

Town and County of Nantucket Select Board • County Commissioners

Jason Bridges, Chair
Matt Fee
Dawn E. Hill Holdgate
Malcolm W. MacNab
Brooke Mohr



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C. Elizabeth Gibson
Town & County Manager

AGENDA FOR THE MEETING OF THE COUNTY COMMISSIONERS DECEMBER 21, 2022 - 5:30 PM PSF COMMUNITY ROOM, 4 FAIRGROUNDS ROAD AND REMOTE PARTICIPATION VIA ZOOM WEBINAR NANTUCKET, MASSACHUSETTS

YOU TUBE LINK FOR VIEWING ONLY:

<https://youtu.be/eoPjrVvPEcA>

ZOOM WEBINAR REGISTRATION LINK TO VIRTUALLY ATTEND MEETING:

https://us06web.zoom.us/webinar/register/WN_LOGZA9i-Q_m0Feo-kY19GA

I. CALL TO ORDER

II. ANNOUNCEMENTS

1. The County Commission Meeting is Being Audio/Video Recorded.

III. PUBLIC COMMENT*

IV. NEW BUSINESS*

V. APPROVAL OF MINUTES AND WARRANTS

1. Approval of Minutes of October 26, 2022 at 5:30 PM.
2. Approval of Payroll and Treasury Warrants for November and December, 2022.

VI. OFFICIAL BUSINESS

1. Request for Approval and Authorization for Town Counsel to Execute Assent to Complaint to Recognize Taking and Approve Plan, for Taking of Nobadeer Avenue.
2. Discussion Regarding Petition for Discontinuance of Baxter Road by Nantucket Land Council, Inc.

VII. COMMISSIONERS REPORTS/COMMENTS

VIII. ADJOURNMENT

****Identified on Agenda Protocol Sheet.***

COUNTY COMMISSION AGENDA PROTOCOL:

Roberts Rules: The County Commission follows Roberts Rules of Order to govern its meetings as per the Town Code Charter.

Public Comment: Public Comment is to bring matters of public interest to the attention of the Commission. The Commission welcomes concise statements on matters that are within the purview of the County Commission. At the Commission's discretion, matters raised under Public Comment may be directed to County Administration or may be placed on a future agenda, allowing all viewpoints to be represented before the Commission takes action, if any. Except in emergencies, the Commission will not normally take any other action on Public Comment in its sole discretion.

To facilitate that any individual who wishes to provide Public Comment has the opportunity and to ensure the ability of the Commission to conduct its business in an orderly fashion, the following rules and procedures are adopted consistent with state and federal free speech laws:

- The agenda for regular County Commission meetings will include a Public Comment period at the beginning of the meeting unless there is more urgent business for the Commission to take up first. This time is reserved for speakers to address the Commission on matters that are not related to any other Agenda item. If a speaker wishes to address the Commission on a matter that is related to another Agenda item, the Chair will accept public comment when that Agenda item is reached during the meeting.
- All speakers are encouraged to present their remarks in a respectful manner.
- All remarks will be addressed through the Chair of the meeting.
- The Chair of the meeting may not interrupt speakers who have been recognized to speak, except that the Chair reserves the right to terminate speech which is not constitutionally protected because it constitutes true threats, incitement to imminent lawless conduct, comments that were found by a court of law to be defamatory, and/or sexually explicit comments made to appeal to prurient interests. Verbal comments may also be curtailed if they exceed three (3) minutes and to the extent they exceed the scope of the Commission's authority.

Disclaimer: Public Comment is not a time for debate or response to comments by the Commission. Comments made during the Public Comment period do not reflect the views or positions of the Commission. Because of constitutional free speech principles, the Commission

does not have authority to prevent all speech that may be upsetting and/or offensive made during the Public Comment period.

New Business: For topics not reasonably anticipated by the Chair 48 hours in advance of the meeting may be brought up for discussion in accordance with the Open Meeting Law.

Public Participation: The Commission welcomes valuable input from the public at appropriate times during the meeting with recognition from the Chair at his/her sole discretion. For appropriate agenda items, the Chair will introduce the item and take public input. Individual Commission Members may have questions on the clarity of the information presented. The Commission will hear any staff input and then deliberate on a course of action.

Commissions Reports and Comments: Individual Commission Members may have matters to bring to the attention of the Commission during a meeting. If the matter contemplates action by the Commission, Commission Members will consult with the Chair and/or County Manager in advance and provide any needed information by the Thursday before the meeting and/or schedule the matter for a future Commission meeting. Otherwise, except in emergencies, the Commission will not normally take action on County Commission Comment.

Approved on March 24, 2021



Agenda Item Summary

Agenda Item #	VI. 1.
Date	12/21/2022

Staff

Ken Beaugrand, Real Estate Specialist

Subject

Approval and execution by the COUNTY of the Supplementary Complaint for Approval of Plan, for the approval of the Subdivision Plan identified as Land Court Plan No. 17745-R, for the property located at 55 Nobadeer Avenue.

Executive Summary

The Land Court requires that the County assent to a Supplementary Complaint for Approval of Plan filed by Fifty-Five Nobadeer Nominee Trust, the owner of 55 Nobadeer Avenue, representing the County complied with all the requirements pursuant to G.L. c. 79, as amended, in its taking of the fee in portions of Nobadeer Avenue pursuant to an Order of Taking by Eminent Domain, dated September 24, 2008 and filed with Nantucket Registry District of the Land Court as Document No. 125255. The Supplementary Complaint and the Assent request the Land Court recognize the Taking and approve of the Subdivision Plan shown as Land Court Plan No. 17745-R.

Staff Recommendation

Recommend the Commission approve the Assent and authorize Town Counsel to execute the Assent on behalf of the County.

Background/Discussion

Town Counsel has reviewed the Assent, the Order of Taking, and the Subdivision Plan of 55 Nobadeer Avenue to be approved by the Land Court and opines that this documentation does not adversely affect the Town's interests. Town Counsel approves of the form of the Assent and recommends the County Commissioners authorize the Town Counsel to execute the Assent on behalf of the County.

Impact: Environmental ☐ Fiscal ☐ Community ☐ Other ☐

Allows for the normal subdivision process to proceed in the Land Court.

Board/Commission Recommendation

N/A

Public Outreach

N/A



Connection to Existing Applicable Plan (i.e., Strategic Plan, Master Plan, etc.)

N/A

Attachments

Assent, Subdivision Plan – Land Court Plan No. 17745-R and the Order of Taking by Eminent Domain of Portions of Nobadeer Avenue.



COMMONWEALTH OF MASSACHUSETTS

Nantucket, ss.

Land Court Department
Supplementary Complaint
No. 22-SBQ-17745-1

)
Fifty-Five Nobadeer Avenue) ASSENT TO
Nominee Trust,) COMPLAINT TO RECOGNIZE
Plaintiff) TAKING AND APPROVE PLAN

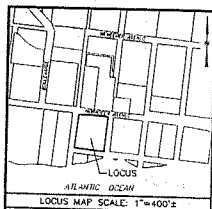
The County of Nantucket hereby acknowledges receipt and sufficient notice of the Complaint to Recognize Taking and Approve Plan of Fifty-Five Nobadeer Avenue Nominee Trust, which Petition is dated December 12, 2022, and assents to the Petition, the Plan filed by the Plaintiff, and the lines of the taking of Nobadeer Avenue shown on said plan, and hereby assents that an Order may issue for the relief requested therein, namely (1) recognizing the Order of Taking by eminent domain of portions of Nobadeer Avenue by the County of Nantucket dated September 24, 2008, filed with the Nantucket Registry District of the Land Court as Document No. 125255, and (2) approving for registration the Subdivision Plan of Lot 17 and Lots 1 & 2 showing Lots 54 and 55 on Land Court Plan No. 17745-R, without further notice to it.

