



CONSERVATION COMMISSION

PUBLIC MEETING

2 Bathing Beach Road
Nantucket, Massachusetts 02554

www.nantucket-ma.gov

Thursday, May 28, 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 5:00 p.m. by Ms. Erisman

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

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

Agenda adopted by unanimous consent

*Matter has not been heard

I. PUBLIC MEETING

A. Announcements

B. Public Comment – None

II. PUBLIC HEARING

A. Notice of Intent

1. Chuckrow Nominee Trust – 25 Quaise Road (26-12) SE48-3241 **(Cont. 06/11/2020)**
2. Cindy & John J. Galihier – 34 Washing Pond Road (31-13.3) SE48-3302

Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
Representative Art Gasbarro, Nantucket Engineering & Survey
Public None
Discussion (5:07) **Gasbarro** – Asked to withdraw the application.
Staff None
Motion **Motion to Accept the withdrawal.** (made by: Golding) (seconded)
Roll-call Vote Carried unanimously//Beale-aye; Engelbourg-aye; Erisman-aye; Golding-aye; LaFleur-aye; Phillips-aye; Topham-aye

3. 46 Shimmo Pond Road N.T – 46 Shimmo Pond Road (43-77) SE48-3264 **(Cont. 06/25/2020)**
4. Nantucket Point of View, LLC – 9 Lincoln Avenue (30-137) SE48-3278 **(Cont. 06/11/2020)**
5. *On the Pond, LLC – 96 Miacomet Avenue (81-5.1) SE48-3303

Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
Representative Brian Madden, LEC Environmental
Public None
Discussion (5:09) **Madden** – This proposal is for a new dwelling outside the 50-foot buffer to Miacomet Pond; driveway, water, and sewer. The foundation will meet groundwater requirements. Proposing to revegetate cleared areas and lawn that encroached into the 25-foot buffer and requesting a waiver for that work.
Phillips – Given the problems with flooding, asked why they didn’t place it farther from the pond.
Madden – The bordering vegetated wetland is 50-foot wide; pond elevation is elevation 6.6 and the house location is around elevation 14; also, they are reserving an area to the northeast for a future structure.
Staff Have everything needed to close.
Motion **Motion to Close.** (made by: Topham) (seconded)
Roll-call Vote Carried unanimously//Beale-aye; Engelbourg-aye; Erisman-aye; Golding-aye; LaFleur-aye; Phillips-aye; Topham-aye

6. Kim Glowacki – 46 Easton Street (42.4.1-22) SE48-3285 **(Cont. 06/11/2020)**
7. 300 Polpis Road, LLC – 300 Polpis Road (88-20 & 11) SE48-3295

Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
Representative Jeff Blackwell, Blackwell & Assoc.
Public None
Discussion (5:14) **Blackwell** – Recapped the project and reviewed information provided since the last hearing. The dumpster will be removed and does not impact areas of jurisdiction. Lawn and structure are circa 1982, therefore it has grandfathered use. Proposing a split-rail fence to delineate the 25-foot buffer.
Engelbourg – Believes a waiver is required for planting highbrush blueberry in the wetland.

Phillips – She respects the 1982 date but wants documentation on contracts or purchasers that would substantiate that.

Golding – He takes the owners word for the age of the structure.

Erisman – Asked if Caleb Cressman, the owner, provided a timeframe for removal of debris within the 25-foot buffer.

Blackwell – He didn’t provide a date, but the truck will be removed within the week. He offers a month to six weeks due to the COVID restriction on the number of workers at a worksite.

Erisman – The application said the owner was willing to plant 6 highbrush blueberries; you said 10. She prefers 10 because she would like the vegetation in the wetland to be made more robust.

Beale – He’s happy to see the property being cleaned up. It’s good news if the work is environmentally sensitive.

Staff Have everything needed to close.

Motion **Motion to Close.** (made by: Engelbourg) (seconded)

Roll-call Vote Carried 5-0//Beale-aye; Engelbourg-aye; Erisman-aye; Golding-aye; LaFleur-abstain; Topham-aye; Phillips-no vote lost connection

8. The Town of Nantucket – 34 Washington Street (42.2.3-2) SE48-3300 **(Cont. 06/25/2020)**

9. Trust for Richard Phillips – 19 East Tristram Avenue (31-4.1) SE48-3304

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

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

Representative Paul Santos, Nantucket Surveyors

Public None

Discussion (5:31) **Santos** – This is for the reconfiguration of existing driveway within the buffer to a bordering vegetated wetland, which is located across the street and associated with a drainage ditch. All work is within the 100-foot setback; the house and septic are outside the 100-foot buffer. Have a Natural Heritage Endangered Species Program permit for work on the property; their determination is no adverse impact/no take.

