



CONSERVATION COMMISSION

PUBLIC MEETING

2 Bathing Beach Road
Nantucket, Massachusetts 02554

www.nantucket-ma.gov

Thursday, June 11, 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

Absent Members: None

Late Arrivals: None

Earlier Departure: None

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

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
Steven Cohen, Cohen & Cohen Law P.C.

Public R.J. Turcott, Nantucket Land Council, Inc.
Rick Atherton

Discussion (5:06) **Gasbarro** – This is for the repair/installation of a sheet bulkhead in front of a failing timber bulkhead. Reviewed supplemental information addressing questions and concerns: will agree to a time-of-year restriction on work between April 1 and Aug 31; Chapter 91 requiring maintenance of a licensed structure; steel piles will disturb beach and bank less than anchors and tiebacks. Explained why this couldn’t support a living shoreline. speaking about why this is the best project here. Doesn’t think the proposed will have an adverse impact on the protected area. There is a pile of rock on the Quaise Road layout and we think the extension is limited in size and will prevent flanking at that end. This proposal is not atypical to other approved projects; we expect to be held to a similar set of standards and conditions.

Engelbourg – The presentation hits on items of discussion. He didn’t see the analysis of the option to relocate the structure.

Gasbarro – There are other structures, septic systems, and wells on a limited-sized property; there isn’t much alternative for relocating the structure.

Engelbourg – Another thing he’d hope would be considered is since we are at the easterly end of a structure; instead of replacing the bulkhead in the current location, moving it back and installing a hybrid project in front. Explained the benefits of such a hybrid project.

Gasbarro – It goes back to the same alternatives we’ve looked at. There is the chance we’d destabilize the bulkhead to the west. Moving back would mean moving the top of the bank back toward the structure, which is only about 36 feet away and is a pre-1978 structure. There is a bordering vegetated wetland to the west on the property line. We have a license and a permit for the structure in its current location.

Golding – He’s sympathetic to Mr. Engelbourg’s argument. The high tide is lapping 2 feet up the bulkhead. He doesn’t think the Chapter 91 license is valid; it was predicated on this being beyond the high-tide line. He wants Town Counsel’s opinion on that. Easy Street is not a good comparison; this is a different situation.

Erisman – She appreciates the alternative analysis. We need to look at living shorelines and hybrids more seriously. These projects are changing the banks. Since this was installed, the bank’s retreat has been impeded. With this next to Nantucket Islands Land Bank property, it’s the best place for a living shoreline. She can’t see permitting the extension, which is new construction not covered in the Chapter 91 license.

Topham – He went through the math for the required pitch for a living shoreline; it would obliterate the wetland. Any restoration of the wetland would then cut into Land Bank property. There is no way but to walk in front of the house. He has issues with the extension except that it would be access to the path easement.

He sees an issue with denying this and the impact on Easy Street and Hulbert Avenue. We have a problem coming; the shoreline is linked, and we have to come up with a standard.

Golding – The consistency should be protecting what we’re charged to protect, which is the beach. He really wants an opinion from Town Counsel regarding the limitation of the Chapter 91 license.

Beale – He’s concerned with the end scouring on Land Bank property; with a rebuild and rising water it will get worse. Asked if there is a way to mitigate that.

Gasbarro – We are dealing in an environment of low wave-energy. You are seeing the retreat of the unprotected shoreline. Wherever you stop a stabilized bank, there will be a point of end scour. Doesn’t think that impact will be worse than a naturally retreating shoreline. Feels installing a fiber-roll array would cause greater disturbance.

Engelbourg – He respects the point about consistency; however, it is in our regulations to consider a more environmentally friendly project as these applications come in. Regarding the extension, he can’t see how it’s permissible. The representative’s point is that it creates a stop on the property they have control over; without that, he wonders if the bulkhead will function as intended; therefore, he questions if the entire project is permissible.

Gasbarro – We have to do something. If we don’t, the timber bulkhead will fail and fall apart, causing debris.