Executed and sealed on _____, 2022.

COUNTY OF NANTUCKET
By its attorneys
hereunto duly authorized:

KP Law, P.C.
By:

Vicki S. Marsh, Attorney
(BBO # 307040)
101 Arch Street
Boston, MA 02110
(617) 556-0007



REFERENCES:
OWNER: ROBERT L. ANGLUND & JOAN WALSH ANGLUND, TRUSTEES OF FIFTY-FIVE NOBADER AVENUE NOMINEE TRUST
DEED REFERENCE: LAND COURT CERT. #21726
PLAN REFERENCE: LAND COURT PLAN NO. 17745-A
LAND COURT PLAN NO. 36804-A
ASSESSORS REFERENCE: MAP: 88 PARCEL: 54

ZONING CLASSIFICATION
DISTRICT: R-20

MINIMUM LOT SIZE = 20,000 S.F.
MINIMUM FRONTAGE = 75'
FRONT YARD SETBACK = 30'
SIDE & REAR LINE SETBACK = 10'
ALLOWABLE GROUND COVER RATIO = 12.5%

LEGEND:

DHCB DRILL HOLE/CONCRETE BOUND
IP IRON PIPE
SSM STEEL SURVEY MARKER
FND FOUND
GC GROUND COVER
L.C. CERT. LAND COURT CERTIFICATE
L.C. LAND COURT
MEAS. MEASURED
N/F NOW OR FORMERLY
SF SQUARE FEET
TDTF POINT FIELD
S01T POINT THEORY
OHV OVERHEAD WIRES
UP UTILITY POLE

17745-R
LAND COURT
SEP 22 2022
FILED

Lots 54 and 55

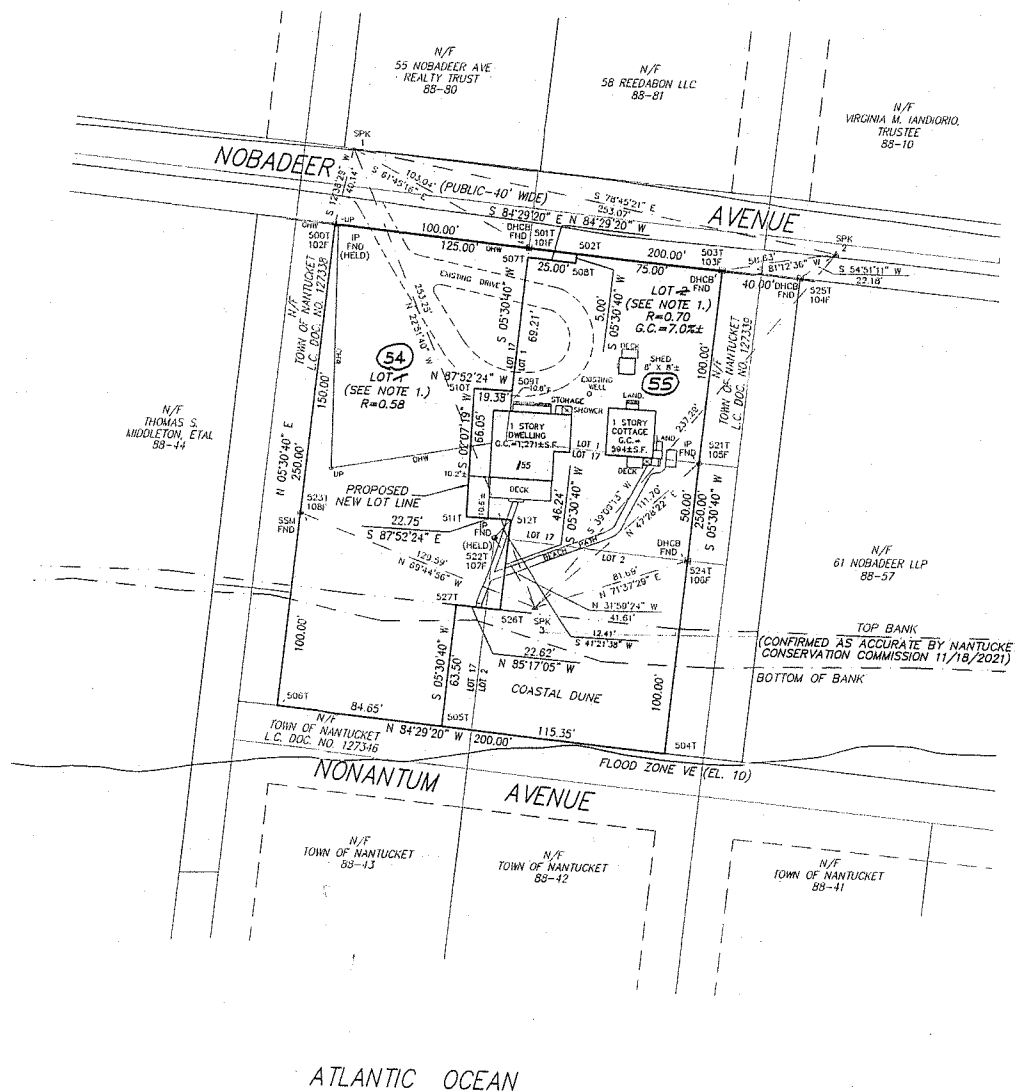
PLAN OF LAND
BEING A SUBDIVISION OF LOT 17
AS SHOWN ON L.C. PLAN NO. 17745-A
AND LOTS 1 & 2
AS SHOWN ON L.C. PLAN NO. 36804-A
IN
#55 NOBADER AVENUE
IN
NANTUCKET, MASSACHUSETTS

SCALE: 1"=30' DATE: NOVEMBER 29, 2021
REVISED: JULY 22, 2022 LAND COURT PRE-FILE REVIEW

PREPARED FOR:
ROBERT L. ANGLUND & JOAN WALSH ANGLUND, TRUSTEES
NANTUCKET SURVEYORS, LLC
5 WINDY WAY
NANTUCKET, MA 02554
(508) 228-0240

GRAPHIC SCALE
1"=30'

0 30 60 90 120



NOTES:

1. TOTAL AREA (LOTS 1 & 2) EQUALS 50,000± S.F.
LOT 1 AREA = 23,333± S.F. UPLAND AREA = 18,001± S.F.
LOT 2 AREA = 26,667± S.F. UPLAND AREA = 10,202± S.F.
2. ALL MEASUREMENTS WERE MADE USING AN EDM, UNLESS OTHERWISE NOTED.
NANTUCKET SURVEYORS, LLC TEMPORARY COMPARISON BASELINE MILESTONE ROAD (EDM=543.387, TAPE=543.37)
DATE OF MEASUREMENT MAY 21, 2019.
3. BUILDING CORNERS WERE MEASURED TO THE CORNERBOARDS (UP 5'±).
4. SURVEY INSTRUMENT: LEICA TPS 1200 TOTAL STATION
EDM ACCURACY: ±(1MM+3PPM)
TRAVERSE DATA:
PRECISION OF TRAVERSE: 1 IN 101,938
ERROR OF CLOSURE:
LINEAR: 0.85'
BEARING: S 64°08'53" W
5. I HEREBY CERTIFY TO THE BEST OF MY KNOWLEDGE THAT A PORTION OF THE PREMISES SHOWN ON THIS PLAN IS LOCATED WITHIN ZONE "VE" (EL. 10) AS DELINEATED ON "FORM" MAP NO. 280190202 EFFECTIVE DATE: JUNE 9, 2014 BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY.
6. THE PLANNING BOARD DETERMINES THAT:
LOT(S) 1 & 2 ARE SUBJECT IN PART TO PROTECTION UNDER THE MASSACHUSETTS WETLANDS PROTECTION ACT, BUT CONTAIN SUFFICIENT LOT AREA, AS DETERMINED IN THE NANTUCKET ZONING BYLAW, TO COMPLY WITH THE APPLICABLE ZONING REQUIREMENTS. A NOTICE OF INTENT MAY BE REQUIRED TO BE FILED WITH THE NANTUCKET CONSERVATION COMMISSION WITH REGARD TO PROPOSED CONSTRUCTION ON SUCH LOT(S).

