



CONSERVATION COMMISSION

PUBLIC MEETING

2 Bathing Beach Road
Nantucket, Massachusetts 02554

www.nantucket-ma.gov

Thursday, May 14, 2020 – 5:00 p.m.

*This meeting was held via remote participation using ZOOM and YouTube,
Pursuant to Governor Baker’s March 12, 2020 Order Regarding Open Meeting Law*

Commissioners: Ashley Erisman (Chair), Ian Golding (Vice Chair), David LaFleur, Joe Topham,
Seth Engelbourg, Maureen Phillips, and Mark Beale

Called to order at 5:03 p.m. by Ms. Erisman

Staff in attendance: Jeff Carlson, Natural Resources Director; Joanne Dodd, Natural Resources Coordinator

Attending Members: Erisman, Golding, Topham, Engelbourg, Phillips, Beale

Absent Members: LaFleur

Agenda adopted by unanimous consent

*Matter has not been heard

I. PUBLIC MEETING

A. Announcements

B. Public Comment –

II. PUBLIC HEARING

A. Notice of Intent

1. Chuckrow Nominee Trust – 25 Quaise Road (26-12) SE48-3241 **(Cont. 05/28/2020)**

2. Lotte Leschly QPRT & Jan Leschly QPRT – 65 Squam Road (13-15) SE48-3301

Sitting Erisman, Golding, Topham, Engelbourg, Phillips, Beale

Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.

Representative Art Gasbarro, Nantucket Engineering & Survey

Public None

Discussion (5:09) **Gasbarro** – For a new leach bed and upgraded septic.

Staff Recomm. Have everything needed to close.

Motion Motion to Close. (made by: Beale) (seconded)

Roll-call Vote Carried 6-0//Beale-aye; Engelbourg-aye; Erisman-aye; Golding-aye; Phillips-aye; Topham-aye

3. Nantucket Point of View, LLC – 9 Lincoln Avenue (30-137) SE48-3278 **(Cont. 05/28/2020)**

4. Kim Glowacki – 46 Easton Street (42.4.1-22) SE48-3285 **(Cont. 05/28/2020)**

5. *Cindy & John J. Galihier – 34 Washing Pond Road (31-13.3) SE48-_____

Sitting Erisman, Golding, Topham, Engelbourg, Phillips, Beale

Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.

Representative Art Gasbarro, Nantucket Engineering & Survey

Dan Bailey, Pierce Attwood LLP

Public Whitney Gifford, Reade, Gullicksen, Hanley, & Gifford LLP for Chip Schorr at 30 Washing Pond Road

Discussion (5:12) **Gasbarro** – This is for residential redevelopment within the buffer to a coastal bank. The house on the property was approved for removal and some landscaping work, which is still an open order. According to regulations, we’ve provided supporting CVM information on long-term erosion and have exceeded the 50-foot setback. Work includes construction of a secondary dwelling, swimming pool, fire pit, and patio. The previous house location will become lawn using excavated dirt with an access path through the 25-foot buffer to the beach. This property has been approved for subdivision into two lots. Grade plans show all grading leads away from the resource area south toward the road. We have not requested waivers; only work within the resource area is related to the beach stairs, which constitute water-dependent use.

Golding – The letter in the packet references a single-family dwelling, which doesn’t exist. He couldn’t figure out where the new dwelling is going in relation to the old dwelling; it looks like a covered patio is being placed in an existing dune field. Asked if the applicant’s representatives read the abutter’s letter.

Gasbarro – Noted that “existing structure” was a typo; should not have said “existing.” This is the secondary structure which meets the definition for a single-family dwelling. We did an extensive geologic survey of the area and have a determination that this is a coastal bank rather than a coastal dune. We did read the letters and finds them without merit as to the protected interests.

Golding – From his observation, the contour map isn’t accurate; he’d like a drawing with contours and location of the old house and would like to see the ruling on the coastal bank.

Gasbarro – The site plan has all the contours and was based upon a current field survey.

Topham – He’d like to see that plan, it isn’t in the packet; asked Mr. Gasbarro to screen-share it.

Gasbarro – Screen-shared the plan and reviewed it.

Golding – Where it says, “excavation is to be stored”, the lip of the area seems to be within 10 or 15 feet of the top of the bank.

