SELECT BOARD

Minutes of Meeting of November 30, 2022. 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, Matt Fee, Dawn Holdgate, 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.

III. ANNOUNCEMENTS

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

2. Public Information Forum for Surfside Water Main Extension Project and Surfside Area Roadway and Sidepath Projects to be Held Thursday, December 8, 2022, 5:30PM to 7:00 PM, PSF Community Room, 4 Fairgrounds Road and Remote Participation via Zoom Webinar; Registration link to Virtually Attend Meeting: https://us06web.zoom.us/webinar/register/WN_R8yEeF4vQOyzZChp4sWn2w.

3. Review of Applications for Appointments to: Zoning Board of Appeals; Harbor Plan Update Committee; Agricultural Commission; Tree Advisory Committee; Applicant Introduction and Appointments Scheduled for Wednesday, December 7, 2022, Pursuant to Select Board Committee Appointment Policy.

The names of the applicants were read aloud as follows:

Zoning Board of Appeals (1 seat): John Brescher
Harbor Plan Update Committee (2 At-Large seats): Phil Smith, Steven E. Leinbach, Karen C. Beattie, Emily Molden, Emily Kilvert
Agricultural Commission (2 seats): No applicants
Tree Advisory Committee (2 seats): Judy Deutsch

4. Select Board Announcements/Comments. The Board held a moment of silence in memory of Ed Toole, who recently passed away after 25 years of service on the Zoning Board of Appeals.

Brooke Mohr acknowledged recent fall sidewalk work and said she appreciated that work and the DPW's work getting the Christmas trees up.

Dr. MacNab inquired as to a study from 2019 relating to the Planning & Land Use Services department and the Board's discussion as to the HDC at its November 16 meeting. It was agreed that Town Administration will follow up on this. Ms. Holdgate noted that the HDC recently adopted some best management practices as to its meeting operations.

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

1. Public Comment Follow-up from November 16, 2022 Select Board Meeting Regarding Sconset Beach Preservation Fund/Town of Nantucket Notice of Intent Application to Conservation Commission for Erosion Control Project. Coastal Resilience Coordinator Vince Murphy explained the response provided by email to

Meghan Perry who made the Public Comment on November 16. Mr. Murphy used a sketch projected on screen to explain the details of the answer to the question asked in the November 16 public comment.

V. PUBLIC COMMENT
Meghan Perry asked if anyone has spoken to local fishermen as to environmental impacts of sourcing sand for the erosion control project offshore.

D. Anne Atherton asked questions about the permitting for offshore sand sources.

VI. NEW BUSINESS
No new business.

VII. APPROVAL OF MINUTES, WARRANTS AND PENDING CONTRACTS
Ms. Holdgate moved approval of items VII 1 – 3; seconded by Ms. Mohr; all in favor, so voted.

1. Approval of Minutes of October 19, 2022 at 9:00 AM; November 16, 2022 at 5:30 PM.

2. Approval of Payroll Warrants for November 27, 2022.

3. Approval of Treasury Warrants for November 30, 2022.

4. Approval of Pending Contracts for November 30, 2022 - as Set Forth on the Spreadsheet Identified as Exhibit 1, Which Exhibit is Incorporated Herein by Reference.
Ms. Holdgate moved approval as presented; seconded by Ms. Mohr; all in favor, so voted.

VIII. CITIZEN/DEPARTMENTAL/COMMITTEE REQUESTS
1. Resignation Acceptances (2): Council on Aging. Ms. Holdgate moved to accept the resignations of Alison Forsgren and Suzy Spring with regret, and thanks for their service; seconded by Ms. Mohr; all in favor, so voted.

2. Valet Park of America: 2022 Summer Valet Service Update. Tim Graney of Valet Park of America, operator of the summer valet service at the National Grid Candle Street lot, reviewed statistics from the summer, indicating significant use of the lot. Assistant Town Manager Gregg Tivnan provided background on the use of this lot for valet parking. He noted that thanks to the efforts of Operations Administrator Erika Mooney and Town Counsel there is high potential for using the lot again for this purpose in 2023. Some discussion followed as to details of the operation. Mr. Graney emphasized that early confirmation of use of the lot is extremely important. Ms. Mohr asked if any downtown employers take advantage of the valet service. Mr. Graney responded, noting that the Hy-line is an example. Discussion followed as to how often the lot was full and not able to take additional vehicles. Victoria Ewing asked about procurement relating to the valet service. Mr. Tivnan explained that the property is not owned by the Town and the agreement with National Grid, owner of the lot, requires a specific vendor (Valet Park of America).

