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CONSERVATION COMMISSION MINUTES

4 Fairgrounds Rd

Nantucket, Massachusetts 02554

www.nantucket-ma.gov

Thursday, August 8th, 2024 – 5:00 p.m.

This meeting was held in a hybrid format with some participation using ZOOM and YouTube.

<https://youtube.com/live/e77RYXQcZVc>

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

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

Staff in attendance: Jeff Carlson, Natural Resources Director, Will Dell 'Erba, Conservation Agent, Vincent Murphy, Sustainability and Projects Manager
 Attending Members: Engelbourg, Braine, Misurelli, Plandowski, Williams, and Schafer
 Absent Members: -
 Members Left Early: -

I. PUBLIC MEETING - Public Comment

Chair Engelbourg called for public comment.

Public Comment	Burton Balkind - Discussed the geotubes and his concerns over it as well as the beach below the Sconset bluff Engelbourg - Acknowledged Balkind's concerns

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

Sitting	Engelbourg, Braine, Misurelli, Plandowski, Williams
Recused:	- Schafer not sitting
Representative:	Chip Nylon
Documentation:	-
Discussion:	Engelbourg - Discussed potential order and gave update from town council for a letter of engagement Williams - Read questions from town council - Asked that if public hearing is closed if they can still converse with attorney Carlson - Stated yes, you can get legal council Engelbourg - Stated previous chairs desire for conversation about pre 1978 homes status and gap lots Williams - Stated it wasn't necessary as the commission didn't support it Misurelli - Supports getting question answered Baine - Doesn't think it's necessary but wouldn't mind getting it answered

	Williams – Is against it Plandowski – Agrees gap lots should be included Williams – States issues she has with the contract itself and adding additional requests Engelbourg – States he doesn't believe it's the commissions job to seek legal advice based on difficulty. Williams – Concerned about further delays Braine – States it's not important enough to delay further Engelbourg – Clarified 5th question is procedural Plandowski – Discusses potential issues with gap lots Braine – No longer in support due to it being a procedural question No motion made in support of adding question
Public Comment/Discussion:	Staff prepared potential positive order of conditions (revised) Chip Nylon – Brings up concern over delaying longer due to winter season – Maintaining existing geotubes would be part of new extension – Hoping commission will close issue today Engelbourg • States it's not possible to do work on the project this year Williams • Ask Jeff for clarification on what was revised Carlson • Included information on coastal dune • Added two separate conditions for phase two in number 42 and 43 Staff confirms 21 days approval mac if applicant wants to close immediately Engelbourg • Goes through additional findings and writes down anything commissioners wants to go through Nylon • Will not move to close until discussions area had and reached Engelbourg reads findings numbers – one's staff wish to discuss are: • 3, 6, *flood control*, 11, 13, 15, 16 Chip wishes to discuss 20 RJ Turcotte wishes to discuss 22 Balkind • Questions if there's anything on monitoring Plandowski • Does not understand a flood on the bluff Engelbourg

	- Explains flood control is in the findings due to the way the regulations are written - No questions on 3 or 6 - Discusses 11, why is groundwater in finding
	Carlson - Related to the history of requesting sediment samples, locally purged ground water relates to test wells and ground water breakout - Can alter or change language
	Engelbourg - Discusses 13, states responsibility is to use minimum protection for pre-78 structures temporarily from imminent danger - Also calls 15 - Wants conditions discussed in tandem, because the bank beach and dune are to protect temporarily and not permanently
	Williams Imminent danger is a broad term
	Engelbourg - States commission needs to define what imminent danger is - Imminent danger is for this project only - Wants 15 before 13 and wants to state what the definition of imminent danger is
	Nylon - Agrees language should track what's in the bylaw - Believes they have presented enough evidence of imminent danger and believes there does not need to be a definition
	Dr. Dunk - Established definition and standards from DPW - Proposed that there can be multiple storms and under regs its standard to look at two storms
	Meredith Moldenhauer States commission can make decision without “going into the weeds”
	Engelbourg - States that a lot of the concerns for the last conditions could have been resolved had the commission taken more time to resolve, and their goal is not to delay process but to do it right - States that the words Imminent is important due to its meaning
	Braine Questions if the concerns boil down to definitions of distance or storms
	Engelbourg - Confirms and has concerns about both definitions - Good in theory to have linear distance
	Misurelli Concerned 40ft seems close but agrees to putting a distance on it
	Plandowski Agrees with having measurements
	Engelbourg Questions what commissioners' justification is for adopting a different distance
	Williams Concerned about defining a footage
	Engelbourg Must define
	Carlson States he likes things he can measure but is willing to give anything a shot
	Engelbourg

