



CONSERVATION COMMISSION

PUBLIC MEETING

2 Bathing Beach Road
Nantucket, Massachusetts 02554

www.nantucket-ma.gov

Thursday, April 16, 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. roll call attendance.

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

C. Adoption of E-signatures: Carlson – We will be sending everyone a secure link to sign documents. The Registry of Deeds said there needs to be vote to accept that.

Motion to Accept use of E-signatures. (made by; Lafleur) (seconded)

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

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 Arthur Gasbarro, Nantucket Engineering & Survey, P.C.

Steven Cohen, Cohen & Cohen LP

Public RJ Turcott, Nantucket Land Council (NCL)

Discussion (5:12) **Gasbarro** – This is a project to replacement a timber bulkhead with metal sheathing. He provide supplemental information including the Chapter 91 license and the ConCom approval for the existing bulkhead. If we were to remove and replace this in kind, that would be a greater disturbance to the resource area than what we are proposing. There is a 7-foot return on the east end of the property, which will be extended. We believe the proposed work meets the Chapter 91 license requirements for maintaining the existing structure.

Golding – He went to the site. He opposes this renewal; it interferes with public access under the public trust doctrine; cited supporting sources: Massachusetts Public Waterfront Act and Conservation Law Foundation Public Waterfront Act Bill of Rights. If this is built with steel, it will be there for the next 50 years. Currently, when the tide comes in there is no ability to walk the beach and there is room to move the house back.

Engelbourg – He also opposes this project. He has asked for alternative analyses, which have not been sufficient. Chapter 91 requires the structure be maintained but our local law requires the applicant to seek a more environmentally friendly alternative.

LaFleur – Chapter 91 allows them to keep and maintain this bulkhead; it’s in place and was granted by a previous ConCom and falls under the state mandate.

Topham – Agrees with Mr. LaFleur. He doesn’t agree the house can be moved; there are two other structures in place and separation per code couldn’t be maintained. In this setting, coir rolls won’t fit.

Phillips – She has also been to the site and it isn’t in great shape. If this was naked land, we wouldn’t allow this bulkhead to be built. We want progress but at the same time the situation is limited. Her observation of the site is that there aren’t a lot of good choices. This is not in good shape and something needs to be done. She would reluctantly agree with the proposal that’s been put together. We need to look carefully at the existing structures within our jurisdiction.

Beale – Asked if wood versus steel might make the project more palatable.

Golding – He would feel better with wood; however, he disagrees there is not adequate room to move the structure back to the driveway. This family has been there for many years; but it is the long-term protection of riparian rights. Read DEP water-dependent use definition; his point is going forward this is absolutely diminishing that capacity.

Erisman – She’s concerned about sea-level rise and walkability of the beach; asked if they looked at stairs to allow people to walk up and over the structure.

Gasbarro – The top of the bulkhead is above mean high water; to do that, we would have to grant the public rights onto the property. The rights of the public aren’t stopped when the tide allows; it’s just at mean high tide. Also, the steel is strong enough to be driven in without requiring excavation and extra support.

Beale – It appears to him that there is substantial scouring on the east end. Asked if this will exacerbate and extend that scouring.

Gasbarro – What is being perceived as scour is natural retreat of the unprotected bank. That is the reason to extend the return.

Cohen – He appreciates the interest in maintaining the public access; however, some points raised don’t meet the applicable legal standard. This commission has required steel bulkhead specifically where the beach is narrow.

Carlson – The last place a steel bulkhead came up was on Washington Street Extension.

Erisman – About public access, asked if the bulkhead can be conditioned that at the point the public can no long traverse the beach, they have to allow access of the public up and over.

Carlson – Some of that is covered by Chapter 91. Looking at it in the sense of how the bulkhead further impacts recreational interest, you’d have to put together a level of findings about why that condition is being required. He doesn’t know how those findings would be worded.

Erisman – She would like to look into that further as more bulkheads need repair and sea-level rise becomes more of an issue.

Carlson – The most relevant project is on Orange Street where the pier is in proximity to the harbor and passage around was required.

Golding – He disagrees that there is so little fetch across the harbor that it makes very little difference; aerials over the past 40 years indicate differently. If we approve this, he feels it will be completely impassible before it comes up for further repair in the future. Everyone needs to take another look at hard armoring. The license granted 40 years ago isn’t defensible going forward.

Phillips – We have a lot of these and find a way, thinking outside the box, to provide public access in this difficult area. She supports Ms. Erisman’s idea of conditioning that public access is to be maintained.

Erisman – Opened this to public comment.

Gasbarro – The erosion Mr. Golding referenced happened over 40 years. Confirmed that the Board is looking for information on how to condition public access.

Turcott – This new return along the eastern side of the property is not maintenance; it is a new, additional structure. The return is not grandfathered under the Bylaw and requires multiple waivers as a new coastal engineering structure (CES).

