



MEETING POSTING

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TOWN OF NANTUCKET

Pursuant to MGL Chapter 30A, § 18-25

All meeting **notices and agenda** must be filed and time stamped with the Town Clerk's Office and posted at least 48 hours prior to the meeting (excluding Saturdays, Sundays and Holidays)

Committee/Board/s	Town Government Study Committee
Day, Date, and Time	Tuesday March 30, 2021 9:00 AM
Location / Address	☐ "REMOTE PARTICIPATION VIA ZOOM Pursuant to Governor Baker's March 12, 2020 Order Regarding Open Meeting Law (Attached); the meeting will be aired at a later time on the Town's Government TV YouTube Channel https://www.youtube.com/channel/UC-sgxA1fdoxteLNzRAUHixA "
Signature of Chair or Authorized Person	John B. Brescher

WARNING: IF THERE IS NO QUORUM OF MEMBERS PRESENT, OR IF MEETING POSTING IS NOT IN COMPLIANCE WITH THE OML STATUTE, NO MEETING MAY BE HELD!

AGENDA

Please list below the topics the chair reasonably anticipates will be discussed at the meeting
TO JOIN MEETING

<https://zoom.us/j/2179151123>

MEETING ID:

217 915 1123

1. Call To Order
2. Approval of the Agenda
3. Public Comment
4. Approval of minutes of March 16, 2021
5. Presentation by Hillary Hedges Rayport re: NPEDC
6. Discussion: unresolved items on topics to investigate list
 - a. Affordable Housing Trust Fund as Town Department
 - b. Expanding role/redefining Town Government Study Committee and Town Governance Committee
7. Other Business
8. Date and time of next meeting
9. Adjournment



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CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
LIEUTENANT GOVERNOR

**ORDER SUSPENDING CERTAIN PROVISIONS
OF THE OPEN MEETING LAW, G. L. c. 30A, § 20**

WHEREAS, on March 10, 2020, I, Charles D. Baker, Governor of the Commonwealth of Massachusetts, acting pursuant to the powers provided by Chapter 639 of the Acts of 1950 and Section 2A of Chapter 17 of the General Laws, declared that there now exists in the Commonwealth of Massachusetts a state of emergency due to the outbreak of the 2019 novel Coronavirus (“COVID-19”); and

WHEREAS, many important functions of State and Local Government are executed by “public bodies,” as that term is defined in G. L. c. 30A, § 18, in meetings that are open to the public, consistent with the requirements of law and sound public policy and in order to ensure active public engagement with, contribution to, and oversight of the functions of government; and

WHEREAS, both the Federal Centers for Disease Control and Prevention (“CDC”) and the Massachusetts Department of Public Health (“DPH”) have advised residents to take extra measures to put distance between themselves and other people to further reduce the risk of being exposed to COVID-19. Additionally, the CDC and DPH have advised high-risk individuals, including people over the age of 60, anyone with underlying health conditions or a weakened immune system, and pregnant women, to avoid large gatherings.

WHEREAS, sections 7, 8, and 8A of Chapter 639 of the Acts of 1950 authorize the Governor, during the effective period of a declared emergency, to exercise authority over public assemblages as necessary to protect the health and safety of persons; and

WHEREAS, low-cost telephone, social media, and other internet-based technologies are currently available that will permit the convening of a public body through virtual means and allow real-time public access to the activities of the public body; and

WHEREAS section 20 of chapter 30A and implementing regulations issued by the Attorney General currently authorize remote participation by members of a public body, subject to certain limitations;

NOW THEREFORE, I hereby order the following:

(1) A public body, as defined in section 18 of chapter 30A of the General Laws, is hereby relieved from the requirement of section 20 of chapter 30A that it conduct its meetings in a public place that is open and physically accessible to the public, provided that the public body makes provision to ensure public access to the deliberations of the public body for interested members of the public through adequate, alternative means.

