



CONSERVATION COMMISSION MINUTES

131 Pleasant Street
Nantucket, Massachusetts 02554

www.nantucket-ma.gov

Thursday, April 23, 2026 – 5:00 p.m.

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

https://youtube.com/live/KHvc6Z_dzWA

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, Turcotte, Plandowski and Williams
Absent Members: Braine, Misurelli, Schafer
Members Left Early: -

I. Call To Order

II. Acceptance of the Agenda

Discussion: (00:01:05)	Engelbourg takes a roll call of Commissioner's present and asks for a motion to accept the agenda.
Motion:	Motion to accept the agenda (Made by: Williams) (Seconded by: Plandowski)
Vote:	Vote Carried: 4:0: Engelbourg, Plandowski, Turcotte, and Williams (aye)

III. Announcements

Discussion: (00:01:24)	Engelbourg announced that the meeting is being audio and video recorded.
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IV. Update on Public Comment Questions from Prior Meetings

Discussion: (00:01:42)	none
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V. Public Comment

Chair Engelbourg called for public comment

Discussion: (00:01:50)	none
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VI. Public Hearing

1. Discussion of Revision of the Town of Nantucket Wetlands Protection Regulations (Chapter 390)

Discussion: (00:01:54)	Engelbourg - We did a large update to our regulations that went into effect on January 1, 2025. - As part of that process we committed to have twice annual hearings to discuss potential updates to the regulations. - Dell 'Erba requested the Commission to send any regulatory updates that they were interested in pursuing. Dell 'Erba - I received two emails- one from Engelbourg in terms of definitions and the other from Plandowski in reference to continuations that last almost in perpetuity. Engelbourg - Asks if there are any staff logistical revisions or things that are needing to be done? Dell 'Erba - I may have one thing that I may want to propose for minor activities, but there's nothing else pressing from me for now. Plandowski
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	- There have been two situations in the last year that we get continuation after continuation and there's got to be a good reason why applicants file an application and want to continue for six months. Engelbourg - We can't speak about any specific projects but my opinion on the general process is that sometimes people submit things just because they want to consider the possibility of maybe having permitting approval. But they're not interested in doing the project but want to get it before the Commission before the regulations change. - Maybe at one point people were interested in going forward with that process and then maybe they didn't like the conversation that was had or how the Commission was potentially going to view their project, so they wait for more information. - Sometimes there is back and forth between clients, representatives, property owners, staff, etc. Dell 'Erba - Sometimes we get an application and then there is something outside of the Commission, such as a neighbor dispute and it will hold up an application. Engelbourg - Agrees- it could be pending litigation, potential transfers of properties, turnover of a trust or LLC, Commission turnover, or whatnot. - Maybe it's annoying that these projects get continued but if it's not an Enforcement issue, it doesn't make a difference to us. - If it's an Enforcement issue, that's when it gets tricky because there is a potential feeling that it's delayed tactics of stalling. - We're pretty much tied into the process on the basis of the Wetland's protection Act and the Nantucket Wetlands bylaw so even if we come up with some process that would be able to change the continuation protocol, it would require a vote at Town Meeting as it would have to be a bylaw change. - Secondly, it would only allow us to hear the local part of the regulations of the application anyways so we would have to hear it again later after we close out that portion. Logistically, in my opinion it's impossible. Dell 'Erba - It would be a tricky thing for us to alter, and I don't know if we get too much of a benefit. - The Enforcement side of it, we already have mechanisms to deal with that such as issue another Enforcement Order, Amend the existing EO to put a civil penalty or monetary fine. Engelbourg - Theoretically, to get some mechanism where we could compel applicants to hear their applications, we would have to petition DEP to change the Wetlands Protection Act. - We could also have staff ask the applicants and they could either tell us or they could decline to tell us. Engelbourg - Asks the Commissioners if there are other discussion items they want to discuss.
Discussion: (00:11:31)	Turcotte - When we have an applicant come in and literally reference a stream and building culverts and things, we should call it a stream. - It won't come up very often, but I would like to see it defined properly. Engelbourg - Reads the definition for a River and Stream from the regulations. - When we scroll over to the list of our resource areas, it mentions that there are no rivers or streams on Nantucket.

