

SELECT BOARD

Minutes of the Meeting of September 27, 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 Dawn Holdgate, Thomas Dixon, Matt Fee, Dr. Malcolm MacNab and Brooke Mohr.

I. CALL TO ORDER

Chair Holdgate called the meeting to order at 5:54 PM following a meeting of the County Commission.

II. SELECT BOARD ACCEPTANCE OF AGENDA

The agenda was accepted as posted.

III. ANNOUNCEMENTS

Town Manager C. Elizabeth Gibson reviewed the announcements:

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

2. Town Council Study Committee Openings – Applications Due Monday, October 2 at Noon.

3. May 7, 2024 Annual Town Meeting:

- Warrant Open for Citizen Warrant Article Submittals through November 13, 2023 at 4:00 PM. Ms. Gibson reminded the public that citizen warrant articles require the signatures of at least 10 registered voters.

- Town Counsel Citizen Warrant Article Consultation Scheduled for Tuesday, October 3, 2023 from 2:00 PM – 4:00 PM; and Wednesday, October 4, 2023 from 9:00 AM – 11:00 AM via Zoom; email TownManager@nantucket-ma.gov for Zoom Links.

4. Information Sessions on November 7, 2023 Special Town Meeting Short-Term Rental Articles via Remote Participation via Zoom Webinar:

- Thursday, October 5, 2023 at 4:30 PM (Register at https://us06web.zoom.us/webinar/register/WN_xTxL43foToSMcOdN5Zlgxw)
- Thursday, October 12, 2023 at 5:30 PM (Register at https://us06web.zoom.us/webinar/register/WN_Vx_ygpoEQF2lwL587PxdVA)

5. Select Board Announcements/Comments.

There were no comments.

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

There was no follow up.

V. PUBLIC COMMENT

Anne Dewez asked who would be involved in the informational sessions involving the short-term rental articles. Ms. Gibson responded and said that Town Counsel would be present as well as members of the Finance Committee, former Short-term Rental Work Group and that Ms. Mohr would be moderating the sessions.

Campbell Sutton asked about an action the Board took last week as to requesting certain special local preference for a couple of housing developments from the state. Ms. Holdgate said that the Housing Director would respond to this next week. Ms. Mohr commented that the numbers quoted by Ms. Sutton are incorrect. Housing Director Tucker Holland stated that he felt a “real time” response was necessary and explained the specifics of the Board’s vote from September 20, 2023 on this matter.

VI. NEW BUSINESS

Sewer Director David Gray requested a waiver of the Town noise bylaw for night work to fix collapsing drainage structures on Orange Street near Cherry and Williams Streets and West Creek Road. He said that the work is expected to be complete within the next two weeks. Ms. Mohr moved approval pending abutter notification in advance of the work; seconded by Mr. Fee; all in favor, so voted.

VII. APPROVAL OF MINUTES AND WARRANTS

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

1. Approval of Minutes of September 20, 2023 at 5:30 PM.

2. Approval of Treasury Warrants for September 27, 2023.

VIII. CITIZEN/DEPARTMENTAL/COMMITTEE REQUESTS/REPORTS

1. Town Clerk: Request for Appointment of Constables; Appointment/ Reappointment of Election Officers.

Mr. Fee moved to appoint Jerry Adams and Frank Psaradelis as Constables, each for three-year terms, and to appoint/reappoint the slate of election workers presented (attached); seconded by Dr. MacNab; all in favor, so voted.

2. NanTukTuk: Request to Expand 2023 Summer Season Pilot Pedicab Program to December 31, 2023.

Mr. Fee asked what the Bicycle and Pedestrian Advisory Committee (BPAC) recommended about an associated request to expand the area for the pedicab operation. Chair Holdgate said that request is awaiting further review by BPAC and will be taken up at a later time. Mr. Fee moved approval to extend the season to December 31, 2023; seconded by Ms. Mohr; all in favor, so voted.