Gasbarro – We agree it is new but that waivers aren’t required due to water dependent use.

Golding – He’s uncomfortable in a virtual situation in closing a hearing that is this complicated and the public has trouble voicing concerns. He agrees with Mr. Turcott, the new portion isn’t grandfathered and requires waivers.

Topham – Dave Fronzutto said a couple of years ago that the Town is going to start maintaining this site.

Gasbarro – Requested continuance to April 30.

Continued to April 30 without objection

N/A

Motion

Voce vote

2. William F. Hopkins Trustee – 7 Hallowell Lane (30-93) SE48-3288

3. Hallowell Lane Nominee Trust – 9 Hallowell Lane (30-14) SE48-3289

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

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

Representative Arthur Gasbarro, Nantucket Engineering & Survey, P.C.

Public None

Discussion (5:49)

Gasbarro – These are for in-kind replacement of aging timber groins existing on the two properties. He provided updated site plan showing spot elevations along the top of the structure. The best way it will be held in check is the upland portion of the existing structure is in good shape. Received a response from Massachusetts Natural Heritage (MNH) with conditions related to time-of-year access and protection of shorebirds.

Erisman – Opened to public comment.

Carlson – We have everything needed to close.

Motion to Close SE48-3288 and SE48-3289. (made by: Topham) (seconded)

Motion

Roll-call Vote

4. Shawkemo Road Realty Trust – 4 Shawkemo Road (43-91.1) SE48-3291

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

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

Representative Arthur Gasbarro, Nantucket Engineering & Survey, P.C.

Public None

- Discussion (5:55) **Gasbarro** – This is to remove and replace an existing dwelling and install a pool. Resource areas are a bordering vegetated wetland with buffers shown on the plan with a proposed silt fence. The bottom of the pool is 2 feet above groundwater. The septic will be abandoned, and the site tied into Town sewer.
Phillips – Regarding the cross section of the pool, she’s concerned that the terrain is being regraded so that the pool will be lifted above of groundwater.
Gasbarro – When you have a sloping site and the large flat area such as a pool, there has to be some plateauing. On the high side, the pool comes up only a foot; on the low side it comes up 4-5 feet. We included a detailed grading plan showing the proposed contours won’t intrude into the 25-foot buffer.
Erisman – Opened to the public. No public comment.
Carlson – We have everything needed to close.
- Motion **Motion to Close.** (made by: Golding) (seconded)
- Roll-call Vote Carried unanimously//Beale-aye, Engelbourg-aye, Erisman-aye, Golding-aye, LaFleur-aye, Phillips-aye, Topham-aye
5. *Lotte Leschly QPRT & Jan Leschly QPRT – 65 Squam Road (13-15) SE48-_____ (Cont. 04/30/2020)
 6. 46 Shimmo Pond Road N.T – 46 Shimmo Pond Road (43-77) SE48-3264 (Cont. 04/30/2020)
 7. Nantucket Point of View, LLC – 9 Lincoln Avenue (30-137) SE48-3278 (Cont. 04/30/2020)
 8. Four Quaise Pastures Nominee Trust – 4 Quaise Pastures Road (26-69) SE48-3293
- Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
Representative Brian Madden, LEC
Public None
- Discussion (6:10) **Madden** – This is for a pool and decking, stone patio, fence, landscaping, pool equipment. This is outside the 50-foot buffer and no waivers are required. This was originally approved in 2016 and is a reactivation with minimal updating.
Erisman – Opened to public comments. No public comment.
Carlson – We have everything needed to close.
- Motion **Motion to Close.** (made by: Engelbourg) (seconded)
- Roll-call Vote Carried unanimously//Beale-aye, Engelbourg-aye, Erisman-aye, Golding-aye, LaFleur-aye, Phillips-aye, Topham-aye
9. *72 Pocomo Road, LLC – 72 Pocomo Road (15-37) SE48-3292
- Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
Representative Brian Madden, LEC
Public None
- Discussion (6:15) **Madden** – This is to fence in a garden with a small deck, pergola, and fountain within existing landscape conditions; work is within the 50-foot buffer to the coastal bank.
Erisman – Opened to public comment. No public comments.
Carlson – We have everything needed to close.
- Motion **Motion to Close.** (made by: Topham) (seconded)
- Roll-call Vote Carried unanimously//Beale-aye, Engelbourg-aye, Erisman-aye, Golding-aye, LaFleur-aye, Phillips-aye, Topham-aye
10. Harborfront Realty Trust – Village Way (14-2) SE48-3285
- Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
Representative Paul Santos – Nantucket Surveyors, Inc.
Public None
- Discussion (6:21) **Santos** – Removal and relocation of beach stairs within a coastal bank and beach interface. Have received MNH Endangers Species Program (NHESP) comments: no adverse impact, no take.
Erisman – Opened to public comments. No public comments.
Carlson – We have everything needed to close.
- Motion **Motion to Close.** (made by: Beale) (seconded)
- Roll-call Vote Carried unanimously//Beale-aye, Engelbourg-aye, Erisman-aye, Golding-aye, LaFleur-aye, Phillips-aye, Topham-aye
11. Kim Glowacki – 46 Easton Street (42.4.1-22) SE48-3285
- Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
Representative Dan Wells, Goddard Consulting
Public RJ Turcott, NCL
- Discussion (6:25) **Wells** – This is for a boathouse designed to qualify for Chapter 91. Reviewed submitted supplemental materials and information. Have plans ready to submit plans for Chapter 91 license and expect it to be approved. Asking the commission to consider this as a water-dependent use.
Englebourg – The bulkhead historic photos and plans make it appear the bulkhead exists past the point where the house ends. He would like to see a survey done in the event the end of the bulkhead is buried in sand.