3. Coastal Resilience Advisory Committee: Request for Select Board to Jointly Support Conservation Commission Request to Massachusetts Department of Environmental Protection Regarding Questions and Requests about Enforcement and Access Along Shoreline. Coastal Resilience Coordinator Vincent Murphy explained the request. Chair Bridges asked what sort of problems this request would be intended to resolve. Mr. Murphy explained and said it mostly relates to passage along waterfront areas becoming

compromised with bulkheads and other coastal structures due to erosion. Conservation Commission Chair Ashley Erisman elaborated on Mr. Murphy's explanation. Some discussion followed. Mr. Fee commented on beach access laws. Ms. Holdgate moved approval of the request as presented; seconded by Dr. MacNab; all in favor, so voted.

IX. PUBLIC HEARINGS

1. Public Hearing to Consider the Taking of Portions of Hollister Road, as Shown as Parcels 1, 2, 3, 4, 5 and 6 on Plan of Land Entitled "Being a Plan for Real Estate Acquisition and Conveyance of Paper Streets as Referred to in Articles 96 & 97 at the 2014 ATM, Plan of Taking for the Town of Nantucket, Mass.," Dated April 26, 2022, Prepared by Earle & Sullivan, Inc. and Recorded with Nantucket County Registry of Deeds as Plan No. 2022-33 for Public Ways and/or General Municipal Purposes and for the Purpose of Conveyance of the Fee Title or Lesser Interests, Together with any Public or Private Rights of Passage, as Authorized by MGL Chapter 79 and Vote on Article 96 of 2014 Annual Town Meeting. Chair Bridges opened the hearing. Real Estate Specialist Ken Beaugrand reviewed the proposed transaction.

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

Ms. Holdgate moved approval of the transaction as presented; seconded by Dr. MacNab; all in favor, so voted.

2. Public Hearing to Determine Tax Allocation by Classification (Chapter 369, Acts of 1982, as Amended); Percentage of Residential Exemption to be Granted for Fiscal Year 2023 (Request to be Continued to December 7. 2022). Chair Bridges opened the hearing. Assessor Robert Ranney explained that the tax rate approval is still pending with the state Department of Revenue and requested that the hearing be continued to December 7. Ms. Holdgate moved to continue the public hearing to December 7; seconded by Mr. Fee; all in favor, so voted. Mr. Ranney noted that in recent local publications there was misinformation as to how the process works. He reviewed the inaccuracies and explained in detail the specifics of the process, including examples of how it is applied, financial implications to other taxpayers, and how enforcement works. He said that, nonetheless, additional action is being explored by his department to enhance compliance with the exemption eligibility. Some discussion followed. Ms. Mohr asked about ownership requirements for exemption eligibility, with respect to LLC's. Mr. Ranney explained the state law eligibility requirements. Rick Atherton read what he said was a statement made by a Finance Committee member at a short-term rental work group meeting recently, related to "fraud" and the residential exemption. He suggested that the Town investigate the comment. Mr. Ranney followed up and said his information does not support widespread abuse and reaffirmed actions his office will be exploring. Dr. MacNab complimented Mr. Ranney for following up on the issue.

X. TOWN MANAGER'S REPORT

1. Traffic Safety Work Group Recommendation: Designate West Side of Mill Street between Prospect Street and Mill Hill Lane as No Parking. Arthur Gasbarro, Work Group representative explained the recommendation. Mr. Fee asked about the side of the road that was selected for No Parking. Mr. Gasbarro explained. Mr. Fee moved approval of the recommendation as presented; seconded by Ms. Holdgate; all in favor, so voted.

2. Review of Proposed Communications Plan. Ms. Gibson reviewed discussions over the last several years regarding the Town's communications both internally and with the Board, noting that mostly recently at the

Board's annual governance workshop in July 2022, the topic of "Communications" was discussed, with the Board supporting the concept of securing additional resources to assist with the variety of communications that the Town needs to keep up with in order to provide accurate information to the community. She added that over ten years ago, she and Mr. Tivnan attended a Massachusetts Municipal Managers Association meeting at which communications was the topic and towns were then starting to formulate public outreach staffing. She noted that three contracts with outside communications vendors were executed earlier this month. She introduced Public Outreach Director Florencia Rullo to provide a presentation on a proposed Communications Plan. Ms. Rullo reviewed the presentation as contained in the Board's agenda packet. Ms. Mohr asked about translation services. Ms. Rullo explained how the service being explored works. Ms. Mohr noted that these services exist elsewhere in the community. Dr. MacNab asked about the outside assistance and commented that there may be local assistance available. Chair Bridges said he appreciates the training that is expected as a result of the Plan presented and emphasized its value. Dr. MacNab concurred. Ms. Mohr said centralized communication is important for consistent messaging. Mr. Fee asked about in-person public informational meetings, saying that he appreciates that type of communication.