IX. TOWN MANAGER’S REPORT

1. Review of Preliminary FY 2025 General Fund Budget Projections. Ms. Gibson introduced the item and then turned it over to Finance Director Brian Turbitt. Mr. Turbitt reviewed the presentation in the Board’s packet. Ms. Gibson reviewed “To Be Determined” items and next steps in the budget development process. Mr. Fee spoke on the potential for fee increases and offsets such as betterments where appropriate. Mr. Fee added that while coastal resiliency projects and costs are significant, there are many other projects as well, as will be reviewed in the next presentation.

2. Review Near-Term Timing/Cost of Large Capital Projects. Ms. Gibson introduced the item and then turned it over to Mr. Turbitt. Mr. Turbitt reviewed the presentation contained in the Board’s packet. Ms. Gibson supplemented Mr. Turbitt’s review with commentary and explanation on several of the pending capital projects. Mr. Fee asked if a project management plan has been laid out. Mr. Turbitt said funds have been secured for additional project management staff and that staffing has been challenging to hire. Mr. Fee asked about project prioritization. Discussion followed on this and unknowns. Dr. MacNab said he believes the Board should make the prioritization decisions and discuss these projects more often. Chair

Holdgate suggested a Board workshop to rank the projects. Dr. MacNab and Ms. Mohr concurred. Ms. Mohr commented that the presentation is sobering.

3. Monthly Town Management Report. Ms. Gibson provided a verbal report and reviewed items that Town Administration has been working on, including Baxter Road alternate access, Town Manager September e-news, FY 2025 budget development, FY 2025 capital project request development, the development of a more formal employee training program, the November special town meeting, policy updates, long-term solid waste planning, hosting the September Cape Cod Manager's Association meeting, real estate and housing issues.

Dr. MacNab left the meeting at 6:54 PM; he returned at 6:56 PM.

X. SELECT BOARD'S REPORTS/COMMENT

1. Review of Rental Car Enforcement Complaint. Attorney John Perten spoke on behalf of two rental vehicle agencies and the concern that there are a large number of vehicles being rented on-island that are in non-compliance with Chapter 58 of the Town Code and are unlicensed. He commented that the Board has an obligation to uphold the provisions of the Town Code. Tim Mahoney of Affordable Rentals spoke on the need to enforce the bylaw. Airport Manager Noah Karberg spoke on the challenges of enforcement with the rentals that result from the variety of platforms for car rental and other rentals, that are regulated. He reviewed the impact of these on the Airport and said that he is working on ways in which the Airport might be able to address the enforcement. He said that there is a legitimate concern with the impact of these unlicensed businesses on Airport revenue and the licensed rental agencies at the Airport. Ray Conlon of Nantucket Windmill Auto Rental spoke on the history of the bylaw in question and an "explosion" of cars on the island which he said are "illegally" rented. He said these cars are the cause of the Island's traffic problems. He said it would be "easy" to find these vehicles because much of the information associated with them is readily available online. Attorney Brian Riley of Town Counsel's office agreed that the bylaw is most likely being violated and that practically speaking, enforcement is difficult, given the number of vehicles rented by individuals and the nature in which the rentals are occurring. He said none of the other towns represented by Town Counsel are successfully tackling this issue. He said there are very few viable options. Chair Holdgate said it would be helpful for the Airport to share whatever its research develops. Mr. Fee agreed this situation is "patently unfair" and is a major issue. He said he thinks the Town should send letters to people and that there are things the Town could do. He said that staff and Town Counsel should come up with a way to enforce the bylaw. Mr. Perten spoke on further on the enforcement. Ms. Mohr suggested that at minimum letters go out to those on a list that Mr. Perten provided, and that the Town conduct some outreach on this. Mr. Riley agreed that letters are a start but that actually mailing out tickets is not recommended. Mr. Fee asked if the ticket for a bylaw violation is the same as a parking ticket. Ms. Gibson said it is not. Mr. Conlon said that people advertising on-line are in violation and should be ticketed in accordance with the bylaw. Mr. Gasbarro, speaking as the Airport Commission Chair, said that the Airport is very willing to work with the Town. Chair Holdgate suggested that there seems to be a consensus that the Town should send a letter to those who are listed online as actively renting vehicles without a license and educate them as to the bylaw. Licensing Administrator Amy Baxter spoke on enforcement challenges. Some discussion followed. Ms. Mohr moved to send a letter clarifying the existence of the bylaw to those who can be identified and put out some media outreach as to the bylaw and what is/is not permitted; seconded by Mr. Fee. Mr. Fee asked to amend the motion to obtain some follow-up as to the results of the letters. Some discussion followed. Ms. Mohr agreed to add an enforcement plan to the motion. All in favor, so voted.

