



CONSERVATION COMMISSION

PUBLIC MEETING

2 Bathing Beach Road

Nantucket, Massachusetts 02554

www.nantucket-ma.gov

Thursday, July 23, 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: Joanne Dodd, Natural Resources Coordinator

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

Absent Members: None

Agenda adopted by unanimous consents

*Matter has not been heard

I. PUBLIC MEETING

A. Announcements

B. Public Comment – None

II. PUBLIC HEARING

A. Notice of Intent

1. The Town of Nantucket – 34 Washington Street (42.2.3-2) SE48-3300 (**Cont. 09/17/2020**)
2. Eli Zabar – 47 Squam Road (13-22) SE48-3253 (**Cont. 08/06/2020**)
3. Madaket Wheelhouse, LLC – 13 Massachusetts Avenue (60-75) SE48-3309

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** – This is to change the support for an elevated walkway to helical anchors. We were waiting on and have received sign-off from Massachusetts Natural Heritage (MNH); they require certain conditions be included in the Order of Conditions.

Staff Have everything needed to close.

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

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

4. *5 Sherburne Way, LLC – 5 Sherburne Way (30-38) SE48-3321

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 (5:10) **Gasbarro** – This is to provide beach access down a coastal bank, over a coastal dune, and to a coastal beach. There is an existing asphalt path in the coastal bank and dune, which crisscrosses this and the abutting property; that asphalt path will be remove and the bank area restored and planted with beach grass. We will be continuing for MNH response; the entire property is within their jurisdiction. A local architect is working on the drawings for the stairs.

Golding – He’d like to see detailed drawings of the steps going down to the beach. The lease obtrusive the better.

Engelbourg – It looks like there is a “jut-out” in the middle of the stairs; wants to see the drawing. If the path is coming out and area restored, it seems odd to have “steps to nowhere.”

Gasbarro – The neighbor would use the granite steps to get back to their property; removing the granite steps would cause additional disturbance. 2-thirds to ¾ of the asphalt path will be removed on his client’s property.

Erisman – Agrees with Mr. Engelbourg and Golding; would like to see the amount of asphalt material being removed.

Gasbarro – That information is under the resource restoration area.

Beale – Asked why we wouldn’t require the granite stairs be removed.

Gasbarro – He will get that information.

Topham – Agrees the platforms are quite large but understands the need for them.

Beale – Confirmed the applicant is not the owner of the property.

Gasbarro – He’ll work on getting the requested information. Asked for a two-week continuance.

Staff None
 Motion Continued to August 6.
 Roll-call Vote N/A
 5. Phyllis J. & Donald T. Visco – 67 Easton Street (42.4.1-115.1) SE48-3308 **Withdrawn**
 Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
 Discussion (5:23) None
 Motion **Motion to Approve the withdrawal.** (made by: Phillips) (seconded)
 Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Topham-aye
 6. *Nantucket Island Land Bank – 73 Washington Street (42.2.3-41.3) SE48-3313 (**Cont. 08/06/2020**)
 7. 62 Cliff Road Realty Trust – 62 Cliff Road (41-20) SE48-3306 (**Cont. 08/06/2020**)
 8. *Steven and Marth Peterson – 11 East Hallowell Lane (30-17) SE48-3318
 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 (5:25) **Madden** – The house surrounded by unmaintained lawn area with poison ivy; our intent is to establish lawn and remove the poison ivy by mowing and rototilling and seeding with a native mix. There is no fertilizer use proposed. Temporary irrigation will be used to help establish the plants. Doesn't expect any erosion due to the well-draining soils.
Phillips – Appreciates the plan to plant a natural lawn.
Golding – Asked how a natural lawn would be conditioned.
Madden – No fertilizer, no irrigation, marked boundary. There is no established woody growth.
 Staff Have everything needed to close.
 Motion **Motion to Close.** (made by: Golding) (seconded)
 Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Topham-aye
 9. *ABH, LLC – 4 Stone Barn Way (29-914) SE48-3315
 Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Brian Madden, LEC Environmental
 Don Bracken, Bracken Engineering
 Public None
 Discussion (5:29) **Madden** – This is to elevate and reconstruct the foundation to be in compliance with flood regulations and building code. Resource areas are an off-site isolated vegetated wetland to the southwest and the entire site is within land subject to coastal storm flowage. The foundation will be an at grade crawl space; no permanent dewatering is needed; temporary dewatering is to go out to North Beach Street. We reduced structure within 25-foot buffer to 26 feet. 50 feet; the brick patio is being removed from within the 25-foot buffer. We have requested a waiver for 2-foot separation and work within the 25-foot buffer.
Topham – Asked if the foundation will stop at the high-groundwater mark.
Bracken – Physically they will lay 6" of stone; dewatering depends on time of year and amount of rain.
Erisman – Asked how the patio and house ended up within the 25-foot buffer to the isolated vegetated wetland; she'd prefer the patio be eliminated entirely and the trash bin removed from within the 50-foot buffer.
Madden – Order of Conditions for patio issued in 2014 did not show the wetland; it might have expanded since then. The trash bin is existing.
 Staff Have everything needed to close.
 Motion **Motion to Close.** (made by: LaFleur) (seconded)
 Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Topham-aye
 10. *Cedar View Point, LLC – 40 Shawkemo Road (27-4) SE48-3316
 Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Brian Madden, LEC Environmental
 Don Bracken, Bracken Engineering
 Public None
 Discussion (5:37) **Madden** – This is for renovation of the guesthouse outside the 100-foot and modification of the driveway and septic upgrade within the 100-foot buffer. The bordering vegetated wetland boundaries were refreshed last year. Septic work is all within established lawn area.
Erisman – The 12-bedroom reserve area, asked if that is being cleared now.
Bracken – That is not being cleared at this time; it is for future use.
Madden – Asked for a 2-week continuance
 Staff Waiting for MNH.
 Motion Continued to August 6
 Roll-call Vote N/A

