



CONSERVATION COMMISSION MINUTES

131 Pleasant Street
Nantucket, Massachusetts 02554

www.nantucket-ma.gov

Thursday, October 23, 2025 – 5:00 p.m.

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

https://youtube.com/live/T-rk_xBSSTA

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: Will Dell’Erba, Conservation Agent
 Attending Members: Engelbourg, Braine, Misurelli, Plandowski, Schafer
 Absent Members: Turcotte, Williams
 Members Left Early: Schafer left at 7:12pm

I. Acceptance of the Agenda

Discussion: (00:01:22)	Engelbourg notes the continuances
Motion:	Motion to accept the agenda (Made by: Braine) (Seconded by: Misurelli)
Vote:	Vote Carried: 5:0 Engelbourg, Braine, Misurelli, Plandowski, and Schafer (aye)

II. Public Comment

Chair Engelbourg called for public comment

Discussion: (00:02:42)	none
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III. Public Hearing

A. Notice of Intent- No Waiver Required

1. Maloney- 15 Old North Wharf (42.3.1-26) SE48-3924

Action:	CONTINUED UNTIL DECEMBER 4 TH
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2. *ACK KODA, LLC- 42 Shimmo Pond Road (43-126) SE48-3930

Action:	CONTINUED UNTIL NOVEMBER 6 TH
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B. Notice of Intent- Waiver Required: Pre-January 1st Submissions

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

Action:	CONTINUED UNTIL NOVEMBER 6 TH
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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 NOVEMBER 6 TH
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3. West Ashored LLC- 62 Wanoma Way (92-16) SE48-3869

Action:	CONTINUED UNTIL NOVEMBER 6 th
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C. Notice of Intent- Waiver Required

1. Robert F. Greenhill Revocable Trust- 16 Hoicks Hollow Road (23-1) SE48-3917

Action:	CONTINUED UNTIL NOVEMBER 6 TH
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2. Nantucket Islands Land Bank- 2 Massasoit Bridge Road (59-14) SE48-3925

Sitting:	Engelbourg, Braine, Misurelli, Plandowski, and Schafer
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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: (00:03:26)	Phelps - The Notice of Intent was submitted in order to treat Cypress Spurge which is within the 50-foot buffer zone to a Bordering Vegetated Wetland and within Natural Heritage priority and estimated rare species habitat. - The Land Bank had received a letter of approval from Natural Heritage with no conditions. No questions or comments from Commissioners or from Public
Action:	Motion to close: (Made by: Misurelli) (Seconded by: Plandowski)
Vote:	Carried://5:0 Engelbourg, Braine, Misurelli, Plandowski, and Schafer (aye)

3. *Nantucket Islands Land Bank- 39 & 41 Almanack Pond Road (46-11.1 & 11.2) SE48-3926

Sitting:	Engelbourg, Braine, Misurelli, Plandowski, and Schafer
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: (00:05:42)	Phelps - The proposed project includes habitat and land management by mowing the fields on a rotating schedule, maintaining the trails, and managing invasive species that may be identified. - The location is within Natural Heritage rare species habitat and some of these areas are within the 25-foot buffer zone to a Bordering Vegetated Wetland. - Natural Heritage has approved the project with conditions which includes protecting the native species during any herbicide application as well as documenting and submitting reports to Natural Heritage. Misurelli - On protecting the plants against the invasives, is that involving care application or do you have to put some sort of screening in the area? Phelps - We would do a survey prior to doing any herbicide treatment and would flag any rare species found, document it, and protect it by hand cutting and covering around the native species. Engelbourg - We could also, if necessary, limit herbicide application to specific techniques if we think there is a reason that would benefit our resource areas.
Action:	Motion to close: (Made by: Schafer) (Seconded by: Braine)
Vote:	Carried://5:0 Engelbourg, Braine, Misurelli, Plandowski, and Schafer (aye)

4. *Ripley- 92 Washington Street (42.2.3-22) SE48-3927

Sitting:	Engelbourg, Braine, Misurelli, Plandowski, and Schafer
Recused:	-----
Representatives:	Jack Vaccaro, Epsilon Associates Tom Ripley, Property owner Leo Wilson, Hammond Wilson Architects
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Public Comment:	There were no public comments.
Discussion: (00:11:31)	Vaccaro - Applicant has provided information that was requested from the Commission from the October 2nd hearing. - We believe we provided some reasonable justification for meeting the standards for our waiver request of allowing structures within 50 feet of the wetland.

