



Town of Nantucket Finance Committee

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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 30, 2020

4 Fairgrounds Road, Community 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; Rob McNeil, Director Department of Public Works (DPW)

Attending Members: Kronau, Maury, Grause, Glowacki, Vieth, Harrington

Absent Members: McEachern, Roche, Schaeffer

Town Counsel: John Giorgio, K&P Law

Documents used: Draft minutes for January 21, 23, & 27, 2020; Warrant Articles for 2020 Annual Town Meeting; handout from Mr. Clifford Williams regarding Article 35; handout from Vallorie Oliver regarding Article 58; Historic District Commission Enabling Legislation; K&P Law opinions on Articles

Agenda adopted by unanimously consent.

I. ANNOUNCEMENTS

II. APPROVAL OF PRIOR MEETING MINUTES

1. January 21, 23, & 27, 2020: No action taken at this time.

III. PUBLIC COMMENT

1. None

IV. DISCUSSION AND POSSIBLE ADOPTION OF MOTIONS FOR WARRANT ARTICLES FOR 2020 ANNUAL TOWN MEETING (ATM)

1. Article 35 (Appropriation: Incineration of Solid Waste) Cliff Williams

Discussion **Williams** – This to implement gasification of Construction and Demolition (C&D) and Solid Waste; gasifiers are made by Sierra Company and producing energy, generating income, and producing no emissions. It can pay for itself in 2 years.

Kronau – There is a capital expense noted of \$13.7m; confirmed that is for the gasification plant. Asked why the Town hasn't done this.

Williams – The technology isn't that old and has advanced quickly.

McNeil – The Town has been working through its consultant over the last 6 months to conduct monthly waste summary meetings. On session was on technology having to do with gasification. We recognize technology has changed and improved. There is a State moratorium on incineration; that doesn't stop the Town from trying a pilot program. We are considering it for what happens after 2025 when the Waste Options agreement expires; technology will play a role in the future agreement. This article "jumps in with both feet" rather than looking at how to get there. This would be a bid project; in the next year we will be working to get an expression of interest.

Turbitt – He's not sure about the procurement cycle for a project like this.

Giorgio – The Town has an existing contract and there is a minimum amount of solid waste to be provided for processing; he thinks it would be difficult to institute a new technology under the existing contract. The opportunity to do that is in 2025 when the existing contract

terminates. For an investment of this kind, you're talking about another long-term contract if you want the operator to finance that for the Town. The rates the Town would pay would include the debt service. In terms of procurement, the 18 months would have a lot of work the Town would have to do to come up with a scope of services that is feasible. Starting in 2022 or 2023 is when the Town would start working on the scope of services.

Kronau – Asked if Waste Options has any experience with gasification.

McNeil – Waste Options has partners with technology folks but isn't active in any technologies that he's aware of.

Grause – Reading this article it says incineration not gasification; asked if that wording would be changed. Also, it states the Town would raise an appropriate money.

Maury – If we appropriated \$13m and Waste Options is out, wonders who would do this.

Williams – He was in school when Nantucket started talking about the landfill; feels we need to start moving forward on it.

Harrington – Asked how many gasification plants are in existence now.

Vieth – The referenced company has a contract with the Department of Defense, so it is in use; she's heard about this. Asked Mr. McNeil what other technologies have been discussed.

McNeil – We've seen no hard proposals, just discussed paralysis, gasification, and incineration. All of them have been at pilot scale; that would be the most appropriate level at which to start to ensure it is fully operational.

Glowacki – He likes people coming up with ideas addressing issues for the Town and the technology should be discuss; doesn't know what to do about this article.

Maury – He doesn't want to buy it then not use it.

Giorgio – It isn't as simple as appropriating money to spend later; this amount would require an authorization to borrow subject to a debt exclusion; it would be on the books and affect the bond rating. He doesn't recommend putting a debt like this on the books without using it. Bond Counsel might not approve this. Lastly, do you want to spend the money and build yourself or enter into a contract for a firm to finance and build the facility. You currently have a major contractual commitment. This needs to be part of the long-t5erm plan on how to operate the landfill after 2025.

Gibson – This has not gone through the proper Capital Program Committee process. This article also doesn't mention anything about how it would be operated; also, it isn't allowed in Massachusetts and would have to go through a massive permitting process.

Kronau – Asked Mr. Glowacki to write a comment recognizing the Town should look toward more innovation in our next landfill contract process.

Motion **Motion not to adopt.** (made by: Grause) (seconded)

Vote Carried unanimously

2. Article 37 (Appropriation: Hazardous Waste) Andrew Lowell

Discussion **Lowell** – He feels hazardous waste is being improperly disposed of in a lot of job sites; he's been told it's been found in porto-potties. We have more hazardous waste collection days than other municipalities but neither do we have other towns to dispose of it between those dates. Until more research is done, we won't know the exact cost but feels we should move forward on this. The \$1m would be to construct a two-car garage-size facility. Our environment is too fragile not to have a collection site that's open one or two days a week; every other month isn't convenient enough, so the waste gets stashed or improperly disposed.

