicant wasn't looking at pruning the shrubs any smaller than they are now but was looking at future maintenance and not letting the groundsel get out of control where it starts encroaching along the roadway. - Mentions wanting to speak with others at the Land Bank and request continuance until the next meeting.
Action:	CONTINUED UNTIL JUNE 26th

E. Amended Orders of Conditions- No Waiver Required (none)

F. Amended Orders of Conditions- Waiver Required (none)

IV. Public Meeting

A. Orders of Conditions/ Amended Orders of Conditions- No Waiver Required

1. *East Lincoln Ave Realty Trust- 16 Walsh Street & 2 East Lincoln Avenue (42.4.1-50 & 50.1) SE48-3906

Sitting:	Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte, and Williams
Recused:	---
Representatives:	David Haines, Haines Hydrological Consulting
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Public Comment:	There were no public comments.
Discussion: (00:25:03)	Dell'Erba presents the item and reviews the OOC as drafted
Action:	Motion to issue OOC as drafted (Made by: Williams) (Seconded by: Misurelli)
Vote:	Carried://7:0 Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte, and Williams (aye)

2.

B. Orders of Conditions/ Amended Orders of Conditions- Waiver Required: Pre- January 1st Submissions

(none)

C. Orders of Conditions/Amended Orders of Conditions- Waiver Required

1. ACK TU LLC- 14 Plover Lane (12-53) SE48-3905

Sitting:	Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte, and Williams
Recused:	---
Representatives:	Brian Madden, LEC Environmental
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Public Comment:	There were no public comments.
Discussion: (00:27:13)	Dell’Erba presents the item and reviews the OOC as drafted Turcotte - Questions if the applicant will not need fertilizer at any point for any of these paintings. Misurelli - I don’t see a need for it at this point, but it could be evaluated at another time. Engelbourg - Requests to include a condition that “any invasive species removed shall be displaced accordingly at the Nantucket Land Fill.” - Requests to include a condition that “any irrigation applied on this site is temporary and shall not be maintained beyond the effective date of this OOC. - Requests to add the survivorship conditions of the planting. - We need to have a discussion on security if we would like to consider any including bonds, other financial instruments, deed restrictions and/or conservation restrictions. Misurelli - Asks if this is the time to discuss Pierce Atwood’s letter but the deed restriction would be of interest for further discussion. Engelbourg - Agrees with the letter that it would be hard to get a bond, but we have plenty of alternatives available to us. - Explains the difference between a deed restriction and a conservation restriction. Williams - Agrees with Misurelli on the deed restriction option but needs to be further discussed if we want to make this decision. Turcotte - I was initially interested in a conservation restriction because it is an independent party, and it goes into perpetuity. It would require good record written and photographic of GIS/GPS points of that site and everything that’s there. - I wasn’t aware that the deed restriction could be transferred over to us but I’m not sure if the Commission wants that responsibility. Engelbourg - It’s important to think about when considering a conservation restriction, what the value of that site is in terms of landscape, diversity and connectivity. - A conservation restriction allows a lot of eyes on the property to ensure that it’s permanently held in conservation purpose and automatically ensures in the future that all our protective interests are protected. Schafer - We need to be mindful of the reaction we had when this happened and seeing the progress made to what is happening now. - They’ve done everything they said they would and we should be careful not to be arbitrary or punitive. Engelbourg - I don’t believe doing this would be arbitrary or capricious because it’s specifically an option called out to us by our bylaw.