<u>3. Continued Preliminary Review of Town-Sponsored Warrant Articles for 2023 Annual Town Meeting.</u> Ms. Gibson noted updates from the Board's prior discussion about warrant articles on November 16, including one additional real estate article for an easement to be granted to National Grid for the use of municipal property in connection National Grid's "L1" upgrade project. She noted that the Planning Office provided an update this week on zoning and other planning-related articles. Deputy Director of Planning Leslie Snell reviewed, on screen, the updates and said the articles still have to be endorsed by the Planning Board. Ms. Mohr suggested that the Board clarify its desired timeline pertaining to short-term rental warrant articles; and, that the Board formally commit to a special town meeting in the fall of 2023 for such articles and that the Board formally agree not to support any citizen articles that have been submitted for the 2023 annual town meeting. She said she feels it is important to put forward accurate and complete data. Ms. Holdgate concurred. Some discussion followed as to the need for data. Dr. MacNab said he would reluctantly support the suggestion but said he is disappointed it has taken so long to obtain data. Planning Board member David Iverson commented on the data and that it is coming from various sources. He said it is important that this be done right and based on accurate data. Mr. Fee concurred. Ms. Holdgate suggested re-submitting an article for a central municipal facility that failed at the 2022 annual town meeting. Some discussion followed. It was generally agreed to tentatively consider that article for a fall 2023 special town meeting. She added that the Town is spending a lot of money on many municipal buildings that need a lot of work rather than a central facility. Ms. Mohr concurred. Dr. MacNab suggested the Board sponsor a charter commission warrant article. Some discussion followed. It was agreed to request Town Counsel attend next week's meeting to explain what is required specifically with respect to a charter commission. D. Anne Atherton asked that the Board consider a moratorium on short-term rentals until there is an outcome at the fall special town meeting. Some discussion followed, and the Board members did not indicate concurrence.

<u>4. Monthly Town Management Report.</u> Ms. Gibson reviewed the report as contained in the Board's agenda packet.

At 7:01 PM, Chair Bridges left the meeting; he returned at 7:03 PM.

Mr. Fee asked if Housing Nantucket could potentially be contracted for rental housing management. Mr. Fee reiterated comments he made at a Board Strategic Planning workshop held yesterday relating to the need to focus on Town employee housing, noting that the Town is and will continue to experience difficulties in accomplishing its work unless it can house more of its employees. Ms. Mohr commented on the rate of turnover of Town employees and the associated costly impacts that result. Ms. Holdgate asked about public records requests. Some discussion followed about the purpose, nature, number and scope of public records requests.