McNeil – Typically the Town doesn't have a "horse in the race" but we could make appropriate recommendations. The current situation is 6 events a year between April to December; we do have a fair bit of flexibility to accommodate people who use our program. Tow of Nantucket has the most municipal events than other communities in the Commonwealth. Also, the Select Board has voted to extend this to small-quantity commercial generators; there's no other example of that in the State. The Town has worked to make hazardous waste disposal convenient. Each event costs about \$2,000 per event. Part of our waste summit events focused

on hazardous waste; it had the highest participation with a lot of discussion about convenience. Haulers used to collect and store the material for their customers; they all said that process ceased when their insurance companies said it was not insurable due to questions about contamination and handling. Addressed the issues of cost regarding maintaining and manning a facility that would be open to receive hazardous waste at the haulers convenience; there would be issues if the facility reaches capacity before disposal. Currently the small quantity commercial generators call ahead of time to tell us how much is being brought before the event day. The current contractor is highly trained to handle hazardous waste. Additional discussion at the forum was round the fast-moving building trade with off-Island contractors rushing to the boat and not having sufficient storage on Island for the material. He feels constructing this facility would not solve the issue of people too busy to take advantage of the current program. We need to get a full handle on what the problem is.

Glowacki – Asked what the average collection mass is.

McNeil – Between 100 and 150 participants at each event. That’s pretty consistent participation. Each full load is considered 25 gallons. Most residential participants bring in what might be considered a half load; commercial entities will bring in up to 10 25-gallon containers. All this comes to us for free.

Glowacki – Asked if Mr. McNeil has seen any improperly disposed hazardous waste.

McNeil – Not in the 3 years he’s been here.

Val Oliver – Asked if solar panels are considered hazardous waste. There’s an influx of solar panels and wonders what will happen when those need to be replaced.

McNeil – Most of these agreements are 20- to 25-year terms; general when they are removed it would be considered C&D debris, which is taken off Island.

Grause – Asked if the 6 events are for small and residential users and if there are any large-volume users on the Island.

McNeil – There are three categories: large, small, and very small. Each has specific criteria thresholds and those are on the DPW website; all commercial vendors handling hazardous waste should be registered with the State.

Grause – Asked if DPW stores any hazardous waste between the events.

McNeil – We neither collect nor store; we only store our own hazardous material, which we generate.

Vieth – Asked the type of hazardous waste is the most collected.

McNeil – Most of it is waste oil from landscapers. By law used oil is to be accepted at the point of sale.

Motion **Motion not to adopt.** (made by: Vieth) (seconded)

Vote Carried unanimously

3. Article 58 (Zoning Bylaw Amendment: Commercial Mid-Island – Height Restriction) Vallorie Oliver

Discussion **Oliver** – This would modify a previously approved raise in height within the mid-Island overlay district. She realizes the Planning staff are vehemently opposed to this and thanks FinCom for the opportunity to present this. Read a statement into the record targeting the idea of car-free residents and 40-foot top-floor housing becoming high-end rentals and the architectural language becoming urban. The driving force for the article is her daily navigation of driving and parking in the mid-Island area even in the winter.

Patrick Ridge – He doesn’t support this article and asked FinCom for a negative recommendation. Reviewed why RC2 went to CMI. He owns property in the CMI district, which has work-force housing on the 3rd floor.

Maury – CMI allows more dwelling per square foot than RC2.

Ridge – Yes and you can build to 40 feet.

Oliver – Mr. Ridges buildings are to 30 feet, which is the Historic District Commission (HDC) standard; the institutional structures are a different category the commercial or residential.

Maury – He’s gotten phone calls about why there is no reason to limit this because HDC has absolute discretion they can cap; however, his experience is people not happy with HDC’s decision appeal it. The zoning bylaw allows building up to 40 feet; if HDC denies that height because it’s not in character with the neighborhood, asked if HDC’s decision would be supported.

Oliver – HDC hasn’t approved anything at 40 feet so the question of support is up in the air. HDC held a joint meeting with the Planning Board to collaborate on; the problem with the 40-foot is when people buy property, they are told they can build up to 40 feet; that causes a battle for HDC. Mid Island does have a character and we’ve worked hard for 20 years to make sure businesses fit that character. She doesn’t see the intent of increasing workforce housing with the 40-foot height, but it won’t be the reality when that top floor is a water view.