	• Could have the staff give a few proposals Misurelli • Structures is the build infrastructure is road/utilities • Defining it by distance is the way to go Engelbourg • States infrastructure is what is in the road not the roads itself • Public infrastructure is a concern due to state and local regulation discrepancies Carlson • Was a belief there being the ability to have a local coastal bank only, but agrees local regulations do not have ability to be a go around on state regulations • Agrees the way regulations are written it focuses on pre-78 structure protection versus infrastructure Engelbourg • Is not comfortable permitting project to protect infrastructure • Wants to focus on dwellings Williams • Wants to make a motion to ask about infrastructure Misurelli • If they are protecting the structure, there's a good shot at it not being harmed Plandowski • Recalls 65 ft measurement is road and not infrastructure Nylon • States they've given 100 years of data, and it isn't helpful to determine imminent danger by ft. • Wants a finding of area is in imminent danger without defining • Need infrastructure to make building habitable • Geotube process is related to protecting both infrastructure and buildings • Inviting damage by coming up with a number to the geotubes Murphy • Wishes to emphasize the importance of the road in an event of emergency • Needs public access for public and homeowners but also for emergency access Dr. Dunk • States standard is to protect pre-78 buildings, and that is what they have which are eligible for protection • In addition, for the bylaw many of the homes and infrastructure for a continuous line of protection is need and therefore the entire reach needs to be protected • 2 storm standards make sense, but commission can make determination the entire area is in imminent danger due to continuous connection Engelbourg • Difference between applicants want and what is regulatorily permissible • Wants staff to create a few definitions of imminent danger Williams makes motion to ask staff to make a request on the issue of infrastructure a contributing factor to decision making Plandowski seconds Engelbourg • States he believes its bad practice to have multiple attorneys providing advice Vote/ Carries 3-2 (Braine, Misurelli, Williams (aye)) (Engelbourg, Plandowski (Nay)) Discussion was had on what it means for homeowners to have imminent danger designated on their lots Dennis Murphy -Attorney for Greenhill Family • On conditions 13 and 15, 40ft has been standard for years
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	• Over 10-year history where the yardstick for imminent danger has been 40ft, is not the time to move goalpost • There cannot be any more discussion once the meeting is closed, it must be voted on Dr. Kreilbal • Counting 2 storms back-to-back runs counter to science • Discussing how engineering field does it Balkind • States having reasonable belief having reasonably belief of imminent danger is different from pending danger Dr. Dunk • States Mass has a common practice to request modeling following storms along with 50- and 100-year storms Engelbourg • Discussion on 16 – Williams withdraws • Wants one word added “temporarily” • 20a, questions the numbering of houses Chip • Doesn’t see need for terminology for which reaches come first Carlson • In review, it came on the heels of these properties being in the most danger and the priority would be to protect these first Engelbourg • Is commissioner's role to protect buildings from danger Williams • States a lot of phases depended on funding Engelbourg • Will not accept discussions on funding Williams • Wants to fix reach 2 and 3 before 1 due to the fact it’s connected to 1 Misurelli • Seems like a counterproductive sentence Jamie Feeley • Discusses the different reaches and how they’d bring material into it and urges everyone to see benefits of reach 3 Murphy • States need to address most important houses, and if it changes, he needs to take it back to select board Moldenhauer • Discusses they want to be in the best position to get reaches built in quickest and most efficient manner Williams • Most concerned about reach 1 and questions why 1, 2, and 3 can go at one time Engelbourg • Finding 22 discussion RJ Turcotte • States mitigation number was discussed thoroughly and previous reasoning's Additional discusses needed on the nourishment Dr. Dunk • After storm season, till be determined how much sand is required to refill template • States there's a large variation in amount of sand needed • Is a condition for applicant to receive relief but no quantitative standard Engelbourg
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	• Language in SSC does not authorize this Ruthyen • Addresses adaptive management over erosion being directly caused by the geotubes and the 22 cubic feet not being addressed now • Applicant hasn't been compliant in a decade Engelbourg • Findings can be added or taken away Carlson • Reiterates Engelbourg' s statement Engelbourg • Requests applicants to continue and requests SBPF be moved to special hearings Nylon • Agrees and wants a meeting next week • If the hearing is closed, 21 days to issue order of it is not voted upon Carlson • Will have dates through end of year and location Nylon – wishes to continue to August 22 nd .
Motion	
Vote	
Public Comment/Discussion Cont.	
Action:	CARRIED TILL AUGUST 22ND