	Williams - I think we need to discuss who holds it because it makes a difference as to whether it's enforceable in perpetuity or if it's only enforceable and the holder would have to re-up it in 30 years. - Thinks some entity with the town should hold it. Dell'Erba - Thinks we also has this option on doing this apart of our Enforcement Order and if we want to discuss it further, we will also have council present. Engelbourg - It would make more sense to have it apart of the Order of Conditions. - The other option is that we don't have to issue this tonight, we have 21 days to issue the OOC if we decide we want to think about this more. Misurelli - There were a lot of good points on the conservation restriction vs. the deed restriction, however, is more in favor of the deed restriction. Williams - Thinks we should take some time and ask town council. Wood - If the Commission finds that a conservation restriction is necessary, we would object to having anyone beside the Conservation Commission doing it.
Action:	CONTINUED UNTIL JUNE 26TH

D. Request for Determination of Applicability- Delineation Only (none)

E. Request for Determination of Applicability- Work Requested (none)

F. Minor Modifications

1. Yellow Dog Nominee Trust- 224 Polpis Road (26-22.3) SE48-3858

Sitting:	Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte, and Williams
Recused:	----
Representatives:	Brian Madden, LEC Environmental
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Public Comment:	There were no public comments.
Discussion: (00:56:32)	Madden - Describes the modification of updates to the garage studio including some roof overhangs that were added. Engelbourg - Not sure if the assessment of the no waiver being required is correct or not but has been voicing to make some clear policy on it. - It is up to the Commissioners to decide if a waiver is required for this project or not. Turcotte - I would prefer to keep the waiver out and keep it clear that a no build is a no build. Engelbourg - It's hard to rectify the two perspectives of ground level structures and what's an overhang but we need to come to a policy. Misurelli - Doesn't have a problem with it as it's cantilevered and not touching the ground.
Motion:	Motion to approve the Minor Modification with no waivers required (Made by: Williams) (Seconded by: Misurelli)
Vote:	Carried://5:1: Engelbourg, Braine, Misurelli, Plandowski, Schafer, and Williams (aye) Turcotte (nay) Engelbourg (abstained)

3. Once Upon A Tide LLC- 56R Madequcham Valley Road (88-65) SE48-3661

Sitting:	Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte, and Williams
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Recused:	-----
Representatives:	David Haines, Haines Hydrologic Consulting
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Public Comment:	There were no public comments.
Discussion: (01:02:15)	Haines - The modification includes the addition of a deck that has been built with a mild intrusion into the 100-foot buffer zone. No questions or comments from Commissioners
Motion:	Motion to approve the Minor Modification (Made by: Schafer) (Seconded by: Williams)
Vote:	Carried://7:0 Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte, and Williams (aye)

G. Certificate of Compliance

1. Once Upon A Tide LLC- 56R Madequecham Valley Road (88-65) SE48-3661

Sitting:	Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte, and Williams
Recused:	-----
Representatives:	David Haines, Haines Hydrologic Consulting
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Public Comment:	There were no public comments.
Discussion: (01:04:18)	Haines - Project has been completed in compliance in accordance to the newly approved plans. Dell’Erba recommends issuing the COC with ongoing lighting and pool conditions
Motion:	Motion to approve the COC with ongoing conditions #20-24 Made by:(Williams) (Seconded by: Misurelli)
Vote:	Carried://7:0 Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte, and Williams (aye)

H. Extension Requests (none)

I. Other Business

1. Approval of Minutes (none)

2. Monitoring Reports – None

3. Reports: CRAC, CPC, NP&EDC, Harbor Plan, Offshore Wind Work Group, etc.

CRAC:	Braine - No report
CPC:	Schafer - No report
NP&EDC:	Misurelli - No report
Harbor Plan	Williams - We have been reviewing the final draft, which will be released to the public. The public session will be on July 16th in the Public Safety building.

