

SELECT BOARD

Minutes of the Meeting of April 12, 2023. The hybrid meeting took place in person at the Public Safety Facility Community Room at 4 Fairgrounds Road; and, via remote participation using Zoom Webinar. Members of the Board present were Jason Bridges, Dawn Holdgate, Matt Fee, Dr. Malcolm MacNab and Brooke Mohr.

I. CALL TO ORDER

Chair Bridges called the meeting to order at 5:30 PM following the Pledge of Allegiance.

II. SELECT BOARD ACCEPTANCE OF AGENDA

The agenda was accepted as posted with one change: item IX - 5 is withdrawn.

III. ANNOUNCEMENTS

1. The Select Board Meeting is Being Audio/Video Recorded.

2. No Select Board Meeting on Wednesday, April 19, 2023 (School Vacation Week); Next Meeting to be Held on Wednesday, April 26, 2023.

Town Manager C. Elizabeth Gibson noted that the Nantucket Civic League is hosting its annual "Meet the Articles" forum for the 2023 Annual Town Meeting, next Wednesday, April 19th from 4pm – 7pm. She said the forum will be remote and the link will be made available on the Town website.

Operations Administrator Erika Mooney reviewed the annual committee appointment timeline. Ms. Mohr encouraged interesting members of the community to consider volunteering for a Town board, committee or commission.

3. Select Board Announcements/Comments.

Mr. Fee asked when the next Nantucket Regional Transit Authority Advisory Board meeting will be. Chair Bridges said it is tentatively scheduled for May 3rd.

IV. FOLLOW-UP ON COMMENTS FROM PRIOR SELECT BOARD MEETINGS

There were no follow-up comments.

V. PUBLIC COMMENT

There was no public comment.

VI. NEW BUSINESS

There was no new business.

VII. APPROVAL OF MINUTES, WARRANTS AND PENDING CONTRACTS

Mr. Fee moved approval of items VII 1 – 2; seconded by Ms. Holdgate; all in favor, so voted.

1. Approval of Minutes of April 5, 2023 at 5:30 PM.

2. Approval of Treasury Warrants for April 12, 2023.

VIII. CITIZEN/DEPARTMENTAL/COMMITTEE REQUESTS

1. Nantucket Community Television (NCTV 18) Annual Report. NCTV Executive Director Lisa Getter and NCTV Government Services Manager Charles Douglas presented NCTV's 2022 annual report, as contained in the Board's agenda packet, beginning with a video highlighting NCTV activities from 2022. Chair Bridges commended the accomplishments of NCTV over the last several years. Ms. Mohr, noting that she is the Select Board representative on the NCTV board, said that the board meetings are "very uplifting".

IX. PUBLIC HEARINGS

1. Public Hearing to Consider Application for Multiple Amendments for Seasonal All-Alcoholic Beverages Restaurant License for Oswack Associates LLC d/b/a Bar Yoshi, Terrance Noyes, Manager, for Premises Located at 21 Old South Wharf to Add Indoor and Outdoor Seating in Adjacent Structure, Change of Beneficial Interest and Change of Category (Continued from March 15, 2023). Chair Bridges opened the hearing. Mr. Fee recused from this agenda item and left the table to take a seat in the audience. Licensing Administrator Amy Baxter also commended the NCTV presentation. She reviewed the specifics of this application. She noted compliance issues with the applicant, including a cease and desist order issued by the Health Department. She said that while steps have been made to address the compliance issues in a progressive manner, she considers the situation to be at a "final warning" status.

Ms. Mohr asked about the "final warning" status of the applicant and whether it would be wise to approve the application at this time. Ms. Baxter responded and said that she believes things have changed to a point where the applicant has understanding as to the need to maintain compliance. Attorney Steven Cohen, representing the applicant, explained the steps that have been taken to comply with Health Department citations. He said these are "code issues" not "behavior issues". Ms. Mohr asked how any further violations would be handled. Ms. Baxter responded and said that a hearing would be most likely scheduled before the Select Board.