2. Committee Reports. There were no reports.

XI. PUBLIC HEARINGS

1. Public Hearing to Consider Appeal of Nantucket REAL Fund of Historic District Commission (HDC) Approval of Certificate of Appropriateness (COA) No. HDC2023-02-7909 to Partially Demolish a Dwelling and Relocate the Historic Section on Site at 9 Sherburne Way, Map 30, Parcel 37. Chair Holdgate opened the hearing and reviewed the HDC Appeals Procedure.

Ms. Mohr left the meeting at 7:51 PM; she returned at 7:53 PM.

Chair Holdgate asked the appellant to state the case and the reason for the appeal. Attorney Paul Kominers, representing the appellant, Nantucket REAL Fund, identified speakers for the appeal and the sequence of speakers for the appeal and explained the appeal as it relates to the HDC Act. He proceeded to review the sequence of events that led up to the appeal, including playing an audio clip of an HDC meeting. Stephen Welch, Historic District Commissioner, raised a “point of order” with the audio clip and said this was not part of the packet and expressed concern as to allowing it to continue. Chair Holdgate requested that the appellant focus on why the HDC was arbitrary and capricious with this decision. Mr. Kominers stated that the HDC Chair sat inappropriately on the HDC application. Chair Holdgate said that is not a matter to be brought before the Select Board, but rather the State Ethics Commission. Mr. Kominers disagreed. Mr. Riley concurred with Chair Holdgate. Chair Holdgate reiterated the need for the appellant to demonstrate how the HDC acted arbitrarily and capriciously; and, that any proposed conflict of the HDC Chair should be referred to the State Ethics Commission. Mr. Kominers maintained that the HDC Chair’s participation with the HDC application contributed to the decision being arbitrary. Hillary Rayport raised a “point of order” and spoke further on the HDC Chair’s role in the application. Some discussion followed as to whether or not a complaint has been brought before the Ethics Commission. Mr. Kominers continued with a comprehensive review of the meetings at which the application was discussed. Brian Pfeiffer, representing the appellant, spoke on his credentials as a historic preservation expert. He spoke in favor of the appeal from his perspective as a recognized consultant and reviewed the specifics of the building in question with its historic components and why it should not have been demolished. Ms. Rayport spoke extensively in support of the appeal, citing numerous historic references to the building in question. Chair Holdgate asked the HDC to define its position. HDC Compliance Coordinator Esmeralda Martinez reviewed the specifics of the HDC hearings on this application, and noted that the HDC Chair was essentially cleared by the Ethics Commission during the course of the application. HDC Vice Chair Stephen Welch disputed the findings of the appellant and reviewed the basics of the HDC’s decision. Ms. Rayport spoke in response to Mr. Welch’s comments and spoke again on the HDC’s decision, with respect to the historic features of the building. Mr. Kominers provided a rebuttal and spoke again in favor of the appeal. He said he would like to speak again as to the HDC Chair issue. Chair Holdgate recognized Mr. Pfeiffer again, who rebutted some of what Mr. Welch and Ms. Martinez said. Mr. Welch spoke as to comments made by the appellants as to a constructive grant and disputed how that was characterized. Attorney Rick Beaudette representing the owner of the property, disputed the appellants’ presentation and stated that the application process was “sound”. He commented that Ms. Rayport did not appear at any of the HDC meetings on the application. He added his opinion that Ms. Rayport’s group does not have standing in an appeal and said that the house has been demolished, therefore, there is no real recourse. He said that arbitrary and capricious is a very high standard and spoke how it is legally applied. Chair Holdgate opened the hearing to public comment. Rich Merriman, founder of Keep Nantucket Real and the Nantucket REAL Fund, spoke on his background with historic preservation issues. He spoke in favor of the appeal and the loss of historic structures on the Island. He asked the Board to remand the matter to the HDC. Mr. Welch rebutted some of Ms. Rayport’s

earlier comments with respect to the meaning of “intrusion”. Mr. Kominers spoke further on the merits of the appeal.

