



CONSERVATION COMMISSION MINUTES

131 Pleasant Street
Nantucket, Massachusetts 02554
www.nantucket-ma.gov
Thursday, June 20th, 2024 – 4:00 p.m.

This meeting was held via remote participation using ZOOM and YouTube.
<https://www.youtube.com/watch?v=DLQyM8kxvdg>

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

Called to order at 4:00 p.m. by Chair Golding

Staff in attendance: Jeff Carlson, Natural Resources Director, Will Dell’Erba, Conservation Agent, Vince Murphy, Sustainability Programs Manager
Attending Members: Golding, Engelbourg, Beale, Braine, Misurelli, and Plandowski, (All Remote)
Absent Members: Williams
Members Left Early: -

Motion for Mark Baele to act as interim chair for this meeting
(Made by: Mark Misurelli) (Seconded by: Joe Plandowski)
Motion Carried://5:0 Engelbourg, Beale, Braine, Misurelli, Plandowski (aye)

Ian Golding arrived late at 4:28, proceeded as chair for the meeting

I. PUBLIC MEETING - Public Comment

Chair Golding called for public comment.

Discussion:	Burton Balking – Noted continuing of coirs installation for SBPF and wondered if this would be discussed Golding – Noted it would be discussed
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II. PUBLIC HEARING

1. Sconset Bluff Preservation Trust- 41-119 Baxter Road (various) SE48-3736 (Posner)

Sitting:	Golding, Engelbourg, Beale, Braine, Misurelli, Plandowski, and Williams
Recused:	-
Representative:	Steven Cohen
Documentation:	-
Discussion:	Jeff Carlson, Natural Resources Director - Introduced a member from the third party reporter of BETA - Noted they have not received independent legal review Jonathan Niro – BETA group inc - Indicated their scope was specific in that they weren’t performing any engineering or structural review, just review of compliance for the state wetlands protection act and local bylaws - Stated all administrative comments are easily addressed with some minor changes for both clarity and bylaw requirements

	– Stated a more pertinent confirmation with the applicant was discussion of access points and additional stairwells of which the applicant confirmed this would be in a later filing – Recommended few special conditions such as provided a formal planting plan for shoreline prior to construction, memorializing monitoring requirements, etc – For performance standards, BETA highlighted that the applicant has made a good effort to come into compliance with standards, noting an instance of if the sacrificial dune does wash away, only coastal engineering structures would receive the geotubes – Gap lots – independent legal review would need to review – Feels the applicant has provided sufficient information that the work proposed would meet performance standards on the gap lots – Stated any issues/comments BETA made could be easily addressed and made into conditions Golding – Questioned if there was anything in Nylon’s response from the previous meeting that Niro disagreed with or found surprising Niro – Stated the response received was reasonable – Some responses where applicant had indicated that the plan change ect would be addressed – Stated that no, the responses provided were accurate and in line with regulations Golding – Indicated that the commission has been told the only drawings they would receive would be after the fact, so wondered if this was something that BETA had seen before or was used to doing Niro – Indicated In the case of the planting plan, it would be smart to condition as a planting plan proposed today may not be feasible – Generally has seen commissions request certain pages be received prior to closing
Public Comment/Discussion:	Steven Cohen – Reiterated that they agree with all in the beta report, and have no concerns – Wishes to respond to a comment from Niro of gap lots, where the DEP issued the gap lots were legal and appropriate – Indicated they have 5-10 minutes on topics unrelated to beta Burton Balkind – Indicates on page 1 natural heritage and endangered species mapping are present but questions when the last one was done as it is not indicated, can it be provided Niro – Believes applicant has engaged and cooperated with natural heritage and has received proper notice, but it would be up to applicant to continue to receive this. These reports are available to the public. Balkind – Questioned the special condition on Page 6, questioned specific wording with special condition number 5 Niro – State this was in regard to establishing a source of sand, applicant indicated later phases of project would require additional sources of sand