Wells – The coastal dune resource area is closer to the existing dwelling; therefore, the setback distance doesn't matter.

Erisman – We require resource area boundaries be accurately represented on the plans. Someone should find the bulkhead and accurately represent where it ends.

Engelbourg – It is important to have accurate information going forward.

Topham – Perhaps the location of the Japanese knotweed is a place to start looking for the bulkhead.

Engelbourg – He had concerns about the protocol of removal for the Japanese knotweed and asked had for a chemical removal protocol.

Wells – He intends to revise the plans regarding that procedure. The intent is to make that modification.

Beale – Questions that this proposed boathouse with a dwelling is a water-dependent use.

Erisman – In this area, dwellings have to raised 8 feet above the flood plain. She doesn't see this as water-dependent use.

Engelbourg – The storage area is ambiguous regarding water-dependent use. At the last meeting there was a discrepancy in how boats would be transferred between the water and the boat storage area. There is a coastal bank and coastal dune between this and the water and can't see adequate transfer.

Erisman – At the last meeting, the applicant said the boats would be trailered to and from a boat launch and not moved over the resource areas.

Englebourg – He would not want boats dragged through dunes; moving boats across the road precludes this being a water-dependent use.

Golding – If this is a water-dependent use, he'll change his name to Capt. William Bligh; he opposes this.

Topham – Part of the house is on piers, but the main mass is on a full foundation; that's a concern. Even with breakaway panels, there will be chemicals stored in the flood zone. This structure has to be all on piers.

Phillips – Agrees about the issue with chemicals. You can't decide that because the structure holds boats it is a water-dependent use.

LaFleur – His question is the foundation in the flood zone; he agrees with Mr. Topham.

Wells – The plan indicates doors and flood vents will be designed to breakaway under flood conditions.

Topham – A hard-armor foundation in this area is going to be problematic, especially for neighbors; it will also cause water acceleration across into the wetlands. The ground floor should not be a concrete mass.

Engelbourg – If there is a major flood in this area, not only is there potential for chemicals leeching out but the boats stored could result in objects inside crashing about and damaging the structure.

Wells – We haven't yet thought about securing the stored boats.

Golding – Another issue is the 50-foot setback; he takes exception to any structure being built within that buffer. Asked for a legal opinion from Town Counsel.

Carlson – It would be helpful to clarify that it isn't water dependent under our definition. Read the local definition.

Engelbourg – Dwellings are not considered water dependent. The definition requires direct water access; it's unclear that this requires direct water access.

Erisman – In her mind it does not require direct access to water, especially with the 2nd-floor dwelling.

Phillips – She is willing to state that this is not water dependent. This is nothing more than an opening under the foundation that can be called boat storage; it's too far removed and there is no question it is not water dependent.

Beale – Asked if we are prepared to make a finding it is not water dependent.

Motion **Motion to Find that this is not a water dependent use.** (made by: Beale) (seconded)

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

Erisman – Opened to public comments.

Turcott – NCL supports the Commission's finding.

Wells – Asked for a continuance to April 30.

Motion Continued to April 30 without objection

Roll-call Vote N/A

12. *Nantucket Memorial Airport – 14 Airport Road (88-15&16) SE48-3294

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

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

Representative Jed Merrow

Noah Karberg, Nantucket Memorial Airport (via YouTube chat)

Public Burton Balkind

Discussion (6:56) **Merrow** – This is for a 1400-foot fence, which is a safety feature and is required to be regularly inspected and kept in good condition. Replacement is in kind partly within a coastal dune. Resource areas are land subject to coastal storm flowage, coastal dune, and coastal beach. Most fence posts are in good condition and will be reused. If any fence is buried within the dune, the fence will be cut off at the ground and left in place. Work will be done from the perimeter road.