Adequate, alternative means of public access shall mean measures that provide transparency and permit timely and effective public access to the deliberations of the public body. Such means may include, without limitation, providing public access through telephone, internet, or satellite enabled audio or video conferencing or any other technology that enables the public to clearly follow the proceedings of the public body while those activities are occurring. Where allowance for active, real-time participation by members of the public is a specific requirement of a general or special law or regulation, or a local ordinance or by-law, pursuant to which the proceeding is conducted, any alternative means of public access must provide for such participation.

A municipal public body that for reasons of economic hardship and despite best efforts is unable to provide alternative means of public access that will enable the public to follow the proceedings of the municipal public body as those activities are occurring in real time may instead post on its municipal website a full and complete transcript, recording, or other comprehensive record of the proceedings as soon as practicable upon conclusion of the proceedings. This paragraph shall not apply to proceedings that are conducted pursuant to a general or special law or regulation, or a local ordinance or by-law, that requires allowance for active participation by members of the public.

A public body must offer its selected alternative means of access to its proceedings without subscription, toll, or similar charge to the public.

(2) Public bodies are hereby authorized to allow remote participation by all members in any meeting of the public body. The requirement that a quorum of the body and the chair be physically present at a specified meeting location, as provided in G. L. c. 30A, § 20(d) and in 940 CMR 29.10(4)(b), is hereby suspended.

(3) A public body that elects to conduct its proceedings under the relief provided in sections (1) or (2) above shall ensure that any party entitled or required to appear before it shall be able to do so through remote means, as if the party were a member of the public body and participating remotely as provided in section (2).

(4) All other provisions of sections 18 to 25 of chapter 30A and the Attorney General's implementing regulations shall otherwise remain unchanged and fully applicable to the activities of public bodies.

This Order is effective immediately and shall remain in effect until rescinded or until the State of Emergency is terminated, whichever happens first.

Given in Boston at 6:40 PM this 12th day of
March, two thousand and twenty.

A handwritten signature in cursive script, reading "Charles D. Baker". The signature is written in black ink and is positioned above a horizontal line.

CHARLES D. BAKER
GOVERNOR
Commonwealth of Massachusetts

Town Government Study Committee

Minutes of the meeting of March 16, 2021. The meeting took place via Zoom. Members of the committee present were: John Brescher, Rick Atherton, Campbell Sutton, Curtis Barnes, and Tucker Holland. Hillary Hedges Rayport was present from the public.

- 1) Chair John Brescher called the meeting to order at 10:05 am with a quorum.
- 2) Agenda: A motion was made by Campbell Sutton and duly seconded by Tucker Holland to approve the agenda as written. All voted in favor by voice vote.
- 3) Public Comment: Hillary Hedges Rayport introduced herself to the Committee and asked if her presentation regarding the Nantucket Planning and Economic Development Commission (“NPEDC”) would be under the purview of the Committee. John Brescher noted that committee would take this up under the Chair update, but the Committee should decide whether or not we should invite Hillary back for a more robust discussion. Curtis Barnes asked if we should consider this part of the charge of the Committee or not. Ultimately, the Committee felt the topic warranted discussion because even if it did not fit directly within the mission of the Committee, it may be a topic to add to the report to Town Meeting.
- 4) Meeting Minutes: A motion was made by Campbell Sutton to approve the minutes for the meeting held on February 17, 2021. The motion was seconded by Curtis. and all voted in favor by voice vote.
- 5) Chair Update re: discussion with public re: NPEDC and update on action items

John Brescher noted that the NPEDC topic was covered under Public Comment and moved on to the next item on the agenda:
- 6) Discussion: unresolved items on topics to investigate list

John Brescher briefly discussed his zoom meeting with a group interested in Remote Open Town Meeting. While the topic may be premature due to technological or legal impediments, it was interesting to see what other Towns are planning. More information to follow as it comes.

The Committee then discussed the review of other Charters as it relates to examples of the organization of Town Government.