THE AREA CALCULATIONS FOR EACH LOT COMPLY WITH LOT AREA REQUIREMENTS AS PROVIDED IN NANTUCKET ZONING BYLAW CH. 139 SS. 2A AND 16A.

PLANNING BOARD ENDORSEMENT DOES NOT CONSTITUTE A DETERMINATION OF CONFORMANCE UNDER ZONING.

NANTUCKET PLANNING BOARD

APPROVAL UNDER THE SUBDIVISION CONTROL LAW NOT REQUIRED

DAVID HODSON
NANTUCKET PLANNING BOARD

FREDERICK WHITE WOODLUM

DAVE HODSON

DATE APPROVED 12-13-2021

DATE SIGNED 12-13-2021

FILE NO. PL SUB-2021-12-00224

"I CERTIFY THAT AS OF THE DATE OF THIS SURVEY, THE MONUMENTS CONTROLLING PRIOR PLANS ARE IN THE GROUND AS SHOWN AND DESCRIBED HEREON. I FURTHER CERTIFY THAT ANY ADDITIONAL MONUMENTS SHOWN HEREON HAVE BEEN SET IN ACCORDANCE WITH THE LAND COURT INSTRUCTIONS OF 2006 AS OF THE DATE OF THIS SURVEY."

"I CERTIFY THAT THIS PLAN WAS DRAWN FROM AN ACTUAL SURVEY MADE ON THE GROUND IN ACCORDANCE WITH THE LAND COURT INSTRUCTIONS OF 2006, ON OR BETWEEN, APRIL 3, 1995 AND JULY 8, 2022."



PROFESSIONAL LAND SURVEYOR

7/23/22
DATE

N-11237



TOWN AND COUNTY OF NANTUCKET

16 Broad Street
Nantucket, Massachusetts 02554

Telephone (508) 228-7255
Facsimile (508) 228-7272
www.nantucket-ma.gov



2008 00002689
Bk: 1155 Pg: 18 Page: 1 of 9
Doc: OOT 09/30/2008 11:41 AM



2008 00125255
Cert: 22452 Doc: OOT
Registered: 09/30/2008 11:37 AM

A TRUE COPY 12/12/2022 *qst*

ATTEST: *Jennifer Ferreira*
REGISTER OF DEEDS NANTUCKET COUNTY

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF NANTUCKET
COUNTY COMMISSIONERS

**ORDER OF TAKING BY EMINENT DOMAIN AND LAYOUT
OF PORTIONS OF NOBADEER AVENUE AND ADAMS STREET**

The undersigned being the majority of the duly elected and serving members of the County Commissioners of the County of Nantucket, a body politic and corporate and a political subdivision of the Commonwealth of Massachusetts, having a principal place of business of Town and County Building, 16 Broad Street, Nantucket, Massachusetts ("County"), acting by authority of Massachusetts General Laws Chapters 79 and 82, as amended, Article I of the Nantucket County Charter, St. 1996, c. 290, § 4, and by virtue of every other power and authority hereto enabling us, having complied with all of the preliminary requirements prescribed by law and determined that common convenience and necessity require the layout of portions of Nobadeer Avenue and Adams Street as public ways, as shown on the Plan described below, do hereby adopt and decree this Order and take from their supposed owners (and their successors, heirs and assigns, as their interests may appear), by the power of eminent domain, easements at, over and under the land in the County located between the westerly boundary of Dunham Street (f/k/a Madequechem Street) to the centerline of Adams Street, and north to the southerly boundary of Weweeder Avenue (the "Parcels"), and layout the Parcels for the purpose of establishing portions of Nobadeer Avenue and Adams Street as public ways, further bounded and described as follows:

The land shown on a plan containing three (3) sheets and entitled "Plan of Road Takings in Surfside Area Prepared for the Town of Nantucket in Nantucket, MA," dated January 31, 2007, revised February 28, 2008, further described as "Dwg. No. 2," prepared by Nantucket Surveyors LLC ("Plan") and filed with the Nantucket County Registry of Deeds herewith as Plan No. 2008-69 and consisting of the following parcels described on the Plan:

<u>Parcel</u>	<u>Street Address</u>	<u>Area (s.f.) ±</u>
Parcel 28A	46 Nonantum Avenue	400 s.f.
<u>Assessor ID</u>	<u>Supposed Owner(s)</u>	<u>Title Reference</u>
Map 87, Lot 34	Eric F. Stone and Dominican C. Stone	Bk. 229, Pg. 199

<u>Parcel</u>	<u>Street Address</u>	<u>Area (s.f.) ±</u>
Parcel 47	6 Dunham Street	400 s.f.
<u>Assessor ID</u>	<u>Supposed Owner(s)</u>	<u>Title Reference</u>
Map 87, Lot 32	Nancy J. Hammond and Lewis J. Hammond, Jr.	Cert. No. 22452

<u>Parcel</u>	<u>Street Address</u>	<u>Area (s.f.) ±</u>
Parcel 48	30 Nobadeer Avenue	4,800 s.f.
<u>Assessor ID</u>	<u>Supposed Owner(s)</u>	<u>Title Reference</u>
Map 87, Lot 35	Dennis G. Brown and Diane K. Brown	Cert. No. 15236

<u>Parcel</u>	<u>Street Address</u>	<u>Area (s.f.) ±</u>
Parcel 29A	48 Nonantum Avenue	2,400 s.f.
<u>Assessor ID</u>	<u>Supposed Owner(s)</u>	<u>Title Reference</u>
Map 87, Lot 37	Fred Hamou and Grace Hamou	Bk. 1024, Pg. 259

<u>Parcel</u>	<u>Street Address</u>	<u>Area (s.f.) ±</u>
Parcel 30A	50 Nonantum Avenue	2,400 s.f.
<u>Assessor ID</u>	<u>Supposed Owner(s)</u>	<u>Title Reference</u>
Map 87, Lot 38.2	Norman A. Levenson, Trustee of Surfside Investment Realty Trust	Bk. 703, Pg. 273

<u>Parcel</u>	<u>Street Address</u>	<u>Area (s.f.) ±</u>
Parcel 49	34 Nobadeer Avenue	2,400 s.f.
<u>Assessor ID</u>	<u>Supposed Owner(s)</u>	<u>Title Reference</u>
Map 88, Lot 2	Town of Nantucket and Gustave Baker, and his heirs successors and assigns	Bk. 81, Pg. 426

<u>Parcel</u>	<u>Street Address</u>	<u>Area (s.f.) ±</u>
Parcel 50	38 Nobadeer Avenue	2,400 s.f.
<u>Assessor ID</u>	<u>Supposed Owner(s)</u>	<u>Title Reference</u>
Map 88, Lot 3	Surfside Nantucket Partners, L.P.	Bk. 731, Pg. 189

<u>Parcel</u>	<u>Street Address</u>	<u>Area (s.f.) ±</u>
Parcel 31A	35 Nobadeer Avenue	4,800 s.f.
<u>Assessor ID</u>	<u>Supposed Owner(s)</u>	<u>Title Reference</u>
Map 88, Lot 49	Thomas B. Quigley, Jr.	Cert. No. 18229

<u>Parcel</u>	<u>Street Address</u>	<u>Area (s.f.) ±</u>
Parcel 51	40 Nobadeer Avenue	4,800 s.f.
<u>Assessor ID</u>	<u>Supposed Owner(s)</u>	<u>Title Reference</u>
Map 88, Lot 4	Glenn Stewart and Judith R. Stewart	Cert. No 18180

