



**Town of Nantucket
Finance Committee**
www.nantucket-ma.gov

Committee Members: Denice Kronau (Chair), Stephen Maury (Vice-chair), Joseph T. Grause Jr., Peter McEachern, Joanna Roche, Peter Schaeffer, Chris Glowacki, Jill Vieth, George Harrington

MINUTES

Thursday, January 16, 2020

4 Fairgrounds Road, Training Room – 4:00 p.m.

Called to order at 4:00 p.m.

Staff in attendance: Libby Gibson, Town Manager; Brian Turbitt, Director of Finance; Alexandria Penta, Financial Analyst; Terry Norton, Town Minutes Taker

Attending Members: Kronau, Maury, Grause, McEachern, Roche, Schaeffer, Glowacki, Vieth, Harrington

Town Counsel: John Giorgio, K&P Law P.C.

Documents used: Draft January 6, 9, & 13, 2020 minutes; Citizen and Town Warrant Articles for 2020 Annual Town Meeting (ATM); Roundabout news articles

Agenda approved by unanimous consent.

I. ANNOUNCEMENTS

II. PUBLIC COMMENT

- 1. None

III. APPROVAL OF PRIOR MEETING MINUTES

- 1. January 6, 2020: Held by unanimous consent.
- 2. January 9, 2020: Held by unanimous consent.
- 3. January 13, 2020: Held by unanimous consent.

IV. DISCUSSION OF OPEN ITEMS AND POTENTIAL MOTIONS FOR CITIZEN ARTICLES FOR 2020 ATM

- 1. Article G Prohibiting Roundabouts Near School – John McGrady

Discussion **McGrady** – Moving traffic through a school zone is contrary to public safety. A roundabout is said to slow traffic to 25 mph which is 5 mph faster than speed in a school zone. Cited news articles arguing against roundabouts near children. It’s safer to cross a street where traffic stops.

Grause – Asked if Mr. McGrady has any law/traffic enforcement experience.

McGrady – Yes, he was a State Police Officer for 20 years, a detective/prosecutor for Nantucket Police for 15 years, and currently works in the court system.

Harrington – Asked if a roundabout with crossing guards be effective for pedestrian safety.

McGrady – Everything he’s read says no. he can’t find anything that says a roundabout is safer for pedestrians and bicyclists. Surfside Road had rumble strips that were removed and never replaced; those slowed traffic.

Giorgio – The way this is worded, it is a non-binding vote directed at Town officials. He’s noticed Nantucket is now getting so many petition articles on different topics, but he’s observed a common theme, which is these are efforts to blur the separation of powers between Town Meeting and Town officials. Town Meeting is responsible for appropriating funds. If the Select Board or FinCom were to submit an article to appropriate funds for a roundabout within 500 feet of a school, there is the opportunity at Town Meeting for constituents to express their opinion and put a condition that no roundabout be installed; that is at the core of Town Meeting. If you read this article, it says to see if the Town will vote to prohibit; that isn’t recognizable as legislation. There is no reason Town Meeting can’t vote a non-binding article.

Roche – Asked if there is a plan to have a roundabout in this location.

Gibson – A roundabout at Bartlett and Surfside Roads is in the Transportation Improvement Plan; there was an article that the Select Board talked about putting on the 2020 warrant but has since been withdrawn. There is a future roundabout planned for 4-Corners next to the high school; it is not on the Town Meeting warrant.

Giorgio – The problem becomes a bylaw that conflicts with a traffic regulation; he doesn't believe there currently such a conflict. If this were enacted as a bylaw it wouldn't necessarily take precedence over a regulation. It is up to the Town Meeting Moderate to make a determination if the voters have been adequately warned that this is an enforceable bylaw, not just a directive.

Kronau – Asked if this article could be changed to a bylaw at this point.

Giorgio – That is a decision ultimately for the Moderator; if she were to ask me, he doesn't believe there has been proper warning to the voter that this would be enforceable. If this passes at Town Meeting, a committee could be formed to look at what makes a sensible bylaw. You have to be concerned with two things: safety implications and what an engineer would say is safer for an intersection.

Maury – Asked what would happen if a bylaw prohibiting roundabouts were passed and later it was determined it would have been safer.

Giorgio – He would look at that try to construct a counter to the bylaw. It is important for FinCom to keep in mind its proper function as it relates to the Select Board, Finance, and Town Meeting. He's not going to speculate on a bylaw until he sees the wording for that. When the Town starts regulating use of land by bylaw, that might require a zoning bylaw versus a general bylaw.

McGrady – The Planning Board has been before the School Committee on 3 occasions trying to promote roundabouts near the school; in each instant, the school committee voted unanimously against them because of student safety. If this passes at ATM, he hopes the Select Board will hear that.