Phillips – This is difficult; she tried to make a list of pros and cons. It’s difficult; there is the feasibility of doing this in a narrow space and building something new could be very difficult to do. Also taking it out has concerns in how that would be done. If we approve this, this is not to be looked upon as a precedent. Appreciates the alternative analyses. If we were to approve this, it would have to be noted as an exception and make it clear we require robust alternative analyses.

Beale – It’s not clear to him from the photo and plans what specifically is the extension.

Gasbarro – It’s about 37 feet long from the current terminus. The easement requires that stabilized access point.

Golding – He’s absolutely opposed to the extension, which requires a waiver; would like to see a soft solution for that. Reiterated that he wants Town Counsel’s opinion on this.

Carlson – He can file for Town Counsel’s opinion if that is what the Commission wants.

Erisman – We have many agreements for that. She also doesn’t think we can grant the extension and a softer solution would be best for that.

Cohen – The idea that the Chapter 91 is no long valid doesn’t make sense to him; but he’s okay for a continuance to seek a legal opinion on that. The commission’s vigilance on ensuring replacements are environmentally friendly is good but that might not work here. The solution has to be practical. You could approve the extension as a water-dependent use that doesn’t require a waiver; you have three examples of that. Asked for a 2-week continuance to allow Mr. Gasbarro time to research requests and for Town Counsel to provide an opinion.

Engelbourg – He’d like the living shoreline

Turcott – This is a significant return not covered under grandfather laws.

R.Atherton – It seems there ought to be a way to integrate concerns about the extension and what the Town is doing at the end of Quaise Road. There could be shared responsibility to minimize scouring.
Continued to June 25th.

Motion

Roll-call Vote N/A

2. *Croquet Pitch, LLC – 24 West Chester Street (42.4.3-57) SE48- 3305

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 (5:54)

Gasbarro – Seeking to construct an addition and extend a porch within the buffers to bordering vegetated wetland and isolated vegetated wetland. The addition is designed to avoid the 50-foot buffer. On the back of the smaller structure, there’s an existing covered porch they want to enclose; that’s within the 50-foot buffer. There’s no expansion of footprint but he’s requested a waiver. He has a revised plan in response in concerns expressed by an abutter; would move the dewatering area to the west side of the property: hay bales with silt fence. Will create a raingarden to uptake some water. Another aspect of the project is the waiver from 2-foot separation from groundwater; went to shallow footing, which will sit on gravel. Shared the revised plan on screen.

Engelbourg – In relation to the waiver request; he thinks it should be amended to include the raingarden work within the 25-foot buffer. Asked if helical piers rather than slab were considered.

Gasbarro – For sites that have helical piers supporting living space, a slab is poured on top of that the piers. In this case if you go to the piers or pilings, your joists would be right at grade and the piers would go into the groundwater as well.

Erisman – This property was redeveloped about 5 years ago. Wonders if the Commission needs an analysis of the change between the 25- and 50-foot buffers. There is already extensive development between three wetlands, and it is continuing. She doesn’t think it should be further developed.

Carlson – He vaguely recalls if a reassessment was done; would have to pull the permit; he can get that information.

Topham – Maps said the original structure was built in 1967 but extensive revisions were more recently done.
Phillips – Her concern is the groundwater issue; the case seems to be cramming additional structures on this last bit on this site.

Golding – He wonders if the GIS card is accurate.

LaFleur – He’d also like to see what was done most recently. Appreciates Mr. Gasbarro’s plan to minimize the foundation impact on the groundwater.

Topham – Also appreciates the foundation design. He feels they are squeezing the last out this lot and giving nothing back. The resource area will be under extreme stress.

Gasbarro – The driveway, lawn, and edge of disturbance hasn’t changed since 2003. There is some infill but asked the owners to consider since it is being balanced to respect the 50-foot buffer. The project has been designed to meet ConCom regulations.

Phillips – Asked about the patio material in front of the porch that will be covered. Asked if the patio material could be changed to something more permeable.