Notice of Intent

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

Sitting:	Engelbourg, Braine, Misurelli, Plandowski, Williams,
Recused:	-Schafer not sitting
Representatives:	-
Documentation:	-
Public Comment:	-
Discussion	-
Staff Recommendations:	
Action:	CONTINUED AUGUST 22ND

2. Nantucket Islands Land Bank- 45 Nonantum Avenue (87-40) SE48-3769 (Freeman)

Sitting:	Engelbourg, Braine, Misurelli, Plandowski, Williams
Recused:	Schafer
Representatives:	Racheal Freeman
Documentation:	Site and topographical plans
Public Comment:	No public Comments
Discussion:	
Staff Recommendations	All necessary items have been received to close
Motion:	Motion to close (Williams) Seconded (Braine)
Vote	Vote Carried: 5-0 (Engelbourg, Braine, Misurelli, Plandowski Williams aye) (Schafer recused)

3. Nantucket Islands Land Bank- Madequecham Valley Road and Surfside (various) SE48-3771 (Freeman)

Sitting:	Engelbourg, Braine, Misurelli, Plandowski, Williams
Recused:	Schafer
Representatives:	Rachael Freeman
Documentation:	
Public Comment:	There were no public comments.
Discussion:	
Staff Recommendation:	All necessary items have been received to close
Motion	Motion to close (Made by Williams) (Seconded by Plandowski)
Vote:	Vote Carried: 5-0 (Engelbourg, Braine, Misurelli, Plandowski Williams aye) (Schafer recused)

4. LAZ Family Nominee Trust- 20 Waquoit Road (90-5) SE48-3795 (Gasbarro)

Sitting:	Engelbourg, Braine, Plandowski, Williams, Schafer
Recused:	Misurelli
Representatives:	Gasbarro
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence. With letter from NHESP approval
Public Comment:	There were no public comments.
Discussion:	No discussion
Staff Recommendation:	All necessary items have been received in order to close.
Motion:	Motion to close. (Made by: Williams) (Seconded by Braine)
Vote:	Carried://5:0 Engelbourg, Braine, Plandowski, Schafer, Williams (aye) Misurelli recused

5. DeBenedictis- 17 Sesachacha Road (21-18 & 19) SE48-3798 (Bracken)

Sitting:	Engelbourg, Braine, Misurelli, Plandowski, Schafer
Recused:	Williams
Representatives:	Ryan Maxwell
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Public Comment:	There were no public comments.
Discussion:	No Discussions
Staff Recommendation:	All necessary items have been received in order to close.
Motion:	Motion to close. (Made by Plandowski) (Seconded by Misurelli)
Vote:	Carried://5:0 Engelbourg, Braine, Plandowski, Schafer, Misurelli (aye) Williams recused

6. Nantucket Islands Land Bank- Consue Springs (55 & 55.1.4-398, 404, 404.1, 404.2, 414, 415, 642 & 15) SE48-3799 (Freeman)

Sitting:	Engelbourg, Braine, Misurelli, Plandowski, Williams, Schafer
Recused:	
Representatives:	Racheal Freeman
Documentation:	Site and topographical plans
Public Comment:	No Public Comment
Discussion:	No discussion
Staff Recommendation:	All necessary items have been received in order to close.
Motion:	Motion to close. (Made by: Williams) (Seconded by: Misurelli)
Vote:	Carried://6:0 Engelbourg, Braine. Misurelli, Williams, Plandowski, Schafer (aye)

B. Amended Order of Condition

1. 13 Commercial Street LLC- 13 Commercial Wharf (42.2.4-10) SE48-3563 (Santos) CONT 8/22

PUBLIC MEETING

A. Requests for Determination of Applicability - None

B. Minor Modifications

1. 256 Polpis, LLC- 256 Polpis Road (25-25) SE48-3644 (Gasbarro)