	- There is a precedent for there being differences between the Wetlands Protection Act and the Nantucket Wetland Regulations. - If there's a reason why we want to protect these streams, which I think is beneficial because they're clearly a resource area on Nantucket, we would need to add a new resource area with the protected interests and performance standards. - We would just reference which ones would be for the Wetlands Protection Act, and which ones were for the Wetland Regulations. - The only thing that we need that we don't have is an accurate definition explaining why we're protecting streams, what the protected interest of those streams are, and performance standards that allow us to do anything to protect the stream. Turcotte - I would like to apply stream crossings with dimensions and things like that for culvers from the state's handbook. - We can add the section from the Wetland's Protection Act and then add in whatever anyone else wants to include. Engelbourg - We could keep the riverfront area as it is though because we don't have any rivers. - If there is enough changes to the regulations, we put a red line copy, staff reviews it, and then Town Council review it. - In September or October, we would vote to enact the changes with an effective date, which would need to be a minimum of 3 weeks after the hearing. - It would be good to have the changes drafted earlier in order for staff and Town Council to review it before the hearing is held. - We can also add it to an agenda over the summer with the potential changes so that people can voice their opinion if they have any at that time prior to hearing. Engelbourg - Asks Williams if she has any specific updates that she would like to discuss Williams - Nothing other than the two that were mentioned.
Discussion: (00:21:24)	Engelbourg - There are two definitions that I would like the Commission to consider for, Temporary Shade Apparatuses and Bioengineered Materials. - The temporary shade apparatuses came up as a result of a lack of clarity on tents, pergolas, and things that meet the structural definition under our local regulations but are installed on a non-permanent basis. - They have enough structural support like being anchored into the ground or cases cemented or have bases. - There was a desire to be voiced by a few Commissioners to come up with a definition to regulate these. - Shares drafted definition of a Temporary Shade Apparatuses and asks if there are any comments or questions on it. Plandowski - Asks if the time frame is consecutive 14 days during a calendar year. Engelbourg - Clarifies that it could be consecutive or non-consecutive, not more than 14 days at the same fixed location. Williams - Confirms that we're only proposing the definition within the Commission's jurisdiction. - In the zoning bylaw, there are restrictions on how long you can have it, how many times you can have a tent, and all of that. - I think this is reasonable, as it can totally get out of control.

	Turcotte agrees Dell 'Erba - My only thought is that someone can make an argument by moving over an inch once a week or something. Engelbourg - I will direct you and Jeff or Town Council to figure it. Dell 'Erba - There could be some language about it being in a substantially different location rather than like shifted. - It defeats the purpose if people work around it. Engelbourg - A Notice of Intent will come in and then an Order of Conditions comes in and can state that an as-built plan for the location of the temporary shade apparatus needs to be submitted to staff before erection. Dell 'Erba - If they have alternative locations, then they show that on the plan also. Engelbourg - I'm not sure, we'll have to figure that one out. Williams - We don't want loopholes. Engelbourg - Agrees with Williams and definitions have to be specific enough but not too specific. - We could also say that if they remain in place on any given parcel for more than 14 days during any calendar year, that means people can put them wherever they want. - The Commission's concern is whether the temporary shade apparatus is within the wetlands buffer zone. - We don't want it to be moved around so I think if they remain in place on any given parcel for more than 14 days. Williams - Agrees that she doesn't care where they put it, but after 14 days, they're done. Engelbourg - Amends the wording to include "remain erected on a lot" Dell 'Erba - Mentions that they can change the wording once it's reviewed by Town Council's recommendations. Engelbourg - Reviews his definition of Bioengineered Materials which tries to provide clarity for what is a Coastal Engineering Structure and not considered a Coastal Engineering Structure. - Wood is a fiber product so we need to figure that part out because we don't want to imply that all materials that are made from plants are non-structural as it would mean that timber bulkheads are non-structural. Plandowski - Asks what the difference is between wood and timber products. Dell 'Erba - My concern is due to a lack of knowledge of what some of the stuff is made of as certain things might technically be timber products or have timber products involved. Engelbourg - Changes the wording in that first sentence to "wood" products. - Mentions that bulkheads are already specifically already listed in the definition of Coastal Engineering Structures so if there's a lack of clarity, it's listed. Dell 'Erba
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	- Mentions that he thinks the last line in the definition is a little bit open but that is by design and it makes sense. Engelbourg - Using the example of a sand drift fence along with a coir terrace, the Commission has been calling that a structure because it's a combination of two different assemblies that function in the way of the Coastal Engineering Structure. Plandowski - I assumed that bioengineered and non-bioengineered would be maybe 50/50 but it could be 10/90 or 90/10. Engelbourg - It's up to us to decide depending on the specific project and that's why the word "may be considered" is there as it would be up for us to decide. - Thinks that the wording should include "wood" and "wood-based products" should be used. Turcotte - Thinks that "combination" should be replace "mixture" in the last sentence. Engelbourg - If we did add these two things, it would clear up a lot of confusion and make these two areas of permitting much simpler for the Commission. - Directs Staff to have Town Council review these two definitions before the hearing. Williams - Mentions that the only other matter is that she wishes they could somehow find an option other than fines to discourage Enforcements from happening. Engelbourg - Looked into other options, but it wasn't possible, resulting in the civil penalty being explored. - We also have criminal proceedings that we can explore if we really need to but hopefully, we don't have to. Engelbourg calls for public comment
Public Comment:	Willa Arsenault, Nantucket Land & Water Council
Discussion: (00:38:28)	Arsenault - Submitted a proposal for fertilizer regulations, which had been posted in the packet. - This proposal is intended to strengthen the protection of Nantucket's most sensitive resource areas as excess nutrients can contribute to algae blooms, loss of eel grass, degradation of our coastal waters and groundwater. - These fertilizer restrictions are often included through conditioning Notice of Intent applications, but they can vary from project to project and rely on case-by-case implementation. - The goal is to establish a clear consistent baseline across all projects within the Commission's jurisdiction. - The regulation prohibits routine fertilizer use for lawn maintenance within resource areas and buffer zones and applies only to turf and lawn areas, not to gardens, trees, shrubs, agriculture, and plantings. - It allows the Commission to give approved fertilizer use for things like the establishment of new lawns or restoration projects. - It's a consistent approach with what we're seeing in other towns across Cape Cod who have focused on either nitrogen or phosphorus or both. Plandowski - Asks how the Commission could enforce it. Arsenault - It would be enforced through staff as I think the Conservation Commission has more ability to manage what's happening in the wetland resource areas than the town does to manage the island as a whole.

