



CONSERVATION COMMISSION

PUBLIC MEETING

2 Bathing Beach Road
Nantucket, Massachusetts 02554
www.nantucket-ma.gov
Tuesday, October 20, 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. and announcements made 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 consents

I. PUBLIC MEETING

A. Orders of Condition

1. Kim Glowacki – 46 Easton Street (42.4.1-22) SE48-3285

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

Documentation Draft Order of Conditions

Staff Only reviewing under the state act; last week we issued a denial under the local regulations.

To do due diligence, he proposed discussing a condition related to migration.

Discussion (5:05) **Beale** – Noted a technical correction on the denial – last paragraph, second sentence.

Engelbourg – He made the motion to issue an approval under the State Act but also made the motion to issue a denial under local regulations. Explained why he did that.

Topham – He looks at Madaket where dunes are always moving; dunes are going to grow and go where they want. He thinks if dunes move toward the house, that’s a great thing. He has problems with the denial.

Phillips – She too voted for approval on the State level. However, looking at the Performance Standard for free landward movement of sands, she doesn’t think the applicant met the burden of proof for net improvement. That’s why she supported the local denial. There is very dynamic movement in Madaket; but the harbor is less dynamic, so feels the dunes should be given every chance for free movement.

Engelbourg – He feels the situation in Madaket proves the point of the Performance Standard, noted the illegal shoveling of sand from migrating dunes away from houses.

Topham – He doesn’t think shoveling sand away from the houses would be necessary here because the structures would be 9 feet above ground. He believes the foundation system will allow the dunes to move landward. He would have loved to see a robust dune restoration effort here.

Motion **Motion to Approve the denial.** (made by: Beale) (seconded)

Roll-call Vote Carried 5-2//Beale, Engelbourg, Erisman, Golding, and Phillips-aye; LaFleur and Topham-nay

2. Cheryl Gilbert – 16 D Street (60.2.1-2) SE48-3350

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

Documentation Draft Order of Conditions

Staff Explained why he added this to this agenda.

Discussion (5:20) None

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

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

B. Other Business

1. Approval of Minutes: 10/15/2020

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

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

2. Reports:

a. CRAC and NP&EDC, Phillips – Attended for Mr. Golding; summarized discussion tied into a discussion at NP&EDC regarding Harbor Place (aka Wilkes Square).

b. CPC, Topham – Reviewed submitted requests.

3. Public comments:

a. **Sam Kefferstan**, Mass Audubon – Asked about ratification of a Cease and Desist (C&D) order for the Department of Public Works (DPW) for work at Saccacha Pond off Polpis Road.

Carlson – Mr. Golding sent photos showing status regarding damage assessment for work on Polpis Road at Saccacha Pond. Staff was out there on October 13th and the DPW had gotten to the site to start repair; on Friday, October 16th he got word from Emily Molden, Nantucket Land Council, that the work was in excess. The structure in place is not in compliance with the original structure and the Emergency Permit. Hoping to issue an enforcement

action to include C&D and require an NOI for the work. He and Ms. Molden met with Robert O’Neil on the site to discuss issues and what must be done.

Erisman – She was able to get out to the site Friday; it was clear that the DPW had driven through the pond resource area. Agrees the DPW needs a Stop-Work Order and Enforcement Order.

Golding – Asked about the 30-day emergency work and Mass Audubon being included on the order since the land belongs to them.

Carlson – The Emergency Order issued in 2018 by the State didn’t require additional filing; at that time, the commission should have issued out a separate Emergency Order to deal with the need for an Order of Conditions. Audubon has been involved the entire time and are signing off on restoration and monitoring.

Kefferstan – We weren’t notified of last-week’s work; he just happened to be at that end of the Island, Saturday and noted there was no erosion control system in place.

Erisman – The road will have to be shorn up another way. We will have to condition for siltation fencing to protect the pond.

Carlson – Mr. O’Neil indicated that the wall will have to be removed; there must be a review of how that will be done. All work should be done from the landward side; a protocol should be put together for construction without accessing the resource area and without destabilizing the roadway. They created a footing then excavate perpendicular into the resource area.

Golding – Asked if pilings would be the least obtrusive and allow more beach with the least environmental impact.

LaFleur – Pilings would be a better way.

Erisman – The DPW will have to come in with a full set of engineered plans on what they propose.

Carlson – Reviewed photos of the current situation. He doesn’t believe the structure on the ground now is permissible under the local bylaw.

Phillips – Before the DPW does anything, we should approve what steps will be taken to undo this and put in something that is approvable, asked what steps need to be taken and what the DPW responsibilities are.

Erisman – For enforcement, the first step is to get the violator in front of us to explain what they did and for us to set the benchmark for restoration.

Carlson – We also need a total explanation of what was installed and plans on how that was done. We then know what measures to take to repair and mitigate damage; DPW should then file an NOI. Audubon also needs to authorize work to take place on their property.

Phillips – Wants to know how this happened and wants there is a procedure to ensure it doesn’t happen again.

Carlson – We have to have Town department heads file written plans on what they propose, especially for sensitive areas.

Beale – There is no easy solution here with a wetland on one side of the road and the pond on the other.

Engelbourg – The DPW has a plan to elevate the road; now is the time to discuss that option with them.

Erisman – Would like the DPW to present that plan now so there is a one-time disruption to the area.

Carlson – Reviewed staff’s thoughts on what should be done to protect the road and the resource areas.

Kefferstan – We visited the existing culvert; the repair of those would help water flow between the wetland and pond.

Topham – Thinks raising the road would be a very successful resolution.

Carlson – The Select Board and Town Manager is aware of what happened and scope of damage.

Engelbourg – Asked if ConCom could issue a temporary NOI that requires the DPW to come back with an NOI for a permanent solution.

Carlson – Yes in the sense that he has already impressed upon Mr. O’Neil the need for a holistic solution to the problem that would be as long-term as possible rather than piecemealing to get by.

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

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

4. Commissioners Comment

a. Engelbourg – Attended a forum regarding permitting and design of projects. One discussion he was interested in was on seawalls.

5. Administrator/Staff Reports

a. We have our next regular meeting on October 29th; after that he’s hoping for a special meeting on November 5th with SBPF. The November regular meeting is scheduled for the 19th; he would like to have a special meeting on November 12th to discuss regulations and procedures. The 19th was chosen so as not to exceed 21 days between approval and issuance of Orders of Conditions. Explained the timeline for discussion: issue draft, discuss in open forum, Town Counsel review the resulting draft, and approval of updated regulations. Explained how commissioners should ask for regulations to be review or suggest new ones. He will send out a digital copy of the Local bylaw.

b. Ms. Dodd has been working on compiling an updated enforcement procedure list. Letters will go out, if there is no response, the violator will be subject to daily fines.

C. Adjournment

Motion **Motion to Adjourn at 6:21 p.m.** (made by: Golding) (seconded)

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

Submitted by:
Terry L. Norton