4. Commissioner’s Comments

Discussion: (01:07:46)	Engelbourg - The Nantucket Coastal Conference is next Tuesday, June 10th at the Great Harbor Yacht Club. - The Orders of SE48-3736 were subject to two appeals that are pending before Mass DEP which will be a site visit scheduled but we will notify Commissioners.
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	- Order NAN-142 was subject to two appeals locally to the Nantucket Superior Court.
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5. Enforcement Actions

1. 14 Plover Lane

Sitting:	Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte, and Williams
Recused:	-----
Representatives:	Brian Madden, LEC Environmental Consultants- representing the applicant Dan Bailey, representing the abutters Glenn Wood, representing the property owner George Pucci, Town Council
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Public Comment:	Tony Cahill, concerned citizen Doug Delaney, Owner of 16 Plover Lane
Discussion: (01:10:51)	Dell’Erba - The requirements from the Commission for today’s meeting were to have the existing fencing down and the existing lighting in compliance in Chapter 102. - Madden reports that the lighting is all shut off until they can install compliant lighting. Engelbourg - We were in receipt of letters from the violator’s representative along with Madden indicating that compliant lighting is scheduled to be installed in July. - We would request an update with photos when the lighting in installed and that the fencing put in without benefit of a permit has been removed. Madden - The section of the pre-existing fence that had been installed has been removed and there has been additional efforts for the temporary deer fencing that was approved at the May 22nd meeting to be installed. - Will submit photographs to confirm all of this once it’s been completed. Engelbourg - Confirms that the Commissioners received a letter from Pucci’s office with options on potential fines/ options to employ monetary penalties. Pucci - Under the circumstances where you had the violation occur, it doesn’t appear that you want to impose something that would exceed \$25,000, even though the Commission has jurisdiction and authority to exercise a civil penalty under the Wetlands Protection Act. - The Commission could issue a fine by way of a new Enforcement Order, a revision to the current Enforcement Order, or a letter of demand. - There is no guidance that I could give you about the reasonableness of a fine under that provision would be as it’s under your discretionary authority to do that. - Council had represented to me that the property owner was willing to pay a fine up to a certain amount that they were willing to offer to resolve that issue beyond the increased filing fee. Engelbourg - I’m not in receipt of that specific number but took your point about taking into account the filing fees as well. Please provide that information to the Commission and I’s a point of discussion. Wood - I emailed Pucci that the client has agreed to the \$11,100 figure that the Commission has already come up with from the issuance of the Enforcement Order. - Agres with Geoge that he has never seen in 40 years of practice a Commission ever fining under the Wetlands Protection Act. Pucci

	- I reviewed a 2017 decision of the Massachusetts Appeals Court and there is absolutely no question that you have the ability to impose a civil penalty under the Wetlands Protection Act.
	Dell’Erba
	- We’re not held or bound by any prior decisions and the Commission had a different makeup at that time and a different situation.
	Engelbourg
	- I think proceeding in the way Pucci is referencing with the civil penalty under the Wetlands Protection Act makes much more sense than the non-criminal disposition that was originally discussed. - Ass the Commission the following questions: - Would you like to proceed with this penalty at all? - Would you like to proceed under the civil penalty procedure that town council has laid out? - What amount would you like to proceed with?
	Misurelli
	- I’m in favor of the civil penalty and as for the amount, I’m going with the date of the Enforcement to when we saw the remediation. - My reasoning is that we have to put a penalty on this, and we need to make an example that if people cooperate with the Commission, we can be reasonable.
	Turcotte
	- Agrees with Mike, the amount was based on \$300 a day, which is how we got the \$11,100.
	Engelbourg
	- Would like to proceed with the civil penalty as laid out by Town Council in the amount that’s being referenced by other Commissioners. - The amount of value lost to that resource area from a resource economics perspective is far in excess \$11,100.
	Plandowski
	- Doesn’t support a fine as they have been a cooperating violator. - I would rather work with the violator on putting that money towards the replanting and restoration area.
	Engelbourg
	- Asks Pucci if the civil penalty was assessed, where would monies from that go?
	Pucci
	- I never really thought about that before but could be re-directed for the Conservation Commission.
	Plandowski
	- Notes that he read the Massachusetts Enforcement bulletin and the monies go into a municipal fund to support whatever expenses that come into the town.
	Engelbourg
	- Directs Pucci to look into this and update us in the future.
	Braine
	- I’m in favor of the penalty and the amount that we settled on of \$11,100 is fair with the calculation of it was right.
	Schafer
	- Asks if we don’t do it now, would we have the ability to do it later?
	Engelbourg
	- As long as the Enforcement Order is open, it can be amended at any time.
	Schafer
	- Also in favor of the proposed fine and it seems like the violators are in agreement.
	Pucci
	- We could include the wording in the Order that the applicant agrees to pay the sum which will be used for certain purpose to clarify where the money would goes.
	Engelbourg