	– Indicated additional permits on state and local levels – Stated some permitting may not feasibly be done until later on, and indicated commission could indicate the permitting is required to be done before the current sand source is exhausted
Balkind	– Questioned the monitoring data in which BETA reviewed, and if BETA could go over this
Niro	– Does not have it in his head, but indicated they did go through the provided monitoring and felt as though it was comprehensive and commensurate with the scope of the project, that both the type, method and frequency is sufficient and appropriate – Recommends that prior to commission issuing the permit, look at timelines
Doug Rose – member of the public	– Questioned the pre-approval request in the NOI for future phases specifically the 5-year preapproval and wondered if this was unusual
Niro	– Agreed there can be instances where the applicant desires approval for future work, and indicates they would never recommend preapproval – Indicated that in this instance, applicant has been very thorough in their request therefore unless there was a drastic change in conditions, it could be appropriate for approval of multiuse projects
Rose	– Questioned the failure-triggers to see if monitoring might have the corresponding level of detail and is troubled that they are calling for a decrease in frequency and monitoring locations – Indicates this could be troublesome with a project of this magnitude and disagrees that the current monitoring proposal is not sufficient enough – Notes the need for close scrutiny for monitoring and is disappointed with the only data being 2 years old
Golding	– Asked Jeff Carlson for the date of the last beach profile
Jeff Carlson	– Will find this information
Rose	– States the last report was December 2022
David Kreibel – representing attorney Denis Murphy	– Claimed Niro needs a correction to report being that the plan uses conditions of current topography which he believes is incorrect because the drawings are based on a June 2021 survey – Concerned that given the erosions rates, the drawings are not based on current topography
Niro	– Indicates their reports does check this off because the applicant has provided existing conditions data, whether its deemed sufficient is up to the commission – Does understand concern, and agrees that the most up to date conditions are the best way to go
Kreibel	– Indicated Beta stated they did not review structural or engineering aspects and wanted to know who would if any

	Golding – Indicated disappointment that the beta group did not address this Niro – Indicated during initial solicitation for this review, they were asked for a regulatory review. Beta does have structural and engineering folks, but their understanding in their request was only for the coastal survey Carlson – Indicated the best efforts for use of Beta, and if that is something the commission deems necessary, they will be happy to resolve Kreibel – States review is only on NOI and not on any of the other submissions – Questions if the review should have included issues brought up in other submission and not just what was provided in the NOI Golding – Agrees the review should include additional submissions Niro – Stated he did look through documents but that is correct the review was solely on the 300+ page NOI submitted by applicant Murphy – Reiterates the towns commitment to undertake the current notice of intent RJ Turcotte – Nantucket Land and Water Council – States many issues have come up and is concerned the scope given to BETA was not sufficient to address the NOI – Requests the commission to request the scope be expanded – Natural heritage state reach 1 would only be approved with conditions Engelbourg – States that asking for updated plans could be conditioned – Agrees that they should move forward with an updated scope – States commission retains authority to write orders any way they see fit that protects performance standard issues – Commission has ability to write “needs commission review” in orders Cohen – Agrees with commissioner Engelbourg – States the structural and civil engineering is not what the commission is weighing in on, commission does not to structural engineering reviews – Does not believe the request to extend the review is required or related, asking BETA to go through hall comments is beyond their scope – Willing to submit updated plans as they go Turcotte – Questions if it’s feasible to ask for a review of alternatives by beta – States the commission does have the right to review engineering plans if they effect the coastline Beale – Stressed the commission does need engineering plans Cohen – States he was not suggesting there should not be engineering plans, there are existing engineering plans, he is suggesting it is not the commissions job to review engineering only the compliance with state and local bylaws. Engelbourg – States it is certainly within the commissions role to ensure the engineering plans do not cause adverse effects to the resource areas and review alternative plans if they reduce impact Gordon Tomson
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	– States during construction of resource area, you lay out plans of the most recent data and prior to construction, you resurvey the area for any changes which are then presented which is the intent – States he usually has clients have preconstruction survey – States what they are proposing is standard practice in the engineering field
Turcotte	– Stated smaller projects required wetland delineations within 6 months and did not understand why we would expect less than the largest project
Golding	– Senses the commission would like to request the BETA group to provide additional aspects of the project
Beale	– Believes it is key for a monitoring report that does not decrease overtime as well as a current beach profile survey – Questioned Vince Murphy if the town has the means/ability/desire to place the sand if the Baxter Road individuals do not wish to do so
Murphy	– Stated the approach is that SBPF provides the sand, does not see it proceeding any other way
Cohen	– Reminds Vince that the town required SBPF that they have the financing in place so the situation Beale described would not occur
Beale	– Believes the commission should have the MOI in hand before the NOI is issued
Murphy	– Does not believe it has been the case that any other agency reviews MOUs, but this case is unprecedented
Golding	– Believes the commission is better off not looking at MOU's and addressing it their selves
Carlson	– Reiterates willingness to provide adjusted scope – Believes the commission does have the ability (if conditions of a positive permit occur) that certain triggers would be put in place for information needing to be filed with the commission – Gives example of sand, that SBPF puts contracts in place for sand retrieval/storage beforehand
Engelbourg	– Iterates the pretense of failure conditions as well, that if failure of either party on these permit requirements should be considered failure of the project which give the commission additional actions
Cohen	– Indicates the submission of other records – Pre- '78 assessment of lots and building permits showing all work predates adoption of 20% rule – Kate Edwards prepared an isolated explanation of why the town believed the monitoring requirements were good, and the additional requirements could be discussed – There was a question about the walkable beach with a suggestion that there is a very small time period it will disappear but believes this is the worst-case scenario – Reality is this is a much longer period
Rose	

