



# CONSERVATION COMMISSION

## PUBLIC MEETING

2 Bathing Beach Road  
Nantucket, Massachusetts 02554

[www.nantucket-ma.gov](http://www.nantucket-ma.gov)

Wednesday, February 05, 2020

4 Fairgrounds Road, Training Room – 5:00 p.m.

**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.

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. 2/19/2020**)

2. Margeret Zarcone – 16 Cherry Street (55-379) SE48-3274

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 (5:02) **Santos** – This was held for the Massachusetts Department of Environmental Protection (DEP) file number. Believes we have everything needed to close the hearing,

Staff Have everything needed to close.

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

Vote Carried unanimously

3. Amy M. Ambrecht – 13 Giny Lane (41-850) SE48-3273

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

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

Representative None

Public None

Discussion (5:03) **Erisman** – There seem to be some questions, and no one is here. We’ll continue to the next meeting.

Staff This was closed at the last hearing and was mistakenly added to this agenda.

Motion No action necessary

Vote N/A

4. \*Nantucket Point of View, LLC – 9 Lincoln Avenue (30-137) SE48-\_\_\_\_\_

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 Steven Cohen, Cohen & Cohen Law P.C. for the abutters

R.J. Turcott, Nantucket Land Council, Inc.

Discussion (5:04) **Madden** – Resource areas include: two isolated vegetated wetlands, Elevation 8 flood zone, and a fragmented coastal bank. This is for a retaining wall, revegetation of 1500 square feet of lawn area, invasive species removal, coastal bank revegetation, slope stabilization, planting plan with no cultivars, relocate stairs and boardwalk, and construction of a cottage over a garage. The garage is proposed on slab with flood vents; he’ll provide distance from high groundwater to the commission. The cottage is designed to meet flood-code requirements. We feel the restoration of the coastal bank provides a long-term net benefit.

**Erisman** – Given the depth of the bank, asked if there was a phased plan for landscaping.

**Madden** – We would not want to denude it all at once. We can provide a phase concept plan.

**Golding** – (not speaking into a mic so very hard to hear.) One of the plans should show how far something extends into the 25-foot buffer. Asked how high the plantings will grow.

**Beale** – The waiver states no reasonable alternative, asked why they can’t build on top of the hill.

**Madden** – He believes because there is no adequate space. The waiver is specific to the proposed project area and to have useable space in the lower area. He believes there is no adverse impact.

**Engelbourg** – He doesn’t believe adding that additional structure to the top of the bank is good for in it will compact the soil; he wants it removed.

**Madden** – Suggested taking a look at it; it’s a steep drop and will provide a physical demarcation. A fence doesn’t provide the same protection against stuff and people going over the bank. Relocating the stairs puts it 25 feet from both isolated vegetated wetlands and the current stairs are in poor shape.

**Cohen** – His clients feel a 2-story structure over a 10-foot garage at the bottom of the bank will change the character of the area. There is no justification for the wall; a split rail fence with chicken wire would be more effective. The structure at the bottom doesn’t meet the legal standards for the coastal bank and adjacent wetlands; the commission doesn’t have to let them do it. Would like more information on the non-delineated wetland across the street.

**Turcott** – Agrees with Mr. Cohen and Mr. Beale’s comments about a reasonable alternative. Feels the area should be allowed to grow back in.

**Madden** – We submitted an architectural concept of the structure showing it only about 24 feet wide; the lower lawn area is about 50 feet wide. He doesn’t know if massing and height of the structure are important to the commission.

**Golding** – This is a pretty substantial structure, so he’d like a closer look at the site.

**Madden** – The top of the coastal bank is at 36 feet; the ridge is not that high. We don’t show any mechanicals, but his idea is they will be under the 2<sup>nd</sup>-floor deck. This is a small structure, but we can provide a drawing showing French drains.

**Golding** – Asked for at least concept drawings of the structure.

**Engelbourg** – Nothing in the requirement precludes us from asking for an analysis for alternative siting on the lot.

**Madden** – He’s always heard waivers are specific to the project; ultimately, we feel the project won’t have an adverse impact and will be a long-term net benefit.