<u>Parcel</u>	<u>Street Address</u>	<u>Area (s.f.) ±</u>
Parcel 33A	37 Nobadeer Avenue	2,400 s.f.
<u>Assessor ID</u>	<u>Supposed Owner(s)</u>	<u>Title Reference</u>
Map 88, Lot 52.1	Natalie Salatich Jacobson	Cert. No. 20694

<u>Parcel</u>	<u>Street Address</u>	<u>Area (s.f.) ±</u>
Parcel 34A	41 Nobadeer Avenue	2,400 s.f.
<u>Assessor ID</u>	<u>Supposed Owner(s)</u>	<u>Title Reference</u>
Map 88, Lot 52.2	Bernard S. Carrey and Virginia Carrey	Cert. No. 8345

<u>Parcel</u>	<u>Street Address</u>	<u>Area (s.f.) ±</u>
Parcel 52	48 Nobadeer Avenue	4,862.6 s.f.
<u>Assessor ID</u>	<u>Supposed Owner(s)</u>	<u>Title Reference</u>
Map 88, Lot 6	Patricia R. Thomas, Trustee of the Qualified Personal Residence Trust of Patricia R. Thomas	Cert. No. 20670

<u>Parcel</u>	<u>Street Address</u>	<u>Area (s.f.) ±</u>
Parcel 36A	47 Nobadeer Avenue	4,862.6 s.f.
<u>Assessor ID</u>	<u>Supposed Owner(s)</u>	<u>Title Reference</u>
Map 88, Lot 53	Alfred D. Chandler, Jr., Fay M. Chandler and Alpine C. Bird, Trustees of Chandler Nantucket Realty Trust	Bk. 341, Pg. 279

<u>Parcel</u>	<u>Street Address</u>	<u>Area (s.f.) ±</u>
Parcel 53	50 Nobadeer Avenue	4,862.6 s.f.
<u>Assessor ID</u>	<u>Supposed Owner(s)</u>	<u>Title Reference</u>
Map 88, Lot 7	Starr Moore and David H. Low, Jr.	Cert. No. 16418
<u>Parcel</u>	<u>Street Address</u>	<u>Area (s.f.) ±</u>
Parcel 20A	51 Nobadeer Avenue	2,400 s.f.
<u>Assessor ID</u>	<u>Supposed Owner(s)</u>	<u>Title Reference</u>
Map 88, Lot 44	Thomas S. Middleton	Bk. 979, Pg. 159
	Estate of E. Willoughby Middleton, Jr. (and Bank of America, N.A. and Nancy S. Middleton, as their interests may appear as Trustees of the Credit Shelter Trust and Martial Trust created by the Will of E. Willoughby Middleton, Jr.)	Bk. 136, Pg. 631 (and Nantucket Probate Docket No. 04-P-0023-FE)
<u>Parcel</u>	<u>Street Address</u>	<u>Area (s.f.) ±</u>
Parcel 54		2,400 s.f.
<u>Assessor ID</u>	<u>Supposed Owner(s)</u>	<u>Title Reference</u>
Map 88, Lot 8	Dolores Girard and Joseph Girard	Bk. 217, Pg. 294
<u>Parcel</u>	<u>Street Address</u>	<u>Area (s.f.) ±</u>
Parcel 37A	55 Nobadeer Avenue	2,400 s.f.
<u>Assessor ID</u>	<u>Supposed Owner(s)</u>	<u>Title Reference</u>
Map 88, Lot 54	Robert L. Anglund and Joan Walsh Anglund, Trustees of Fifty Five Nobadeer Avenue Nominee Trust	Cert. No. 21728
<u>Parcel</u>	<u>Street Address</u>	<u>Area (s.f.) ±</u>
Parcel 55	58 Nobadeer Avenue	2,400 s.f.
<u>Assessor ID</u>	<u>Supposed Owner(s)</u>	<u>Title Reference</u>
Map 88, Lot 9	Dolores Girard and Joseph Girard	Bk. 217, Pg. 294

<u>Parcel</u>	<u>Street Address</u>	<u>Area (s.f.) ±</u>
Parcel 38A	57 Nobadeer Avenue	2,400 s.f.
<u>Assessor ID</u>	<u>Supposed Owner(s)</u>	<u>Title Reference</u>
Map 88, Lot 56	Robert L. Anglund and Joan Walsh Anglund, Trustees of Fifty Five Nobadeer Avenue Nominee Trust	Cert. No. 21728
 <u>Parcel</u>	 <u>Street Address</u>	 <u>Area (s.f.) ±</u>
Parcel 56	60 Nobadeer Avenue	2,400 s.f.
<u>Assessor ID</u>	<u>Supposed Owner(s)</u>	<u>Title Reference</u>
Map 88, Lot 10	Virginia M. Iandiorio, Trustee of the V. Iandiorio Realty Trust	Bk. 724, Pg. 252
 <u>Parcel</u>	 <u>Street Address</u>	 <u>Area (s.f.) ±</u>
Parcel 57A	62 Nobadeer Avenue	2,400 s.f.
<u>Assessor ID</u>	<u>Supposed Owner(s)</u>	<u>Title Reference</u>
Map 88, Lot 11	Susan P. Jarrell, Trustee of the Susan P. Jarrell Trust	Cert. No. 18780
 <u>Parcel</u>	 <u>Street Address</u>	 <u>Area (s.f.) ±</u>
Parcel 41A	61 Nobadeer Avenue	4,800 s.f.
<u>Assessor ID</u>	<u>Supposed Owner(s)</u>	<u>Title Reference</u>
Map 88, Lot 57	Nancy H. Pierson, Trustee of Sixty One Nobadeer Nominee Trust	Cert. No. 17436
 <u>Parcel</u>	 <u>Street Address</u>	 <u>Area (s.f.) ±</u>
Parcel 57B	62 Nobadeer Avenue	600 s.f.
<u>Assessor ID</u>	<u>Supposed Owner(s)</u>	<u>Title Reference</u>
Map 88, Lot 11	Susan P. Jarrell, Trustee of the Susan P. Jarrell Trust	Cert. No. 18780
 <u>Parcel</u>	 <u>Street Address</u>	 <u>Area (s.f.) ±</u>
Parcel 58	51 Weweeder Avenue	8,400 s.f.
<u>Assessor ID</u>	<u>Supposed Owner(s)</u>	<u>Title Reference</u>
Map 88, Lot 12	Nantucket Islands Land Bank	Bk. 933, Pg. 94

<u>Parcel</u>	<u>Street Address</u>	<u>Area (s.f.) ±</u>
Parcel 43A	63 Nobadeer Avenue	4,200 s.f.
<u>Assessor ID</u>	<u>Supposed Owner(s)</u>	<u>Title Reference</u>
Map 88, Lot 58	Norine Powell	Bk. 452, Pg. 136

<u>Parcel</u>	<u>Street Address</u>	<u>Area (s.f.) ±</u>
Parcel 44A	65 Nobadeer Avenue	4,200 s.f.
<u>Assessor ID</u>	<u>Supposed Owner(s)</u>	<u>Title Reference</u>
Map 88, Lot 59	Adele Wick	Bk. 1096, Pg. 4 and Bk. 396, Pg. 207

<u>Parcel</u>	<u>Street Address</u>	<u>Area (s.f.) ±</u>
Parcel 46A	69 Nobadeer Avenue	8,400 s.f.
<u>Assessor ID</u>	<u>Supposed Owner(s)</u>	<u>Title Reference</u>
Map 88, Lot 60	Nantucket Conservation Foundation, Inc.	Bk. 140, Pg. 249