	- We will defer back to you when you have more information on if the penalty goes back to the Conservation Commission.
Williams	
	- Mentions that in a situation with a fund issued by the HDC, the money that we accessed them went into a general fund for the Town. - Asks the total amount the applicant paid for the “after the fact” Enforcement action NOI.
Engelbourg	
	- Confirms it was \$2,000
Williams	
	- Agrees with the civil penalty and not the criminal disposition but on the fence as I understand Plandowski’s position. - If the applicant offered that settlement amount, I’m ok with that.
Pucci	
	- Will look into the option of wording it in the Enforcement Order or the Order of Conditions that the money would go into a fund for the Conservation Commission and not into the general fund.
Engelbourg	
	- Clarifies that the options available before us would be to amend the current Enforcement Order, draft a new Enforcement Order or some type demand letter, which seem to be within the Enforcement Order process. - We also have a Notice of Intent with the Order of Conditions open for deliberations on that Notice, but it seems like to me we should handle any type of monetary penalty under the Enforcement Order.
Pucci	
	- That was my initial recommendation, and it seems that we have an agreement on the sum of the penalty and for the sake of efficiency and control, we should look at putting it in the Order of Conditions. - Always open to looking at creative solutions if we can achieve even more of what you’re after.
Williams	
	- Doesn’t believe we could add it to the Order of Conditions as I think we closed it.
Engelbourg	
	- We closed the Notice of Intent, but the Order of Conditions remains open for deliberation.
Williams would rather do it under the Enforcement Order.	
Plandowski	
	- From the Enforcement manual, it’s clear that fines “cannot be imposed in an Enforcement Order but can through the Wetlands Protection Act only by going to court and getting a final judgement from a judge”
Pucci and Engelbourg doesn’t agree with that.	
Engelbourg	
	- Civil penalty and a fine are two different things.
Misurelli	
	- With the majority of the Commission is in agreement but the question of whether it goes to the general fund or directly to the Commission, are we able to discuss this later?
Engelbourg	
	- We could take a vote to agree on the method of civil penalty and the amount and then have the council look into it.
Pucci	
	- You could vote on the concept tonight and then have me look into how it would be the best creative way of imposing it. - In light of the applicant accepting the penalty, I think the cleanest way of doing it would be to draft appropriately in the Order of Conditions.

	Engelbourg - Thinks that the Commission should amend the current Enforcement Order and we could add it to the Order of Conditions as well.
Motion:	Motion to Amend the existing Enforcement Order to access a civil penalty under the Wetlands Protection Act in the amount of \$11,100 and to have the Town Council investigate mechanisms for which that could be used for Conservation purpose. (Made by: Schafer) (Seconded by: Misurelli)
Vote:	Carried://6:1 Engelbourg, Braine, Misurelli, Schafer, Turcotte, and Williams (aye) Plandowski (nay)

6. Administrator/Staff Reports

Discussion: (01:48:34)	Dell’Erba - The DEP Baxter Road onsite visit is on June 23 rd - There will be a scheduled site visit to 62 Wanoma Way on June 24 th - There is a three-week break until our next meeting. Engelbourg - Committee appointments are on June 25 th .
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Adjournment:

Motion:	Motion to adjourn at 6:54pm. (Made by: Misurelli) (Seconded by: Williams)
Vote:	Carried://7:0 Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte, and Williams (aye)

Submitted by:
Lisa Graves