SELECT BOARD/COUNTY COMMISSIONERS

Executive Session. Minutes of the meeting of October 6, 2022. The meeting took place via Zoom. Select Board Members present were Jason Bridges, Brooke Mohr, Matt Fee, and Dawn Holdgate. Melissa Murphy was not present. Also present were Town Manager C. Elizabeth Gibson, Human Resources Director Amanda Perry, Public Works Director Stephen Arceneaux, Sewer Director David Gray and Police Chief William Pittman.

Chair Bridges called the meeting to order at 9:02 AM following a meeting in open session.

II. EXECUTIVE SESSION, PURSUANT TO MGL C. 30A § 21(A)

1. Approval of Executive Session Minutes of September 8, 2022. The minutes were tabled to the November meeting.

2. Purpose 3: To Discuss Strategy with Regard to Collective Bargaining (LiUNA), where the Chair has Determined that an Open Meeting May have a Detrimental Effect on the Bargaining Position of the Board of Selectmen/County Commissioners. [redacted]

[redacted]

3. Purpose 3: To Discuss Strategy with Regard to Collective Bargaining (AFSCME), where the Chair has Determined that an Open Meeting May have a Detrimental Effect on the Bargaining Position of the Board of Selectmen/County Commissioners. [redacted]

[redacted]

[redacted]

Ms. Perry, Chief Pittman, Mr. Arceneaux and Mr. Gray left the meeting at 9:27 AM.

Energy Coordinator Lauren Sinatra, Water Department Director Mark Willett, and Attorneys Vicki Marsh and George Pucci from Town Counsel's office joined the meeting at 9:27 AM.

4. Purpose 3: To Discuss Strategy with Respect to Potential Litigation Regarding 1 Milestone Road Solar Project, where the Chair has Determined that an Open Session Meeting May have a Detrimental Effect on the Litigating Position of the Select Board/County Commissioners. Ms. Gibson introduced the item and turned it over to Ms. Sinatra for further details. Ms. Sinatra reviewed the current status of the project, as contained in a memo in the Board's packet. She also reviewed the conditions that the Nantucket Land Council and Monomoy Association are seeking. Ms. Marsh reviewed the conditions in detail and explained her legal opinion that the conditions are unnecessary and that the land is not "Article 97 land" as asserted by the Land Council. Some discussion followed as to how solar fits into allowable uses of the property. Ms. Marsh explained that its use relates to supplying electricity for the water supply operation. Ms. Sinatra added that several solar arrays in Massachusetts are situated on top of water supplies. Ms. Mohr asked about the timeline of defending a lawsuit vs proceeding to Town Meeting for the Land Council requested action. Mr. Pucci explained. Ms. Marsh said the Town already has authority to seek the legislative approval, a Town Meeting vote would not be needed. Mr. Fee said he would support signing a letter supporting the conditions as requested. Ms. Gibson said the Land Council is seeking a deed restriction not a letter. Ms. Marsh explained the ramifications of a deed restriction. Ms. Holdgate said she is not comfortable with the requested deed restriction. Ms. Mohr agreed and said her inclination is "not to yield". Some discussion followed as to what uses the Board might agree to restrict. Ms. Holdgate suggested only "municipal use" be allowed. Mr. Pucci recommended against any voluntary restrictions on Town land, saying that he believes the "Article 97 claim is weak". He said it is a difficult claim on which to prevail. Ms. Sinatra explained that the disturbance of the land will result in a "taking" due to the type of habitat that will be disturbed. She explained the mitigation actions that will be necessary, and that despite an exhaustive search there are no available similar parcels to mitigate with. She said the only other option is a fee, paid to the state. She said the fee would be absorbed by the developer. She said the fee is a concern of the Land Council yet approved by the state. She said the Land Council has indicated it will challenge the fee. Ms. Sinatra said the fee option was offered to the Town by the state, as the only viable alternative to mitigation. Discussion followed on how that legal action would occur. Discussion followed as to the availability (or lack thereof) of suitable habitat when needed. Chair Bridges asked what is being requested of the Board. Ms. Marsh said the Town has been advised that it will be presented with a notice of legal action if it does not comply with the requested conditions and that the Board is being asked how it wants to proceed. Mr. Pucci said it would be helpful to authorize defense of litigation as needed. Ms. Mohr asked if there is a path forward for the project without the mitigation fee. Ms. Sinatra said "no". Discussion follows. Ms. Mohr moved to authorize defense of litigation with this matter and that the two conditions as proposed by the Land Council are rejected; seconded by Ms. Holdgate. Ms. Mohr suggested that the Board counter propose the previously discussed "side letter" regarding limitation of use of the property. Some discussion followed. Mr. Willett said that the Water Commission shares the position of the Select Board and that he is meeting later today with the Land Council regarding the idea of a letter or lesser permanent restriction. He said he would be willing to explore ways to retain the mitigation fee(s) locally.

So voted by roll call vote: Chair Bridges - Yes; Mr. Fee – Yes; Ms. Mohr – Yes; Ms. Holdgate – Yes. Chair Bridges commented on the amount of mitigation that has already occurred with this project.

Ms. Sinatra and Mr. Willett left the meeting at 10:09 AM.

Housing Director Tucker Holland and Real Estate Specialist Ken Beaugrand joined the meeting at 10:09 AM.

5. Purpose 6: To Consider the Purchase, Exchange, Lease, or Value of Real Property Regarding 6 Fairgrounds Road/Ticcoma Green, where the Chair has Determined that an Open Meeting May have a Detrimental Effect on the Negotiating Position of the Select Board/County Commissioners. Housing Director Tucker Holland reviewed the status of this issue with Ticcoma Green and an agreement with the Town as to a loan to proceed with the project, as outlined in the agenda materials. He said the agreement is getting closer to fruition. Mr. Fee asked about affordability restrictions on the property. Ms. Marsh said the restrictions are in perpetuity. Mr. Fee said he is not "happy" with this situation but will support an agreement such as laid out in the agenda packet. No action was requested or taken by the Board.

6. Purpose 3: To Discuss Strategy with Respect to Litigation Regarding Surfside Crossing, where the Chair has Determined that an Open Session Meeting May have a Detrimental Effect on the Litigating Position of the Select Board/County Commissioners. [redacted]

Ms. Holdgate left the meeting at 11:00 AM.

[redacted]

[redacted]

[redacted]

III. ADJOURNMENT

Ms. Mohr moved adjournment at 11:11 AM; seconded by Mr. Fee; so voted by roll call vote: Chair Bridges - Yes; Mr. Fee – Yes; Ms. Mohr – Yes.

Approved the 8th day of December 2022.

Partially released the 6th day of March 2025.

SELECT BOARD
OCTOBER 6, 2022 – 9:00 AM
REMOTE PARTICIPATION VIA ZOOM
NANTUCKET, MASSACHUSETTS

List of documents used at the meeting:

[redacted]

II. 4. Memo from Energy Coordinator re: Nantucket Land Council/Monomoy Civic Association demands for solar farm at Nantucket Water Dept.; email thread between Town Manager and Energy Coordinator; letter from Nantucket Land Council; Letter from Kathleen O'Donnell, Esq.; draft Memorandum of Understanding for Wyers Valley Solar Array; Minutes of Monomoy civic Association 8/19/2022; Memo from TotalEnergies re: Environmental permit status

II. 5. Email thread re: Ticcoma Green; Draft Proposed Affordable housing Trust Loan and Participation Terms; HallKeen High-Readiness Mini-Comp 2022 package

[redacted]