The Committee suggested that the Charter have something more forceful and it was suggested to have a re-write of Section 4 to allow for a flow-chart and to modernize the code.

Rick Atherton suggested that we ask Town Counsel to review/re-draft Section 4 as part of her greater review of the Charter. Campbell asked if there was a way to expedite the matter and Tucker suggested emailing Town Counsel and cc' the Town Manager. The Committee agreed this was a great idea and

John also noted that he is waiting to hear back from his contact in the State regarding what other Towns do to allow a more robust participation for Non-Voting Tax Payers. It seems as though the information will come from the Massachusetts Moderators Association.

Tucker Holland noted that it appears as though the seasonal residents want more of a voice. The Committee then discussed what the non-voting taxpayers can and cannot do at Town Meeting. Rick Atherton suggested inviting the Chair of the Advisory Committee of Non-Voting Taxpayers to find out what, exactly, they would like.

7) Other Business:

Hilary Hedges Rayport asked if the Committee would be looking at the future of democracy and ways to make Government and democracy more inclusive. Curtis noted that while that's a topic in the background, it's not something within our charge. John noted that it was an interesting way to circle back to the discussion regarding remote Open Town Meeting.

Campbell Sutton suggested that we take up the role of the Affordable Housing Trust Fund and if they should be a Town Department at the next meeting.

8) Date and Time of the Next Meeting:

The Committee's next meeting will be at 9:00 am on Tuesday March 30, 2021 via Zoom.

9) Adjournment:

A motion was made by Curtis Barnes and seconded by Campbell Sutton to adjourn at 10:04 am.

Respectfully Submitted,
John B. Brescher, Chair

The Nantucket Planning and Economic Development Commission was founded in 1973 by a special act.

This document sets forth the mission, composition, and powers of the NP&EDC, and how it compares to neighboring Planning Commissions: The Cape Cod Commission and Martha's Vineyard Commission.

The question at hand is could the NP&EDC be reformed and improved. Areas for improvement are:

- Governance and accountability
- Update mission to support balanced growth, the environment, and quality of life
- Align mission and powers with our neighboring Regional Planning Authorities: The Cape Cod Commission and Martha's Vineyard Commission

This briefing document is organized in two parts:

- Part I: mission, responsibilities and powers of the NP&EDC including:
 - Characteristics
 - Past governance recommendations
- Part II: How does the NP&EDC compare to neighboring Planning Commissions?

Part I

Mission, Responsibilities, and Powers of the NP&EDC

The Nantucket Planning and Economic Development Commission (NP&EDC or the Commission) was established in 1973 by a Special Act. Since 1978, the Commission has been responsible for comprehensive planning on Nantucket (Source: 2019 Novak Consulting Group report on PLUS). The Commission's mission is:

- To plan for the orderly and coordinated development and protection of the physical, social and economic resources of the Island of Nantucket.

While the Planning *Board* is responsible for regulatory approvals as well as proposing, administering, and enforcing zoning matters, the Planning *Commission* is responsible for longer range plans and looking after the "physical, social and economic development of [Nantucket]." (source: The Special Act)

- The Commission makes recommendations to the responsible county and town agencies. The Commission has one regulatory power, which is to identify and permit Developments of Regional Economic Impact. This is accomplished through issuing, at its discretion, a "Development of Regional Economic Impact Permit. (DREIP)." The DREIP is in addition to zoning and MCD permits. According to the Planning Director, the Commission has never issued a DREIP nor has it ever established guidelines for a DREIP.

- The NPEDC also operates as **Nantucket’s Regional Planning Agency (RPA)**. Currently, there are 13 RPAs in the Commonwealth. The NP&EDC is the only RPA in the Commonwealth that serves a town, a county, an island, and a region.
- Since its creation, the NP&EDC has been responsible for the appointment and oversight of the Director of Planning through an employment agreement (this is not a requirement of the Special Act).

