

SELECT BOARD

Minutes of the Meeting of November 1, 2021. The meeting took place via remote participation using Zoom Webinar. Members of the Board present were Jason Bridges, Matt Fee, Kristie Ferrantella, Dawn Hill Holdgate and Melissa Murphy.

I. CALL TO ORDER

Chair Bridges called the meeting to order at 4:30 PM. He read a prepared statement as to how the meeting would be conducted via remote participation and the ground rules for any discussion and called roll for those present.

II. JOINT MEETING WITH CONSERVATION COMMISSION TO DISCUSS SIASCONSET BEACH PRESERVATION FUND (SBPF) GEOTUBE PROJECT AT SCONSET BLUFF.

The Conservation Commission (ConCom) called to order at 4:34 PM. Chair Bridges reviewed the protocol of the meeting with respect to input of Select Board and ConCom members, noting that he will centralize and take comments and input from members as they raise hands. Chair Bridges commented on the complexity of the issues before the Board and the ConCom with respect to this project. Ms. Holdgate said she hopes this meeting will lead to a path forward that is best for the entire island that keeps the Town out of "never-ending legal battles". Ms. Murphy agreed and said there is a complexity between the regulatory obligations of the ConCom and the broader policy responsibilities of the Select Board with regard to this project. She spoke on her hope that open discussion will lead to a collaborative approach, with respect on both sides for each group's responsibilities. ConCom Chair Ashley Erisman agreed and said that it will be important for the ConCom to understand some issues that have transpired over the last 6 months. ConCom member Maureen Phillips said she disagrees that the Board and ConCom have different charges and said she hopes both groups will consider what each has in common. Chair Bridges said he has seven topics of discussion, beginning with what the ConCom's goals are for Baxter Road and what their biggest frustrations have been with the project. Ms. Erisman said the ConCom doesn't have specific goals so much as responsibility for ensuring compliance with permit conditions for resource areas. She reviewed the initial purpose of the geotubes installation was to give the Town time to develop a plan for Baxter Road, which has been delayed. ConCom member Seth Engelbourg spoke on the ConCom's role with permitting and compliance. He said it isn't within the ConCom's role to consider strategic planning for the Island. Ms. Phillips commented on the recently issued Coastal Resilience Plan and suggested that be the basis for how to address Baxter Road. She added that a report on long-term options for Baxter Road that the Select Board commissioned from Arcadis is not an application to the Conservation Commission. Mr. Fee said that with respect to strategy and goals, in this specific case, if a project is not in compliance, then steps need to be taken to get it into compliance; and, if it is actually causing harm, that needs to be demonstrated. He said the question is "what is the ConCom's goal" of the removal order. Ms. Erisman said the ConCom's goal is removal. She said the ConCom asked for the Board's support over a year ago with respect to the project, which was not forthcoming. She said the project has not been in compliance, it had clear failure criteria with steps for removal and that SBPF had every opportunity to comply and did not. She said the ConCom's goal is to protect a resource area and in order to do that, it has ordered removal. She added that the ConCom has tried to work with SBPF. ConCom member Linda Williams stated that the word "failure" has different meanings to different people, that she does not believe the project is in failure and in fact it has held up in storms. She said she hopes the Town and SBPF will jointly file a new application with the ConCom. Ms. Holdgate said that is the Town's intention to do that; and to file something that is approvable. She asked if the ConCom will be able to consider such an application. She asked if the impact of removal has been fully evaluated by the ConCom. Ms. Erisman said if the geotubes are removed, the road should be relocated and there will be an erosion impact. She said as far as a new application goes, the ConCom