<u>Parcel</u>	<u>Street Address</u>	<u>Area (s.f.) ±</u>
Parcel 59A	68 Nobadeer Avenue	8,400 s.f.
<u>Assessor ID</u>	<u>Supposed Owner(s)</u>	<u>Title Reference</u>
Map 88, Lot 13	Ellery B. Woodworth and Carol P. Woodworth	Bk. 120, Pg. 306 & Bk. 130, Pg. 493

<u>Parcel</u>	<u>Street Address</u>	<u>Area (s.f.) ±</u>
Parcel 59B	68 Nobadeer Avenue	9,400 s.f.
<u>Assessor ID</u>	<u>Supposed Owner(s)</u>	<u>Title Reference</u>
Map 88, Lot 13	Ellery B. Woodworth and Carol P. Woodworth	Bk. 120, Pg. 306 & Bk. 130, Pg. 493

<u>Parcel</u>	<u>Street Address</u>	<u>Area (s.f.) ±</u>
Parcels 47, 28A, 48, 29A, 30A, 49, 50, 31A, 51, 33A, 34A, 52, 36A, 53, 20A, 54, 37A, 55, 38A, 56, 57A, 41A, 57B, 58, 43A, 44A, 46A, 59A and 59B	Nobadeer Avenue and Adams Street <u>Supposed Owner(s)</u> Surfside Land Company, Henry Coffin, Charles Coffin and their heirs, successors and assigns, and owners unknown	109,387.8 s.f.

The County hereby takes these exclusive and perpetual rights and easements for all lawful purposes for which ways are now or hereafter used in the Town and County of Nantucket and purposes of performing any work to the Parcels as the County may require, including without limitation: (i) providing a right of ingress and egress to and from the Parcels from the adjacent public ways by foot and by vehicle, (ii) removing any trees, undergrowth or other vegetation and any structures, fixtures, obstructions or other improvements or property, now or hereafter located at the Parcels, (iii) moving construction equipment, vehicles, persons and materials to the Parcels, (iv) installing utilities at, over and under the Parcels, and (v) re-grading, paving and landscaping the Parcels, subject to easements of record, insofar as is in force and effect.

The Parcels shall remain the property of their owners and may be used by them, their successors, heirs and assigns, for any lawful purpose not inconsistent with the use of the Parcels for the purposes set forth in this Order of Layout and Taking.

Any and all trees, vegetation, structures and improvements on the Parcels are included in this Order of Taking.

The damages sustained by the supposed owner(s) listed above by reason of this taking of the Parcels are valued and awarded in a resolution of even date adopted by the Commissioners in accordance with Massachusetts General Law Chapter 79, as amended.

If any party named hereinabove as an owner of any Parcels taken hereby is not a true owner of said Parcels, then the award is made only to the true owner(s) of said Parcels.

[Remainder Of Page Intentionally Left Blank]

Adopted under seal this 24th day of September, 2008.

COUNTY OF NANTUCKET
BY ITS COUNTY COMMISSIONERS

Brian J. Chadwick
Brian J. Chadwick

Michael Kopko
Michael Kopko

Allen B. Reinhard
Allen B. Reinhard

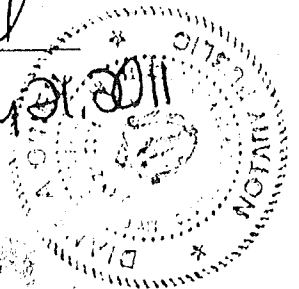
Patricia Roggeveen
Patricia Roggeveen

Rick Atherton
Rick Atherton

Commonwealth of Massachusetts
Nantucket County, ss

On this 24th day of September, 2008, before me, the undersigned notary public, personally appeared Brian J. Chadwick, Michael Kopko, Allen B. Reinhard, Patricia Roggeveen and ~~Rick Atherton~~, as members of the County Commissioners of the County of Nantucket, proved to me through satisfactory evidence of identification, which were ☐ photographic identification with signature issued by federal or state governmental agency, ☐ oath or affirmation of a credible witness, ☐ personal knowledge of the undersigned, to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose as the free act and deed of the County Commissioners of the County of Nantucket.

Laurel A. Mal
Notary Public
My commission expires: July 31, 2011



NANTUCKET COUNTY Received & Entered
Attest: Jennifer H. Ferreira, Register of Deeds

Doc No: 00125255

NANTUCKET COUNTY LAND COURT
REGISTRY DISTRICT

** RECEIVED FOR REGISTRATION **

On: Sep 30, 2008 at 11:37A

Document Fee: 75.00 Rec Total: \$975.00

CERTIFICATE NO: 22452

Also noted on

CERT 8345
CERT 15236
CERT 16412
CERT 17436
CERT 18120
CERT 18229
CERT 18780
CERT 18780
CERT 20670
CERT 20694
CERT 21728

MEMORANDUM

TO: C. Elizabeth Gibson, Town Manager

CC: Kenneth Beaugrand and Vincent Murphy, Jason Bridges, Chair of Select Board and Brooke Mohr, Chair of Board of County Commissioners

FROM: Vicki S. Marsh, Esq.

RE: Petition for Discontinuance of Baxter Road by Nantucket Land Council, Inc.

DATE: December 6, 2022

The Nantucket Land Council, Inc. delivered a letter to Jason Bridges, Chair of the Nantucket Select Board, dated November 14, 2022, petitioning the Town to discontinue a portion of Baxter Road having a length of .52 miles from Bayberry Lane to the Sankaty Lighthouse and requesting the layout of that portion of Baxter Road as a statutory private way. You have requested that I provide an outline for the process of the discontinuance of Baxter Road, which is a County highway, and comments as to the Petition's requested discontinuance and layout of the highway as a private way.

Discontinuance of County Highway

A county highway can only be discontinued by the county having jurisdiction over it. It cannot be discontinued by the town in which it is situated. The Nantucket County Commissioners cannot discontinue their County highways on their own. The following steps must be taken in order to discontinue a County highway:

1. Petition. A Petition in writing must be filed with the County Commissioners requesting the discontinuance of a County highway or discontinuance of maintenance of a County highway "if common convenience and necessity require... discontinuance or discontinuance of maintenance of an existing highway." G.L. c. 82, §2. There are no statutory requirements as to who may file the petition, the format of the petition or the number of signatures required to file the petition. There is also no statutory time in which the County must respond to the Petition. In order to discontinue a County highway, the County Commissioners must find that "common convenience and necessity require" the discontinuance of the county highway.
2. Surety. Before any action is taken on the petition, the County Commissioners may impose a surety in an amount they deem satisfactory for the payment of all costs and expenses to the County which they incur due to the proceedings on such a petition if the petitioners do not prevail.

3. View; Public Hearing. A view of the site may be held if the County Commissioners deem it “expedient or if requested by any party interested.” They shall hold a public hearing to hear the interested parties at the time of the view, or at a regular or special meeting of the County Commissioners, as the Commissioners decide.
4. Public Notice. Before a view or a public hearing is held, the County Commissioners must give notice to the public of the view or public hearing.
 - (a) At least fifteen (15) days prior to the view or hearing, notice of the time and place of the view or the hearing must be delivered to the Town Clerk with a copy of the petition for the discontinuance or discontinuance of maintenance of the highway.
 - (b) At least seven (7) days before the date of the view or the hearing, the Commissioners shall post in two public places in the Town of Nantucket and publish in a town newspaper a copy of the petition and the notice of the time and place of the view or hearing. The posting and publication of the petition and notice must be at least seven (7) days before any view, hearing or adjudication of the petition.
5. Decision. If the County Commissioners determine that the discontinuance or discontinuance of the maintenance of a County highway is “not required” by common convenience and necessity, then the petition shall be dismissed. G.L. c. 82, §4. The County Commissioners may decide at a viewing, without a separate public hearing, whether the highway should be discontinued. If so, then the County Commissioners shall announce their decision at their next regular meeting and vote on their decision and the discontinuance shall go into effect. If the County Commissioners do not dismiss the petition, they shall proceed with a return to a public hearing and adjudicate the question as to whether to discontinue or discontinue the maintenance of a highway. G.L. c. 82, §5.
6. Effect of Discontinuance of County Highway. Upon the discontinuance of a County highway, the way would become a Town way pursuant to G.L. c. 82, §5. If the County has title to the fee in the way, as is the case with Baxter Road, the Town may lay out the Town way as a private way which will require Town Meeting approval to discontinue the former County highway as a Town way. Upon Town Meeting approval to discontinue the Town way and accept its layout as a statutory private way, the abutters to the private way would then own the portion of the roadway to the centerline of the private way.