Gasbarro – It is dry-laid bluestone

Topham – We have about 1000 square feet (SF) in the 25- to 50-foot buffers; going forward we are putting a lot of impact on the resource areas within and adjacent to this property. We should get something back.

Gasbarro – He will get more information. Asked for a 2-week continuance.

Motion Continued to June 25th.

Roll-call Vote N/A

3. Nantucket Point of View, LLC – 9 Lincoln Avenue (30-137) SE48-3278 (Cont. 06/25/2020)

4. *62 Cliff Road Realty Trust – 62 Cliff Road (41-20) SE48-3306

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 (6:14) **Madden** – This involves an addition replacing an existing deck within the 50-foot buffer and largely within the 25-foot buffer. Access will occur within the 25-foot buffer on existing lawn area. Requested a waiver. We are proposing helical pier support for the 233-SF addition. Best management practices will be incorporated and erosion control barriers on the back lawn. We are working within the existing footprint.

Erisman – Asked if water can flow through the decking as it is currently constructed.

Madden – The boards are very tight.

Erisman – She doesn’t like transitioning open decks to closed living space; given where it’s located, she can’t allow this.

Other commissioners agree with Ms. Erisman.

Madden – Asked for specific concerns relative to adverse impact; asked Staff if it is general practice when working within an existing footprint.

Erisman – Walls bring windows closer to the wetland; as a deck, there is some run through and the roof causes a different runoff pattern.

Topham – Agrees with Ms. Erisman. This would be problematic for this wetland.

Golding – This is an example of classic mission creep.

Carlson – The Commission has allowed for structural conversion; however, they must still meet performance standards and waiver. Part of the existing wetland is in lawn; the wetland is partially developed with a fence running through it.

Madden – Asked for a 2-week continuance.

Motion Continued to June 25th.

Roll-call Vote N/A

5. Kim Glowacki – 46 Easton Street (42.4.1-22) SE48-3285 (Cont. 06/25/2020)

B. Amended Order of Conditions

1. 11 Meadow Lane, LLC – 11 Meadow Lane (41-448.1) SE48-3093

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 (6:23) **Santos** – This is to remove invasive vines between 25- and 50-foot buffer to a bordering vegetated wetland. Agreed to a condition to no work or alteration within the 50-foot setback; we’ll treat it as no disturb zone. Vines will be hand-pruned and removed.
Engelbourg – Asked the species of the invasive vine and the estimated acreage of area to be removed.
Santos – He has no answer; there are two clumps – one about 20-foot square and the other a little large engulfing cedar trees.
Engelbourg – He’s all for removing invasive vines but wants to ensure they are truly invasive rather than a aggressive native plant.
Carlson – He hasn’t been to the site; he can go look.
LaFleur – We would want to know what’s going to be cut and a measured area.
Santos – We’re in the early stages of landscaping. He can provide the species type and measure the area. Asked for a 2-week continuance
 Motion Continued to June 25th.
 Roll-call Vote N/A

III. PUBLIC MEETING

C. Certificates of Compliance

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

Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
 Staff No comments
 Discussion (6:29) **Don Bracken**, Bracken Engineering – There were questions about the roof plan; we removed the roof infiltration plan. Submitted as-built plan, everything is in compliance. All roof runoff will be absorbed with none going toward the wetland. Described how runoff would be contained.
Erisman – She still has concerns about there being no underground drainage. Any runoff into the driveway will pick up chemicals off the cars. She doesn’t want to count on the Town catch basin at the end of the driveway.
Bracken – He thinks 90% will be absorbed by the driveway since the roof area is very small. He sees no sense in changing the style of the structure by adding gutters.
Topham – If you put in a downspout, it concentrates the water, which can also be problematic.
 Motion **Motion to Issue.** (made by: Topham) (seconded)
 Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Topham-aye
 2. 46 Shimmo Pond Road Nominee Trust – 46 Shimmo Pond Road (43-77) SE48-3037
 Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
 Staff We check this site regularly; recommend the cert be issued with on-going conditions 19, 20, 21, 22, 23, & 25.
 Discussion (6:35) **Art Gasbarro**, Nantucket Engineering & Survey – This was a residential redevelopment; work is in substantial compliance.
 Motion **Motion to Issue with on-going conditions as recommended.** (made by: LaFleur) (seconded)
 Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Topham-aye