As there was no public comment, Ms. Holdgate moved to close the hearing; seconded by Dr. MacNab; all in favor, so voted.

Ms. Holdgate moved approval; seconded by Ms. Mohr; so voted 4-0.

Mr. Fee returned to the table.

2. Public Hearing to Consider Application for Alteration of Premises of Annual All-Alcoholic Beverages Restaurant License for Ca'Mercante, LLC d/b/a Greydon House, Taylor Oliver, Manager, for Premises Located at 17 Broad Street, to Remove all Hotel Rooms and General Public and Storage Areas of the Hotel, Leaving only the Restaurant, Patio and Associated Storage Areas on the License; Change of DBA from Greydon House to Via Mare. Chair Bridges opened the hearing. Ms. Baxter reviewed the application, noting that the proposed separation of the restaurant from the hotel is similar to the JC House and the Tap Room.

As there was no public comment, Ms. Holdgate moved to close the hearing; seconded by Ms. Mohr; all in favor, so voted.

Ms. Holdgate moved approval; seconded by Ms. Mohr; all in favor, so voted.

3. Public Hearing to Consider Application for New Common Victualler with Annual All-Alcoholic Beverages Hotel License for Faros 17 Broad, LLC d/b/a Greydon House, Garison Beale, Manager, for Premises Located at 17 Broad Street. Chair Bridges opened the hearing. Ms. Baxter reviewed the application.

As there was no public comment, Ms. Holdgate moved to close the hearing; seconded by Mr. Fee; all in favor, so voted.

Ms. Holdgate moved approval; seconded by Dr. MacNab; all in favor, so voted.

4. Public Hearing to Consider Application for New Non-Live Entertainment License for Faros 17 Broad, LLC d/b/a Greydon House, Garison Beale, Manager, for Premises Located at 17 Broad Street. Chair Bridges opened the hearing. Ms. Baxter reviewed the application. She emphasized there is to be no exterior music whatsoever, including on the patio. Mr. Fee said he thinks this restriction is a good idea and he appreciates Ms. Baxter bringing it forward and explaining it. Leslie Delaney Hawkins, attorney representing the applicant, commended Ms. Baxter for her assistance.

As there was no public comment, Ms. Holdgate moved to close the hearing; seconded by Ms. Mohr; all in favor, so voted.

Ms. Holdgate moved approval; seconded by Dr. MacNab; all in favor, so voted.

5. Public Hearing to Consider Application for Alteration of Premises of Seasonal All-Alcoholic Beverages Hotel License for Nantucket Island Management, LLC d/b/a White Elephant Hotel Residences, Bettina Landt, Manager, for Premises Located at 19 North Water Street, to Add Portion of Building 11 Including the Ballroom Back to Licensed Premises, Effective July 29, 2023. This matter was withdrawn due to insufficient abutter notification.

6. Public Hearings to Consider Applications for Alteration of Premises and Sidewalk Seating Permit Applications for the Following Downtown Core Restaurant Locations; Permits Allowed by Chapter 42 of the Acts of 2022 (Pandemic-relief Provisions Related to Restaurants) Expire April 1, 2023; All Permits Issued after April 1 Must be Approved by Select Board and Approved as Alteration of Licensed Premises by Alcoholic Beverages Control Commission for Alcohol Service; No Entertainment is Allowed on Sidewalk Spaces. Ms. Baxter explained current state allowances regarding outdoor dining and reviewed the process and requirements for local approval. Chair Bridges opened all public hearings and noted each would be closed individually as they come up on the agenda.

a) EGB Enterprises, Inc. d/b/a The Rose and Crown, Debba Pitcock, Manager, Seasonal All-Alcoholic Beverages Restaurant License, Premises Located at 23 South Water Street. Ms. Baxter reviewed the application and spoke on consistency with some of the outdoor dining features of all outdoor dining approvals.

As there was no public comment, Ms. Holdgate moved to close the hearing for 6a; seconded by Mr. Fee; all in favor, so voted.