Comments on Petition from Nantucket Land Council

In my review of the Petition filed by the Nantucket Land Council, Inc. requesting the discontinuance of a portion of Baxter Road, please note my following comments:

1. Baxter Road is a county highway by virtue of an Order of Taking, taking the fee in Baxter Road, formerly known as Atlantic Avenue. Therefore, the County Commissioners of Nantucket and not the Town and its Select Board decide upon the discontinuance of Baxter Road pursuant to G.L. c. 82, §2. Although the Select Board members act as the County Commissioners pursuant to the County Charter, Section 2.2, they are not acting in their capacity as the Select Board members. In addition, any public hearings or regular or special meetings for the consideration of this Petition shall be held by the County Commissioners and not the Select Board.

It is not clear in this Petition as to whether the Land Council has made this distinction between the County Commissioners and the Select Board. Although at times in this Petition it states the Select Board is acting as County Commissioners, it addresses the Petition to "Jason Bridges Chair of the Select Board and Select Board members, with no reference to the County Commissioners. Furthermore, it references the Select Board as making the adjudication on the discontinuance of Baxter Road. Lastly it states that the Select Board will determine if there will be a site viewing rather than the County Commissioners. Therefore, the County Commissioners may wish to consider requesting that since this Petition is not filed with the County Commissioners as required by statute that they re-file it with the County Commissioners.

2. The County Commissioners may request a surety from the Petitioners in an amount they determine to cover the payment of all costs and expenses the County may incur by reason of the proceedings to address this Petition if the Petitioners do not prevail. This surety may be required before any action and hearings is taken on said Petition. There is no limit as to the amount of the surety or basis for the costs and expenses other than that the surety is "to the satisfaction of the commissioners." G.L. c. 82, §2.

3. In addition, please note that pursuant to G.L. c. 82, §2, in order to discontinue a County way, the County Commissioners must find that "common convenience and necessity require" the discontinuance of a portion of Baxter Road at this time. If the County Commissioners determine that discontinuance is "not required" for common convenience and necessity" then they will dismiss the Petition. The Petition, in my opinion, does not present any evidence as to why this County way should no longer be a public way and should be ultimately a private way at this time. Rather than presenting any discussion of the conditions of the roadway that necessitate discontinuing Baxter Road as a County highway, much of their discussion is about the costs and time the Town and its staff is expending on preserving the bluff and Baxter Road.

4. In the Petition's discussion of the steps for discontinuing Baxter Road, there are several references which are incorrect. The Petition states that the "Select Board, acting as County Commissioners," shall make the decision as to the discontinuance of Baxter Road rather than the County Commissioners as dictated by statute. It also states that the Select Board may decide to hold a site view if it deems it necessary. This is not the case, since the County Commissioners will determine if there is a site view and whether to hold separate public hearings. The Petition also states that although a public hearing will be required concerning the discontinuance, they claim it would involve multiple sessions.

This determination as to the public hearings is again made solely by the County Commissioners. Lastly the Petition states that the Select Board will decide on the discontinuance of Baxter Road, rather than the County Commissioners who have the sole statutory authority to do so.

If you have any questions or require further assistance in this matter, please do not hesitate to contact me.



Nantucket Land Council

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General Counsel

November 14, 2022

Jason Bridges, Chair

Nantucket Select Board

16 Broad Street

Nantucket, Ma 02554

Re: Petition to Discontinue Baxter Road and Create Statutory Private Way;

Dear Chair Bridges and Select Board members,

The Nantucket Land Council is a 501(c)(3) nonprofit with a mission to protect Nantucket's natural resources. As our community continues to grapple with the ever-growing list of coastal resilience challenges around Nantucket, and in consideration the Superior Court's recent decision upholding the Conservation Commission's geotube removal order we present this Board with an alternative path forward for Baxter Road that would save the Town millions and preserve 'Sconset beach.

We propose that the Board use tools unique to the Commonwealth to discontinue the most vulnerable segment of Baxter Road, from Bayberry Lane north to Sankaty Lighthouse, and create a Statutory Private Way in its place. This 0.52 miles of road represents a tiny fraction (~0.002%) of Nantucket's ~270 miles of roads, yet in recent history has taken up an inordinate amount of taxpayer resources and time.

The first segment of this letter will lay out why this strategy should be pursued, and the second segment will explain how it can be implemented.

The Case for Discontinuing Baxter Road as a Public Way:

With the delivery of the Coastal Resilience Plan (CRP) in November 2021, our community faces a reckoning it has never faced before. The plan lays out the need for projects island-wide that will cost nearly a billion dollars in the next decade and a half: **“\$830,000,000 to \$900,000,000 over the next 15+ years with \$11,000,000 in annual operations and maintenance costs. These estimates do not include staff and volunteer time to implement...”**

This figure is staggering. As of June 2021, the Baker-Polito Administration has dedicated approximately \$300 million to support climate resilient infrastructure *across Massachusetts*. Although more funding is available than ever before at the State and Federal levels, competition for these funds is fierce. Major metropolitan centers not only tend to receive the lions' share of grant funding for resilience, but their large populations allow project costs per capita to be lower. Residents of small coastal communities must contribute far more per capita to fund their coastal resilience projects.

The total cost in the CRP is unevenly divided between forty or more projects on varying timelines. There is currently only one Town employee, the Coastal Resilience Coordinator, to lead our community on resilience. The Resilience Coordinator must work with all departments



of Town government, Coastal Resilience Advisory Committee (CRAC), State and Federal agencies, and the community. Any one of the projects highlighted in the CRP¹, if accomplished, is a career's worth of work. We're lucky to have Vince Murphy at the helm as Nantucket's Coastal Resilience Coordinator.

Not only must the community pull together with enormous effort, but we must be careful with our time and limited resources. Unfortunately, we will not be able to save everything, and even if we succeed, Nantucket will look very different in the years to come. To quote a poignant NPR piece on sea level rise and our collective race for coastal resilience, "*this is Dunkirk, not Normandy.*"²

That brings us to 'Sconset bluff and Baxter Road. For centuries, the bluff has eroded uninterrupted. **The original layout of Baxter Road by William Flagg in 1883 strategically included paired lots along the western side of Baxter Road for homeowners to retreat to as the bluff inevitably eroded.** This foresight came long before climate change.

Despite careful planning in the layout of paired lots, the seasonal homeowners along northern Baxter Road have taken every opportunity to try to impede the natural process along the bluff. Over the last three decades, the Siasconset Beach Preservation Fund (SBPF) has tried everything to stop the elemental forces of nature, including beach dewatering systems, a proposal to inject grout at the base of the bluff, a proposal to install thousands of feet of stone revetment, and the installation of the present-day geotubes.

Throughout, SBPF has been at odds with the Nantucket Conservation Commission for nearly a decade. Despite multiple different members over the years, the Commission has never been persuaded that geotubes provide a long-term solution to halting the erosion of the dynamic bluff. The Commission was overruled in 2013 by the State DEP's approval of the emergency order that led to the current installation.