	Engelbourg - The Commission’s job is to promulgate regulations that are easy to understand, make for good permitting and are enforceable. - We shouldn’t be deterred from doing things that make sense just because enforcement is a difficulty. - There are probably changes that we need to make to the draft that was submitted as I see a lot of loopholes, so we need to have a lot more clarity in it. Arsenault - That draft was intended to be sort of a jumping off point and I’m open to any changes that the Commission might want to make and happy to provide input. Engelbourg - In favor of this type of regulatory change as it makes sense to protect the wetlands resource areas. - If people have reasons to fertilize, it should be outside of those areas. - Believes there should be no fertilizer in wetland resource areas as all with the exception being for the purpose of restoration activities when properly permitted. Dell ‘Erba - You’re going to have high tree mortality rates without any help in the first two years, it would preclude trees from surviving at good rates. Engelbourg - Thinks that planting native trees in a wetland resource area would meet the definition of what ecological restoration is. - Maybe rather than no fertilizer within the buffer zone, we could allow it within the 75- or 50-foot buffer zone, and it would still fulfill most of the goals with this intent of allowing it. - There are plenty of ways to reach the overall goals by having enough reasonable exceptions in place and there’s always the waiver requirement. Dell ‘Erba - Our minor activities have planting of native trees or shrubs outside of 50 feet, so if they had a minor activity permit to plant but I’m also hesitant to knock out 50% of our impact. Engelbourg - Realistically most of the fertilizer application is within the 50–100-foot buffer zones as that’s where landscaped areas and houses tend to be. - I think there are ways to get around it, we either do the waiver or there could be exception if there was a minor activity permit for the activity then it could proceed. - I think the simplest way to grant fertilizer is through a waiver. Dell ‘Erba - Agrees that it may be difficult to enforce but think it’s a terrible copout reason to not do anything. - We either regulate or develop some magical enforcement wing to see what happens with it to make it effective. Engelbourg - We have a good template here, but we need to write our own part of the bylaw. - Dell ‘Erba will draft the bylaw and Engelbourg will edit with his thoughts. Arsenault - Asks if the matter will be continued into concurrent Conservation Commission meetings or will it be proposed at the next regulations meeting. Engelbourg - It sounds like we’re going to try to get a draft of this, a draft of our stream standards, review of the two definitions that I submitted today, which is enough for an update package. - If we have all that ready and reviewed by council prior to October, we will approve it before, otherwise it will be in October.
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	Dell 'Erba - If anyone has any ideas on the following, you can email them to me, and we can put them on an agenda. Turcotte - Refers to a flow chart that he provided to the Commission on how they approach enforcement and asked to put it on the website. Dell 'Erba - It should be in our procedure's manual, which is all over the website now. Plandowski - The Enforcement procedure that exists is very old and should be updated. Turcotte - I just outlined what exists and how we operate now and we can always update it. Plandowski - The date on that is November 2004 for the enforcement manual. Dell 'Erba - That is the most current from DEP
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VII. Other Business

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

Discussion: (00:59:40)	None
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3. Commissioner's Comments

Discussion: (00:59:45)	None
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4. Administrator/Staff Reports

Discussion: (00:59:53)	Dell 'Erba - I'm glad that we're doing this meeting and feel that this makes our procedural and regulations updates make more sense and work a lot more efficiently.
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VIII. Adjournment:

Motion:	Motion to adjourn at 6:00pm. (Made by: Plandowski) (Seconded by: Williams)
Vote:	Carried://4:0: Engelbourg, Plandowski, Turcotte, and Williams (aye)

Submitted by:
Lisa Graves