Giorgio – Whenever there is a warrant article proposing zoning bylaw amendment, it has to be referred to the Planning Board for a recommendation. That is a standard public hearing process. It is the public hearing process where concerns are discussed and vetted.

Kronau – The Planning Board motion was to take no action.

Giorgio – Explained the difference between take no action and not to adopt: a negative action, such as not to adopt, bars the article from being resubmitted for two years.

Glowacki – Asked if there are any 40-foot structures seeking approval at this time.

Oliver – There was an apartment building across from Our Island Home a couple of years ago and a couple of condominiums across from Marine Lumber. HDC did approve structures but not at 40 feet.

Maury – If you can get 3 floors in 30 feet, can you get 4 floors in 40 feet. He keeps hearing that this is about getting 3 full floors above ground, but for him that doesn’t ring true.

Nan Sperry – Asked if there would be a consideration for a building height increase specifically for affordable housing.

Vieth – It’s hard to single out a property within a zone.

Oliver – She’s talking about individual properties.

Maury – Before voting on this, he’d like to provide the commissioners with copies of the HDC enabling legislation; this gets to the heart of HDC protecting the aesthetic character of the Island. Once you change the character of an area, there’s no going back. The HDC needs to zoning change to go back to 30 feet if they are going to fulfill their mission of protecting the integrity of the neighborhood.

Kronau – Asked if 35 feet would be better.

Oliver – She doesn’t have the language behind the shift up; there was a reference to encouraging car-free housing.

Maury – Asked if the HDC supports this article.

Oliver – The HDC as an entity wasn’t able to get an article together for an article; they agree on the 30-foot height limit.

Maury – Noted that municipal buildings would be exempt from the 30-foot height limit.

Motion No action at this time.

Vote N/A

4. Article 77 (Bylaw Amendment: Merchandise and Wares) David Iverson

Discussion **Iverson** – This is about people standing in doorways and trying to lure customers in with free samples; that has negatively impacted businesses along Centre and Main Streets. Mr. Giorgio suggested some bylaw changes, which are this article.

Giorgio – This is going to be more than “as applied.” Often a bylaw is innocuous on the face, but the attorney general will issue a caution that it doesn’t infringe on First Amendment rights. He wouldn’t be too concerned on that regarding recommending this. FinCom should focus on the substance.

Maury – This harkens back to keeping the character of Nantucket which brings people to the Island; it stops the “mall mentality.”

Glowacki – Asked if this would impact the bike rental business; those are part of Nantucket’s character.

Iverson – We’re trying to target the free samples being handed out; that isn’t the same as what the bike shops do.

Gibson – The bike-on-the-street display is separate, and a bylaw exists which addresses that. Also, locally-grown food and locally caught fish are also exempt from this article.

Grause – He hasn’t witnessed this; asked if it is so bad that we need a bylaw.

Iverson – One point is a questionable business practice. Two his mother-in-law owns a shop on Centre Street next to one where this was taking place; people crossed the street to avoid them thus impacting her business. You shouldn’t be able to affect other businesses or people’s personal space. They were on the Hyline Wharf for a year then moved up to the old Tonkin building and next to Congdon and Coleman on Centre Street.

Motion **Motion to Adopt.** (made by: Maury) (seconded)

Vote Carried 5-1//Grause opposed

5. Article 36 (Appropriation: Legal Opinion for Beach Access) Cliff Williams

Discussion **Williams** – He hopes counsel can aid in the amount of money that will be necessary to open all beaches to access. Everyone needs to get on the same page regarding public access to privately owned beaches. He thought the One Big Beach program solved the issues but apparently not.

Maury – Asked if there is any ambiguity on this.

Giorgio – We have issued two opinions that there was ownership to the low-water mark excluding fishing, fowling, and navigation. Emphasized that in those opinions, they were dealing with specific facts about a specific parcel of land; the opinions were based upon the deed particular to that property. You can’t apply those opinions to every parcel on Island; it would be a very costly title search to ascertain each deed. The Town needs to apply the law on a very specific set of facts as each situation arises; it could be a very expensive proposition and unfocused without a specific set of facts. You are going to have to put a number on this appropriation; and that will be spent.

Williams – It is the opinion of Town Meeting whether or not to fight this battle. The intent of the law was initially to encourage people to build businesses and docks on Boston Harbor; that has nothing to do with Nantucket. He doesn’t believe we have to go deed by deed.

Maury – He doesn’t know what the problem is that is trying to address. He’s never been blocked from any beaches he wanted to go to and isn’t aware of where this is a problem.

Williams – It’s to bring up and clarify the 1870 Madaket Ditch legislation. He doesn’t think the laws established when Nantucket was part of the State of New York could be discharged once the Island became part of Massachusetts.

Kronau – Read the article: to raise and appropriate a sum of money for a legal opinion to allow free access to the tidal flats.