Membership and Appointment

The NPEDC consists of 11 members:

- The five members of the Planning Board
- One representative from the Nantucket Housing Authority
- One representative of the County Commissioners of Nantucket County
- One representative of the Conservation Commission
- Three at-large members with staggered terms, appointed by the NP&EDC.

Prior to 2017, the NPEDC had 12 members, with the 12th being the Director of the DPW. This seat was removed via a revision to the Special Act, adopted at Town Meeting.

Funding

The Commission appropriates funds from the Treasury of the Town of Nantucket. The RPA designation allows Nantucket to access state and federal grants to fund transportation, transit, economic development, and planning. Programs include 3C Transportation Planning Activities, Highway Safety Improvement Program, District Local Technical Assistance, the annual Transportation Improvement Program (TIP) funds (awarded based on a five-year listing of Federal and State Highway and Transit projects), CARES act funds, and other development funds.

Governance and Past Recommendations

The NPEDC is responsible for the Town’s planning efforts, but the ultimate decision-making authority for the Town and County rests with the Select Board. The Novak Consulting Group reviewed PLUS in 2019, and observed a natural tension as to who is responsible for establishing a vision or directing the Town’s planning activity and staff.

The Novak Group observed that the Town has grown and evolved its government structure over the past nearly 50 years – principally by creating and then expanding the role of Town Manager and defined its executive functions. The 2007 amendment to the Town Charter further consolidated the ZBA, Historical Commission, Historic District Commission, Conservation Commission, and Planning Board as part of Town Administration.

Importantly, the NP&EDC is neither elected by the people nor appointed by the Select Board.

The Novak Group recommended the Town consider an alternative structure for its RPA:

... As the Town's population and economic and environmental landscape change, it may be appropriate to evaluate the following: (1) whether the NPEDC is the appropriate agency to serve as the RPA for Nantucket; and (2) should it have hiring authority and determine conditions of employment for employees who report to Town Administration...An alternative structure for the RPA could provide both efficiencies and clarity within PLUS by consolidating Planning functions under a single Board and, subsequently, reducing the number of Boards and Commissions and the amount of time spent providing administrative and staff support. (May 2019 report on PLUS)

The Novak Group did not make a specific recommendation about where the RPA should live nor did they recommend elimination of the NP&EDC.

Part II

How does the Nantucket Planning & Economic Development Commission compare to neighboring Planning Commissions?

The Nantucket Planning Commission differs from The Cape Cod Commission and Martha's Vineyard Commission in three important ways:

- Composition
- Mission
- Powers

Composition

- Nantucket is the only Regional Planning Commission that is comprised of only one town. It has 11 Commissioners:
 - All five members of the Planning Board (elected by the voters)
 - One representative from the Nantucket Housing Authority
 - One representative of the County Commissioners of Nantucket County
 - One representative of the Conservation Commission
 - Three at-large members with staggered terms, appointed by the NP&EDC.
- The Cape Cod Commission (Barnstable County) has 19 Commissioners:
 - 15 members, one each appointed by the Select Board of each of 15 towns
 - One county commissioner appointed by the board of the county commissioners
 - One Native American appointed by the board of county commissioners
 - one minority appointed by the board of county commissioners
 - one minority appointed by the governor, serving in an advisory role only
 - The 18 voting members each have one vote
- Martha's Vineyard (Dukes County) has 21 Commissioners
 - One Selectman or a resident registered to vote from each town, appointed by the board of selectmen from that town

- Nine persons elected at large island wide, provided that there shall not be less than one person nor more than two persons elected from each town on Martha's Vineyard
- One county commissioner or designee of the board of county commissioners
- one member of the cabinet, or his designee, appointed by the governor
- four persons whose principal residence is not Martha's Vineyard to be appointed by the governor, said persons to have a voice but not vote in deciding matters before the commission.