Erisman – Asked how far the fence that might be cut off and left extends below grade.

Merrow – The fence has probably caught sand and debris; thinks it goes down about a foot.

Erisman – When we leave material that could potentially be exposed, we condition that the material be removed upon exposure.

Carlson – We can add that condition.

Golding – Asked if this needs a waiver due to where work is taking place.

Carlson – Yes.

Erisman – Opened to public comments.

Balkind – Asked if a site evaluation was done for endangered birds.

Merrow – We haven’t done any yet; did a rare plant survey. Work would be in the fall outside the nesting season. MNH has not yet signed off on this, but that isn’t required for ConCom due to the Federal regulatory restrictions.

Carlson – The airport is heavily regulated regarding endangered species. A condition that work be in the fall should suffice. Inherent public safety has some inherent benefit in the analysis of use of the property regarding resource areas. We can put together language that accommodates that.

Engelbourg – Asked how long the fence would be open; blazing star blooms in September when other animals might move through the open fence and eat those plants.

Merrow – There are provisions to maintain the integrity of the fence and would be retained at all times.

Carlson – We have everything needed to close.

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

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

13. *300 Polpis Road, LLC – 300 Polpis Road (88-20 & 11) SE48-3295

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

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

Representative Jeff Blackwell, Blackwell & Associates Land Surveyors, Inc.

Public None

Discussion (7:11) **Blackwell** – This is to provide a water-proofing solution to an existing structure; the structure was built in 1970s as a blacksmith shop and the owner wants to finish off the inside as a recording studio. After work, the soil will be restored to the present grade. Suggested a condition to complete the grading before installation of the waterproofing.

Erisman – Asked if the dumpster would be in the wetlands.

Blackwell – If it isn’t in the wetlands, it’s very close.

Topham – He appreciates the wetland cleanup, but Mr. Carlson should see how it is being done.

Erisman – Open dumpsters attract scavengers who pull out trash. Also, she’s concerned about the structure’s proximity to the wetlands and excavating to waterproof it, she thinks the building should be moved out of the 25-foot buffer. Would like more detail on where soil is being excavated to ensure it doesn’t impact the wetland.

Golding – If the work could be done in a manner that doesn’t impact the wetlands, it could be allowed to stay.

Topham – Asked that Mr. Carlson go to the site, and stake and take photos of where the excavation would take place.

Blackwell – He can provide photos; also, he can detail on the plans where excavation would be required. There would be no excavation necessary on the side of the wetland due to the slope of grade.

Topham – This scan is very grainy; he’d like to see something easier to read.

LaFleur – It’s hard to read the contour numbers and elevations. The east side will require a trench at least 8 feet deep. The west elevation looks okay. The north and South elevations will also require a trench. This site will need a silt fence; storage of fill should be away from the wetlands, possibly the other side of the house.

Engelbourg – He supports the idea of relocation but there might be logistical issues due to other structures.

Erisman – Photos and alternative analyses would be nice.

Phillips – This is so intertwined with the wetlands; we’re searching for what would be best. Asked if the excavation would be done by hand. We’d really like more details about how the work would be done.

Blackwell – The smallest excavator would be adequate to move the required material.

Erisman – Opened to public comments. No public comments.

Blackwell – Requested a continuance to April 30.

Motion Continued to April 30 without objection

Roll-call Vote N/A

14. *Timothy & Elizabeth Quinlisk – 88 Quidnet Road (21-109) SE48-3297

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

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

Representative Jeff Blackwell, Blackwell & Associates Land Surveyors, Inc.

Public None

Discussion (7:29) **Blackwell** – Explained the project: renovation and pull structure back from coastal dune.

Engelbourg – The proposed structure is slightly rotated from the existing; if it were rotated a bit the other way, the 8.2 square feet within the buffer could be pulled out of the setback.

Golding – Asked if the project has been submitted to the HDC.

Blackwell – It has been submitted but doesn't know the status. He will work with Mr. Engelbourg's suggestion.

Golding – This is a complete reconstruction versus a renovation; the reconstruction removes the pre-1978 protection and wants that to be clear.

Erisman – Agrees with Mr. Engelbourg.

Phillips – Asked if there is another well or is it a choice to retain the well.

Blackwell – We haven't explored a new well site; we have to look at the septic systems in the area to see if that could be done.

Erisman – Opened to public comments. No public comment.

Blackwell – Requested a continuance to April 30.