	- Reviews the supplemental information that was submitted on comparative building footprint areas of the currently permitted condition and the project that is proposed. - An alternative analysis was also submitted in support of the waiver request, additional information on the mechanicals for the site and utilities, along with a brief review of comments from the CRAC meeting.
Misurelli	- Asks Vaccaro if the applicant's alternative is to move the building back further from where it is now.
Vaccaro	- The building is currently just over 25-foot set back from the bulkhead with the existing structure and we're moving it back to 41 feet from the new proposed structure.
Engelbourg	- Has concerns about the increase of the building footprint on the site, especially with the alternatives analysis that was presented. - The waiver that's being requested should demonstrate that there will be no adverse impacts, no reasonable alternatives but they have presented a reasonable alternative. - We permit projects on the basis of the project purpose, which is a house with auxiliary outbuildings. - They have a project that is completely permitted and could be built today that would solve that same project purpose. - I don't believe they are adhering to the less than 50% disturbance within the 25-50' zone along with the mitigation requirement that would be needed to exempt structures outside of the 75-foot zone. - There are multiple performance standards that are all related, but they fall under separate categories that can't be met, which is why the waiver is being requested.
Vaccaro	- It's a little less than 1,000 square feet increase over what's currently permitted to accommodate the needs of the applicant and their family. - Reviews the site plan in order to look at the increase in building area within the 75-foot setback.
Engelbourg	- We'll look out for those updated numbers of what new structures are with the 75-foot buffer zone.
Braine	- Reviews the comments and recommendations that were made by CRAC regarding the proposed project that came out of the meeting. - The property is located in a high or moderate coastal risk area which demonstrates that large structural investments are not recommended unless necessary in order to ensure public safety. - The structural footprint in current flood zones is not recommended. - CRAC also recommends landscaping with native vegetation. - Potential more restrictive zoning changes may affect this property.
Engelbourg	- Thanks CRAC for providing these recommendations but reminds everyone that they are just an advisory committee. - If there are concerns of their recommendations being binding, it's not binding as it's the Commission's job to make sure that projects are built in accordance with the Coastal Resiliency Plan.
Ripley	- The currently approved plans were submitted by the prior property owner but when we designed the home, it accommodates space for a family of four and extended family.

	Engelbourg - It's important and we do want to make sure your family's needs are accommodated but those types of considerations are outside of our jurisdiction. Wilson - Reviewed the currently approved site plan along with the proposed updated plans that demonstrate how to improve the site conditions while considering the applicant's needs. - Reviews elevation levels of the site through architectural drawings. Vaccaro - We're not protecting the resource area as much as we're protecting the function of the resource area, which is the ability to provide the functions of storm damage protection and flood control. - Although the proposals provide an increase in the size of the residence, it is in fact improving the ability of the resource area to provide those very functions. Schafer - Asks Vaccaro what the original footprint of the existing house is compared to the new footprint of the proposed house. Vaccaro - The original footprint is 1,800 square feet while the proposed is 2,627 square feet so an increase around 827 square feet. Misurelli - There are a lot of variables here to have a site visit, and it could be helpful to see all the pieces together before we make our final decision. Braine - Agrees with Misurelli and is concerned about the 40% increase in footprint given CRAC's recommendations and what the Coastal Resiliency Plan says. Engelbourg - It is about the function of the resource areas but the part in the proposed project that's going to help is the elevation of the house, which can be done in a different way with a permitted project without increasing the building area to this size. - We have to make sure we get the benefits for the flood zone without sacrificing the other benefits for the buffer zone to the Coastal Bank, Coastal Beach, or Land Subject to Coastal Storm Flowage that we protect.
Action:	CONTINUED UNTIL NOVEMBER 6TH