	– Requests everyone too look at letter he submitted on June 19th, reiterating his point that in the NOI one of the failure criteria is loss of walkable beach with criteria that is physically impossible – Questions if there is a way for the commission to revisit all failure criteria to ensure its probability
Misurelli	– Questions Dr. Kriebels alternative of coir rolls
Golding	– States it is a completely different project with more sand than is available
Misurelli	– Does not see that coir rolls are appropriate for the high energy front
Engelboug	– Does not believe it is the 3rd party reviewers' job to determine what alternative is right, but does believe that the alternatives should be considered – Commissioner deliberations should not be the only ones referencing public comments and believes it would be reasonable to ask 3rd party reviewers to look at it – Asks Carlson to proceed with asking for more of a scope review from 3rd party BETA
Carlson	– Cautions on reviewing proposals provided by others that do not include applicants because if the reviewer decides there's a better project, the applicant can come back and accept or deny. – The project that they are previewing is the notice of intent filed by the applicant – If the commission believes other engineering is the best, applicant could say they do not want that specific engineering – It is part of the applicants' jobs to determine whether they desire an alternative approach – Indicates it is not the commissioner's job to engineer a project – Cautions straying onto a different proposal that is not from the applicants
Golding	– Feels a project of this size and importance, he would like a review of this project whether they approve or disapprove of this project on environmental grounds
Misurelli	– Does not believe it's necessary to have another evaluation
Plandowski	– Supports Carlson's position
Richard Nylon	– Reiterates they agree with the way beta reviewed project – Indicated their questions was on whether their project meets performance standards and not a separate project – Reminds commission that Keibel indicated the coir terraces would not support the bluff better than the geotubes – Does not believe there is any need fora review on separate projects – Also reminds commission with respect to removal and failure, they had stated that after the order is issued, there must be a removal and failure plan approved by commission prior to construction
Golding	– Reiterates the geotubes have failure to provide sufficient sacrificial sand and he would like this examined by an independent third party
Nylon	– Stated they have had that discussion and have provided there is more sand contributed than would have been contributed by the coastal bank

	– Indicates this is the reason for this proposal Trey Ruthven – Sustainable Coastal Solutions – Indicates when they take on a project plan, a survey is conducted immediately because when you have a dynamic coastline you have dynamic shifts. – Concerned the coastline has eroded 14ft after the survey being done – Reiterates that applicant has been out of compliance since 2015 with 10,000 cubic yards of sediment which will only increase and magnify erosion rates – Not a matter of updating data before construction, its updating data so the commission can view the impacts Turcotte – Does not deny that geotubes offer more protection than coir logs but indicates worry that the commission will lose context for the resource area, historic performance of the current project and finding a balance for holding the line and for the resource area Balkind – Questions if they are discussing NOI itself Golding – They are not looking at an NOI Balkind – Iterates the large volume of sand in shortfall, feels as though the resource areas impact goes beyond the scope Would like to see a more robust area monitored due to a wall being in place without proper mitigation sand Cohen – Believes they can be done. Applicant has provided all documentation, public has reviewed, it is time for the commission to review Golding – Indicates Beverage and Diamond has not weighed in on the four questions yet Cohen – Believes commission should leave public hearing open so the beverage and diamond report could be discussed and reported Golding – Questioned if commissions wanted to continue with Cohen’s suggestion Carlson – Indicates in either direction in relation to this NOI, it demands an attempt to permit. – A negative order of conditions results from a lack of conditions or merits such as the impacts being so outstanding as to result in the conditions not being as minimal as possible – Can open comments after the deliberation, but would caution against closing before having said discussion Golding – Requests to continue to a future date, and prior to commissions submit to jeff all provisions for approval/disapproval Cohen – Requests the continuation date of the 27th with the idea they will not get into details during that meeting but would allow fora few minutes of discussion Carlson – Feels confident that they can have the revised scope for engineering back with beta by that time or at minimum an update
Action	CONTINUED UNTIL JUNE 27th