Beale – Asked if the beach access is new or existing – existing.

Staff Have everything needed to close.

Motion **Motion to Close.** (made by: Phillips) (seconded)

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

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)

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

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

Representative Brian Madden, LEC Environmental

Public None

Discussion (5:36) **Madden** – This is to confirm the wetland resource area boundaries for a sewer connection.

Beale – Asked if there is a trail on the property.

Madden – There is a vegetative buffer around the pond, but the lawn comes close.

Staff We can confirm the resource area boundaries. Recommend Positive 2A and Negative 3.

There is a path from the Nantucket Island Land Bank property to the pond.

Motion **Motion to Approve as recommended.** (made by: Topham) (seconded)

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

D. Certificates of Compliance

1. Norman M. and Susan I. Fidel – 3 Cudweed Road (82-143) SE48-3106

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

Staff The site is in compliance.

Discussion (5:41) **Paul Santos**, Nantucket Surveyors – This was for an addition within the buffer to a bordering vegetated wetland. Work was done in compliance.

Motion **Motion to Issue.** (made by: Engelbourg) (seconded)

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

2. The Constance K. Cheever Revocable Trust – 23 Monomoy Road (54-205) SE48-3061

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

Staff This was for residential development. Everything is in compliance. There have been past issues with this site; we talked to the contractor and Town about sediment in a catchbasin. That has been cleaned out.

Discussion (5:43) **Erisman** – Our packet indicates roof drainage wasn’t installed; asked why.

Carlson – We can ask for more information. It was explained that they weren’t seeing runoff in the amount which the site could not naturally infiltrate. We can hold this over.

Golding – He agrees; there was a reason for requesting the drainage and that is how the order was drafted.

Engelbourg – He agrees. It has not been long enough to determine that there will not be issues in the future.

Motion Continued for 2 weeks.

Roll-call Vote N/A

E. Orders of Condition

1. On the Pond, LLC – 96 Miacomet Avenue (81-5.1) SE48-3303

Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
 Documentation Draft Order of Conditions
 Staff He'll add Condition 21 requiring native species. He'll add a request for photos to survival rate is met.
 Discussion (5:48) **Erisman** – The plantings should be specified as native with no cultivars.
Engelbourg – Since this is a restoration area, we should add the plant survivability rate.
 Motion **Motion to Approve as amended.** (made by: Golding) (seconded)
 Roll-call Vote Carried unanimously//Beale-aye; Engelbourg-aye; Erisman-aye; Golding-aye; LaFleur-aye; Phillips-aye; Topham-aye

2. 300 Polpis Road, LLC – 300 Polpis Road (88-20 & 11) SE48-3295

Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
 Documentation Draft Order of Conditions
 Staff Condition 19 will add the requirement for photos and survival rate and no cultivars within 25 feet. In the permit overview, asked if they want to include the waiver for plantings – yes. We call out the removal activity.
 Discussion (5:52) **Beale** – Asked if highbrush blueberries should be added.
Erisman – Those are native species.
Engelbourg – Under the waiver, we should call out the plantings.
Erisman – We should be notified before heavy equipment is used to remove debris from within the 25-foot buffer.
Phillips – Regarding the future of the property, asked what “pre-existing” refers to.
Carlson – Grandfathering allows maintaining and renovating the existing structure.
 Motion **Motion to Approve as amended.** (made by: Beale) (seconded)
 Roll-call Vote Carried unanimously//Beale-aye; Engelbourg-aye; Erisman-aye; Golding-aye; LaFleur-aye; Phillips-aye; Topham-aye

3. Trust for Richard Phillips – 19 East Tristram Avenue (31-4.1) SE48-3304

Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
 Documentation Draft Order of Conditions
 Staff Didn't have a lot of conditions for this; it's pretty straight forward.
 Discussion (5:58) None
 Motion **Motion to Approve as drafted.** (made by: Topham) (seconded)
 Roll-call Vote Carried unanimously//Beale-aye; Engelbourg-aye; Erisman-aye; Golding-aye; LaFleur-aye; Phillips-aye; Topham-aye

F. Extension Requests

1. Kathleen Sayle – 103 Washington Street (55.1.4-37) SE48-2995

Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
 Documentation Draft Order of Conditions
 Staff None
 Discussion (6:00) **Paul Santos**, Nantucket Surveyors – Asking for one 1-year extension. A majority of the work is in compliance. But they are looking to apply for work on the building which he wants to incorporate on this order.
 Motion **Motion to Approve the 1-year extension.** (made by: Topham) (seconded)
 Roll-call Vote Carried unanimously//Beale-aye; Engelbourg-aye; Erisman-aye; Golding-aye; LaFleur-aye; Phillips-aye; Topham-aye