Sitting:	Engelbourg, Braine, Misurelli, Plandowski, Williams, Schafer
Recused:	
Representatives:	Gasbarro
Documentation:	Site and topographical plans
Public Comment:	No Public Comment
Discussion:	Engelbourg - Issue with some grass, requested to not place nonnative species and continue to next meeting Gasbarro - Happy to continue and discussed which plants commission had a problem with Misurelli - Plans did not make it to the packet Williams - Question what was changed Gasbarro - Will provide other plans
Staff Recommendation:	
Motion:	
Vote:	
Action:	CONTINUED 8/22

C. Certificate of Compliance

1. Frost Daisy Field Trust- 74 Madaket Road (41-462.6) SE48-2804 (Ritz)
2. Frost Daisy Field Trust- 76 Madaket Road (41-462.6) SE48-2805 (Ritz)

Sitting:	Engelbourg, Braine, Misurelli, Plandowski, Williams, Schafer
Recused:	
Representatives:	Mark Ritz
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Public Comment:	There were no public comments.
Discussion:	No discussion
Staff recommendation	
Motion:	Motion to approve the issuance of the Certificates of Compliance for both properties (Made by: Misurelli) (Seconded by: Williams)
Vote:	Carried://6:0 Engelbourg, Braine. Misurelli, Williams, Plandowski, Schafer (aye)

3. Andrews- 4 Old North Wharf (42.3.1-18) SE48-1619 (Gasbarro)

Sitting:	Engelbourg, Braine, Misurelli, Plandowski, Williams, Schafer
Recused:	
Representatives:	Gasbarro
Documentation:	Site and topographical plans, photos, requisite departmental reports, and correspondence.
Public Comment:	There were no public comments.
Discussion:	No discussion
Staff recommendation	Dell 'Erba recommends issuing the COC
Motion:	Motion to approve the issuance of the Certificates of Compliance (Made by: Williams) (Seconded by: Misurelli)
Vote:	Carried:// 6:0 Engelbourg, Braine. Misurelli, Williams, Plandowski, Schafer (aye)

4. Nantucket Islands Land Bank- Consue Springs (55-404, 404.1, 404.2, 390, 414 and 415) SE48-3407 (Freeman)

Sitting:	Engelbourg, Braine, Misurelli, Plandowski, Williams, Schafer
Recused:	
Representatives:	Freeman
Documentation:	Site and topographical plans, photos, requisite departmental reports, and correspondence.
Public Comment:	There were no public comments.
Discussion:	No discussion
Staff recommendation	Dell 'Erba recommends issuing the COC
Motion:	Motion to approve the issuance of the Certificates of Compliance (Made by: Williams) (Seconded by: Misurelli)
Vote:	Carried:// 6:0 Engelbourg, Braine, Misurelli, Williams, Plandowski, Schafer (aye)

5. Creekside Nominee Trust- 156 Orange Street (55-61) SE48-3718 (Ritz)

Sitting:	Engelbourg, Braine, Plandowski, Williams, Schafer
Recused:	Misurelli
Representatives:	Gasbarro
Documentation:	Site and topographical plans, photos, requisite departmental reports, and correspondence.
Public Comment:	There were no public comments.
Discussion:	No discussion
Staff recommendation	Dell 'Erba recommends issuing COC with continuing conditions 21-26
Motion:	Motion to approve the issuance of the Certificates of Compliance with continuing conditions (Made by: Williams) (Seconded by: Braine)
Vote:	Carried:// 5:0 Engelbourg, Braine, Williams, Plandowski, Schafer (aye) Misurelli recused

6. Quidnet Properties, LLC- 84 Quidnet Road (21-100 & 101) SE48-1788 (Santos)

7. Quidnet Properties, LLC- 90 Quidnet Road (21-71, 105 & 108) SE48-1273 (Santos)

Sitting:	Engelbourg, Braine, Misurelli, Plandowski, Williams, Schafer
Recused:	
Representatives:	Paul Santos
Documentation:	No Documentation
Public Comment:	There were no public comments.
Discussion:	No discussion

Staff recommendation	Dell 'Erba recommends invalidating order as work was not completed
Motion:	Motion to approve invalidation of COC (Made by: Williams) (Seconded by: Misurelli)
Vote:	Carried://6:0 Engelbourg, Braine, Misurelli, Williams, Plandowski, Schafer (aye)