1. Notice of Intent

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

Sitting:	Golding, Engelbourg, Beale, Braine, Misurelli, Plandowski, and Williams
Recused:	-
Representatives:	Dr. Dwight Dunk – Epsilon Associates inc
Documentation:	Site and topographical plans
Public Comment:	There were no Public Comments
Discussion	Dight – Asked for a continuance
Staff Recommendations:	All necessary items have been received in order to close
Action	CONTINUED UNTIL JULY 11TH

B. Amended Order of Condition - None

PUBLIC MEETING

A. Requests for Determination of Applicability - None

B. Minor Modifications - None

C. Certificate of Compliance

1. Childs- 19 Medouie Creek Road (14-33) SE48-1479 (reissue) (Blackwell)

Sitting:	Golding, Engelbourg, Beale, Braine, Misurelli, Plandowski
Recused:	-
Representatives:	Jeff Blackwell
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Public Comment:	There were no public comments.
Discussion:	Blackwell - Requested continuance
Action:	CONTINUED UNTIL JULY 11TH

2. Elliott W. Gumaer, Jr., Trustee, 2014 Trust- 4 Charles Street (29-52) SE48-3577 (Haines)

Sitting:	Golding, Engelbourg, Beale, Braine, Misurelli, Plandowski, and Williams
Recused:	-
Representatives:	David Haines.
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Public Comment:	There were no public comments.
Discussion:	
Motion:	Motion to approve the issuance of the Certificate of Compliance. (Made by: Plandowski) (Seconded by: Braine)
Vote:	Carried://6:0 Engelbourg, Beale, Braine, Misurelli, Plandowski, Golding (aye)

3. JFM Cacique LLC- 36 Easton Street (42.1.4-19) SE48-3525 (Blackwell)

Sitting:	Golding, Engelbourg, Beale, Braine, Misurelli, Plandowski
Recused:	
Representatives:	Jeff Blackwell
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Public Comment:	There were no public comments.
Discussion:	Dell' Erba

	– Continuing conditions of 2, 3
Motion:	Motion to approve the reissuance of the Certificate of Compliance. (Made by: Misurelli) (Seconded by: Braine)
Vote:	Carried://6:0 Engelbourg, Beale, Braine, Misurelli, Plandowski, Golding (aye)

4. JFM Cacique LLC- 36 Easton Street (42.1.4-19) SE48-3609 (Blackwell)

Sitting:	Golding, Engelbourg, Beale, Braine, Misurelli, Plandowski
Recused:	
Representatives:	Jeff Blackwell
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Public Comment:	There were no public comments.
Discussion:	– There was no discussion
Motion:	Motion to approve the Certificate of Compliance. (Made by: Misurelli) (Seconded by: Beale)
Vote:	Carried://6:0 Engelbourg, Beale, Braine, Misurelli, Plandowski, Golding (aye)

5. Randolph G. Sharpe, Jr Trust- 49 Meadow View Drive (56-390) SE48-3428 (Bracken)

Sitting:	Golding, Engelbourg, Beale, Braine, Misurelli, Plandowski
Recused:	
Representatives:	Will Dell’Erba
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Public Comment:	There were no public comments.
Discussion:	Dell’Erba – Continuing conditions 19-23
Motion:	Motion to approve the Certificate of Compliance. (Made by: Plandowski) (Seconded by: Beale)
Vote:	Carried://6:0 Engelbourg, Beale, Braine, Misurelli, Plandowski, Golding (aye)

6. Easton Realty Trust- 34 Easton Street (42.1.4-18) SE48-3516 (Gasbarro)

Sitting:	Golding, Engelbourg, Beale, Braine, Misurelli, Plandowski
Recused:	
Representatives:	Jeff Blackwell
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Public Comment:	There were no public comments.
Discussion:	Dell’Erba – Additional conditions and findings of 2 and 3. o Post 1978 structure – Conditions 20 and 21
Motion:	Motion to approve the Certificate of Compliance. (Made by: Plandowski) (Seconded by: Misurelli)
Vote:	Carried://6:0 Engelbourg, Beale, Braine, Misurelli, Plandowski, Golding (aye)