Motion Continued to April 30 without objection

Roll-call Vote N/A

15. *The Town of Nantucket – 34 Washington Street (42.2.3-2) SE48-3300

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

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

Representative Tarja McGrail, Coastal Engineering

Public R.J. Turcott – NCL

Rick Atherton

Discussion (7:40) **McGrail** – This is for redevelopment of property adjacent to the Town Pier. Resource areas are a coastal bank, coastal dune, and land subject to coastal storm flowage. This is a water-dependent building. Work involves removal of the existing Harbor Master building, construction of a new building on a pile foundation with the 1st floor at elevation 9.9, construction of an ancillary storage building; the storage building, which is for a trailer holding equipment, will have a slab foundation with break-away walls. The pervious area will be increased to facilitate stormwater runoff.

Golding – This is massive and extends into the park while the Land Bank is trying to open up the harbor view. Asked them to reconsider putting such a large building there.

Erisman – The size of this structure surprised her, and she questions the need at this location.

McGrail – The public bathroom facilities would be improved, and the 2nd-floor will have desperately needed office space.

Topham – The amount of boats coming into the harbor creates a need to meet commercial code requirement regarding the size of the bathrooms. What is there is too small and shabby.

LaFleur – What Mr. Topham said is true; what's there is totally inadequate.

Topham – Asked if a code analysis could be included in the file to address concerns about the size.

Erisman – Opened to public comments.

Turcott – Asked if any landscaping plants will require fertilization.

McGrail – We have chosen American Beach Grass.

Carlson – This can be conditioned no fertilizer. There had been talk about relocating this across the street but there was concern about having to cross Washington Street should the Harbor Master need to get to the pier and boats.

Golding – He would like to see more detail, and the public should to have more time to reflect on whether or not they want this large a building in this location; perhaps the Town should have an architect look at tweaking the plans so the building won't be so large.

Erisman – She'd like to see the construction protocol and where construction debris will be stored.

McGrail – Most debris will have to be removed due to the size of the property.

Beale – There is no need for a storage shed when the cargo trailer could go anywhere.

LaFleur – Clarified that the trailer is for holding necessary equipment which can't be store in the building.

Engelbourg – He understands it will be a cargo trailer but doesn't see a need for a shed.

Erisman – She wants to know exactly what the trailer would hold.

Atherton – View sheds are important. Very long-term outlook. Take this into consideration. But the Town has a long-term goal for a harbor walk from the Coast Guard Station to the creeks. Please take this into consideration.

Beale – he wants to know specifically which employees will be there; he doesn't think the lifeguards need to be there.

McGrail – Asked for a two-week continuance.

Motion Continued to April 30 without objection

Roll-call Vote N/A

III. PUBLIC MEETING

C. Requests for Determination of Applicability

- 1. The Karin Alper Revocable Trust of 2005 – 1 Wamasquid Place & 49 Meadow View Drive (56113; 390) (Cont. 04/30/2020)

D. Minor Modifications

- 1. Keybank National Association – 14 Washing Pond Road (31-19) SE48-3133

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

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

Representative Arthur Gasbarro, Nantucket Engineering & Survey, P.C.
 Public None
 Discussion (8:01) **Carlson** – We were waiting to hear from Department of Fisheries and Wildlife. We now have that.
 Motion **Motion to Approve the minor modification.** (made by: Topham) (seconded)
 Roll-call Vote Carried unanimously//Beale-aye, Engelbourg-aye, Erisman-aye, Golding-aye, LaFleur-aye, Phillips-aye, Topham-aye

2. Madaket Wheelhouse, LLC – 13 Massachusetts Avenue (60-75) SE48-2893
 Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Arthur Gasbarro, Nantucket Engineering & Survey, P.C.
 Public None
 Discussion (8:04) **Gasbarro** – Modifications include: the walkway changed to steppingstones; a concrete propane pad; repair of an existing fence; and installation of a split-rail fence.
Erisman – Asked if the planting bed will be for native species; it’s in an area we would prefer native plants.
Gasbarro – He will double check that; judging from photos, there are tall grasses in the bed.
Erisman – Asked Mr. Carlson to check the plants in the bed to ensure they are native species.
 Motion **Motion to Approve the minor modification.** (made by: Topham) (seconded)
 Roll-call Vote Carried unanimously//Beale-aye, Engelbourg-aye, Erisman-aye, Golding-aye, LaFleur-aye, Phillips-aye, Topham-aye

3. Hulbert ACK, LLC – 2 Hulbert Avenue #2 (42.1.4-2.1) SE48-3142
 Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Paul Santos – Nantucket Surveyors, Inc.
 Public None
 Discussion (8:09) **Santos** – This is to remove the raised planting component with bluestone; it will just be American Hornbeam trees.
Engelbourg – He has an issue with the American Hornbeam; Nantucket is the one Massachusetts county in which it is not a native plant. Asked that the applicant choose a tree native to Nantucketf.
Erisman – Agrees.
Santos – He will get the landscaper to pick a tree and come back on the 30th.
 Motion Continued to April 30 without objection
 Roll-call Vote N/A