11. *BSS Hummock Pond, LLC & Hummock Pond Holdings, LLC – 287/289 Hummock Pond Rd (83-4;39) SE48-3320

Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Brian Madden, LEC Environmental
 Steven Cohen, Cohen & Cohen Law P.C.
 Public Burton Balkind, via YouTube chat
 Discussion (5:41) **Madden** – Both properties are accessed by a shared driveway; resource areas are an eroding coastal bank to the south, bordering vegetated wetland to the north, coastal dune and barrier beach west off site and flood zone. Reviewed the permitting history of the sites. Scope of work involves demolition/move off of the garage from 287 and relocate the structure at 289 to 287; a shallow pool is proposed within the deck; relocation of the driveway away from the coastal bank; restoration of the bank; installation of a new septic system. The existing septic in a non-utilized coastal bank will be left in place until it’s fully exposed. Reviewed proposed restoration of disturbed areas to naturalized state.
Engelbourg – He’d prefer not to see non-native species. Asked about the pool and portion of the deck within the bordering vegetated wetland 50-foot buffer and if it could be redesigned to be pulled out of the 50-foot buffer.
Erisman – Agrees with Mr. Engelbourg about the pool not being within the 50. Asked about the erosion rate (average over 8 years is 3.8 feet per year). Would also like them to consider removing some of the extra structures; erosion can be radical along this shoreline. We could condition the removal of the existing septic, so it doesn’t remain on the beach any more than a few days after it’s fully exposed; one big storm could make it tough to remove.
Cohen – The applicant would be amenable to a condition about the removal of the septic so there is no waste on the beach.
Topham – This is a well-thought out plan; he has a problem with the pool and size of the deck. He walked by the site and about 3 feet of the septic is sticking out.
Phillips – Echoed concerns about the pool and deck. This is complicated with intersecting resource areas. Appreciates the pool being above surface but due to its proximity to the ocean, there is an argument it isn’t necessary.
Erisman – Read Burton Balkind’s comments: 289 & 287 have undergone rapid erosion; if that continues, the proposed septic would end up within the 50-foot buffer to the coastal bank. Retaining wall installed on property to the east, which will shift erosion to the east and west. Need to look at the erosion rate regarding approvability of this request. Recommends a site visit and use aerial maps to examine erosion. She tends to agree about the need for a site visit.
Phillips – The site visit would be a good idea; also, would like to see an overhead mapping-out of the erosion. Asked about the wall.
Madden – That wall is two properties down. That site is actively under construction with an Order of Conditions.
Beale – It’s interesting to note the lot lines that existed previously and the series of lots that are now gone; this is a rapidly eroding area, and we should be careful about approving anything within the 50-foot area.
Madden – Asked for a two-week continuance for MNH.
 Staff We can set up a site visit where Commissioners go on their own time; or Commissioners are welcomed to visit the sites in their own time.
 Motion Continued to August 6.
 Roll-call Vote N/A