hears applications before it and there will be a "burden of proof" that it is different from what has previously been filed. Discussion followed as to the removal process with respect to impact as well as how a new application will be evaluated. Ms. Murphy commented on the relocation of Baxter Road, with the Board's commitment to follow two paths at the same time including short-term and long-term planning. She noted that relocating the road is also very complex and that will be a long process. She said there will need to be short-term protection. She said she is hearing mixed messages from the ConCom, specifically, as to how or if the ConCom works with applicants to refine applications. Ms. Erisman said the ConCom does work with applicants on their applications. She noted that a previous new application from SBPF did not go anywhere because SBPF did not work with the ConCom. Some discussion followed on various compromises the ConCom has discussed with SBPF, again stating that SBPF did not want to compromise. Some discussion followed on the current condition of the project, following a nor-easter last week. Mr. Fee commented on the complexity of planning for the long-term relocation of the road and the need for balance for the protection of private property, funding mechanisms and retreat all at once. He also noted the difficulty of locating sand sources sufficient for mitigation requirements, as well as bigger picture issues such as managing this entire effort with existing staff, which is also not sufficient. He said he would like to understand what the Town can "do better" regarding this project. Ms. Phillips said she is "very concerned" about the weight seemingly being given to threats of litigation with respect to this project. She added that putting Baxter Road as a top priority is not appropriate. She spoke on prior litigation, recent Select Board actions and that parties need to be transparent and the Select Board has not done that with its recent "settlement statement". She said that has been frustrating and the Board needs to understand "facts and science" and the application of these to the project. Mr. Fee said that he does agree with some of what Ms. Phillips said but that implying certain motivations with some of her assumptions, is incorrect. He said Baxter Road has been an issue for years and has been an existing situation. Ms. Phillips said she is going by statements in the Board's also recently issued "position statement" for the project which seemed to emphasize avoiding litigation. Ms. Holdgate said she is not concerned with the threat of litigation, she is concerned with the threat to Baxter Road and said she does not see an issue with the Board's "settlement statement" which includes a desire to find a path forward with an application that is approvable. She concurred with Mr. Fee that Baxter Road is an existing project, there is a threat of collapse of Baxter Road and the Board has made a commitment to develop a long-term plan, but it is going to take time because of the complexity. She said it is the ConCom's action that has made this project a priority. Mr. Golding said he disagrees with Ms. Holdgate and that the action taken by the ConCom was due to non-compliance of SBPF. He said the ConCom is acting in the Island's best interest. Mr. Engelbourg said the agreed upon long-term strategy is retreat; the mitigation strategy is not working as intended because of non-compliance; and, as a result the removal of the project is required. He said there are adaptive strategies which could be employed. He urged creativity with a new application. ConCom member Mark Beale said he has been troubled by the lack of cooperation by SBPF. He said sand sourcing is a major concern. He said that if SBPF has not met the mitigation requirements for the existing project, he does not see them meeting the requirements for an expanded project. Mr. Fee said the rationale as to the mitigation issues relates to a desire for an expanded project. He added that sand is going to be needed for many more projects besides this one. Mr. Golding said he is "baffled" by what Mr. Fee is saying, and that SBPF knew the requirements and "renege". He added that if sufficient sand was deposited it might buy time for more planning on the road; he added that the geotubes are weakening based on his review of photos of damage following last week's storm. He added that he does not feel the Select Board is supporting the ConCom. Chair Bridges asked why Mr. Golding thought that. Mr. Golding said he believes it was a tactical legal error for the Board to support the withdrawal of a recent appeal by SBPF of the ConCom's denial of an expansion application. Ms. Holdgate commented that the Arcadis consultants were emphatic as to not removing the project until a road is in place. Mr. Beale said the report also did not recommend expansion of the project. Mr. Golding

said he understands Ms. Holdgate's point but the ConCom order was based on the number of times of non-compliance. Chair Bridges pointed out that the Arcadis report did not recommend or not recommend expansion. Mr. Fee agreed. Ms. Phillips said the sand issue is indeed a difficult one and said it was a "surprise to everyone" as to the recently increased cost of sand. She reiterated what Mr. Engelbourg said about viable alternatives to geotubes that do not involve significant volumes of sand. Mr. Fee commented that large volumes of sand are going to be required as part of coastal resiliency planning, regardless of the types of alternatives used. Discussion followed. Ms. Ferrantella asked about the maintenance of the project currently. Ms. Erisman said if the ConCom had legal counsel they could answer that. Discussion continued about the condition of the project following last week's storm specific to photos which are circulating and what they do and do not represent. Mr. Golding said with respect to Ms. Ferrantella's questions, his understanding is that SBPF should be maintaining the project pending the removal order. Natural Resources Director Jeff Carlson confirmed Mr. Golding's understanding and said he has been contacted about this and expects sand deposits shortly as well as maintenance to the project from the storm. Ms. Williams commented that she does not make decisions based on threats or current or pending litigation. Chair Bridges reviewed what he believes has been put forward during this meeting, which is that the ConCom would entertain a modified project. Some discussion followed as to the distinction of application re-submittals. Mr. Engelbourg, again, spoke on alternative measures which involve less sand. Ms. Erisman agreed. Chair Bridges asked for any further comments. Ms. Erisman said she appreciates this meeting and it seems that each group does have respect for the other's responsibilities. Chair Bridges agreed. Mr. Engelbourg agreed. He said he has some outstanding "logistic questions", specifically, is special counsel going to be provided and the timeline for a new Notice of Intent filing. Ms. Phillips concurred and said the issue of getting special counsel settled is important. Mr. Golding agreed.

III. ADJOURNMENT

Mr. Fee moved to adjourn at 6:21 PM; seconded by Ms. Murphy. Ms. Murphy thanked everyone for the meeting, including Town staff. She said she agrees with long-range planning for Baxter Road and it is going to take a lot of "strategic thinking" which will also need to take into consideration the cost to the taxpayer. She said public-private partnerships should be explored. She said if any of the ConCom members felt any disrespect, it is not intended. So voted by roll call vote: Chair Bridges – Yes; Mr. Fee - Yes; Ms. Ferrantella – Yes; Ms. Holdgate – Yes; Ms. Murphy – Yes. The Con Com adjourned its meeting at 6:24 PM.

Approved the 10th day of November 2021.

**SELECT BOARD
NOVEMBER 1, 2021 – 4:30 PM
REMOTE PARTICIPATION VIA ZOOM
NANTUCKET, MASSACHUSETTS**

List of documents used at the meeting:

II. List of topics for discussion