Observations

Nantucket is unique in several ways:

- Neighboring Commissions do not include members of town planning boards, unless as designees of the select boards.
- The Nantucket Select Board has the right to appoint only one member to the NP&EDC. The Conservation Commission and the Housing Authority also have a right of appointment to the NP&EDC. This is not the case for neighboring RPAs – they give the right of appointment to town select boards, or in the case of MV, nine of the commissioners are elected at large.
- Sitting members of the NP&EDC appoint three at-large members to the Commission. There are no other appointed or elected commissions on Nantucket which appoint their own at-large members. This is always the responsibility of the Select Board. Neighboring planning commissions do not appoint their own members.
- Nantucket has no non-voting appointees and no governor's appointee.

Mission

The Martha's Vineyard Commission Act says:

- The purpose of the commission created by this act shall be to further protect the health, safety and general welfare of island residents and visitors by preserving and conserving for the enjoyment of present and future generations the unique natural, historical, ecological, scientific, and cultural values of Martha's Vineyard which contribute to public enjoyment, inspiration and scientific study, by protecting these values from development and uses which would impair them, and by promoting the enhancement of sound local economies.

The Cape Cod Commission Act says:

- The purpose of the Cape Cod Commission shall be to further: the conservation and preservation of natural undeveloped areas, wildlife, flora and habitats for endangered species; the preservation of coastal resources including aquaculture; the protection of groundwater, surface water and ocean water quality, as well as the other natural resources of Cape Cod; balanced economic growth; the provision of adequate capital facilities, including transportation, water supply, and solid, sanitary and hazardous

waste disposal facilities; the coordination of the provision of adequate capital facilities with the achievement of other goals; the development of an adequate supply of fair affordable housing; and the preservation of historical, cultural, archaeological, architectural, and recreational values.

The Nantucket Planning & Economic Development Commission Act says:

- In order to plan for the orderly and coordinated development and protection of the physical, social and economic resources of the Island of Nantucket, there is hereby established the Nantucket Planning and Economic Development Commission. The Commission shall be responsible for the preparation of comprehensive plans for the physical, social and economic development of said county and town and shall make recommendations for action to implement said plans to the responsible county and town agencies.

Observations

The CCC and MVC specifically seek balanced and/or sustainable growth, specifically plan for protection of the environment and environmental resources, cultural resources, and quality of life. The CCC also highlights planning for affordable housing.

Powers

The Cape Cod and Martha's Vineyard Commission are both RPAs which, like Nantucket, create transportation plans, apply for transportation and development grants, administer TIP funds, and create a variety of plans (development, housing, etc.) for the region.

- All three commissions have the ability to identify, designate, and regulate Developments of Regional Impact (Nantucket calls these DREIs) but differ in how they define these.
- The MV and CC Commissions have an additional power, which is to designate and regulate Districts of Critical Planning Concern (DCPC). This power is granted by the Commonwealth because of fragile regional environments or extraordinary cultural landscapes and historic towns.
- DCPCs are used by the CCC and MVC to guide growth
- **DCPCs allow CCC and MVC to ban fertilizer use outright (Nantucket does not have the ability to ban fertilizer use).**
- DCPCs allow the Commissions to pause development while necessary zoning tools and regulations are adopted to address critical concerns. New zoning or other regulatory changes override pre-existing unexercised grandfathered rights.

Observations

The powers granted by the Commonwealth to the CCC and MVC are unique among RPAs in the state. Because Nantucket has only one town, it does not need to coordinate among multiple towns' zoning and permitting laws. Nonetheless, there are attractive elements to the ability to designate DCPCs.

Resources and References

<https://www.mvcommission.org/dcpcs>

<https://www.capecodcommission.org/about-us/cc-act>

<https://ecode360.com/15338757>

<https://www.nantucket-ma.gov/306/Planning-Economic-Development-Commission>

<https://www.nantucket-ma.gov/DocumentCenter/View/29539/Nantucket-PLUS-Study---Project-Report---Revised1?bidId=>