G. Other Business

1. Approval of Minutes 5/14/2020:

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

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

Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
 SBPF Reps Dwight Dunk, Epsilon
 Steven Cohen, Cohen & Cohen Law P.C.
 Discussion (6:02) **Dunk** – Following the sequence agreed upon, the contractor started removing the debris at Lot 85 Baxter Road; that should be completed by the end of next week. The report submitted last week indicated no debris detected and sand delivered last autumn has been skimmed and used to maintain the template. Asked that they be allowed to return to the weekly and post storm inspections.
Engelbourg – In the 5/11-5/16 log, it seems the dates were incorrectly submitted. Asked those be checked and corrected. Asked if the staff agrees all the sand placed in August has been removed.
Carlson – We've been inspecting the template weekly, and he's not seeing a lot of the problem material or discolored sand.
Phillips – If we get a storm that uncovers the template, asked if the Commission has to specify inspections until the template is recovered. She thinks it should be inspected more than weekly.
Carlson – Inspections are required after any storm until the tubes are recovered.

Motion **Motion to Allow SBPF to go back to weekly inspections.** (made by: Topham) (seconded)

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

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

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

SBPF Reps Dwight Dunk, Epsilon
Steven Cohen, Cohen & Cohen Law P.C.

Public Rick Atherton, Nantucket Coastal Conservancy
Burton Balkind

Discussion (6:12) **Balkind** – About a year ago, he brought to the board’s attention sand with debris at these locations. We still haven’t gotten to the bottom of who is responsible for that.

Atherton – Referred to a memorandum to the Select Board dated 7/5/2019. He doesn’t know if a report was generated as a result of the information referred to. Further conversation should refer to the permit holder; the references are to other contractors. The second item is in the Order of Conditions issued for the coir log installations regarding Condition 6 requiring clean fill. He thinks it’s appropriate for the permit holder to say they understand what happened and agree it was a mistake, which will not be repeated.

Carlson – He agrees with a few of Mr. Atherton’s points. We lost track of the areas to the south; those permits are held by SBPF, but the easiest way to move forward is to schedule more regular contact meetings. We need to have a 6-month personal check-in on the site and source of material provided to the Commission. Inspections should document what’s coming out of the bank, especially on abandoned sites. We have a maintenance request from NETCO for the area to the south.

Erisman – She was surprised to learn SBPF was the permit hold on these. Asked if NETCO has contacted staff.

Carlson – They want to do the maintenance to recover those sand tubes and the nourishment required.

Engelbourg – Asked if the two Orders of Conditions are still active.

Carlson – Yes; on-going conditions must continue to be complied with.

Engelbourg – He wants to lay out the timeline. He’s hearing that when this matter came up there was a question about sand having debris and SBPF said areas to the south were delivered by a separate contractor. The responsibility to ensure the material is clear falls upon SBPF; there is potentially an enforcement issue on those two orders.

Carlson – If you don’t carry conditions forward, they don’t have to follow them any longer. If you want monitoring and maintenance to continue, the Commission must require it. These two orders don’t have Certificates of Compliance.

Golding – He feels we were deceived; he agrees with Mr. Engelbourg. We’ve been skirting the issue of ensuring future deliveries adhere to protocols. He wants that protocol approved before we allow further deliveries.

Topham – This is twice we’ve had NETCO come into our crosshairs; they don’t seem to understand what is going on her on Nantucket and are constantly making mistakes.

Erisman – Asked if NETCO provided delivery tickets – no. She feels they should have a representative at the meeting.

Balkind – Asked about a sample sent to the Department of Environmental Protection (DEP).

Carlson – They didn’t do chemical testing but found the sand was within the medium requirement

Phillips – Asked about the relationship between NETCO and SBPF.

Cohen – These permits are from 2007, before he was involved in the project. They are not SBPF’s permits; they were issued to the property owners, who are the responsible entities. SBPF facilitated applying for permits for these sites to do terracing; however, SBPF never did any of the work. Conversely, the geo-tube project is an SBPF project on Town property. NETCO has contracted with these homeowners and works with them individually. The responsible parties have been made aware and actions will be taken to ensure proper sand is provided.

Erisman – Using Mr. Cohen’s logic, we should have a member of the Select Board present during any discussion regarding SBPF, since the Town is the property owner. She finds this troubling; SBPF is big enough an organization to keep track of all permits under their name. We need to clean up the confusion.

