



CONSERVATION COMMISSION PUBLIC MEETING

2 Bathing Beach Road
Nantucket, Massachusetts 02554
www.nantucket-ma.gov

Thursday, February 11, 2021 – 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; Terry Norton, Town Minutes Taker

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

*Matter has not been heard

I. PUBLIC MEETING

- A. Announcements
- B. Public Comment –

II. PUBLIC HEARING

A. Notice of Intent

1. Nantucket Islands Land Bank – All Land Bank Properties (Various) SE48-3337 (**Cont. 03/11/2021**)
2. *Nantucket Islands Land Bank – 174 Orange Street & 2 Milestone Road (55-64&65) SE48-3388

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
Kris Horiuchi, Horiuchi Landscape design
Arthur Reade, Reade, Gullicksen, Hanley, & Gifford LLP

Public None

Discussion (5:03) **Gasbarro** – This is to remove driveways and restore with native species; create new access driveways and walking paths outside the resource area; and remove a portion of the structure, swimming pool, asphalt, and fuel tanks. Proposing invasive species management for Japanese Knot Weed; will revegetate with native species. Only work within the resource area is to install a fence to deter use of an existing path to the beach, which will also be restored.
Horiuchi – The hope is to promote public access with an all-purpose access path to a point with an overview of the harbor. HDC has approved hardscape materials and removal of structures.
Topham – He really likes the design.
Golding – Asked why they are keeping the existing cottage rather than removing it. He feels it detracts somewhat.
Reade – He believes there was an issue with the HDC about removing it due to historic value.
Phillips – Asked how long before the public can start enjoying it.
Horiuchi – Our plan is to complete our approvals and construction processes to be able to open to the public early this summer.
Phillips – Asked about plans to educate the public as to what plants are going in and why.
Horiuchi – That is a part of all Land Bank properties.

Staff Work has started on aspects outside our jurisdiction such as removal of structures.
On our walk-through on the site, concerns were expressed about the historic portion of the structure. The Land Bank has been looking into platforms encouraged by Nantucket Conservation Foundation’s ACKAPP. They are actively developing a similar platform.
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

3. Weissenberger – 84 Pocomo Road (15-40) SE48-3364 (**Cont. 02/25/2021**)
4. Trojah Nominee Trust – 26 Easy Street (13-22) SE48-3369 (**Cont. 02/25/2021**)
5. *Sweet Meadow Sylvia Lane, LLC – 74 West Chester Street (41-478) SE48-3379 (**Cont. 03/11/2021**)

6. Two Twelve Polpis Road Nominee Trust – 212 Polpis Road (26-18) SE48-3382
 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 (5:19) **Haines** – Resource areas are a Coastal Bank and bordering vegetated wetland; the plan is to rebuild in the existing footprint. Work is outside the 50-foot buffer. Massachusetts Natural Heritage (MNH) said this is exempt from the Massachusetts Endangered Species Act (MESA) and work won't impact the rare wildlife habitat.
 Staff This is one of the properties where the sailboat washed up; it will be removed in the next couple of weeks. Have everything needed to close.
 Motion **Motion to Close.** (made by: Phillips) (seconded)
 Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Topham-aye
 7. *9 E Street, LLC – 9 E Street (60.2.1-6) SE48-3375 (**Cont. 02/25/2021**)
 8. *Weigold – 3 New Hummock Circle (56-365) SE48-3387 (**Cont. 02/25/2021**)
 9. *Saluti – 174 Cliff Road (41-63) SE48-3386
 Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Mark Rits, Site Design Engineering
 Public None
 Discussion (5:22) **Rits** – This was previously before the board for substantial residential site work. The wetland and pond were previously delineated and approved. This request is to construct a barn outside the 50-foot buffer; most of the barn will be in an area of lawn with a small portion in brush.
 Staff We did a site visit and confirmed everything is in compliance. Have everything needed to close.
 Motion **Motion to Close.** (made by: Phillips) (seconded)
 Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Topham-aye