D. Orders of Conditions (If the public hearing is closed – for discussion and/or issuance)

1. Nantucket Islands Land Bank- 45 Nonantum Avenue (87-40) SE48-3769 (Freeman)

Sitting:	Engelbourg, Braine, Misurelli, Plandowski, Williams
Recused:	Schafer not sitting
Representatives:	-
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Public Comment:	There were no public comments.
Discussion:	No Discussion
Motion:	Motion to approve as drafted. (Made by: Misurelli) (Seconded by: Williams)
Vote:	Carried:// 5:0 Engelbourg, Braine, Misurelli, Williams, Plandowski(aye) Schafer not sitting

2. Nantucket Islands Land Bank- Madequecham Valley Road and Surfside (various) SE48-3771 (Freeman)

Sitting	
Recused:	Schafer not sitting
Representatives:	-
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Public Comment:	There were no public comments.
Discussion: (02:53:25)	No discussion
Motion:	Motion to approve as drafted. (Made by: Williams) (Seconded by: Briane)
Vote:	Carried:// 5:0 Engelbourg, Braine, Misurelli, Williams, Plandowski (aye) Schafer not sitting

4. LAZ Family Nominee Trust- 20 Waquoit Road (90-5) SE48-3795 (Gasbarro)

Sitting:	Engelbourg, Braine, Plandowski, Williams, Schafer
Recused:	Misurelli
Representatives:	-
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Public Comment:	There were no public comments.
Discussion:	Dell 'Erba presented the item No further discussion
Motion:	Motion to approve as drafted. (Made by: Williams) (Seconded by: Braine)
Vote:	Carried:// 5:0 Engelbourg, Braine, Williams, Plandowski, Schafer (aye) Misurelli recused

5. DeBenedictis- 17 Sesachacha Road (21-18 & 19) SE48-3798 (Bracken)

Sitting:	Engelbourg, Braine, Misurelli, Plandowski, Schafer
Recused:	Williams
Representatives:	-
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Public Comment:	There were no public comments.
Discussion:	Dell 'Erba presented the item.

Motion:	Motion to approve as drafted (Made by: Plandowski) (Seconded by: Misurelli)
Vote:	Carried:// 5:0 Engelbourg, Braine, Misurelli, Plandowski, Schafer (aye) Williams recused

6. Nantucket Islands Land Bank- Consue Springs (55 & 55.1.4-398, 404, 404.1, 404.2, 414, 415, 642 & 15) SE48-3799 (Freeman)

Sitting:	Engelbourg, Braine, Misurelli, Plandowski, Williams, Schafer
Recused:	-
Representatives:	-
Documentation:	Site and topographical plans, photos, requisite departmental reports, and correspondence.
Public Comment:	There were no public comments.
Discussion:	Dell 'Erba presented the item.
Motion:	Motion to approve as drafted (Made by: Williams) (Seconded by: Plandowski)
Vote:	Carried://6:0 Engelbourg, Braine, Misurelli, Williams, Plandowski, Schafer (aye)

E. Extension of Order - None

F. Other Business

1. Approval of Minutes- None

2. Monitoring Reports - None

3. Enforcement Actions/Potential Enforcement Actions -
Will stated the last enforcement for the summerhouse has been issues

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

John Schafer volunteered as CPC representative

Motion to approved (made by Linda) (seconded by Misurelli)

Vote: Carried 5:0 Engelbourg, Braine, Misurelli, Williams, Plandowski (aye)

CRAC:	Braine - No report.
CPC:	Schafer appointed
NP&EDC:	Misurelli - Brief discussion of wind farms and NRTA ridership - Expanding membership and workgroup
Harbor Plan	Williams - Got through all sections and put together a draft. Will have another public hearing
Offshore Wind Work Group:	

6. Commissioner's Comments

Discussion:	Schafer asked if he has a financial or familiar connection if he should recuse Engelbourg confirmed and a discussion was had on the procedure of such
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7. Administrator/Staff Reports

Discussion:	Dell 'Erba has dates for alternate meeting dates for the procedural meeting Engelbourg requests told hold off until a full commission is had
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Adjournment:

Motion:	Motion to adjourn. (Made by: Williams) (Seconded by: Misurelli)
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Vote:	Carried://6:0 6:0 Engelbourg, Braine, Misurelli, Williams, Plandowski, Schafer (aye)
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Submitted by:
Morgan Nelson