**Erisman** – We want a site visit and more information on the wall.

**Madden** – We can provide more information. Asked for a 2-week continuance.

Staff None  
 Motion Continued to February 19, 2020 by unanimous consent.  
 Vote N/A

5. \*Suzanne Keller and Andrew Bennett – 49 Millbrook Road (56-241) SE48-\_\_\_\_\_

Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale  
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.  
 Representative David M. Haines, Haines Hydrogeologic Consulting  
 Public None

Discussion (5:42) **Haines** – This is for a small addition to an existing house within existing lawn in the 50-foot buffer to an off-site isolated vegetated wetland; also, there is an on-site bordering vegetated wetland and an isolated vegetated wetland off site at the other side of the property. Foundation will be a crawlspace as opposed to the slab noted in the application with the footings still being the same depth. Water is at elevation 12 with four feet of separation from the footings. Asked for a 2-week continuance.

Staff None  
 Motion Continued to February 19, 2020 by unanimous consent.  
 Vote N/A

6. \*Claire F. Salvatore – 13 Old Westmoor Farm Road (41-826) SE48-3275

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

Discussion (5:45) **Gasbarro** – This is for a pool and patio outside the 50-foot buffer to an inland bank and pond. Estimate groundwater from the pond and maintain the 2-foot separation from the water level and bottom of the pool. Do not believe there will be any adverse impact. Pool will have an auto-cover; not aware of landscape lighting.

Staff Have everything needed to close.  
 Motion **Motion to Close.** (made by: Beale) (seconded)  
 Vote Carried unanimously

7. \*Town of Nantucket – 4 California Avenue & Alabama Avenue (60; 60.2.4- 132; 53) SE48-\_\_\_\_\_

Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale  
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.  
 Representative Vincent Murphy, Natural Resources  
 Jennifer Karberg

Public Sam Kefferstan, Mass Audubon  
 Burton Balkind  
 Anne Menz, 8 Ames Avenue

Discussion (5:48) **Murphy** – This is a coastal stabilization project to protect Millie’s Bridge; all work is within the coastal dune. Requesting a waiver from Section 2.03b-2 and Section 1.03s-3. The project will provide long-term net benefit through revegetation of the coastal dune to protect from storm damage. A long-term solution may have to be sought under the Coastal Resiliency Plan. How long the planting will take depends on the number of volunteers they get.

**Phillips** – The Madaket Conservation Association strongly supports this project and will provide a lot of workers.

**Karberg** – We have a couple of years of monitoring and hope the wetlands will come back. This project hopefully will be a model for coastal resiliency and to that end there will be a lot of monitoring associated with it.

**Erisman** – We’ve previously discussed local source planting.

**Murphy** – We will try that since it cuts shipping costs and supports the local economy.

**Karberg** – Will have to look off-Island for the beach grass with in the future looking for seeds locally. Woody plants we can get locally. Hope to get large plants in place for stabilization and use those seeds for future use.

**Engelbourg** – It’s identified as NOI vegetation list that invasive plants were found; asked if those will be removed as part of the project.

**Karberg** – The invasive species are on a neighboring property; we are talking to the owners about that to prevent them from intruding on this property.

**Engelbourg** – Asked about the snow fence.

**Murphy** – That is on the edge of the work area; all work will be on the bridge side of that.

**Karberg** – The fence has helped build the dune and currently is buried; her concern now is the damage that would be caused from removing it.

**Carlson** – We can condition that if the fence becomes exposed, it would be removed.

**Engelbourg** – The NOI says this is in coastal dune but it appears to be within a coastal barrier beach. Asked if we need a finding for that resource area as well.

**Karberg** – We had asked that the resource area not be identified since it is a transitional area. We have been tracking and documenting the extent of migrating sand; we will continue doing that. Part of the planning will be to identify where plants were placed and monitor the success of holding sand.

**Golding** – Asked what the scrub species are.

**Karberg** – Bayberry and high-tide bush. The packet diagram shows a grid for planning, but the planting will be more natural.

**Golding** – Asked if there is a way to use fertilizer that permits growth without being washed into the aquifer.

**Murphy** – There is a neighboring site where we planted about April last year; it grew 8 inches higher and caught sand out of the air. That is the same affect we are trying to get here. Beach grass grows very quickly; he doesn’t think it will need fertilizer.

**Kefferstan** – We support this project; services rendered will help protect over wash, protect the bridge, and provide information on coastal resiliency.

**Balkind** – Regarding the saltmarsh that was there, asked if we are giving up on that.

**Karberg** – Part of the monitoring was to see if the saltmarsh will recover and grow up through the deposited sand; however, we found that the sand was too deep. Without removal of sediment, we won’t get the saltmarsh back. Stabilizing the dune might allow future review of properties with less sand to see if we can get a saltmarsh there.

**Menz** – Thanked the Town for taking on this project. The wash over was devastating in that she no longer has the marsh or a pier; it’s like a sand pit. She wishes it could be dredged. Glad that Madaket is being recognized as having a big issue.