D. Minor Modifications

1. Hannah Gardner House, LLC – 6 Gull Island Lane (42.4.3-61) SE48-3236

Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Jeff Blackwell, Blackwell & Assoc.
 Discussion (6:39) **Jeff Blackwell**, Blackwell & Assoc. – Reviewed the Notice of Intent. This is to add 63 SF to the previous footprint, no closer than 60+ feet to the wetland.
 Staff Recommend issue
 Motion **Motion to Issue as a minor modification.** (made by: Beale) (seconded)
 Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Topham-aye

E. Orders of Condition

1. None closed

F. Extension Requests

1. 43 West Chester Street Realty Trust – 43 West Chester Street (41-231) SE48-2987

Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
 Documentation Draft Order of Conditions
 Staff They haven’t started work; seeking three 1-year extensions
 Discussion (6:43) None
 Motion **Motion to Issue the three 1-year extensions.** (made by: LaFleur) (seconded)
 Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Topham-aye

2. Town of Nantucket – 8 Sesachacha Road (21-20) SE48-2967

Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
 Documentation Draft Order of Conditions
 Staff They completed some work but have to do more to keep monitoring components going. Asking for three 1-year extension

Discussion (6:44) None

Motion **Motion to Issue the three 1-year extensions.** (made by: Topham) (seconded)

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

3. Lisa & Simon J. Van Den Born – 135 Wauwinet Road (11-12) SE48-2961

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

Documentation Draft Order of Conditions

Staff Asking for a 1-year extension. Mostly done and the permit expires in July.

Discussion (6:45) None

Motion **Motion to Issue the 1-year extension.** (made by: Beale) (seconded)

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

G. Other Business

1. Approval of Minutes 5/28/2020:

Motion **Motion to Approve as drafted.** (made by: Phillips) (seconded)

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

2. Enforcement Order: 8 Sesachacha Road

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

Representative Sarah Alger, Sarah F. Alger P.C. for 45 Quidnet Road

Discussion (6:49) **Carlson** – The abutter to the improved property at 8 Sesachacha did work and plantings on Town Land; that work was not covered by a permit and wouldn't be permissible. We would like to allow work to be fixed under the existing permit and issue the Enforcement Order to the person who did the work and watering.

Alger – Her client is really upset this happened; the property restoration was their \$12,000 gift to the Town with bamboo and other invasive species eradication and appropriate planting, and it was doing great. Then someone, who is a Town employee, went in and destroyed all the work to include removing at least one mature tree. The police we called, and they issued a citation. After that criminal citation, the person continued to water and plant, erected a fence, and added a bench. We've had someone provide an estimate on the repair work, \$18,500. Her client would like some restitution to be required.

Golding – Asked why Ms. Alger's client didn't file a case of criminal trespass with triple damages.

Alger – She was told that since the property is Town land, criminal charges fall with the Town and her client has no standing.

Carlson – We inquired how to pursue the matter; he's waiting to hear back. Wants the enforcement issued to the person who did the work. Will do a certified mailing and hand deliver a Cease and Desist stating we are seeking damage on behalf of the Town.

Erisman – We need that property owner to come before us.

Engelbourg – This is an egregious violation. The Cease and Desist is a good start. Would like to know what additional fines the Town could impose and to follow with criminal proceedings. There was a wetland violation here and we need to issue fines.

Carlson – We have the police report against a specific individual; that helps document the violations.

Topham – He'd like to issue a bill for the repairs. He's frustrated someone would do this.

Erisman – This speaks to wide-spread trespass; people don't check their property boundaries and assume it is theirs; however, this person went knowingly into property that wasn't theirs.

Carlson – The Town told that individual that what was permitted was going in. The work was done to improve the person's view.

Phillips – Asked who is the Town employee did the work.