IV. Public Meeting

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

1. Pops Lane Holdings Trust- 3 Pops Lane (60.2.4-64.1) SE48-3830

Sitting:	Engelbourg, Braine, Misurelli, Plandowski, and Schafer
Recused:	-----
Representatives:	Brian Madden, LEC Environmental Consultants
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Public Comment:	There were no public comments.
Discussion: (00:49:10)	Dell'Erba presents the item Engelbourg requests to add the pool conditions #22-25
Action:	Motion to issue OOC as Amended (Made by: Misurelli) (Seconded by: Braine)
Vote:	Carried://5:0 Engelbourg, Braine, Misurelli, Plandowski, and Schafer (aye)

2. Nantucket Islands Land Bank- 2 Massasoit Bridge Road (59-14) SE48-3925

Sitting:	Engelbourg, Braine, Misurelli, Plandowski, and Schafer
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: (00:52:57)	Dell’Erba presents the item
Action:	Motion to issue OOC as drafted (Made by: Misurelli) (Seconded by: Schafer)
Vote:	Carried:/5:0 Engelbourg, Braine, Misurelli, Plandowski, Schafer (aye)

3. Nantucket Islands Land Bank- 39 & 41 Almanack Pond Road (46-11.1 & 11.2) SE48-3926

Sitting:	Engelbourg, Braine, Misurelli, Plandowski, and Schafer
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: (00:55:36)	Dell’Erba presents the item
Action:	Motion to issue OOC as drafted: (Made by: Braine) (Seconded by: Plandowski)
Vote:	Carried://5:0 Engelbourg, Braine, Misurelli, Plandowski, and Schafer (aye)

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 (none)

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

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

F. Minor Modifications (none)

G. Certificate of Compliance

1. Kurtz- 177 Polpis Road (45-1.1) SE48-3887

Sitting:	Engelbourg, Braine, Misurelli, Plandowski, and Schafer
Recused:	-
Representatives:	Brian Madden, LEC Environmental Consultants
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Public Comment:	There were no public comments.
Discussion: (00:58:07)	Madden - Reviews completed project which was installed in substantial compliance.
Action:	Motion to issue a COC with continuing Conditions #20-25: (Made by: Misurelli) (Seconded by: Braine)
Vote:	Carried://5:0 Engelbourg, Braine, Misurelli, Plandowski, and Schafer (aye)

H. Extension Requests (none)

I. Other Business

1. Approval of Minutes 08/21/2025, 09/04/2025

Discussion: (01:00:24)	Plandowski reviewed and would like to hold off on the approval due to edits.
Action:	CONTINUED UNTIL NOVEMBER 6TH