**Carlson** – We do not have a DEP file number. Asked for a 2-week continuance.

Staff None

Motion Continued to February 19, 2020 by unanimous consent.

Vote N/A

**III. PUBLIC MEETING**

**C. Requests for Determination of Applicability**

- 1. Mid-Island Service Limited Partnership – 41 & 43 Sparks Avenue (55-267.4 & 267.3) (Cont. 2/19/2020)

**D. Certificates of Compliance**

- 1. Madaket Wheelhouse, LLC – 13 Massachusetts Avenue (60-75) SE48-2893 (Cont. 2/19/2020)
- 2. Lohman – Great Point – (2-1.2) SE48-3087

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

Documentation Order of Conditions

Staff The Board of Health agrees and recommend issue.

Discussion (6:08) **Art Gasbarro**, Nantucket Engineering & Survey – This was the replacement of sess-pools with Title 5 compliant systems; this is in substantial compliance with the order.

Motion Motion to Issue. (made by: Topham) (seconded)

Vote Carried unanimously

**E. Orders of Condition**

1. Great State Properties, LLC – 92 Washington Street Ext (42.2.3-22) SE48-3268
  - Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
  - Documentation Draft Order of Conditions
  - Staff Put in normal flood-zone conditions.
  - Discussion (6:11) None
  - Motion **Motion to Approve.** (made by: LaFleur) (seconded)
  - Vote Carried unanimously
2. 53 West Chester St, LLC – 53 West Chester Street (41-614) SE48-3269
  - Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
  - Documentation Draft Order of Conditions
  - Staff The invasive material is to be monitored for regrowth
  - Discussion (6:12) None
  - Motion **Motion to Approve.** (made by: LaFleur) (seconded)
  - Vote Carried unanimously
3. Margeret Zarcone – 16 Cherry Street (55-379) SE48-3274
  - Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
  - Documentation Draft Order of Conditions
  - Staff No waiver was required; standard pool conditions.
  - Discussion (6:13) None
  - Motion **Motion to Approve.** (made by: Beale) (seconded)
  - Vote Carried unanimously
4. Amy M. Ambrecht – 13 Gingy Lane (41-850) SE48-3273
  - Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
  - Documentation Draft Order of Conditions
  - Staff Noted the correction about the closing date. Standard conditions.
  - Discussion (6:14) None
  - Motion **Motion to Approve as amended.** (made by: Topham) (seconded)
  - Vote Carried unanimously
5. Claire F. Salvatore – 13 Old Westmoor Farm Road (41-826) SE48-3275
  - Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
  - Documentation Draft Order of Conditions
  - Staff Standard pool conditions; no waiver needed.
  - Discussion (6:15) None
  - Motion **Motion to Approve.** (made by: LaFleur) (seconded)
  - Vote Carried unanimously
6. Lower Pocomo Nominee Trust – 88 Pocomo Road (15-42) SE48-2690 **Reissue**
  - Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
  - Documentation Draft Order of Conditions
  - Staff This came back due to a typographical error.
  - Discussion (6:16) None
  - Motion **Motion to Reissue.** (made by: Engelbourg) (seconded)
  - Vote Carried unanimously

**F. Other Business**

1. Approval of Minutes 1/22/2020: adopted by unanimous consent.
2. Monitoring Report - None
3. Enforcement Actions
  - a. SE48-2824 - Daily Logs, Shoreline 2020 Contract, 80th Survey Report 2019, Aerial Survey Methods, Sand Analysis update, Amendment to Enforcement Order to include Condition #28.
    - Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
    - Staff The reports and surveys are posted to the Town website for view. Still waiting for results from the Testing. Been looking at actual conditions of the geotubes; about 2/3of what is uncovered but they haven't been allowed to recover. We're waiting to hear from Town Counsel regarding Condition 28
    - Discussion (6:20) **Engelbourg** – We've asked 'Sconset Beach Preservation Foundation (SBPF) to provide a weekly photo of the conditions to show how much is exposed. He still hasn't seen them. He asked for them to be separate from the daily log.  
**Erisman** – Those photos are included in the daily log.  
**Engelbourg** – Reviewed the aerial surveys provided by SBPF and their contractors. They start in July 2013 prior to installation of the geotubes; following surveys were done in 2016, August 2017, May 2018, & 2019: photogrammetry and LIDAR. In his opinion, the 2017 survey is the best; it only went as far as the high-water mark and lacked technical information. In 2018, put in only Lidar data and didn't calculate the changes in volume above the geotubes with calculations only of the geotube area. Feels it is important to have the data from both the photogrammetry and LIDAR.  
**Erisman** – Questioned if the Commission should be asking how and when the surveys are done.