Gasbarro – The steep contours continue to the approved limit of work.

Erisman – What we see outlined as one lot is actually two lots.

Topham – Asked for a dimension from the north wall of the previous structure to the north wall of the new structure.

Beale – Asked if the beach stairs have to be 6-feet wide. It seems too wide and should be narrower.

Gasbarro – He can bring that back to the client and work it into the follow up.

Erisman – She was also confused by the terminology of “high dunes” so close to the house. She thinks the Commission need to look more into the resource area boundaries.

Golding – Asked why the letters are without merit and why there is no inclination to compromise.

Bailey – The letters raise issues that don’t exist. Almost all the work is outside ConCom jurisdiction and all structures are pulled back to outside the 50-foot buffer line.

Phillips – The new plan has extremely extensive stone surround to the house; in terms of this being a positive for the resource area is one thing. On the other hand, you have a very dynamic resource area; there is a chance this could erode more with so much impervious surface. The slope does go back from the resource area; she’d like to know just how much of a slope it is. About being a more responsible resident, you have a fire pit and a pool.

Gasbarro – It would be helpful to provide a comparison table between existing and proposed. We wanted the plan to show everything being proposed. The patio is in the 50- to 100-foot buffer zones. He’s happy to provide the requested information but feels this more than meets the performance standards.

Beale – Confirmed the pool and fire pit are within ConCom jurisdiction. There is so much real estate being covered with a stone patio; he thinks the owners might want to rethink that.

Topham – Once we have a plan showing where the house was and what is proposed, he thinks how much better this will be would be explained.

Golding – The original house was placed in a dune field; he’d like an independent expert to review the geological survey. Suggested the other commissioners visit the site.

Carlson – The geological survey was submitted with the origin application; we often get confused with the parent geography and the fact that coastal dunes are landward from a coastal bank. We got permission from Nantucket Islands Land Bank to go onto their property when reviewing this property. We could have someone look at it again. We worked hard to make that a coastal dune; the geology didn’t hold up in that direction.

Erisman – She sees this as a net benefit though she finds the amount of patio as a lot but okay. Her biggest concern is the property has been subdivided; what’s being sold as a net benefit here could be offset by two large structures with accompanying hardscaping on the new lot.

Gasbarro – The other lot will have to come before the ConCom; if they ask for a waiver, that is up ConCom. He sees no issue with this as long as the resource area is not impacted. The proposal is completely compliant with the regulations; that could be the case with the other lot as well.

Carlson – The only public comment is from Chip Schorr; he noted that he sent a letter and Mr. Gifford is here to represent him.

Gifford – With this huge chunk of impervious structure, no drainage plan is included. The plan shows two subterranean parking structures and his client questions where that water is going to drain. If that huge patio is shrunk, the pool and fire pit could be placed outside ConCom jurisdiction. Another question is where the pool will be drained. Regarding the stairs to the beach, the Gilroy property has a functioning set of stairs, which could serve both lots with a simple easement. His client would like to see the project scaled back.

Beale – Asked where the existing stairs are located.

Gifford – Page 30 of the packet shows the existing stairs on the new lot.

Gasbarro – The patio, driveway, and garage are all out of ConCom jurisdiction; a corner of the pool is in the buffer zone. Nothing proposed will impact the resource area. The runoff is all going to the south and it can’t go anywhere else.

Topham – He’s surprised we are spending so much time on what is proposed outside the resource area. The homeowner will handle runoff so it doesn’t erode his property. We have regulations on where pools are drained. This has been pulled out so far that he sees it as a net benefit.

Golding – The resource area goes out to 100 feet and we often ask for porous driveways rather than asphalt.

Gasbarro – We will provide updated plans, additional charts, and other information. Asked for a continuance to May 28th.