Kronau – She'd like to hear from traffic planning before ruling on this.

McEachern – Capital Program Committee has met numerous times with the Traffic Planner Mike Burns. We hired someone on the payroll like Mr. Burns who fulfills his duty by providing his expertise; then his expertise gets pushed aside. FinCom should hear from him.

Motion No action at this time.

Vote N/A

2. Article Z Bylaw Amendment: Preservation of Historically Significant Buildings – Mary Bergman

Discussion **Bergman** – Explained demolition requests of buildings 50 or older would trigger the Historic District Commission (HDC) review of the historic significance of the building and puts in place a year-long delay period for the demolition. It would also provide more transparency in the process of permitting work on historic structures; if people don't know why something is happening, they get upset.

Grause – Asked what the benefit of the delay would be.

Bergman – Right now the delay is 60 days to find someone to move off; she doesn't think that is enough time to get all the permits for moving a structure.

Grause – Asked if 90 days would be better as opposed to extending the time and increasing the costs.

Bergman – If it isn't historic, it wouldn't fall into this special category. There have been applications before the HDC where the owner contends the historic significance. The delay would encourage someone to reconsider a demolition. An important question is when does a renovation become a demolition. The Island has a minimum maintenance bylaw that isn't being enforced.

Kronau – As an example, if one house doesn't meet these criteria but a house across the street does and thinks the first property does meet the criteria; asked if neighbors could petition the HDC against the demolition.

Giorgio – In that instant, the neighbor would first inform the building inspector about a bylaw violation: notice wasn't provided, or demolition started without proper permitting. If the building inspector makes the determination of a bylaw violation, there is provision for a fine and inductive relief through the courts.

Bergman – You could have a list of properties or different zones; going by the age of the house and HDC has done due diligence, it's enforceable. There is an incomplete list of historically significant properties on Nantucket; however, the NACR survey done in the 1990s isn't always accurate. This would apply to those structures that become historic as time moves forward; historic significance isn't just age. It's not just any old house; it's a building HDC has decided is historic and losing it would be detrimental to Nantucket.

McEachern – Asked if the request could be changed to keeping the historic core as significant and everything outside since 1975, rather than saying 50 years old, as not.

Giorgio – FinCom could include that change in their motion. This article is approvable as to form; the only issue is the zoning bylaw, and we need to ensure this doesn't create inconsistencies between the two; Director of Planning Andrew Vorce expressed concerns about that consistency issue and we will be providing an analysis of that. There are many examples where Towns regulate activity through both general and zoning bylaws. It would be appropriate to wait for Zoning and PLUS to weigh in.

Kronau – Asked if this could be amended from 12 months down to 6 months waiting period.

Bergman – That's not the best practice.

Motion No action at this time.

Vote N/A

3. Article C Re-establish Parks & Recreation Department – Maria Zodda

Discussion **Zodda** – She served on the Parks and Recreation Commission for 9 years. Read a statement into the record. Since the department was eliminated, the playgrounds and fields suffer disrepair and no new grants applied for; feels the Department of Public Works (DPW) stewardship isn't working. She feels a separate department and department head are needed to maintain the facilities; without a stand-alone department, Nantucket does not qualify for State grants.

Schaefer – Asked if when the Parks and Recreation Department (P&RD) was eliminated if the Town looked at various departments and why DPW was chosen.

Gibson – The DPW had the equipment; the P&RD was eliminated because the Town was cutting back at that time.

Roche – Asked about the design for field house.

Gibson – The Select Board agenda has that up for discussion. Mr. McNeil has met with stakeholders, and we have contractor ready to go once the Select Board approves the design. It had been delayed due to non-agreement among stakeholders.

Roche – Asked how FinCom would have known there were open capital projects.

Gibson – Anyone can ask, and Town Administration has regular reviews throughout the year. Tracking open capital projects requires time and manhours; we are hiring an Assistant Director of Finance whose duties will include that.

Maury – Agrees that a separate department could take better care of the assets, but we are looking at a \$5m override for Our Island Home; we can't pay for this without cutting costs elsewhere. We need to know what the cost for a new department would be and where cuts would be made.

Glowacki – Asked if there were the money for P&RD, would the Town Manager support it.

Gibson – The DPW needs staff to carry out maintenance tasks; the director has asked for 7 positions for FY2021 and we recommended one. The maintenance of fields and parks has increased; there is a dedicated crew that's getting around; four or five years ago, maintenance of fields was an issue.

Grause – The vote on this would be a non-binding directive even with an appropriation request.