Vieth – She feels like the law works; everyone complained, the property owner was summoned to the Select Board and ultimately took the fence down.

Maury – We have two opinions we paid for and we understand those opinions and laws. It seems that this is because people don’t like that opinion, which the Town paid for, so want to get another opinion that Town Counsel won’t stand behind.

Giorgio – We carefully researched and wrote the first opinion; that work was done by Vicky Marsh, our most senior real estate attorney. Subsequently, he asked Judith Cutler, a former attorney currently a chief judge for the land court, to look at everything and issue an opinion; her opinion was the same as Ms. Marsh.

Motion **Motion not to adopt.** (made by: Maury) (seconded)

Vote Carried 5-1//Glowacki opposed

6. Article 63 (Affordable Housing Requirements) Andrew Lowell

Discussion **Giorgio** – Mr. Lowell asked K&P Law to look at the articles as they relate to zoning; he sent that opinion to Mr. Lowell on Monday. This isn't a bylaw but a directive to the Town to look at a regulation that would require every 10th unit constructed would be affordable; this would apply to any residential construction including one allowed by right. We don't think that bylaw would pass muster and expose the Town to significant liability. This isn't an inclusionary bylaw where you get additional density contingent upon construction of affordable housing. We doubt it would be approved by the attorney general.

Motion **Motion not to adopt.** (made by: Glowacki) (seconded)

Vote Carried unanimously

7. Article 64 (Public Property Damage) Andrew Lowell

Discussion **Giorgio** – This is a non-binding vote but directs PLUS to deal with what happens regarding damage to Town property based upon a building permit. He sees no issues with this; it doesn't require particular action.

Gibson – From your budget presentation, you know DPW has an expense request for a Construction Supervisor; part of the aegis of that position is to create a robust process for just what this article is getting at. There are too many times when builders cut into bike paths and roads. The Planning Board has some measures in place when they issue a special permit. Sometimes things happen next to a residential construction that impacts a bike path or Town road and the Construction Supervisor would address those situations. We already have road opening regulations in place; we could expand that.

Kronau – Mr. Vorce said that it would be hard to prove that damage 500-feet away was caused by construction.

Maury – He likes the idea but agrees 500 feet is too much.

Discussion about a more reasonable distance from a property and the extent of the road opening regulations as they relate to these situations.

Grause – He will write a comment encouraging the Town to review the pertinent existing regulations.

Motion **Motion to take no action.** (made by: Maury) (seconded)

Vote Carried unanimously

8. Article 81 (Bylaw Amendment: Washington Street Parking Lot) Robert DeCosta

Discussion **Giorgio** – In his comments, it states the article is legally defective; under State law, the authority to adopt parking regulations is by general bylaw or by the select board. By law, you can't submit a decision of the Select Board to a Town Meeting vote.

Kronau – If this is legally defective, she doesn't think we should spend a lot of time discussing this.

Glowacki – He would like Mr. DeCosta the opportunity to amend this so it isn't legally defective.

Maury – The question is can this be legally cured in a motion.

Giorgio – That question is a decision that the moderator makes; the reason is any motion can be made on an article as long as it is within scope of the article. The consideration for answering that question is if a Town voter who read the article was sufficiently warned that a motion might be made that would significantly change the scope. This is a very delicate area because Town Meeting and Select Board have dual authority here.

Vieth – For sponsors who say they will amend their article, can they do that any way they want to on Town Meeting floor.

Giorgio – If there is a motion to take no action, the moderator will give the sponsor a chance to fix it to be a positive vote and it has to be in writing. Everyone has to know what is in the record.

Motion No action at this time.

Vote N/A

9. Article 66 (Town Meeting Vote Required to Implement On-street Paid Parking) Christopher Glowacki
Discussion **Glowacki** – Explained how this is different from Article 81. He understands that this can't take away Select Board authority. He had initially wanted to ask for a moratorium on on-street paid parking; he's tried to reach the Moderator without success.
Giorgio – He too would want to talk to the Moderator; he doesn't want to box her into a position.
Kronau – She would have loved this to propose a moratorium; it would have provided breathing room for both sides of the argument to work it through.
Maury – Agrees. Out of courtesy, we should wait for Mr. Glowacki to speak with the Moderator.
Gibson – The Select Board has a public hearing scheduled on paid parking on February 19th.
Motion No action at this time.
Vote N/A

V. NEXT MEETING DATE/ADJOURNMENT

Date: Monday, February 3, 2020; 4:00 p.m.; 4 Fairgrounds Road Community Room

VI. COMMITTEE REPORTS AND OTHER BUSINESS

1. None

Motion to Adjourn at 6:06 p.m. accepted by unanimous consent.

Submitted by:

Terry L. Norton