III. PUBLIC MEETING

C. Requests for Determination of Applicability

1. Cathcart Harbor View, LLC – 2,4,4.5 Cathcart Road (54-8,81&82)
 Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Mark Rits, Site Design Engineering
 Public None
 Discussion (5:26) **Rits** – The property is several parcels which extend to Monomoy Road. There is a wetland system on the property delineated by Brian Madden, LEC Environmental. All wetland flags were survey located. The applicants want to do brush cutting up to the 50-foot buffer prior to work, for which an NOI will be submitted.
Engelbourg – Asked what type of vegetation will be cut.
Rits – It is a mix of shrub and trees; it's very well vegetated between the 50 to 100-foot buffers.
Engelbourg – It depends on what the applicant is proposing; he'd prefer the larger trees be retained at least until the NOI comes in.
Golding – He'd like to see specific delineation of plants between the 50- and 100-foot buffers on all three properties. His concern is that it will be razed; he doesn't want that to happen.
Rits – They would like to clear-cut up to the 50-foot buffer; it's fairly standard practice to propose landscaping up to the 50.
Erisman – Asked if any of this is MNH property.
Rits – The MNH line is shown on the plan; it hugs the 25-foot line pretty much the whole way and comes close to the 50-foot line in one place for a short bit. No work is proposed within that area.
Golding – Though it's customary to allow clear cutting up to the 50, that's normally after the footprint has been delineated. He wants to see the diameter of trees included on this plan before moving forward.
Erisman – She's concerned with the practice of clearing plants to a line, because we have to look at preserving the soil as well. We need to eliminate that clear-cut practice. Agrees we should retain large trees.
Rits – There's little in the regulations that speak to that point. They talk about retaining trees for rare species habitat.
Engelbourg – He knows one of our charges is protecting wildlife habitat. There are red cedars on the property; they are slow growing and provide habitat for bats.
Beale – He echoes the other commissioner's concerns. He thinks a site visit would be helpful. Consensus agrees about a need for a site visit.
Rits – Offered to withdraw the portion requesting brush cutting up to the 50-foot buffer.
 Staff We reviewed the delineation; keep in mind that the Board has the ability to condition a Negative 3. Recommend issue as Positive 2A confirming resource areas.
 Motion **Motion to Issue as a Positive 2A.** (made by: Beale) (seconded)
 Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Topham-aye

2. Nicholas Ray – 37 Somerset Road (56-108)
 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 (5:38) **Gasbarro** – This is work on a small existing structure within buffer to an isolated vegetated wetland. There was brush cutting by a previous owner and they were required to install posts to permanently delineate the no-disturb area; those are shown on the plan.
 Staff Recommend issue as Negative 3 allowing work without permit
 Motion **Motion to Issue as a Negative 3.** (made by: Topham) (seconded)
 Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Topham-aye

D. Certificates of Compliance

1. Sweet Meadow Sylvia Lane, LLC –74 West Chester Street (41-478) SE48-3017 (**Cont. 03/11/2021**)
 2. Thirty-Nine Hulbert, LLC – 39 Hulbert Avenue (29-19) SE48-3035
 3. Thirty-Nine Hulbert, LLC – 39 Hulbert Avenue (29-19) SE48-2503
 Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
 Staff Confirm it is in substantial compliance; recommend on-going Conditions 19 & 20 on SE48-3035 and on-going Condition 19 on SE48-2503.
 Discussion (5:42) **Paul Santos**, Nantucket Surveyors – This was for the redevelopment of an existing parcel involving renovation of the existing structure, construction of new cottage and garage along with site grading, and installation of utilities. Submitted elevation certificates for each structure. All have been constructed and/or elevated to meet flood-zone standards. Resource area was land subject to coastal storm flowage and the bulkhead acting as a policy coastal bank. There is a public access area to the right leading to the beach.
 Motion **Motion to Issue as recommended.** (made by: LaFleur) (seconded)
 Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Topham-aye
 4. Chesley – Formerly 32 West Chester (portion) (Lot C) (42.4.3-51) SE48-3208
 Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
 Staff The work was never done. Recommend issue as invalid
 Discussion (5:46) None
 Motion **Motion to Approve the invalidation of this Order of Condition.** (made by: Golding) (seconded)
 Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Topham-aye
 5. Taconic Partners Nominee Trust – 4 Brant Point Road (29-145) SE48-2712 **Reissue**
 Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
 Staff This is the second re-issue. Recommend it be reissued
 Discussion (5:48) None
 Motion **Motion to Re-issue.** (made by: Engel) (seconded)
 Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Topham-aye