**Engelbourg** – Stated the 2019 report is probably no longer valid and the Commission should get a new report.

**Topham** – We need active surveys of the geotubes; they’ve been doing surveys.

**Engelbourg** – We don’t have a lot of helpful information from the surveys with serious issues with the provided aerial data. We should require the annual surveys happen in the same month. There are issues with mitigation and environmental factors. Surveys at different times of year end up with different results. He has issues with the ground shoreline survey; it’s his understanding that the aerial survey should be separate from the ground survey.

**Erisman** – Asked Mr. Engelbourg to detail what the Commission wants out of the surveys.

**Engelbourg** – Noted that the he and the Commission’s independent reviewer, Greg Berman, had similar concerns with the reports. We need data taken the same way at the same time every year.

**Carlson** – Asked Mr. Engelbourg to provide that list to Staff and they will put forward that to SBPF.

**Phillips** – These requests are what DEP looks at; looking at the data we’ve got, if it isn’t consistent, it is a concern for here that DEP’s latest decision was based upon incomplete information.

**Carlson** – That is a concern with every project; we are always improving with data collection. Regarding Condition 28, which addresses mis-reporting in Spring 2018, Town Counsel George Pucci, KP Law, felt that it was the same time period the quarterly survey was missed; amending the enforcement to include Condition 28 is the appropriate course of action. When you issue out an enforcement, they can be for multiple conditions at the same time.

**Golding** – They still have clearly met two failure criteria; he doesn’t see how it can all be lumped into a singular episode.

**Carlson** – There are still two enforcements: missed monitoring and clean fill. Including Condition 28 in the Enforcement Order doesn’t change the number of criteria they have failed to meet. The commission has to vote to amend the Enforcement Order. Detailed the listed failure criteria; we have held off on issuing out the Enforcement Order on the sand mitigation pending the testing report. The issue is quantifying that failure correctly; if the sand is found to contain biological contaminants, that is a more extreme failure that involves the Health Department.

**Erisman** – If Town Counsel says amending the existing order is appropriate, she’s willing to go with his decision.

Motion **Motion to Issue an amended Order of Enforcement to include Condition 28.** (made by: Topham) (seconded)

Vote Carried unanimously

**Engelbourg** – In the 2020 shoreline monitor contract, it seems in place of the quarterly surveys, they are proposing three ground-based surveys and one aerial survey; he thinks that is not acceptable based upon data received so far. We should require four (quarterly) ground-based surveys and they can do an aerial survey if they choose.

**R.J. Turcott**, Nantucket Land Council, Inc. – The proposal states for quarterly topographic survey extended to five feet below mean-low water. This is to include potential sandbars; Mr. Bergman recommended going to two or three feet below mean-low water as opposed to extrapolating.

**Erisman** – Consistent and reasonable data everyone can read is important. Also, if SBPF had to extrapolate, they should provide the reason(s) why.

b. SE48-3115 – DEP Superseding Order of Conditions.

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

Staff We want the public to know that superseding order was issued at the end of January 2020 and the appeal period ends February 11. Executive Session discussions are on-going.

Discussion (6:59) **Erisman** – Reminded commissioners not to discuss items brought up in Executive Session.

**D. Anne Atherton**, Nantucket Coastal Conservancy – Asked the process if the ConCom is contemplating action; is that done in closed session then vote in open session. Asked how the public will know if action is being taken.

**Carlson** – The commission will publicly announce any decisions made in Executive Session as part of the closure of those executive sessions.

**Atherton** – Whether or not ConCom takes action has a bearing upon whether or not other Island entities take action. With the end date of February 11, the window is closing.

**Carlson** – If the Commission files an appeal, it becomes public record as soon as that is sent in.

**Atherton** – There seems to be an error on the 1<sup>st</sup> page, 2<sup>nd</sup> paragraph of the superseding order; it states the NOI was filed jointly by SBPF and the Town; it was not filed jointly. If the DEP thought the application was joint with the municipality, that might have weighed in their decision.

**Burton Balkind** – Encouraged the Commission to appeal the DEP decision based upon SBPF’s track record as pointed out in the meeting today.

4. Reports:
  - a. CRAC, Golding
  - b. CPC, Topham
  - c. NP&EDC, Phillips
5. Commissioners Comment
  - a. None
6. Administrator/Staff Reports
  - a. None

Adjourned at 7:09 p.m. by unanimous consent.

Submitted by:  
Terry L. Norton