V. Public Hearing- Discussion of Revision of the Town of Nantucket’s Wetlands Protection Regulations (Chapter 390)

Discussion: (01:02:10)	Engelbourg - The Commission made a commitment to have annual check-in meetings to see any issues that are coming up with the regulations. - In May of each year, we would talk about regulations and in October discuss the policies and procedures. Procedural:
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	Braine - Asks if there are real estate brokers or property sellers to inform the buyer of their proximity to a wetland and they would have to submit to the regulations of the Commission. Engelbourg - It is required for real estate professionals to appropriately disclose anything related to their properties that they're listing including doing a title check of any permits that may exist that are either active or need to be closed out. Dell'Erba - I've been making a conscious effort to speak with a few different real estate offices. - I think a lot of the problems stem from confusion by not knowing what they actually need in a given property and the confusing nature of our regulations. Engelbourg - The Commission could make changes that are binding today as long as we have an advertising period for a minimum of three weeks before they could become effective. - One procedural discussion topic that was listed is to approve the Orders of Conditions in bulk. Dell'Erba and I would make sure the Orders and Conditions were drafted and meeting our standards prior to the meeting and we would call them out as we do for the non-waiver section for the Notice of Intent applications. Misurelli - That sounds like an improvement to me as it's a time saver during the meeting. Engelbourg - Commissioners will have the option to open it if they find they want to amend the Order or add additional conditions. It would only be for the non-waiver permits. All Commissioners and Dell'Erba agree Engelbourg - Due to this being a policy/procedural change it wouldn't need to be advertised and can go into place by the next meeting. Dell'Erba - We would like to incorporate a standardized cover sheet that would include the representative's name, property owner info, submission date, address, parcel ID, 1-2 sentence project description, resource areas present, waiver request or not, NHESP approval or not, and approval from other boards/commissions required. Schafer & Braine agree that it's a good idea. Engelbourg - We can politely ask people to start doing this but our regulations include a layout of what's required for project submission, so we would need to add this to the next regulatory update in order to make it mandatory. - I would also like to designate a commissioner to be our Enforcement Officer in order to oversee the Enforcements and help Dell'Erba with checking up on properties and tracking everything. - There is a MACC directive that says that commissioners are allowed to designate Commissioners as an Enforcement Officer. - We still have to keep in mind the open meeting law issues and whatnot, but it's been done in other municipalities. Schafer offers to be the Enforcement Officer Misurelli - Asks Dell'Erba if that's something that the office is looking for help with. Dell'Erba - It depends on what's going on. Sometimes there's one thing and there's no problem and no help needed. There have been times when there is huge enforcement situations going on and help is needed. Misurelli - It seems like it has value, and the role can be sort of turned on and off as needed. Braine
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	- What exactly would the duties of this person be? Engelbourg - Helping out with the site visits, coordinating with the representatives if needed, basically just tracking Enforcements. - We could try it out and if it isn't needed, we can just abolish that position later or have it vacant. - Think we should get an opinion on this new position from MACC and a legal opinion from Town Council. Regulatory: Engelbourg - Right now, our regulations say that Notices of Intent or Requests for determination of Applicability have to be heard under the most up to date regulations. - Amended Order of Conditions and Minor Modifications are held to the standard of the regulations that existed in place when the original project was approved. - Most Amended Order requests rise to the level that they could be considered under a Notice of Intent. It would be great if these additional changes that come in were heard under the new regulations. - Not only can an OOC be extended for three years but now we're in a scenario with Covid tolling, Mass Leads Acts and some of these permits that were approved are going to be valid for like eight or nine years. Misurelli - Obviously, we're going to get a legal opinion on this but if someone came in to Amend an Order and the regulation has changed, they wouldn't have to undo what they've done. Engelbourg - We could apply for a new waiver; they would never have to undo anything. The project is approved under perpetuity until there's a Certificate of Compliance issued, or the permit expires. Schafer - I think the existing regulations should apply to the Amended Orders as well. If the legal opinion recommends, we do that, I would be in favor of it. Engelbourg - I think that if we all agree to include Amended Orders, we should also discuss doing it for Minor Modification as well. I think it should be for everything or just keep it as it is. - Engelbourg requests Dell'Erba