Carlson – Charles Johnson did the work; he resides at 8 Sesachacha Road.

Golding – This leads into our discussion on how to increase the fines. It would help if this were front-page news.

Consensus agrees with Mr. Golding.

Alger – Once the police told him it was criminal vandalism, he didn't stop but continued work.

Motion **Motion to Issue the Enforcement Order to Charles Johnson at 8 Sesachacha Road.** (made by: LaFleur) (seconded)

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

3. 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 Associates Inc.
 Steven Cohen, Cohen & Cohen Law P.C.

Public None

Discussion (7:03) **Carlson** – They had commenced the cleanup at 85 Baxter Road to bring the area into a greater level of compliance. The 1st step was to regrade with existing material; 2nd step clean up; 3rd step was to deliver Polpis Harbor dredge material. We inspected the delivery area at 85 Baxter and debris was removed. There will probably more debris will free from the bank and it is being monitored. Recommend allowing the Polpis Harbor dredging to be delivered. Regarding future nourishment, we need to put the criteria as an agenda item; we need to ensure material is in compliance.

Dunk – Nothing to add.

Carlson – You made a motion to allow them to go forward at the last meeting. This was just an update and no additional action is necessary.

Motion No Action necessary

Roll-call Vote N/A

4. 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 Associates Inc.
 Steven Cohen, Cohen & Cohen Law P.C.

NETCO Rep Dave Lager, NETCO

Public Burton Balkind

Discussion (7:09) **Carlson** – During the whole sand delivery, there was concern that debris made it down to the project to the south through the shared delivery point. Mr. Lager is on the phone to understand the sensitivity of the area and Commission concerns.

Erisman – We have NETCO who did the dumping and SBPF who holds the permit.

Lager – In the past 20 years, we’ve only used sand from Toscana and Holdgate. We’ve never had issues with that sand; the certificates are on file. We will be extremely diligent to ensure no debris makes it down the beach to the other property.

Topham – He’s surprised no one was on site at that time from the company to say the sand was incompatible. This is the 3rd infraction in three years. You need to have someone on site full time to see what’s going on and to stop the truck from delivering if the sand is not compatible. The last NETCO project was unpermitted for 4X4 along the bank; you know we’re here. You need to take control of this; get the knowledge from SBPF. He’s appalled this keeps happening from your company.

Golding – Asked what enforcement options are available.

Carlson – The issue is the older permits don’t have the same level of reporting as current permits. This started because the delivery area became a hodge-podge of material that was being moved around with no reporting. Material was getting moved from 85 Baxter to the north and to the south. We lumped in all the projects using that common delivery site.

Golding – He doesn’t understand why we can’t level the same enforcement on NETCO as we on SBPF. He feels the original permitting didn’t say they could dump polluted sand. Also, he’s very disturbed that in our meeting of December 11, 2019, Mr. Dunk and Mr. Steven Cohen, Cohen & Cohen Law P.C. as the permit holder, sidestepped the issue of NETCO. He wants to charge NETCO so we can be more exacting.

Carlson – The permits are held by SBPF and are related to the property owners, not NETCO. The second issue is the coir logs are mostly uncovered, which has occurred during the season. That material needs to go back.

Erisman – We need to figure out the fining potential. Moving forward, NETCO is going to have to follow the template sand protocol we come up with. Given their track record we can’t give them the go-ahead to deliver sand.

Engelbourg – In the older permits, there is still the requirement for clean fill. Asked to enforce on the basis of that.

Carlson – Current conditions and documentation is that the material was being shared; we could easily document debris on the geotubes because it was on top of the tubes. At the same time, material that went south has washed away so we don’t have that information.

Lager – The normal nourishment timeframe is April to June; most property owners don’t want sand placed in the winter due to the heavy storms. At this point in time, asked the specific instances where debris was found in the area south of the geotubes.

Carlson – We did an inspection late last year and recovered debris in the project area and along the route-of-travel south from the delivery area. He will get the photos of the debris to everyone.