4. 55 Grove Lane, LLC – 55 Grove Lane (41-419) SE48-3155
 Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative None
 Public None
 Discussion (8:12) **Carlson** – This is to shift the pool with pergola and eliminate the shed.
 Motion **Motion to Approve the minor modification.** (made by: Beale) (seconded)
 Roll-call Vote Carried unanimously//Beale-aye, Engelbourg-aye, Erisman-aye, Golding-aye, LaFleur-aye, Phillips-aye, Topham-aye

5. 51 Ocean Avenue Nominee Trust – 51 Ocean Avenue (73.3.2-53) SE48-3287
 Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
 Representative Jeff Blackwell, Blackwell & Associates Land Surveyors, Inc.
 Public None
 Discussion (8:13) **Blackwell** – We need to rework the stairs below the 10-foot-wide landing; the stairs will not be extended toward the coastal dune.
 Motion **Motion to Approver the minor modification.** (made by: LaFleur) (seconded)
 Roll-call Vote Carried unanimously//Beale-aye, Engelbourg-aye, Erisman-aye, Golding-aye, LaFleur-aye, Phillips-aye, Topham-aye

E. Certificates of Compliance

1. Hardman - 51B Madaket Road (41-325.1) SE48-3110
 Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
 Documentation Order of Conditions
 Staff Work is completed; recommend issuance with ongoing Conditions 19, 20, & 21.
 Discussion (8:16) None
 Motion **Motion to Issue.** (made by: LaFleur) (seconded)
 Roll-call Vote Carried unanimously//Beale-aye, Engelbourg-aye, Erisman-aye, Golding-aye, LaFleur-aye, Phillips-aye, Topham-aye

2. Madaket Wheelhouse, LLC – 13 Massachusetts Avenue (60-75) SE48-2893
 Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
 Documentation Order of Conditions
 Staff The project is in compliance with conditions on the gourd.

- Discussion (8:18) None
 Motion Motion to Issue. (made by: Beale) (seconded)
 Roll-call Vote Carried unanimously//Beale-aye, Engelbourg-aye, Erisman-aye, Golding-aye, LaFleur-aye, Phillips-aye, Topham-aye
3. Sixty-Four Walsh Street, LLC- 64 Walsh Street Lot 2 (29-94) SE48-2847
 4. Nantucket 62 Walsh, LLC – 62 Walsh Street (2985) SE48-2933
- Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
 Documentation Order of Conditions
 Staff These sites are in compliance and recommend both be issued; SE-2847 should include on-going conditions regarding the pool.
- Discussion (8:19) None
 Motion **Motion to Issue certificates for SE48-2847 with on-going conditions and SE48-2933.** (made by: Golding) (seconded)
 Roll-call Vote Carried unanimously//Beale-aye, Engelbourg-aye, Erisman-aye, Golding-aye, LaFleur-aye, Phillips-aye, Topham-aye
5. Gloria Grimshaw – 22 Quidnet Road (21-33) SE48-2992
- Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
 Documentation Order of Conditions
 Staff This is in compliance but recommend issuance with on-going Conditions 19 & 20.
- Discussion (8:22) None
 Motion **Motion to Issue with on-going Conditions 19 & 20.** (made by: LaFleur) (seconded)
 Roll-call Vote Carried unanimously//Beale-aye, Engelbourg-aye, Erisman-aye, Golding-aye, LaFleur-aye, Phillips-aye, Topham-aye

F. Orders of Conditions

1. William F. Hopkins Trustee – 7 Hallowell Lane (30-93) SE48-3288
- Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
 Documentation Order of Conditions
 Staff MNH provided comments and conditions; I had nothing extra.
- Discussion (8:23) None
 Motion **Motion to Approve as drafted.** (made by: Golding) (seconded)
 Roll-call Vote Carried unanimously//Beale-aye, Engelbourg-aye, Erisman-aye, Golding-aye, LaFleur-aye, Phillips-aye, Topham-aye
2. Hallowell Lane Nominee Trust – 9 Hallowell Lane (30-14) SE48-3289
- Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
 Documentation Order of Conditions
 Staff This looks the same as 7 Hallowell Lane.
- Discussion (8:27) None
 Motion **Motion to Approve as drafted.** (made by: Golding) (seconded)
 Roll-call Vote Carried unanimously//Beale-aye, Engelbourg-aye, Erisman-aye, Golding-aye, LaFleur-aye, Phillips-aye, Topham-aye
3. 4 Shawkemo Road Realty Trust – 4 Shawkemo Road (43-91.1) SE48-3291
- Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
 Documentation Order of Conditions
 Staff The only conditions added regard the pool. Will include Condition 19 regarding lighting.
- Discussion (8:28) **Erisman** – Because the way the pool is elevated, wants lighting conditioned away from the wetland.
 Motion **Motion to Approve as amended.** (made by: Topham) (seconded)
 Roll-call Vote Carried unanimously//Beale-aye, Engelbourg-aye, Erisman-aye, Golding-aye, LaFleur-aye, Phillips-aye, Topham-aye
4. Four Quaise Pastures Nominee Trust – 4 Quaise Pastures Road (26-69) SE48-3293
- Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
 Documentation Order of Conditions
 Staff He will add Condition 20 directing all lighting away from the resource area and Condition 21 about when chemical treatments will not be permitted.
- Discussion (8:30) None
 Motion **Motion to Approve as amended.** (made by: Engelbourg) (seconded)
 Roll-call Vote Carried unanimously//Beale-aye, Engelbourg-aye, Erisman-aye, Golding-aye, LaFleur-aye, Phillips-aye, Topham-aye
5. 72 Pocomo Road, LLC – 72 Pocomo Road (15-37) SE48-3292
- Sitting Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale
 Documentation Order of Conditions
 Staff He conditioned drainage of the fountain.
- Discussion (8:32) None
 Motion **Motion to Approve as drafted.** (made by: Beale) (seconded)