direct this question to Town Council. Engelbourg - The next discussion item is how to handle endless continuances other than through an Enforcement Order. - We are kind of boxed into either following the process of allowing continuances and using Enforcement Orders or go into other Enforcement tactics we have like monetary penalties and criminal procedures. Dell'Erba - The way to handle the end of the endless continuances is that we just use the tools by Amending the Enforcement Order. Engelbourg - The way is to make a policy change where if we think an applicant is going to be non-cooperative with our process, we just deal with the whole process through the Enforcement Order. - I know it's not gratifying for anyone, but we have endless tools, and we will leverage them if we need to. Misurelli - Agrees with Engelbourg and we could act a little quicker on putting additional Enforcements together. Engelbourg
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	- Our enforcement power comes directly from the Bylaw and the Wetlands Protection Act and is reinforced in our regulations, but the Chapter 390 code has specific language that allows us to enact civil penalties and to have other types of enforcement measures needed. Schafer - Asks if the Commission could create a guideline with a timeframe as to how long meetings could be continued before the next action takes place. This would allow us to be more consistent, and we could have the responsibility of a set of rules that they have to abide by. Engelbourg - Theoretically I like that idea but it's pretty clear that we're not able to constrain the actions or opinions of future commissions. We could have an internal schedule that Dell'Erba can keep it appraised of, but we can't formalize a way that it could be binding at all. Misurelli - We have all types of tools, but different enforcements could have different emergency timelines. If an action is more detrimental to a resource area, we might have to act quicker. Engelbourg - I think in the case where violators are being non-cooperative, we should always bring civil penalties and monetary penalties into fold. Misurelli - It's not the goal of the Commission to seek trouble and look for Enforcements but sometimes it needs to be done. Engelbourg - There have been some projects that brought a new material or alternative implementation that's never been used on Nantucket and attempted to deploy it for a very specific timeline and purpose. - Especially in Coastal areas, It should be a goal of the Commission to expedite and permit that project, as long as it's not causing impacts to the resource areas. - It doesn't make sense for the applicants to have to go through the whole process as it has low impact and a short time commitment. - We could create a definition of test and pilot project that would meet the performance standards, and we would have to work it onto the whole definitions and performance standards. - We could also create a waiver for test and pilot projects so that if they don't meet the performance standards, they could still be done through that waiver. - The third option would be to try to do both of those things to define it and have a waiver at the same time. Plandowski - We shouldn't make people jump through hoops to be permitted. Braine - Asks if this applies to any organization and not just the Town of Nantucket. Engelbourg - We can't give preference to any applicants so we would have to deal with test and pilot projects on the basis of what's proposed and not who's proposing it. - It could involve any resource area, either something that's never been used or has been used in very limited instances. - It could be something that causes there to be benefits for Coastal Stabilization, water quality, but it's more like trying to test a research hypothesis of whether it would work at all in this environment. - We're going to have to come up with a series of definitions of what constitutes these methods, which resource areas do we want them to allow them in. Misurelli - If we're learning something from a research hypothesis, it's great because that can help future Commissions.
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	Engelbourg - In the Wetlands Protection Act, there is a definition of test project and instead of it being something that gets a three-year approval, it's approved for only one year. Schafer - Is there any authority on staff approval that would allow them to implement it faster or is that not possible? Engelbourg - It's possible but not sure if we should make it that drastic of a measure. We have things that are considered minor activities now that are allowed without coming to the Commission. - Given that these are technologies that do have the potential to cause impact, they should come to the Commission. Dell'Erba - I think if a combination of several definitions and a waiver would be the best option. Engelbourg - Reviews the definition of a structure and an engineering structure. - Thinks that the issues really come down to what fixed location means and what a combination of materials that give support or shelter means. - We want to allow bioengineered, or man-made but coming from natural materials to not meet that combination of materials because then we're starting to call a lot of things structures. - The line should be drawn between things that are clearly completely man-made and a hard material verse things that can be considered bioengineered or people putting together a collection of