Staff Recomm. None

Motion Continued to May 28th

Roll-call Vote N/A

III. PUBLIC MEETING

C. Requests for Determination of Applicability

1. The Karin Alper Revocable Trust of 2005 – 1 Wamasquid Place & 49 Meadow View Drive (56-113; 390)
(Cont. 05/28/2020)

D. Certificates of Compliance

1. Andrew O’ Brien & Sonja Anderson, Trustees – 13 C Street (60.2.1-76) SE48-3227

Sitting Erisman, Golding, Topham, Engelbourg, Phillips, Beale
 Staff This was for the construction of a stairway and elevated walkway; it is constructed in compliance. Recommend the certificate can be issued with on-going Condition 19 requiring photo monitoring.
 Discussion (6:02) **Topham** – It says the walkway has a 60% light penetration; it looks like it’s built with wood planks rather than the Fibergrate we required.
Art Gasbarro, Nantucket Engineering & Survey – The first part of the walkway is timber planks and over the marsh, it is the Fibergrate; that might not be clear in the photos. There is a change of resource area at the transition point.
 Motion **Motion to Issue with on-going Condition 19.** (made by: Engelbourg) (seconded)
 Roll-call Vote Carried unanimously//Beale-aye; Engelbourg-aye; Erisman-aye; Golding-aye; Phillips-aye; Topham-aye

E. Orders of Condition

1. Hulbert Ack II, LLC – 4 Hulbert Avenue (42.1.4-2) SE48- 3298

Sitting Erisman, Golding, Topham, Engelbourg, Phillips, Beale
 Documentation Draft Order of Conditions
 Staff The lot next door had the three plants species which were the subject of discussion; not this lot. He will add a Condition directing lighting down and away from the wetlands.
 Discussion (6:05) **Engelbourg** – There was discussion about lighting being directed down.
 Motion **Motion to Approve as amended.** (made by: Topham) (seconded)
 Roll-call Vote Carried unanimously//Beale-aye; Engelbourg-aye; Erisman-aye; Golding-aye; Phillips-aye; Topham-aye
 2. Lotte Leschly QPRT & Jan Leschly QPRT – 65 Squam Road (13-15) SE48-3301
 Sitting Erisman, Golding, Topham, Engelbourg, Phillips, Beale
 Staff Only condition requires the submit ConCom copies of all reports from Board of Health.
 Discussion (6:08) None
 Motion **Motion to Approve.** (made by: Phillips) (seconded)
 Roll-call Vote Carried unanimously//Beale-aye; Engelbourg-aye; Erisman-aye; Golding-aye; Phillips-aye; Topham-aye

F. Other Business

1. Approval of Minutes 4/30/2020: Mr. Golding explained two minor corrections.

Motion **Motion to Approve as amended.** (made by: Beale) (seconded)
 Roll-call Vote Carried unanimously //Beale; Engelbourg; Erisman; Golding; Phillips; Topham-aye

2. Discussion of SBPF – 87-105 Baxter Road (48-Variou) SE48-2824: Template Maintenance

Sitting Erisman, Golding, Topham, Engelbourg, Phillips, Beale
 SBPF Reps Dwight Dunk, Epsilon Associates, Inc.
 Steven Cohen, Cohen & Cohen Law P.C.
 Discussion (6:12) **Carlson** - We did conduct a field inspection of the entire template after it was regraded and found no debris. Said they could start the clean-up at 85 Baxter. Waiting for that to conclude then will be for the 3rd phase.
Dunk – The first stage was done and approve; second phase starts next week. Once that is inspected we move on to stage 3.
Carlson - He met with Ali Tepsurkayev on the site; they are continuing to do the regular inspection for debris and talked about what they are doing and get is insight.
 Motion No action.
 Roll-call Vote N/A

3. Discussion of SBPF – 77-122 Baxter Road SE 48-1659; SBPF - 65-67 Baxter Road SE48-1602

Sitting Erisman, Golding, Topham, Engelbourg, Phillips, Beale
 SBPF Reps Dwight Dunk, Epsilon Associates, Inc.
 Steven Cohen, Cohen & Cohen Law P.C.
 Discussion (6:17) **Carlson** – We had looked at the properties to the south and brought issues to the Commissioners’ attention but didn’t properly deal with them at that time. Nantucket Coastal Conservancy (NCC) has asked the commission to look at it again and ensure those are in compliance with outstanding permits.
Cohen – He doesn’t know if he agrees with much of the information in the NCC letter. We’ve already established the sand delivered to that location is not SBPF sand.
Carlson – Would like to carry this to the May 28th agenda to have more information available. He hasn’t seen any public comment on either SBPF discussion.
 Motion Continued to May 28th.
 Roll-call Vote N/A

4. Discussion of ATM 2020 Article 97 – Proposed Glyphosate Ban

Sitting Erisman, Golding, Topham, Engelbourg, Phillips, Beale

Discussion (6:21) **Engelbourg** – Thinks we can table this since it seems the intention is that no citizen warrant articles will be heard at the June 2020 ATM.