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

6. Harborfront Realty Trust – Village Way (14-2) SE48-3285

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

Documentation Order of Conditions

Staff He found a typo in the file number.

Discussion (8:34) None

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

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

7. Nantucket Memorial Airport – 14 Airport Road (88-15&16) SE48-3294

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

Documentation Order of Conditions

Staff He hadn't drafted an order for this.

Discussion (8:56) **Erisman** – She wants a condition to remove any fencing below grade as it exposes.

Golding – There was a point about granting the waiver due to public safety.

Motion Continued to April 30 by unanimous consent.

Roll-call Vote

8. *Nantucket Islands Land Bank - 17 Commercial Wharf & Lot without street number New Whale Street (42.2.4-7&8) SE48-2885 (Reissue)

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

Documentation Order of Conditions

Staff This is Petrel Landing; the project was appealed a couple of times and a scrivener's error was found. This corrects the number.

Discussion (5:56) None

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

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

G. Other Business

1. Approval of Minutes – 03/4/2020, 04/01/2020, 04/02/2020: **Motion to Approve.** (made by: Topham) (seconded).

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

2. Monitoring Reports

a. Carlton – 84 Pocomo Road SE48-3091

b. Pocomo Neighbors – 47-69 Pocomo Road SE48-2874

c. Waypoint, LLC – 71 Pocomo Road SE48-3144

3. Coastal Project Maintenance – Sand coir logs; Fiber roll arrays

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

Representatives. Arthur Gasbarro, Nantucket Engineering & Survey, P.C.

Discussion (8:41) **Gasbarro** – There has been a change in conditions with some rolls exposed. We'll keep Mr. Carlson posted and get sign-off for any work. Start of work depends on the Select Board/Board of Health meeting on Friday, April 17, at 1 p.m.

4. Discussion SBPF 87-105 Baxter Road (48-Variou) SE48-2824

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

SBPF Reps. Dwight Dunk, Epsilon Associates Inc.

Steven Cohen, Cohen & Cohen LP

Public RJ Turcott

Burton Balkind

D.Anne Atherton, Coastal Conservancy

Discussion (8:45) **Carlson** – Suggested an update regarding work the commission allowed. Any additional work they wish will be discussed.

Dunk – The tubes at the northern end returns were recovered the week of April 6. With the latest storm the other day, there are again some exposed tubes; we reached out to Mr. Carlson about covering the exposed tubes in compliance with the order. If ConCom authorizes recovery of the tubes, we will go to the Emergency Management Team to get authorization to do the work.

Engelbourg – Asked if there is enough material on site to do that work.

Dunk – Based upon the September survey plus 10,000 cubic yards added later, there is enough material. The second item is a request for permission to deliver 9,000 cubic yards of dredged sand from Polpis Harbor to the template. He provided the sieve analyses; on average it is 1% fines. Did a search for any spills; there were none for Polpis Harbor.

Erisman – Opened to public comments. Her concern is debris being buried by new sand and subsequently pushed onto the template.

Engelbourg – The work logs and photos of debris from 4/6 to 4/10 shows debris exceeds other days since the inspections started. Debris was uncovered by doing mechanical work; the amount of debris is a concern.

He believes the Polpis Harbor sand will be good; we know it's contents. However, he's concerned that authorizing a delivery of sand to the template is like lifting the cease-work order entirely, especially since there are on-going concerns.

Erisman – It would be nice to quantify the debris that is coming out.

Dunk – About 2.25 cubic yards of debris was collected last week.

Beale – Confirmed there is still debris in the sand.

Dunk – In talking to the contractor, they have gotten through the grey sand.

Cohen – None of the sand was pushed over, it was sifted on top. He thinks they should be allowed to sift on top then push that over; that allows more debris to be removed.