E. Orders of Condition

1. Nantucket Islands Land Bank – 174 Orange Street & 2 Milestone Road (55-64&65) SE48-3388
 Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
 Documentation Draft Order of Conditions
 Staff Included invasive species monitoring conditions. Typo in Condition 22, he meant to write knotweed instead of phragmites.
 Discussion (5:49) None
 Motion **Motion to Approve as amended.** (made by: Topham) (seconded)
 Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Topham-aye
 2. Two Twelve Polpis Road Nominee Trust – 212 Polpis Road (26-18) SE48-3382
 Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
 Documentation Draft Order of Conditions
 Staff Included additional findings because the work is within the buffer to a coastal bank; also memorialized it won't be eligible for protection.
 Discussion (5:50) **Golding** – Asked if there is a bulkhead there (no).
Beale – Asked if we have jurisdiction on what is built in its place (no). (after the vote) Found a typo in the second Finding paragraph 3.
 Motion **Motion to Approve as drafted.** (made by: Phillips) (seconded)
 Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Topham-aye
 3. Weigold – 3 New Hummock Circle (56-365) SE48-3387
 Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
 Documentation Draft Order of Conditions
 Staff No special conditions. Will add Condition 19 directing lighting away from the pond.
 Discussion (5:55) **Erisman** – She thinks the barn will be elevated compared to the pond; asked if there should be a condition that lighting won't be directed to the pond.
 Motion **Motion to Approve as amended.** (made by: Golding) (seconded)
 Roll-call Vote Carried unanimously//Beale, Engelbourg, Erisman, Golding, LaFleur, Phillips, and Topham-aye

F. Other Business

1. Approval of Minutes 1/28/2021: Golding – Noted a couple of errors to be corrected.

Motion **Motion to Approve as amended.** (made by: Golding) (seconded)

Roll-call Vote Carried 6-0// Engelbourg, Erisman, Golding, LaFleur, Phillips, and Topham-aye; Beale-abstain due to technical issues

2. Reports:

- a. CRAC, Golding: Discussion about ARCADIS wanting to speak with the Commission about Baxter Road and getting associated documentation to the commissioners.

3. Monitoring Reports:

- a. Nantucket Conservation Foundation-Shimmo Pond Road (Pest House Pond) (43-155) SE48-3090

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

Discussion (6:01) **Engelbourg** – It’s interesting to see they are documenting widegone grass at that site; it’s a very important submerged plant for habitat in fresh-water and brackish systems.

4. Enforcement Update:

- a. Kelly – Baxter Road

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

Speakers None

Discussion (6:03) **Carlson** – The Kelly’s have contested the enforcement action and he has a meeting with the Court Magistrate on March 2nd.

5. Commissioners Comment

- a. **Engelbourg** – On Monday the Loring Nature Foundation is holding a meeting of collaboration of researchers across the country to examine yards as an ecosystem rather than just as a residential piece of property and incorporating native biodiversity. He will share the link to that.

- b. **Engelbourg** – He’s been thinking about our limitations in construction additional limitations outside our jurisdiction. The Mass ConCom Act enables us to purchase and hold land. There are possibilities to think holistically about regulations and putting policies into place in other than wetland resource areas. Asked about reviewing that regulation regarding making our regulations more expansive so as we don’t limit our vision as to what we can regulations.

Phillips – Asked if there are other ConComs doing that.

Engelbourg – Yes. Town Counsel might say we can’t enact regulations but put out policies on areas outside our jurisdiction.

Phillips – It seems it is potentially available to us to look at things more broadly on issues such as plants used in landscaping. We should look into that.

Golding – He feels we’re stalled on the update of our regulations; we’ve sent in a variety of suggestions. Asked where we stand.

Carlson – A lot of responsibility the commission was enabled by the Act fell to the Land Bank due to staffing of our office. The Commission has a lot of broad reach to develop education and outreach material to the area of open space. We could get Gregg Corbo, K&P Law, P.C., to address the idea of regulating spaces not under our jurisdiction; the commission could probably draft a protection of open space bylaw, which would go to Town Meeting and designates the Commission as the authority to regulate that bylaw. The Massachusetts Conservation Commission Act was approved in 1957; and the Wetland Protection Act was passed in 1978. Staff got tied up on other issues and updating the regulations fell to the wayside. He’ll get a summary of proposed regulations out next week.

- c. **Erisman** – She has big concerns about the comment that the commission is out of touch with what’s happening in the landscape world regarding plants used on Island. There must be some way to get education to the landscapers about appropriate plants. She’s also concerned that by the time a plant is labeled invasive, it’s too late.

Engelbourg – Education is important in understanding how invasive plants get listed. Explained the process for getting a plant labeled invasive. There is a phone app, Outsmart Invasive Species, available for downloading locations of non-native horticultural plants to the State database. If there are enough occurrences, the State sets a hearing to decide whether or not that plant is invasive.

6. Administrator/Staff Reports

- a. We’ve found a date for an executive session and a date for the annual report from SBPF. We’re looking at March 22 for the review of the annual report. We’ve had a couple of requests from George Pucci, K&P Law, P.C., for an executive session; the idea is to do it before the March 25 regular meeting.

G. Adjournment

Motion **Motion to Adjourn at 6:26 p.m.** (made by: Golding) (seconded)

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

Submitted by:

Terry L. Norton