D. Orders of Conditions (If the public hearing is closed – for discussion and/or issuance)-None

E. Extension of Order – None

1. Town of Nantucket DPW- Town wide operations NOI (Patnode)

Sitting:	Golding, Engelbourg, Beale, Braine, Misurelli, Plandowski, and Williams
Recused:	-
Representatives:	Drew Patnode – Director of Public Works
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Public Comment:	There were no public comments.
Discussion: (02:44:11)	Dell’Erba – Drew is present to answer any questions that arose last meeting when discussing the extension Engelbourg – Explains the reasoning for this request being that the order of conditions be continued for future maintenance if the conditions put in place were followed – Never received the submissions Patode – Aware that this existed, and has reviewed NOI – No concerns with the additional conditions placed on the original NOI – Sees updates have not been complied with in previous years and has no problem with continuing/initiating this – No concerns with maintaining conditions if the commission sees fit to extend for an additional 3 years Engelbourg –
Motion:	Motion to approve the Extension of orders for an additional 3 years. (Made by: Engelbourg) (Seconded by: Beale)
Vote:	Carried://6:0 Engelbourg, Beale, Braine, Misurelli, Plandowski, Golding (aye)

2. Auburn Cottage, LLC- 46 Easton Street (42.4.1-22) SE48-3458 (Bracken)

Sitting:	Golding, Engelbourg, Beale, Braine, Misurelli, Plandowski, and Williams
Recused:	-
Representatives:	-
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Public Comment:	There were no public comments.
Discussion: (02:44:11)	Dell’Erba – Presented item
Motion:	Motion to approve the extension of orders for an additional 3 years. (Made by: Braine) (Seconded by: Plandowski)
Vote:	Carried://6:0 Engelbourg, Beale, Braine, Misurelli, Plandowski, Golding (aye)

3. Lawrence & Garran- 36 Pocomo Road (14-79) SE48-3442 (Blackwell)

Sitting:	Golding, Engelbourg, Beale, Braine, Misurelli, Plandowski, and Williams
Recused:	-
Representatives:	-
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Public Comment:	There were no public comments.
Discussion: (02:44:11)	Dell’Erba – Presented item
Motion:	Motion to approve the extension of orders for an additional 3 years. (Made by: Braine) (Seconded by: Plandowski)
Vote:	Carried://6:0 Engelbourg, Beale, Braine, Misurelli, Plandowski, Golding (aye)

F. Other Business

1. Approval of Minutes- March 14th 2024

Sitting:	Golding, Engelbourg, Beale, Braine, Misurelli, Plandowski, and Williams
Recused:	-
Representatives:	-
Documentation:	-
Public Comment:	There were no public comments.
Discussion:	– No discussion
Motion:	Motion to approve as presented (Made by: Misurelli) (Seconded by: Plankdowski)
Vote:	Carried://6:0 Engelbourg, Beale, Braine, Misurelli, Plandowski, Golding (aye)

2. Monitoring Reports - None

2. Enforcement Actions/Potential Enforcement Actions

A. 10 and 16 Ocean Avenue, The Summer House

Sitting:	Golding, Engelbourg, Beale, Braine, Misurelli, and Plandowski
Recused:	
Discussion:	Will Dell'Erba – Had requested all parties to attend the meeting
Public Comment	
Action	CONTINUED UNTIL JULY 11TH

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

CRAC:	Braine – No report.
CPC:	Beale – Mentioned the approval of some fund disbursements
NP&EDC:	Engelbourg – No report
Harbor Plan	Williams – No report
Offshore Wind Work Group:	Plandowski – No report.

6. Commissioner's Comments

Discussion:	Golding – Rule invoked to allow a member of the public to speak, in an updated makes it clear that making that motion devolves onto the commission – Apologizes for allowing it to happen Gasbarro – Did submit a monitoring report – Gives details on monitoring report Dell'Erba – Agrees with all that Gasbarro has stated and if there are any questions feel free to ask staff

7. Administrator/Staff Reports

Discussion:	Dell’Erba – Apologizes none of the summer house representatives showed (except for Art Gasbarro)
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Adjournment:

Motion:	Motion to adjourn (Made by: Plandowski) (Seconded by: Beale)
Vote:	Carried://6:0 Engelbourg, Beale, Braine, Misurelli, Plandowski, and Golding (aye)

Submitted by:
Morgan Nelson