Ms. Mohr moved approval of 6a; seconded by Ms. Holdgate; all in favor, so voted.

b) Surfside Smokehouse, LLC d/b/a Backyard BBQ, Fredrick Bisallion, Manager, Annual All-Alcoholic Beverages Restaurant License, Premises Located at 20 Straight Wharf. Ms. Baxter reviewed the application. She noted an issue with regard to alcohol crossing a public way, which requires specific approval.

As there was no public comment, Ms. Holdgate moved to close the hearing for 6b; seconded by Ms. Mohr; all in favor, so voted.

Ms. Holdgate moved approval of 6b; seconded by Mr. Fee; all in favor, so voted.

c) NanTaco ACK, LLC d/b/a NanTaco, Cynthia Milazzo, Manager, Annual Wine and Malt Beverages General-On-Premises License, Premises Located at 21 South Water Street. Ms. Baxter reviewed the application. Some discussion followed.

As there was no public comment, Ms. Holdgate moved to close the hearing for 6c; seconded by Dr. MacNab; all in favor, so voted.

Ms. Holdgate moved approval of 6c; seconded by Ms. Mohr; all in favor, so voted.

d) Ethos Nantucket, LLC d/b/a Ethos Nantucket, Emily Dusseau, Manager, Seasonal All-Alcoholic Beverages Restaurant License, Premises Located at 18 Broad Street. Ms. Baxter reviewed the application.

As there was no public comment, Ms. Holdgate moved to close the hearing for 6d; seconded by Ms. Mohr; all in favor, so voted.

Ms. Holdgate moved approval of 6d; seconded by Ms. Mohr; all in favor, so voted.

e) Keeping the Beet, LLC d/b/a The Beet, Felino Samson, Manager, Annual All-Alcoholic Beverages Restaurant License, Premises Located at 9 South Water Street. Ms. Baxter reviewed the application.

As there was no public comment, Ms. Holdgate moved to close the hearing for 6e; seconded by Ms. Mohr; all in favor, so voted.

Ms. Holdgate moved approval of 6e; seconded by Ms. Mohr; all in favor, so voted.

f) Lemon Press Market, LLC, d/b/a Lemon Press, Rachael Afshari, Manager, Seasonal All-Alcoholic Beverages Restaurant License, Premises Located at 41 Main Street - Dinner Service Only. Ms. Baxter reviewed the application. She requested authorization to adjust the number of seats and/or tables as needed, based on the limitations of the sidewalk at this location to meet handicap requirements and/or to address other issues that might arise, given that the sidewalk is in a very busy location. She noted this is for dinner service only from 5:00 to 10:00 PM.

As there was no public comment, Ms. Holdgate moved to close the hearing for 6f; seconded by Ms. Mohr; all in favor, so voted.

Ms. Holdgate moved approval of 6f, with the stipulation that the number of seats/tables may be adjusted by the Licensing Administrator as needed; seconded by Ms. Mohr; all in favor, so voted.

g) One Main Street, LLC d/b/a The Club Car, Matthew Sullivan, Manager, Annual All-Alcoholic Beverages Restaurant License, Premises Located at One Main Street. Ms. Baxter reviewed the application.

As there was no public comment, Ms. Mohr moved to close the hearing of 6g; seconded by Ms. Holdgate; all in favor, so voted.

Ms. Mohr moved approval; seconded by Mr. Fee; all in favor, so voted.

Chair Bridges commended Ms. Baxter for her work to sort out the outdoor dining, which was a tremendous amount of effort. Ms. Holdgate concurred and thanked Ms. Baxter for her thoroughness. Bryan Swain, attorney for Lemon Press asked if a “change in beneficial interest” was approved. Ms. Baxter said it did not need to be part of the public hearing for Lemon Press and would be submitted with the application.