Giorgio – The first part is non-binding to direct the Town to create the department and hire a director; the second part is to appropriate funds necessary in FY2021 to pay for the new director. A positive motion would require a dollar amount and funding source.

Roche – Asked why we hadn't applied for grants.

Gibson – We didn't have the man power and there are limitations on use.

Motion No action at this time.

Vote N/A

4. Article WW Bylaw Amendment: Chapter 66 – Prohibit Obstructions on Beach – Burton Balkind

Discussion **Balkind** – Since there was a presentation, he's here to answer questions.

Vieth – Asked how no trespassing is addressed when you can walk through it.

Giorgio – That is an enforcement question. Meaghan Perry was interested in coming up with some reaction to what happened with dogs on the beach at Madaket. It's very clear that under colonial law, the public has a right to fishing, fowling, and navigation within the intertidal zone. Putting up a barrier could be interpreted as an attempt to prevent someone from exercising their rights under colonial law. How it would be enforced would present a challenge. We have given two opinions on those colonial ordinances and if the public has any rights beyond the fishing, fowling, and navigation. This is an attempt to get something on the books to allow people and to express their opinions. You could take a pathway around the entire Island, but the cost associated with that would be astronomical. One-big-beach easement has been an attempt at opening all the beaches to public use. The way this is drafted, it allows for permitted erosion control structures. Fencing to protect endangered species is an exception in this article.

Grause – Asked if it's known how many properties own to the low-water mark versus high water.

Giorgio – It depends on the beach; you can't make a blanket statement.

Schaeffer – The issue isn't walking but intrusion.

Giorgio – On the Cape we've seen substantial litigation by property owners trying to exercise their rights of ownership.

Balkind – Massachusetts is one the few states that allows ownership to the low water mark; unless it's stated in the deed, ownership is probably to the low-water mark. As far as enforcement, we have leash laws and trespassing laws. This article is to prevent people from blocking off the beach just because they can. He believes a bylaw would give the Town more leverage and ability to enforce blocking access.

Giorgio – If he were a property owner who objected to dogs pooping on his beach, he'd justify his fencing on the beach for health purposes. Some towns don't allow any dogs on any Town beaches.

McEachern – When you use Colonial Ordinance, asked if the Waterfront Protection Act Chapter 91 protects that ordinance.

Giorgio – Chapter 91 is for buildings. This is a significant issue; he asked for a second opinion from his office, which was forwarded to the Town. You can't come up with a blanket answer, which is stated in our opinions; you would have to do a title search. Each property could be potentially different.

Maury – Suggested passing this bylaw would infringe upon the rights of the owners.

Giorgio – This bylaw would have to be approved by the Attorney General; he doesn't know how she would rule.

Grause – This isn't a financial issue and thinks FinCom could vote to take no action; he thinks it will pass at ATM.

Maury – He thinks this is out of FinCom purview.

Kronau – Every article that comes in front of us; in some cases, the question is it a FinCom issue. Anything that could have a financial impact to the Town, FinCom has a responsibility to form an opinion.

Giorgio – Even if the Charter says FinCom should make a recommendation, you don’t have to make a recommendation to pass or not. You can recommend that an article doesn’t have a financial impact, you can say that and recommend take no action; it will still be put on the floor at ATM for discussion.

Maury – Read the Town Code provision for FinCom.

Discussion on how to vote on this article and others like it.

Gibson – Read the Charter.

Roche – Asked if there is a state trend for “spot government” through bylaw articles.

Giorgio – Nantucket is unique in bylaws that require Town Meeting vote. As he said, there is a clear trend going on with articles, which he believes is dangerous in that it blurs the line between legislative. It ultimately would become a huge problem. Cited previous Nantucket ATM warrant bylaw articles that passed ATM and went to State legislature; they approved them “cautiously.”

Maury – It’s a problem when an article usurps the role of a Town department.

Motion No action at this time.

Vote N/A

V. OTHER FINCOM BUSINESS

1. Committee Reports.
 - a. CRC: Maury – Moving into deliberations but have a bulk of site visits to do. Have over \$900,000 in requests. Will come to FinCom with our proposal on February 11th.
2. Our Island Home (OIH) budget reviewed for a future date and won’t be presented on Saturday.
3. 123 Articles on the Town Warrant to be adopted January 22nd and will be posted on the website by that Friday.
4. Anyone who has a request for Mr. Turbitt, send them to Ms. Kronau first and she will forward them to avoid duplication; same with appointments.
5. Next meeting: Saturday, January 18, 2020; 8:30 a.m.; 4 Fairgrounds Road Community Room
 Departmental budget presentations – No OIH or Airport

Motion to Adjourn at 5:47 p.m. accepted by unanimous consent.

Submitted by:

Terry L. Norton