SBPF has not hesitated to be litigious early and often and has sued the Town five times in the last ten years in 2012, 2014, 2019, and 2021. It has never won a single case. Instead, SBPF has used the Town's obligation to maintain Baxter Road and associated infrastructure as a means of circumventing the Conservation Commission's decisions. Repeated threats of litigation against the Town have created a rift between the Select Board and Conservation Commission, leading to the repeated requests by this Board that the Commission "reconsider" its decision to order the removal of the geotubes. This lack of trust between two of our community's most critical Boards has led to increased legal costs and animosity.

Nantucket now has the dubious distinction of both hard-armoring and retreating from the same coastline, an inefficient use of staff time and taxpayer funds. Although SBPF paid for an independent study of the road, much of both the hypothetical geotube expansion project and road relocation fall on Town officials and staff.

As a result, the Town of Nantucket has been spending an inordinate amount of time on Baxter Road. First, let's look at Executive Sessions in which SBPF/Baxter Road was on the agenda:

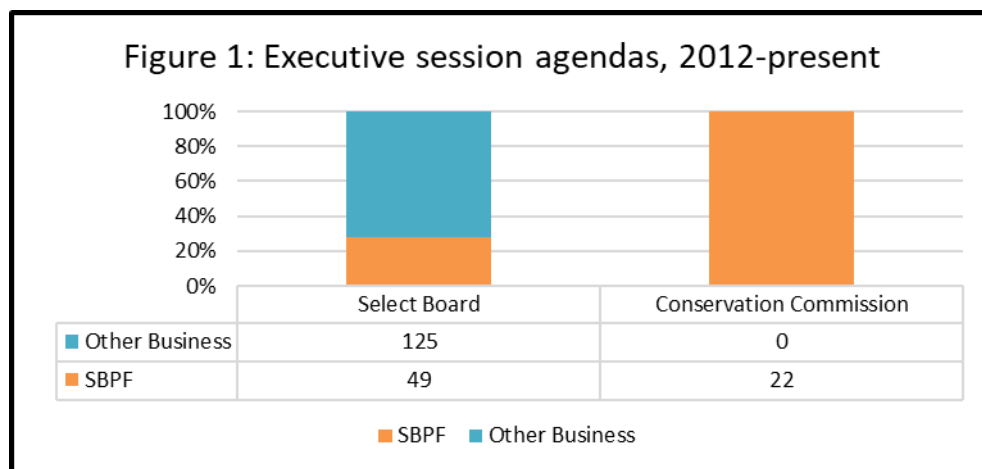


Figure 1: Select Board & Conservation Commission Executive Session agendas which included SBPF/Northern Baxter Road.

As you can see from Figure 1, above, **28% of Select Board Executive Sessions since 2012 have included SBPF/northern Baxter Road on their agendas.** The only issues which appeared more on these agendas were union contract negotiations. No individual project comes close regarding time spent deliberating behind closed doors. For the Conservation Commission, **100% of Executive Sessions included SBPF/northern Baxter Road on the agenda.** For the past decade, Select Board has averaged **4.9** executive sessions annually regarding SBPF, and ConCom has averaged **2.2** SBPF executive sessions.

In 2021, after completing the Arcadis study of Baxter Road, it was revealed that our Coastal Resilience Coordinator would be managing the proposed expansion of the geotube array along Baxter Road.

At the February 17th, 2022 Compliance Workshop Town Manager Libby Gibson stated “*Three Town staff are assigned to this issue: myself, Mr. Beaugrand, and Vince Murphy; We also have a consulting team and Town Counsel. Town is meeting with ‘Sconset Beach Preservation Fund (SBPF) frequently to be on top of this more so than in the past.’*”³

For over five years, the Conservation Commission has been trying to update Nantucket’s Wetland Bylaw. The Bylaw is in dire need of revision because it does not mention climate change or sea level rise. Over a year ago, on October 7th, 2021, during Commissioner’s comments, Chair Ashley Erisman stated “*Jeff and I have been discussing the regs update situation. We will try to schedule the next special meeting once ‘Sconset Bluff calms down.’*”⁴ To date, Nantucket’s Wetland Bylaw still hasn’t been updated.

In these various ways, Baxter Road is having an outsized impact and burden on the Town, its staff and residents. There are **40+** other projects, some of which our community’s very survival depends on, which have not received this sort of attention or funding. Impeding our Conservation Commission’s ability to update our Wetland Bylaw impacts every single resident and visitor. No other project has impeded the Commission’s work to better protect all of Nantucket in favor of **two homes, some vacant lots, and a half-mile stretch of road and utilities.**

According to Arcadis’ CRP, within the next five decades, “From now through 2070, 2,373 structures in Nantucket County are at risk from coastal flooding and erosion, with the cumulative expected annual damages totaling \$3.4 billion, including direct physical damage to buildings, anticipated direct and induced economic disruption to businesses, direct social disruption, including relocation costs, health costs from injuries and mental stress, and lost income due to health issues, and Federal, State, and local tax impacts.”⁵

The Baxter Road, Long-Term Planning Study, notes that “the geotubes... running 947 feet alongshore from 87 to 101 Baxter Rd” protect just “**2 houses and that portion of the road and infrastructure.**”⁶ The rest of the lots lying behind the geotubes are vacant. The Long-Term Planning Study identified **70 total structures along the length of Baxter Road in danger from Sea Level Rise (SLR) and erosion by the year 2100.** These structures comprise 2.9% of the total estimated buildings in

danger from coastal hazards across Nantucket.

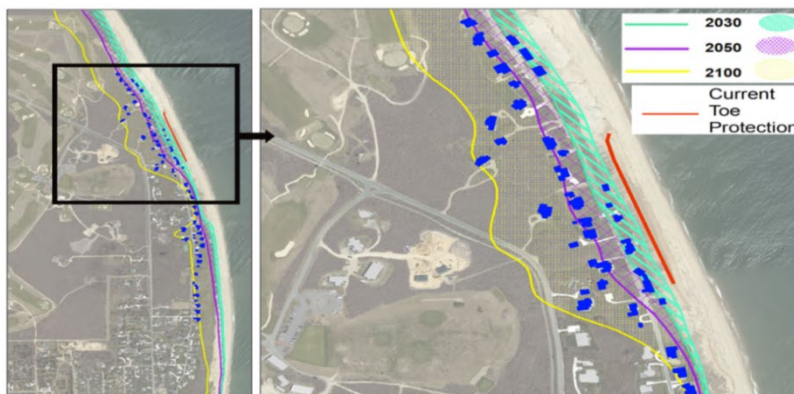


Figure 3: The 70 buildings which are projected to be at risk by 2100 are shown in blue based on FEMA Coastal Erosion Hazard Maps from July of 2019 (Source: <https://arcg.is/1fuXXD0>)

The cost to relocate Baxter Road will be far less than the cost of holding back the Atlantic Ocean, which all parties agree cannot be done indefinitely. In reviewing the suite of options explored by Arcadis, Applied Coastal, Inc. analyzed long-term costs, including maintenance and mitigation, from the present day to 2100. All costs are in US dollars. Coastal Engineer Trey Ruthven produced the following table based on this information:

Item	Year	Baxter Road Relocation	Existing Geotubes	Expanded Geotubes
Initial Construction Cost		\$11,800,000		\$6,000,000
Bring existing geotubes to compliance (61,870 yd3 @ \$50/yd3)			\$3,093,500	\$3,093,500
Annual Mitigation Sediment Maintenance	2022		\$1,000,000	\$3,000,000
Annual Mitigation Sediment Maintenance	2023		\$1,000,000	\$3,000,000
Annual Mitigation Sediment Maintenance	2024		\$1,000,000	\$3,000,000
Annual Mitigation Sediment Maintenance	2025		\$1,000,000	\$3,000,000
Total Life Cycle Cost at 2025	2025	\$11,800,000	\$7,093,500	\$21,093,500
Total Life Cycle Cost at 2030	2030	\$11,800,000	\$12,093,500	\$36,093,500
Total Life Cycle Cost at 2050*	2050	\$30,000,000	\$32,093,500	\$96,093,500
Total Life Cycle Cost at 2070	2070	\$30,000,000	\$52,093,500	\$156,093,500
Total Life Cycle Cost at 2100	2100	\$30,000,000	\$82,093,500	\$246,093,500
* Phase 2 of Baxter Road Relocation Completed				

Figure 4: Estimated Life Cycle costs based on the Arcadis Baxter Road Long Term Planning Study.