natural materials. - We need to come up with some word or phrase that neatly delineates what natural materials are from non-natural materials. Dell'Erba - If we word it "natural or biodegradable" then wood is in there. Misurelli - We could exclude wood. Engelbourg - The other part of this is fixed location but we could look at this in another way to figure out if it's fixed permanently or fixed temporarily. - We could word that as a "permanent fixed location" which in this case would be considered the life of the permit. - We could list examples of what's considered a structure as well as what's not considered a structure or Coastal Engineering Structure. Misurelli - There's always going to be new technologies and products and we're just going to have to deal with those things as they come. - If we update every year, we can not only put things in but can take things out if they become obsolete. Engelbourg - I think that's how we should proceed from now rather than with tinkering with the definition. - Requests the Commissioners to write out their list of what they think qualifies as a Coastal Engineering structure and what they think doesn't qualify as a CE structure. Engelbourg - We should come up with a definition for temporary structures to designate what makes them temporary. - Anything that's up for longer than one month should not be considered temporary. Braine - I think since our summer season is so short, the time frame could be longer. Engelbourg
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	- We want to trigger permitting and make sure that things are put up in compliant ways or don't meet the performance standards.
	Misurelli - Thinks thirty days is reasonable. - Just like anything else with technology, there's things like temporary garages or sheds.
	Engelbourg - There's a lot of ways to use this loophole to get around our structural requirements. - We have the ability to not require this through a Notice of Intent; it could be considered a Request for Determination of Applicability or a Minor Activity. - Asks Dell'Erba to draft the policy for Commission review.
	Engelbourg - Discussing the updates to fertilizer regulations. - The Nantucket Land and Water Council submitted recommendations that other municipalities.
	Misurelli - Reviewed the submission and is written in our Orders that there is no fertilizer use. - Once concern I had is that if it's adopted into our regulations or in the bylaw, we will often forget to then put it in the Orders of Conditions. - I don't see that it's a big change as it's already within our jurisdiction.
	Engelbourg - The only thing that it would change is that at the time we issue a Certificate of Compliance or Order of Conditions, we have discretion about adding it in or not. - In addition to the numbered Conditions that Dell'Erba adds to the permits, we have three pages of general project conditions that everyone should be doing. - Maybe rather just doing a regulation change, we just add that into the general Conditions. - Seems like their focus is on residential lawns and turf scenarios. I'm worried that we're going to create a standard that we're exempting fertilizer from purposes that need it such as restoration.
	Misurelli - We could require soil testing if we're going to allow fertilizer, but we can always add that into an Order.
	Engelbourg - This wouldn't change the Nantucket fertilizer regulations, but it would add on to that specifically in Conservation Commission jurisdiction. - The Commission has authority in our jurisdictional areas if there is a reason to do that if it protects the performance standards and protects the protected interest of the resource areas that we have jurisdiction over.
	Willa Arsenault, Nantucket Land and Water Council - Our hope is to provide more stringent regulations around fertilizer under the Commission's jurisdiction.
	Engelbourg - I think we're deciding if the policy would be more restrictive than its worth and if it's just better to handle it in a procedural way rather than a regulatory way.
	Dell'Erba - In some ways this regulation is less stringent than how we condition permits because no fertilizer can be used. - In the condition where fertilizer would be needed, it lists out establishing trees, new gardens, agricultural purposes.
	Engelbourg - Thinks that the type of conditioning that we put into place now, being uniform on every project without having this regulatory concern is just taking those conditions that we have on every project is put into every permit before it's even drafted. - If we find it very important on a project, we can also add it to special conditions.

	- I think we should start today with the general conditions and then continue the discussion about the regulatory change later. Dell’Erba - There are some towns on the cape that have banned fertilizer in jurisdiction areas, specifically just turf and lawn, which I am in support of. Engelbourg - I think we should go beyond that and ban fertilizer for all residential use in any jurisdictional area with limited exceptions for agriculture, restoration, or industry. - All the policy changes, let’s get them in place for the next meeting. - Requests Staff and Commissioners to do their homework for regulatory changes.
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VI. Adjournment:

Motion:	Motion to adjourn at 7:35pm. (Made by: Plandowski) (Seconded by: Misurelli)
Vote:	Carried://4:0 Engelbourg, Braine, Misurelli, and Plandowski (aye)

Submitted by:
Lisa Graves