Topham – If the sand is gone and the tubes are exposed, sand needs to go on them; it is what the beach needs and the littoral system needs. It is not up to the property owners when sand goes on the tubes. Mr. Lager is working under a different set of rules.

- Lager** – The basis of the permit 15-20 years ago was that the sand nourishment would equal average annual erosion. As he understands it, the amount of sand the owners are required to place is equal to erosion as established by the Coastal Zone Management Council. He can't do work not approved by the owners.
- Carlson** – SE48-1669 requires them to place 5,000 cubic yards (CY) per year.
- Dunk** – In June 2019, there was a report of material being delivered. Mr. Carlson met with Jamie Feeley and there were no deliveries after Feb 19, 2019; they resumed in Autumn 2019.
- Golding** – Read into the record, comments made on December 11, 2019 regarding responsibility for sand delivery and sand source. Asked why Mr. Dunk and Mr. Cohen didn't say they were the primary permit holders and that NETCO was responsible to them
- Cohen** – At the time we didn't know the permit was issued in SBPF's name. The legally responsible party is the person who owns the real estate, not the name on the permit. SBPF has no contractual obligation with NETCO. On the geotube project, SBPF is responsible on behalf of the Town and property other owners.
- Erisman** – Asked if Mr. Cohen saw the information in the packet; there is a life agreement between SBPF and the Town which indicates SBPF is responsible for these permits.
- Engelbourg** – The permit states how much sand must be provided; if they don't do that, they are not in compliance. The applicant agreed to the conditions regardless the cost. Asked if there is a seasonality to sand mitigation requirement.
- Carlson** – The only restriction is time-of-year from April to Labor Day for nesting shorebirds; that can be overcome with permission or notification from a shoreline biologist.
- Engelbourg** – Thinks ConCom should ensure the shoreline biologist is in place.
- Topham** – His client came to us; we gave them permission; they haven't met the requirements. He's happy with SBPF's response in what's going on with NETCO. NETCO needs to sit down with Mr. Carlson to find out what's going wrong and how to correct it. He's really infuriated at NETCO's attitude that they don't want to do that. If they go into failure criteria, the project will have to be removed.
- Golding** – Asked Mr. Carlson to get an opinion from Town Counsel on Mr. Cohen's response; it is a question of holding NETCO responsible for their behavior.
- Engelbourg** – He disagrees with Mr. Cohen's opinion that SBPF isn't responsible.
- Phillips** – Her question is who is responsible. She disagrees with Mr. Cohen; SBPF as the applicant and in the license agreement, SBPF is the responsible party. She also believes NETCO is an agent of SBPF; it is SBPF's responsibility to ensure they do the job right. We should not just focus on NETCO, we need to be clear with Mr. Cohen and Mr. Dunk that SBPF has been the leading and known party.
- Lager** – SBPF has been around since the late 1990s and Epsilon has been involved most of that time. SBPF was the permitting entity for almost all properties along Baxter Road. Our role is we are agents of the property owners and SBPF. He didn't recall the 5,000 cubic yards but he will tell the property owners it is a requirement. There have been multiple sources for sand, and it is unfair to accuse NETCO of all the debris. Argues that sand delivery has been in excess of 5,000 cubic yards and he has the receipts to support that.
- Erisman** – We aren't saying NETCO is the reason for the debris; we've been at SBPF for several months about that. This is your first meeting with us and Mr. Lager
- Topham** – He doesn't see the ConCom process any different from any other regulatory board; the foreman should have the approval to ensure everything is being done according to the permit. For him, it's infuriating what is being done to Nantucket and the coastal bank and the littoral system; he's frustrated Mr. Lager shows up and doesn't know what is required.
- Erisman** – We need to focus on the wetland resource and how to make it better. We need to get to the root of who has the permit and who is doing the work and move forward to make it better.
- Cohen** – SBPF is 100% on board with the work to ensure all the debris and contaminants were removed and working with NETCO to ensure meeting the standards. The ability to clean up the site has been done.
- Balkind** – In June when he brought the debris samples to the Commissioner, there was wire, plastic, and construction debris all in the sand. Another point is it wasn't just Toscana or Holgate; it was Valero truck that delivered the sand. There needs to be a chain of custody. We documented the extent of the soil dropped off in June. Everyone needs to see what we were talking about.
- Atherton** – He appreciates Mr. Lager's refreshing approach. There's an easy way to move forward. All parties agree new standards are needed. All parties involved should have a good clear record of deliveries and chain of custody, so we don't have to speculate. Staff could have asked for that information months ago; for some reason it didn't happen.
- Erisman** – We should get tickets on all coastal projects.
- Carlson** – He wants ConCom to get to a point where we have a level playing field for everyone to put an end to finger pointing. We are relying on random inspections and citizen reports. We have 3,306 NOIs on Nantucket for which we are responsible. In an ideal world, it would all come from the same sand source, but that isn't realistic given the quantity of material required. We need to work toward consistent standards for nourishment projects; it isn't as simple as a permit holder but requires a regulatory change. It will take time to get that done.
- Engelbourg** – On the logistical side, asked if there is an additional level of oversight to ensure the sand delivered meets requirements.
- Carlson** – They still have to meet the standards set out in the Order of Conditions.