Mr. Ruthven, in his analysis for the Land Council, notes, *“The costs above show that relative to the Adaptation Pathways in the report, the costs do not support waiting to relocate Baxter Road as a Mid- or Long-Term action. By 2030 the costs associated with maintaining the geotube system are larger than relocating the road, which is also reflected in the costs associated with the Phase 2 relocation.”*⁷

Furthermore, the Arcadis Study found that 70 structures will be in danger from SLR-driven erosion by 2100. *All these structures lie along the stretch of Baxter Road we are recommending be discontinued and turned into a Statutory Private Way.*

To forge ahead as the Town is doing now with both expanding hard armoring and simultaneously retreating, the cost accrued by 2030 would be an estimated **\$47,893,500**. This does not include staff time taken away from other critical infrastructure projects such as the historic downtown, sewer beds, ferry terminals, landfill, or airport.

Coastal Resilience Project

Project

	Cost*:
Expanded Geotube Array	\$36 million
Relocating Baxter Road Only	\$30 million
Codfish Park Erosion Control & Dune Field	\$19 million
Madaket Road Raising & Bridge Conversion	\$36 million
Downtown Neighborhood Flood Barrier	\$12 million
DPW Facilities & Landfill Resilience	\$300k
Polpis Road Raising & Bridge Conversion, Folger's Marsh	\$18 million
Nantucket Memorial Airport Dune Restoration	\$25 million
Surfside WWTF Dune Restoration	\$25 million
North Shore Dune Restoration & Nourishment	\$34 million
*Projected costs from Coastal Resilience Plan.	

Figure 5: Projects from the CRP which cost as much as or less than expanding geotubes along Baxter Rd.

How To Discontinue the Northernmost half mile of Baxter Road:

The following strategy for discontinuance is based on the Trustees of Reservations document titled “Discontinuing Town and County Roads”⁸

According to Massachusetts General Law Chapter 82, Section 2, the first step of the process is accomplished by this petition for discontinuance:

If common convenience and necessity require a new highway from town to town or from place to place within the same town, or the alteration, relocation, specific repair, discontinuance or discontinuance of maintenance of an existing highway, application therefor shall be made, by petition in writing, to the county commissioners having jurisdiction thereof. The petitioners shall, if so required by the county commissioners, before any action is taken upon such petition, cause a sufficient recognizance to be given to the jurisdiction, with surety to the satisfaction of the commissioners, for the payment of all costs and expenses to the jurisdiction which shall arise by reason of the proceedings on such petition, if the petitioners do not prevail.

This Select Board, acting as County Commissioners, should find that “common convenience and necessity require... discontinuance of an existing highway...”

Second, if requested by another party or deemed necessary by Select Board, a site viewing may be scheduled (MGL Chapter 82, Section 4).

Third, a public hearing must be held concerning the discontinuance (MGL Chapter 82, Section 4). Such a hearing would likely involve multiple sessions where all stakeholders would have the opportunity to be heard. Public notice requirements for viewing and hearing are detailed in MGL Chapter 82, Section 3.

Fourth, this Board will adjudicate and decide on discontinuance after the conclusion of the public hearing process.

The discontinuance of this portion of Baxter Road would require an alternative means of access for the general public to visit Sankaty Lighthouse, a popular and historic attraction in Siasconset. We recommend that the Select Board simultaneously lay out the Statutory Private Way and, at Annual Town Meeting, accept it formally.

The relief sought by this Petition is consistent with the advice of Town Counsel. Over a decade ago on October 17th, 2012, Kopelman & Paige attorney Shirin Everett authored a memo that laid out the possibility of the Town discontinuing the road that discounted as “unlikely” the chance that the Town would be liable for damages. In her memo, attorney Everett states that *“The statutes provide that damages may be due for a discontinuance of maintenance of a public way. However, because a discontinuance of maintenance transforms the way into a statutory private way as to which the public still has rights of access (Coombs v. Board of Selectmen, 26 Mass. App. Ct. 379 (1988)), abutting lot owners and others needing the road for access will still have the right to use this now private way to access their lots. In my opinion, such property owners also have a right to repair and maintain such private ways themselves. Thus, it is my opinion that a successful claim for damages is unlikely...”*²

Conclusion

Via this Petition, we request that the Nantucket Select Board, acting as County Commissioners, move to discontinue the northernmost 0.52 miles of Baxter Road, from Bayberry Lane to Sankaty Light, and simultaneously lay out a Private Statutory Way to be accepted at Annual Town Meeting.

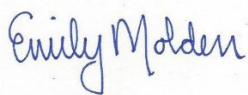
By this action, Select Board will accomplish multiple goals- by discontinuance, the Town will no longer be liable for damage to Baxter Road from natural erosion. It will be able to then step away from controversial hard armoring on the bluff and redouble its efforts to relocate the road. The Town will successfully maintain public access to Sankaty light while freeing up town staff and funds for other coastal resilience projects, such as nearby Codfish Park, where over three dozen structures are at high or moderate risk for coastal hazards within the next 50 years.

Lastly, SBPF and affected residents along northern Baxter Road can continue to work on any strategy they wish to protect existing properties and the existing road.

Therefore, we request this Board to adjudicate that “Common convenience and necessity” require that the Town focus on relocation of Baxter Road and discontinue the northernmost 0.52 miles of Baxter Road while maintaining public access to Sankaty Lighthouse.

I look forward to discussing this with each of you in further detail at the next available meeting.

Respectfully submitted,



Emily Molden
Executive Director



RJ Turcotte
Nantucket Waterkeeper

¹ Nantucket Coastal Resilience Plan <https://www.nantucket-ma.gov/DocumentCenter/View/40278/Nantucket-Coastal-Resilience-Plan-PDF>

² <https://hiddenbrain.org/podcast/we-broke-the-planet-now-what/>,
https://www.researchgate.net/publication/354086314_Adapting_to_Sea_Level_Rise_Insights_from_a_New_Evaluation_Framework_of_Physical_Design_Projects

³ Conservation Commission/Select Board Geotube Joint Compliance Workshop 2/17/2022
<https://www.youtube.com/watch?v=2Lc6MY7nMq4>

⁴ Conservation Commission Meeting 10/07/2021 <https://www.youtube.com/watch?v=vbwVrFxryyA>

⁵ Nantucket Coastal Resilience Plan <https://www.nantucket-ma.gov/DocumentCenter/View/40278/Nantucket-Coastal-Resilience-Plan-PDF>

⁶ Baxter Road Long-Term Planning Assessment <https://nantucket-ma.gov/2122/Baxter-Road-Engineering-Feasibility-Asse>

⁷ Applied Coastal Comments: <https://drive.google.com/drive/folders/0AOBYT81ZENfOUk9PVA>

⁸ Trustees of Reservations Discontinuing Town and County Roads
<https://www.burgy.org/sites/g/files/vyhlif1451/f/events/discontinuing-town-county-roads-5.pdf>

⁹ 2012 Town Counsel Memo https://drive.google.com/drive/u/0/folders/1FJipoeO1WDMNF46NP-_FVj-Dsxzo0ssz