7. Public Hearing to Consider Accepting the Nantucket Open Space and Recreation Plan Pursuant to State Division of Conservation Services Regulatory Process. Chair Bridges opened the hearing. Ms. Mooney noted that written comments from the public on the Plan were advertised as being able to be submitted to the Town Administration office and none were received. Planning Director Andrew Vorce reviewed the proposed Plan. He noted that the Plan before the Board has taken a significant amount of time, due to COVID, personnel changes and consultant changes. He said the Plan before the Board is “fairly final”, that there may be a few outstanding items and some changes could still be made. He said the Planning Board and Planning Commission have approved the Plan subject to any non-substantive changes. He introduced Brandon Kunkel of Weston & Sampson, the firm engaged to develop the Plan. Mr. Kunkel reviewed the development process and thanked all parties involved in the process. He said the Plan is intended to be a guideline for the next 20 years or so, with an update that should be done in 2029. He noted it is a dynamic document and explained its purpose. He reviewed several presentation slides illustrating the highlights of the Plan, noting Town officials and others who were instrumental in completing the Plan. He spoke on the highlights of what those surveyed are seeking with respect to recreational opportunities, needs and desires. He noted areas where the Town is “short” on recreational activities, such as playing fields. Emily Molden of the Nantucket Land Council commented on the Plan, indicating that she submitted some comments and questions to Planning staff that have not been incorporated into the Plan. She spoke on these, indicating they mostly related to using land conservation tools and protecting Nantucket’s water resources. She added that the Plan is used for a variety of purposes, including an action plan. She suggested an analysis of “actionable items” in a future update of the Plan. Jill Vieth commented on an indoor athletic facility and hopes that opportunities can be explored for this. Hillary Rayport commented that the public process is important and said she does not believe there were any public informational sessions or community engagement. She said she believes assertions that there was public outreach are misleading and that the Plan should not be given to the state with that information. Tom Dickson concurred with Ms. Vieth’s comment. Tucker Holland applauded the work that has gone into the Plan. He suggested that the Board consider how the items in the Plan are worded with respect to the Board’s Strategic Plan Housing Goal; and, that partnerships to accomplish community goals should be explored to determine if more collaborative efforts could help with achieving these goals. Ms. Vieth spoke further on the community building aspects of the Plan and said it should be prioritized. Ms. Mohr said that some of the information in the Plan is outdated and should be updated. She asked if there is a breakdown of multi-lingual responses to the survey. Mr. Kunkel said he could provide that. Kevin Corn of the “Sustainable Sports Foundation” spoke on his organization’s goals to further youth sports activities on the Island. He spoke in favor of an indoor sports facility and commented that he and others he knows did not receive the survey. Discussion

followed on the benefits of an indoor sports facility. Dr. MacNab said an updated Plan should be started immediately upon adoption of this one. He noted that outreach was not sufficient with this Plan. Mr. Fee spoke on the importance of outreach. He made some other comments about some of the recommendations in the Plan. Peter Schaffer said the presentation was boring and terrible; and, said that conservation land should be reconsidered for other uses. Ms. Rayport spoke again on the need for public engagement for this Plan. D. Anne Atherton said that Nantucket Ice is an example of a privately-funded indoor facility. Mary Longacre speaking as chair of the Nantucket Planning and Economic Development Commission, said she is pleased that people attended tonight to comment on the Plan, appreciates their comments and is listening. Ms. Mohr said she does not see any mention of indoor facilities in the Plan and is not sure she is ready to vote on it tonight.

Ms. Mohr left the meeting at 7:32 PM; she returned at 7:34 PM.

Mr. Vorce said the Plan has been posted for public comment for months but that there is no rush to submit it to the State and adoption could be delayed to provide the opportunity to conduct more outreach. Mr. Fee spoke on the history of the development of the Delta fields through community efforts and private fundraising. Dr. MacNab suggested that Mr. Vorce provide a plan for additional outreach. Mr. Vorce agreed to do this. Ms. Holdgate suggested that attendees at this meeting provide written comments to the Planning Department, and to “spread the word” for others to do the same. Mr. Holland expressed gratitude for this discussion.

Ms. Holdgate moved to continue the hearing to May 10th; seconded by Mr. Fee; all in favor, so voted.