Lager – He has sand delivery and coir repair scheduled for Mr. Posner and the Darby residents.
Golding – There is a moratorium on sand delivery; he sees no reason to let NETCO go forward.
Balkind – He’d like a shoreline biologist present for any sand delivery since Piping Plovers are nesting.
Carlson – The nests are far enough away; once the fledglings hatch, the distance increases. From D Anne Atherton, if SBPF won’t take responsibility for the south tubes, the Town should be notified.
Erisman – Agrees the Town should be brought up to date with what’s going on.
Atherton – He hopes we don’t leave the meeting with a minimal expectation. It would be helpful to have delivery information from NETCO and SBPF before the next meeting.
Phillips – Mr. Atherton’s idea is good. We’re short of facts which are not in dispute and on dates of deliveries and who is involved. We don’t have a clear idea of who is responsible; Mr. Pucci should look into that.
Erisman – Mr. Pucci should be present at the next discussion of this.
Topham – He’d like to see the handwritten delivery reports from the delivery truck drivers.
Golding – We’ve only been getting tickets for the project for which SBPF claims responsibility.
Lager – He can provide delivery tickets from Toscana and Holgate.
Carlson – Once we get the tickets, we can put it into a spreadsheet. We should keep this active since we are looking for Town Counsel’s opinion. If necessary, we can change the title of the discussion.
Golding – We should hold NETCO to the same level of supervision as we do SBPF. If we are allowing, they should have the same protocol that every delivery is examined.
Erisman – Agrees with Mr. Golding; the name of who will be on site and who we should call if there is a complaint.
Carlson – He’d appreciate that for all site, not just these two.
 Discussion about who and how to inspect sand deliveries.

Motion Continued to June 25th.

Roll-call Vote N/A

- 5. Reports:
 - a. None
- 6. Commissioners Comment
 - a. **Phillips** – Annual Town Meeting is scheduled for 5 p.m. June 25th.
Carlson – There is consensus for a 1 pm meeting.
 - b. **Golding** – Wants to discuss legal opinions on enforcement fines and ticketing and getting an enforcement officer. He’d like ConCom to write a letter to the Select Board requesting a full-time enforcement officer.
Topham – It would be great to get enforcement fines in order.
Engelbourg – The Wetlands Protection Act states a violator would be fined \$2500.
Carlson – We keep a list of enforcements; he’ll send that off to the commissioners. It is up to a police officer to issue a criminal complaint. Tracking enforcement is a Town-wide issue; other departments have the same problem as Natural Resources. He will draft a letter for the Board’s review. That ticket for \$2500 comes from the State.
- 7. Administrator/Staff Reports
 - a. Town elections are on June 16th.

H. Adjournment

Motion **Motion to Adjourn at 8:35 p.m.** (made by: Phillips) (seconded)

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

Submitted by:
Terry L. Norton