Golding – He sees this as being, in part, a political issue; he would be more comfortable if Mr. Engelbourg ask for an amendment rather than the Commission getting involved in a very controversial issue.

Engelbourg – This is a controversial article. For several years he has taken a position on this personally. His intent is to ask the commission if its fruitful to take an official position on it.

Phillips – Her worry is that this is an instance where science is being politicized. It could be within our leadership role to support the science as it relates to the Island and resource areas. She'd be in favor of reviewing this once the Town gets to the point it will vote on citizen warrant articles at Town Meeting.

Erisman – She has mixed feeling. Glyphosate is an important tool in our invasive species management program, but at the same time it is being misused. She wants to stay out of the political issue.

Engelbourg – A ban under current state law is not legal and not helpful. He'd support tighter local regulations limiting who can use glyphosate.

Golding – Reiterated he suggests Mr. Engelbourg request an amendment. He found a number of European papers disagreeing with the papers issued by the makers of Glyphosate. He will be happy to provide the information to Ms. Phillips. He agrees there are uses for it but doesn't want to get the Commission involved in politics.

Carlson – A lot of this has to do with how the State regulates Glyphosate; both he and Roberto Santamaria, Director of Health and Human Services, have petitioned the State to allow the Island to better regulate locally. Suggest the Commission provide a letter of support for the Department of Agriculture asking that Nantucket be allowed to police locally the use of Glyphosate.

Topham – Agrees with supporting Mr. Carlson and Mr. Santamaria petitioning the State. He doesn't think as a Commission we should weigh in on a citizen article. As a concerned citizen, Mr. Engelbourg should push for an amendment either on Town Meeting floor or go to the article sponsor to request a change.

Engelbourg – He brought it to the Commission because we carry a certain amount of weight. He has been in touch with the sponsor and is willing to continue doing so. He likes the idea of supporting Mr. Carlson in petitioning the State. He understands there are different opinions on the environmental and health risks. He thinks those can be mitigated.

Erisman – She's willing to provide a letter supporting Mr. Carlson's efforts with the Town.

Carlson – When the Town decides citizen articles will be considered, he'll put this back on the agenda.

Motion No action

Roll-call Vote N/A

5. Reports:

a. None

6. Commissioners Comment

a. **Golding** – A lot of trout have been released into Washing Pond. Asked about if Mr. Carlson knows about that.

Carlson – That is through Massachusetts Fisheries and Wildlife. If you have a specific pond or issue, send him an email and he'll put Mr. Golding in touch with whoever is necessary.

Engelbourg – Mass Fisheries and Wildlife should have a schedule of all releasing dates on their website. If you see someone releasing fish, call the Police or the Environmental Police.

b. **Erisman** – Asked Mr. Carlson to get to 300 Polpis Road.

c. **Erisman** – At the beach at Surfside, the Terns an Piping Plover have increased; asked if there will be fencing out there.

Carlson – There is some already. He'll contact Massachusetts Audubon about fencing their area of responsibility.

d. **Erisman** – We as a commission need to address the Planning Board about subdividing property within resource areas.

Beale – Having been on the Planning Board, there is a State law stating you can't prevent someone from subdividing their lot. However, a tactic is to make one lot exempt from resource areas then come in and ask for waivers on the second lot.

Engelbourg – Suggested Town Counsel weigh in on this.

Golding – He's willing to talk to our State representative about getting a change in the law.

Carlson – We could also try to address it through our bylaws and performance standards. From D. Anne Atherton, she said the current Planning Board might be more receptive than you think.

7. Administrator/Staff Reports

a. Wear a mask and maintain social distancing when in public; stay safe.

G. Adjournment

Motion **Motion to Adjourn at 6:50 p.m.** (made by: Golding) (seconded)

Roll-call Vote Carried unanimously//Beale-aye; Engelbourg-aye; Erisman-aye; Golding-aye; Phillips-aye; Topham-aye

Submitted by:
Terry L. Norton