Ms. Holdgate left the meeting at 7:37 PM; she returned at 7:39 PM.

X. TOWN MANAGER'S REPORT

Ms. Gibson said she did not have a specific report for tonight.

XI. SELECT BOARD'S REPORTS/COMMENT

1. Review of Legal Impact of Petitioned Short-Term Rental Warrant Articles (Articles 59, 60 and 61 of 2023 Annual Town Meeting) with Town Counsel. Town Counsel John Giorgio said that he will be meeting with a sub-committee of the Short-term Rental Work Group, tomorrow, to have a similar discussion with that group. Mr. Giorgio noted a recent Attorney General approval of a short-term rental bylaw for the Town of Great Barrington, MA that is a significant new development relating to the ability of a town to restrict corporate ownership of short-term rentals. He noted that the Town is in “uncharted waters” with short-term rental regulations. He reviewed the General Laws relating to the ability of Massachusetts municipalities to regulate short-term rentals in certain specific ways: the class of operators, the number of local licenses issued to operators, number of days an operator may operate short-term rentals per year. He said a town can regulate short-term rentals through zoning or a general bylaw. He recommended a general bylaw for several reasons, including the necessity of a majority vote (vs two-thirds needed for zoning); and grandfathering protection issues. He explained how “grandfathering” works. He further reviewed what was approved for short-term rentals at the 2022 annual town meeting and the regulations subsequently adopted by the Select Board and Board of Health. Mr. Giorgio said what should be kept in mind when developing/considering short-term rental regulations, is that a zoning bylaw, such as Article 60, could limit the ability of the Town to adopt a general bylaw in the future. He noted case law on this. He said there is a “legal risk” in prematurely adopting a zoning bylaw, as a result. He emphasized that the case law does not relate to short-term rentals which is why he previously noted these are “uncharted waters”. Mr. Fee asked

about the implications if Article 60 were to be adopted. Mr. Giorgio said there are three pending cases in litigation on this, and that while the cases are not identical, they are “strategically different”. He briefly described each case. Mr. Fee said if Article 60 passes, those operating short-term rentals currently, would likely be grandfathered. Mr. Giorgio said he respectfully takes issue with “likely to be grandfathered”. He emphasized the need to have a solid, well-written zoning bylaw if that is the approach, before putting it forward to the voters. Mr. Giorgio reviewed each petitioned short-term rental article, beginning with Article 59. He explained what the article would do, said that the intent is not clear but he does believe that it would not necessarily preclude the Town from adopting a general bylaw in the future. He noted the words “short-term rental” are not even mentioned in the article. Mr. Fee asked if there are other uses besides short-term rentals that could be impacted. Mr. Giorgio responded affirmatively and said he recommends avoiding the possibility of unintended consequences. Mr. Giorgio reviewed the Planning Board’s Motion and Comment to Article 59. Mr. Giorgio explained what Article 61 would do which would be that short-term rentals would not be considered a commercial use. He said if the article were to pass and be approved by the Attorney General, it would most likely render the pending litigation moot. Some discussion followed. Mr. Fee suggested passage of this article would “codify” commercial use. Mr. Vorce reviewed the Planning Board discussion on this article.

Chair Bridges left the meeting at 8:03 PM; he returned at 8:05 PM.