I. PUBLIC MEETING

C. Requests for Determination of Applicability

1. Nantucket Westmoor Farm, LLC – 8 Old Westmoor Farm Road (41-822)

Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Paul Santos, Nantucket Surveyors
 Steven Cohen, Cohen & Cohen Law P.C.
 Public None
 Discussion (6:05) **Santos** – This is to confirm resource area boundaries for a bordering vegetated wetland and mean-high water limits of a vernal pool behind the Westmoor Club. The second component is a man-made koi pond we are looking to remove and want confirmation it is not a resource area; it has a membrane at the bottom.
 Staff Recommend Positive 2A confirming resource areas and Negative 1 confirming the lined, man-made pond is not an area subject to protection under the act.
 Motion **Motion to Issue as Positive 2A and Negative 1.** (made by: Topham) (seconded)
 Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Topham-aye

2. Conan Laughlin & Brooke Hemming Laughlin – 29 Baxter Road (49.2.3-09)
 - 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 (6:08) **Blackwell** – This is to confirm the resource boundaries for landscaping purposes. Resource areas are a coastal dune, dune field, coastal bank, coastal beach, and land under the ocean.
 - Staff We confirmed only the coastal dune; there is Town property in front of this site; recommend Positive 2A for the coastal dune.
 - Motion **Motion to Issue as a Positive 2A.** (made by: Engelbourg) (seconded)
 - Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Topham-aye

D. Minor Modifications

1. *262 Polpis Nominee Trust – 262 Polpis Road (25-1) SE48-3240
 - Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips
 - Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 - Representative Brian Madden, LEC Environmental
 - Public None
 - Discussion (6:13) **Madden** – This is to move all structures outside the 50-foot buffer.
 - Staff None
 - Motion **Motion to Approve the Minor Modification.** (made by: Golding) (seconded)
 - Roll-call Vote Carried 6-0//Beale recused; Engelbourg, Erisman, Golding, LaFleur, Phillips, and Topham-aye

E. Certificates of Compliance

1. Silver Fox Partners Real Estate, LLC – 235 Madaket Road (59.4-364) SE48-3121 (**Cont. 09/03/2020**)
 2. Nantucket Conservation Foundation, Inc – 183, 185 & 187 Eel Point Road SE48-2319 (**Cont. 08/06/2020**)
 3. Nantucket Hotel Holdings, LLC – 77 Easton Street (42.4.1-35) SE48-1986
 4. Nantucket Hotel Holdings, LLC – 77 Easton Street (42.4.1-35) SE48-2072
 5. Nantucket Hotel Holdings, LLC – 77 Easton Street (42.4.1-35) SE48-2442
- Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips
 - Staff All three Nantucket Hotel Holdings can be done together. Confirmed work is in compliance. Will carry forward Condition regarding drainage of pools.
 - Discussion (6:15) **Paul Santos**, Nantucket Surveyors – The work has been completed in substantial compliance. The property is within land subject to coastal storm flowage with the bordering vegetated wetland north of the site.
 - Motion **Motion to Issue certificates for SE48-1986, SE48-2072, and SE48-2442 with SE48-1986 on-going Condition 22.** (made by: LaFleur) (seconded)
 - Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Topham-aye