Erisman – Her feeling is that we would allow them to recover the tube but wait to authorize new sand until the Commission is certain there is no more debris in the sand. Agrees Polpis Harbor is a much more appropriate sand source.

Dunk – The pushing that occurred last week was to cover the exposed tubes; we believe we have gotten through a lot of the sand deposited last autumn. Suggested Mr. Carlson walk the template with the contractor to look at the material in place before the Polpis sand is brought in.

Erisman – She would like it to come back before a public meeting showing what is being taken out before allowing more sand.

Engelbourg – He agrees with Ms. Erisman. We need to take this one step at a time considering the amount of debris that is coming out. If it happens again, perhaps we should go through this a 3rd time.

Golding – We've actually created a new protocol that goes beyond grain size; he'd like Mr. Carlson to create a blueprint of that to be discussed at the next meeting.

Dunk – The daily inspections this week has found nothing coming out of the angled slope of the template.

Topham – We want to be very cautious about this so that in 6 months you don't get down to a layer with more debris. Skim what you need, Mr. Carlson does an inspection, and we proceed.

Cohen – Sifting and removing debris at the next push to cover the tubes and additional checking, we can use heavy equipment. We'll come back in two weeks about what was found. He appreciates the desire for protocols being in place; those have been submitted. He doesn't want to hold up using the Polpis sand for policy discussions.

Phillips – She agrees with the suggestion to be very clear about the process going forward due to the many missteps to date.

LaFleur – He agrees with Mr. Golding as well; however, the Polpis sand, we know where it came from, it's been approved through the state for nourishment, and the state-required testing is stringent. After that sand is used, we then have to look at new protocols going forward.

Erisman – Opened to public comments.

Turcott – The Commission has discussed testing beyond grain size analysis after what has happened with SBPF's last delivery. Will this apply to all mitigation materials, including this material? The most recent daily inspections indicate a large amount of debris emerging from the bluff right now. It would not make sense to cover it with new material at this time.

Balkind – Please let us know when SBPF next does a push and skims; the public would like to be able to see what is coming out of the template

Atherton – Where is the off-site location that all the debris is being stored? May the members of the Commission and/or the public view the debris collected?

Dunk – The material which came out of the template during the recovery was next to nothing. The sand is being stored at the sand lot.

Golding – Another push might allow additional sand to be exposed to UV radiation and thus neutralize the fecal coliforms.

Cohen – If anyone wants to view the process, contact Jamie Feeley, who will arrange the visit.

Atherton – Asked if the daily inspections by hand will continue.

Dunk – Yes, the Police Chief said it can continue because it's required by a regulatory body.

Motion **Motion to Allow SBPF to do a one-time covering of the template using the material on site.** (made by: Englebourg) (seconded)

Roll-call Vote Carried 6-1//Beale-aye, Engelbourg-aye, Erisman-nay, Golding-aye, LaFleur-aye, Phillips-aye, Topham-aye

Carlson – The Commission had asked about letters to the Select Board; Town Counsel had no concerns.

Engelbourg – His only question is about the fines, he thought fines could be assessed with each day considered an individual violation.

Carlson – Town Code Section 1.1 states \$50 per violation. The question is how to deal with an on-going violation.

Phillips – It would be helpful to have Town Council look again at how fines are assessed.

Carlson – We can look at them at the next meeting.

Erisman – It's more important to send the letters to the Select Board soon.

Motion Motion to Authorize Mr. Carlson to send the letters to the Select Board. (made by: Phillips) (seconded)

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

5. Reports:

- a. None
- 6. Commissioner's Comments
 - a. Englebourg – Regarding Town Meeting, as a committee we should take up an official position on Article 97 banning use of glyphosate. The State has a General Law chapter prohibiting local municipalities implementing pesticide regulations more stringent than the State's. There are two proposed State bills that would relax those regulations and allow towns to enact more stringent regulations. He has personally prepared a list of talking points on why a ban might be detrimental to the Island.
Golding – For years he's been dealing with Ernie Steinauer about the European Union's strict stance against pesticides. He has documentation he's willing to provide.
Erisman – Thinks this should wait until SBPF is off the agenda and we are out of virtual meetings.
Carlson – He will put it on the agenda so the discussion will be legal and compliant with OML.
- 7. Administrator/Staff Reports
 - a. Had one more comments from D. Anne Atherton asking if ConCom was informed about the April 16th executive session regarding SBPF (sic). We were informed.

Motion to Adjourn at 9:30 p.m. (made by: Topham) (seconded)

Roll-call vote: Carried unanimously: Beale – aye, Engelbourg – aye, Erisman – aye, Golding – aye, LaFleur – aye, Phillips - aye,
Topham – aye

Submitted by:
Terry L. Norton