Mr. Giorgio explained legal issues with Article 61, including lack of clarity due to the placement of a comma. Dr. MacNab concurred with Mr. Fee as to this article “codifying” short-term rentals. Mr. Giorgio agreed. Mr. Vorce noted that the Planning Board did not analyze this article because it was following the Select Board’s request that the Short-term Rental Work Group complete its work before any short-term rental articles be approved. Mr. Schaffer commented that the “onus” is on the Select Board to let the community know what these articles mean. He suggested a letter go to every voter explaining the articles and what the Board’s recommendation is. Kathy Baird suggested that the Short-term Rental Work Group be requested to review these articles. She asked if Article 61 needs a two-thirds vote. Mr. Giorgio responded affirmatively. Penny Dey questioned the taxability of properties used for short-term rentals. Mr. Giorgio responded. Ms. Dey questioned Article 39 of the 2022 annual town meeting and what it did or did not allow. Mr. Giorgio responded. Linda Williams (sponsor of Articles 59 and 61) explained her intent with the articles and said she submitted them in response to the lawsuits that have been filed. Ms. Williams continued speaking about her articles. Julia Lindner spoke on Article 61’s impact, if it were to pass. Mr. Giorgio explained Article 60. He said of all three articles, this is the most problematic as far as limiting other options goes. Mr. Fee asked about grandfathering again. Mr. Giorgio said whoever is doing short-term rentals now, would be able to continue, as long as the current rental is “legal”. Dr. MacNab asked what would happen if a lawsuit decision were issued which made a certain type of short-term rental illegal. Mr. Giorgio said that has been his concern. Discussion followed as to the application of any grandfathering. Mr. Giorgio cautioned, again, about the premature adoption of an article, such as Article 60 in connection with legal challenges. Mr. Giorgio said another issue with Article 60 is the impact of the article on Town finances and the collection of the short-term rental revenue, if short-term rentals are not allowed. Some discussion followed as to the validity of information being put out by various groups on this article. Mr. Giorgio said Article 60 does not contain any definition of “short-term rental” which is another issue. Ms. Holdgate reiterated the need for the Short-term Rental Work Group to complete its mission and that the articles discussed tonight should not be approved. Ms. Mohr agreed that the Board should strongly recommend that until there is clarity on this, the articles should not be approved. She suggested outreach on this should be issued to the community in the form of a press release and to reiterate it at Board meetings until the May 6th Town Meeting. Dr. MacNab said he was not comfortable with advising people not to vote on the articles. Ms. Mohr moved to direct

Town Administration with Town Counsel to draft a press release for approval by the Board at its meeting on April 26th; seconded by Ms. Holdgate; all in favor, so voted.

2. Committee Reports. There were no committee reports.

XII. ADJOURNMENT

Ms. Holdgate moved adjournment at 8:48 PM; seconded by Ms. Mohr; all in favor, so voted.

Approved the 26th day of April 2023.

**SELECT BOARD
APRIL 12, 2023 – 5:30 PM
PSF COMMUNITY ROOM, 4 FAIRGROUNDS ROAD
AND REMOTE PARTICIPATION VIA ZOOM WEBINAR
NANTUCKET, MASSACHUSETTS**

List of documents used at the meeting:

- VII. 1. Draft minutes of 4/5/2023
- VIII. 1. NCTV 18 Year in Review (link); NCTV Annual Report
- IX. Liquor License Public Hearing Process; KP Law eUpdate re: Entertainment Licensing
- IX. 1. AIS re: Bar Yoshi; ABCC certification form; ABCC application; ABCC Outdoor Dining Guidelines & Patio Guidelines; Liquor License; Violation notices
- IX. 2. AIS re: Ca'Mercante dba Greydon House; ABCC certification form; ABCC application; Existing licenses
- IX. 3 & 4. AIS re: Greydon House new liquor license & entertainment license; ABCC certification form; ABCC application; Existing licenses
- IX. 5. AIS re: White Elephant Hotel Residences; ABCC certification form; ABCC application; License
- IX. 6. AIS re: Public Sidewalk Dining Permits; Sidewalk Seating Terms and Conditions; Sidewalk Dining Fees; ABCC Outdoor Dining Guidelines; ABCC Advisory on Outdoor Dining
- IX. 6a. Rose & Crown
- IX. 6b. BACKyard BBQ
- IX. 6c. Nantaco
- IX. 6d. Ethos
- IX. 6e. The Beet
- IX. 6f. Lemon Press
- IX. 7. Nantucket Open Space & Recreation Plan; presentation from Weston & Sampson
- XI. 1. Warrant Articles 59, 60 & 61 of 2023 ATM; Memo from Town Counsel re: Review of Short-Term Rental Citizen Articles – 2023 ATM