F. Orders of Condition

1. Madaket Wheelhouse, LLC – 13 Massachusetts Ave (60-75) SE48-3309
 - Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips
 - Documentation Draft Order of Conditions.
 - Staff Included the MNH additional conditions based upon their letter; those aren't in the version on screen.
 - Discussion (6:20) **Golding** – Asked if Condition 19 is MNH.
 - Motion **Motion to Approve as drafted.** (made by: Beale) (seconded)
 - Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Topham-aye
2. Steven and Marth Peterson – 11 East Hallowell Lane (30-17) SE48-3318
 - Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips
 - Documentation Draft Order of Conditions.
 - Staff Will add Conditions about no fertilizer and temporary irrigation as discussed today.
 - Discussion (6:23) **Erisman** – We talked about a proposed condition discussed under the NOI: no fertilizer and only temporary irrigation until the lawn is established.
Topham – If there is erosion, they will need to come back if they want to mitigate that erosion.
Engelbourg – Wants the condition to say, “no permanent irrigation.”
 - Motion **Motion to Approve as amended.** (made by: Golding) (seconded)
 - Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Topham-aye
3. ABH, LLC – 4 Stone Barn Way (29-914) SE48-3315
 - Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips
 - Documentation None
 - Staff Asked if there are any conditions to include on this
 - Discussion (6:27) **Erisman** – Enforce lighting away from isolated vegetated wetland.
 - Motion Continued to August 6
 - Roll-call Vote N/A

G. Other Business

- 1. Approval of Minutes 7/09/2020:

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

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

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

Representatives None

Other speakers None

Discussion (6:29) **Erisman** – Most of us were able to do the site visit; we are here to discuss repercussions.

Dodd – Restoration work has started, and it looks great.

Engelbourg – Confirmed what Ms. Dodd said.

Erisman – Our option is the \$50 ticket for the cutting.

Topham – We were sent out a draft on adjusting the penalties; he thought it was fine.

Erisman – Since that hasn’t been officially adopted, we can’t enforce it.

Dodd – Regarding the draft fining policy, Mr. Carlson advised that the commissioners can engage Town Counsel to see if they can increase the fines.

Phillips – She would like Town Counsel to see if there is anything within our current structure to allow a harsher penalty on this issue.

Engelbourg – Under our current structure it is \$50 a day and we have documentation in the record showing when the unpermitted work started. The draft addresses linear foot but not mature trees.

Golding – If a tree takes 50 years to grow, theoretically he believes, at least theoretically, ConCom could charge the \$50 a day over that time.

Erisman – That is out of line in this case but looking at a mature tree is a valid discussion. From what she’s heard, the majority of commissioners want Town Counsel to look at this to establish the number of days the fine is to be applied.

Motion **Motion for Town Counsel to look at the number of days against which the fine can be applied.** (made by: Engelbourg) (seconded)

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

- 3. Discussion of SBPF – 77-122 Baxter Road SE 48-1659; SBPF – 65-67 Baxter Road SE48-1602 (Cont. 08/06/2020)

- 4. Reports:

- a. CRAC, Golding – Point of dissention regarding who will review the Requests for Proposal. Staff to look into the issue.

- b. CPC, Topham – Have four Fund requisition requests.

- c. NP&EDC, Phillips – Nothing to report.

- d. Polpis Harbor Public Access Workgroup, Beale – Nothing to report.

- 5. Commissioners Comment

- a. **Golding** – Asked if there is progress in liaising with the Historic District Commission (HDC) as discussed at the last hearing.

Erisman – An email was sent out with interest shown by the Planning Board and HDC Chairs; however, no meeting has been coordinated as yet.

- b. **Erisman** – She was contacted by Bruce Mandel about Vineyard Wind; he’s concerned about mitigation for the undersea cable. We permitted the cable, but we might want to discuss potential implications for Nantucket and parse out what is under our jurisdiction.

Phillips – She is on the Town Wind Power Workgroup; she is well aware of Mr. Mandel’s concerns. The only physical impact on Nantucket would be the undersea cable, which was approved. From Vineyard Wind’s point of view, that was our “bite of the apple.” Mayflower Wind and Equinor are the next two groups going forward; we can now be more aware of the implications of any cables within ComCom’s jurisdiction. Bureau of Ocean Energy Management (BOEM) has not followed their own procedures, but I do not think Vineyard Wind is on hold; as far as she is aware, things are moving forward. BOEM issued a supplemental environmental impact statement about a month ago, to include the impact on Nantucket as a National Historic Landmark.

Engelbourg – We should approach each application as it comes in; not sure about having a standing policy.

Golding – There is an irony in that we have “McMansions” as far as we can see, yet here we are worrying about the aesthetics of sustainable energy.

- 6. Administrator/Staff Reports

- c. None

H. Adjournment

Motion **Motion to Adjourn at 7:05 p.m.** (made by: Golding) (seconded)

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

Submitted by:
Terry L. Norton