Chair Holdgate invited questions from Board members. Dr. MacNab asked about staff recommendations. Preservation Planner Holly Backus said her recommendation was that the building was a contributing structure. Chair Holdgate said she would take one last comment from the public, as long as it is brief and direct to the issue of arbitrary and capricious. Clement Durkes, member of the Nantucket Historical Commission, spoke in favor of the appeal. Mr. Fee asked the HDC how it was determined to override the staff recommendation. HDC Chair Ray Pohl responded and explained the difference between a contributing structure (any building built before 1975), individually significant structure (i.e. the Three Bricks) and protected contributing (highest standard in which a building cannot be touched), as well as whether or not these structures are “protected”. He added there is no argument that the building was deemed contributing because it was built before 1975 but was deemed not to be individually significant or protected contributing by the HDC. Mr. Fee asked what the point of remanding is, since the structure is no longer there. Ms. Rayport responded that it is to “correct the process” and discuss what is “valuable to save”. She said if it were determined that the structure should not have been demolished, she would like it rebuilt.

Ms. Mohr moved to close the hearing; seconded by Dr. MacNab; all in favor, so voted.

Ms. Mohr asked about the remedy to rebuild the building. Mr. Riley said there is a point of “mootness” about this situation and said his opinion is that any order to rebuild would be based on other standards. Mr. Fee said he believes there was confusion among HDC members regarding this application. He said he would like to see the issue remanded to clarify confusion and improve the public process for the future. Dr. MacNab said he was bothered by the personal attacks and innuendos throughout the hearing and thinks the procedures were not closely followed. He added that he thinks rebuilding the structure is ridiculous. Some discussion followed among the Board members. Ms. Mohr said that an imperfect process and arbitrary and capricious are not the same thing. She noted that an independent review of the HDC is underway. Mr. Fee said he feels there is a case to be made that the HDC decision was arbitrary since the Preservation Planner’s recommendation wasn’t listened to. Mr. Dixon agreed that a finding of arbitrary and capricious is a high standard.

Dr. MacNab moved to remand the matter to the HDC; seconded by Mr. Fee. Ms. Mohr requested a definition of arbitrary and capricious. Mr. Riley responded and concurred, it is a “high bar”. On the motion, so voted 2-3. Mr. Dixon, Ms. Mohr and Chair Holdgate were opposed.

Ms. Mohr moved to deny the appeal and uphold the decision of the HDC; seconded by Mr. Dixon; so voted 3-2. Mr. Fee and Dr. MacNab were opposed. Mr. Fee asked about a “minority opinion”. Mr. Riley said that unless the Board has a policy on that, if it has not been done before, he does not recommend it.

XII. ADJOURNMENT

Ms. Mohr moved adjournment at 9:48 PM; seconded by Dr. MacNab; all in favor, so voted.

Approved the 4th day of October 2023.

**SELECT BOARD
SEPTEMBER 27, 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 9/20/2023
- VII. 1. AIS re: Town Clerk request for Constables, election workers appointments; Jerry Adams – Constable; Frank Psaradelis – Constable; MGL Ch. 91, s. 91A; 2023 Election Workers list
- VII. 2. AIS re: NanTukTuk pedicab; Portion of 4/5/2023 minutes; Portion of 6/28/2023 minutes; Michael Gormley request; NanTukTuk summer review numbers
- IX. 1. FY 2025 General Fund Budget Projections presentation
- IX. 2. Large Capital Projects presentation
- X. 1. 7/10/2023 Car Rental Enforcement Complaint; 7/28/2023 Car Rental Enforcement Complaint; KP Law response to car rental enforcement complaint
- XI. 1. HDC Appeals Procedure before the Select Board; HDC appeal of 9 Sherburne Way; HDC file; HDC memo on appeal; HDC file for 9 Sherburne Way; Letters received for appeal: Beaudette letter 9/19/2023; Kominers letter 9/20/2023; Hedges email 9/25/2023; Lewis email 9/25/2023; Beaudette letter 9/26/2023