Golding – Suggests we start an Enforcement Action against NETCO and get Town Counsel’s opinion on Mr. Cohen’s take on this. He respectfully disagrees with the way Mr. Cohen presented the situation. It’s essential to have a legal opinion. He’s very dissatisfied that SBPF feels they can “go sideways” on this.

Engelbourg – He understands what Mr. Cohen is saying about the individual property owners; however, SBPF had a role in enabling the projects. Their 990 form says that they are supporting engineering and other professional fees for permitting, design, and implementation of a beach terracing system to reduce beach erosion on Nantucket. He feels that goes beyond the individual property owners; they helped the properties with the permitting process

Cohen – SBPF facilitated obtaining the permits but hasn’t been involved for 13 years. If the Commission wants to reach out to the contractor, that’s okay. If you want to bring an Enforcement Action, that needs to be investigated.

Topham – Agrees with Mr. Engelbourg, NETCO is really at fault. We’ve asked SBPF to be the watchdog. No one has come forward to say what happened. He also agrees Town Counsel should weigh in. An Enforcement Order should be sent to NETCO.

Phillips – SBPF’s involvement means it does have responsibility, even if it isn’t a legal responsibility. Agrees with Mr. Engelbourg, Mr. Topham, and Mr. Golding and the need for legal counsel. Going forward, she hopes we can work together so that a bad actor doesn’t continue.

Cohen – Bringing NETCO in is the right thing to do.

Carlson – A direct enforcement on the properties would be problematic; a better tack is to bring NETCO in, given that they’ve requested to do maintenance.

Topham – We should write a letter and tell them they can’t begin work until they come before the Commission and correct the mistakes.

Golding – Feels we can hit NETCO with an Enforcement Order. Asked Mr. Carlson if he can do that.

Carlson – He’d rather not comment now; he rather Town Counsel provide advice.

Beale – Thinks a letter to NETCO would make a lot of sense.

Atherton – He thinks it would be advisable that the letter to NETCO be cc’d to all the permit holders.

Carlson – When we send out potential violation letters, we always send copies to any involved property owner, the name on the original order, DEP, and the contractor.

Phillips – The property owners should be awakened to the fact that they are part of this project.

Cohen – The owners have the most direct, tactile connection with NETCO.

Topham – He’s surprised the Commission has dragged SBPF through the mud; however, NETCO has never faced the music and never come forward. He’d like the public to know about the egregious damage they’ve caused to Nantucket. A letter should go forward and Town Counsel weigh in regarding going after them.

Carlson – The Commission can direct action; he’ll have Town Counsel at the next meeting.

Continued for two weeks.

Motion

Roll-call Vote N/A

4. Reports:

a. CPC, Topham

b. NP&EDC, Phillips: discussion about ConCom weighing in on creating subdivisions within areas of jurisdiction.

5. Commissioners Comment

a. **Golding** – Thanked Mr. Engelbourg for digging out the Form 990. Sent glyphosate information to Ms. Phillips. Would like about the Florida State protocol on matching sand sampling be put on the agenda for discussion.

b. **Erisman** – Wants Fining and Enforcement put on the agenda for discussion; wetland boundaries are being pushed all over the Island and there is almost no backing at this time and creation of check list.

Carlson – Office staff keeps a list of running Enforcement Orders. He has drafted new enforcement fines that base penalties on the square-footage of a violation as well as allowing the company that did the work to be fined in addition to the homeowner. He will send it around and to Town Counsel then put it on the June 11 agenda. He can enter a property if there is a “known” wetland violation; otherwise he needs permission to enter the site.

Golding – Thinks it’s time to go into the criminal aspect of these violations. He’d also like to approach the Select Board to explain that if we have the right level of fines, Natural Resources should hire someone to track the violations. Feels a \$5000 fine is insufficient; for some homeowners it is a drop in the bucket.

Topham – Agrees with Mr. Golding. Some heavy-handed reactions will get people talking about avoiding violations. Discussion about past violations and when enforcement actions were affective.

Discussion about possible use of drones to inspect “suspected” violation, in lieu of being able to enter a property.

6. Administrator/Staff Reports

a. Two opportunities: 1) Town was contacted by Martha’s Vineyard Conservation Commission and State agency about applying for a net grant from Southeast New England Estuaries Program to look at how pond openings work and what the benefits are; 2) the other is to partner with MPF and Land Bank to do a complete wetland assessment related to Monomoy.

H. Adjournment

Motion **Motion to Adjourn at 7:34 p.m.** (made by: Golding) (seconded)

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

Submitted by:

Terry L. Norton