XI. SELECT BOARD'S REPORTS/COMMENT

1. Conservation Commission: Request for Special Counsel in Connection with Sconset Beach Preservation Fund/Town of Nantucket Notice of Intent Application for Erosion Control Project. Conservation Commission (ConCom) Chair Ashley Erisman spoke on the request. Ms. Holdgate asked if legal counsel has been present for every Notice of Intent (NOI) hearing with respect to the Sconset Beach Preservation Fund (SBPF) erosion control project. Natural Resources Director Jeff Carlson and Ms. Erisman responded, indicating that Town Counsel has been present at many of the related hearings. Mr. Fee asked about the status of special counsel previously approved by the Board for the ConCom. Ms. Gibson said the purpose for that special counsel is no longer pending, as the litigation for which the special counsel was approved, is over. Ms. Erisman said the ConCom needs special counsel in order to maintain its independent regulatory review. Ms. Holdgate said it seems that having special counsel present for the NOI hearings contributes to an adversarial atmosphere. Ms. Erisman said the ConCom wants to have a "level playing field" and that the other parties (Town and SBPF) have counsel. She said that without special counsel there could be "major delays" with the NOI. Mr. Fee spoke on proceeding without special counsel. He added that he hopes the ConCom will extend the removal order for the project so that other concerns that have been raised can be addressed. Ms. Erisman said there is a "conflict of interest" with the ConCom using Town Counsel for any needs it has with the NOI. She added that there is "no worse way to start off" than for the Board to deny the ConCom's request. She reiterated the need for a "level playing field". Dr. MacNab asked about the use of special counsel and whether or not the ConCom is requesting special counsel at the hearings, since the Town will not have any counsel there. Ms. Erisman spoke on the need for the ConCom to be supported by its own counsel. Dr. MacNab asked who will be presenting the application to the ConCom. Discussion followed and it was noted that Mr. Murphy, the Town's consultant, Arcadis and the SBPF consultant. Mr. Fee asked if there is a staff recommendation. Ms. Gibson stated that while this is a policy matter, there is no pending litigation, the NOI is a technical matter that does not typically involve legal representation and that it would be unusual to provide special counsel for a non-legal matter. Mr. Murphy concurred. Mr. Fee asked Mr. Carlson for his opinion. Mr. Carlson noted that Town Counsel has been provided with this project in the past, with respect to decisions. He acknowledged the possibility of delay without an allowance for special counsel. Mr. Fee said that he is unsure why Town Counsel would not be provided, first. Some discussion followed. Mr. Fee commented that he hopes the Town interests and the ConCom interests will be the same. Dr. MacNab said that he does not believe starting out with special counsel is productive. Ms. Holdgate said she has concerns about the expenditure of legal fees on something that does not seem necessary. She added there is no current legal matter to defend. Ms. Mohr expressed concern about a blanket authorization with no detailed scope and the potential for "litigation in advance". She said she would want to know more about the specific legal questions. Ms. Erisman said that some of the legal questions might not be able to be asked because of the "conflict of interest". She said she is "slightly disappointed" that the request is seemingly not being supported by the Board. Chair Bridges asked about a way to allow special counsel with certain parameters. Mr. Fee said for him parameters relate to decision points such as the removal order, and the proposed operations and maintenance plan for the project. Ms. Holdgate said she would be more comfortable if the ConCom developed specific legal questions. She added that perhaps SBPF be asked not to have its counsel present either. Ms. Mohr said this is a complex matter with a history of litigation. She said she understands the need for technical legal advice and asked for clarification on what it is specifically for. Ms. Erisman said it relates to "anything to do

with the partnership between the Town and SBPF". Some discussion followed. Mr. Fee expressed concern about increasing the level of conflict. Mr. Murphy explained the procedure expected at the opening of the hearing on the NOI tomorrow, saying that it will focus almost entirely on scheduling. Mr. Murphy suggested the possibility of a monthly review by the Board as to the need for special counsel. Ms. Erisman reiterated the potential for delays if the ConCom's request is not granted. Dr. MacNab said the Board supports the ConCom but does not see a reason for special counsel, now. Ms. Holdgate concurred and said she has heard Board members request specifics as to what the legal issues are that require special counsel. She suggested tabling the matter pending additional information. Mr. Fee re-expressed concern about the pending removal order. He asked what the ConCom's intent is with respect to removal. Ms. Erisman said that the ConCom's request for special counsel was conditioned on extension of the removal order and said again, that delays are likely without special counsel. She said she cannot go into the legal questions because this is a public forum, and the Board is a co-applicant. Ms. Mohr asked how the removal order and the special counsel are tied together. Ms. Erisman said she would rather not reveal the strategy behind that conditioning. Ms. Mohr said there is no necessity for special counsel relating to the removal order. Ms. Erisman concurred. Ms. Holdgate asked if the request for special counsel was made in open session. Ms. Erisman said it was done in executive session. Ms. Holdgate questioned the exemption from the open meeting that would allow that discussion to occur in executive session. Mr. Carlson explained that an initial discussion occurred in executive session but a secondary meeting was held in open session. Ms. Holdgate said she does not have a good feeling about the impending process. Ms. Mohr said she does not feel pressured to approve this tonight, which is not to be interpreted as a negative response. Mr. Carlson said he thought perhaps more clarity could be discussed and provided by the ConCom fairly soon. Discussion followed as to tabling this matter to the Board's December 14 meeting. Mr. Fee commented on the need for sand all around the island and the prior comments made at the beginning of the meeting and the need for appropriate sand for numerous sorts of projects; and, the need to source it in an environmentally responsible manner that does not involve the significant amount of truck carrying sand loads using the Town roads to get it to locations such as Baxter Road. Ms. Holdgate agreed and noted the numerous coastal resiliency projects that are depending on more and more sand. She spoke again on getting more specifics on legal questions vs technical. Mr. Fee asked who is going to determine what the questions are. Dr. MacNab said the questions will come up during the hearing(s) and the Board should see what comes out those. Ms. Erisman thanked the Board for its consideration. Chair Bridges thanked Ms. Erisman for her attendance. It was generally agreed to table this matter until December 14.

2. Committee Reports. There were no Committee reports.

XII. ADJOURNMENT

Ms. Holdgate moved adjournment at 8:23 PM; seconded by Dr. MacNab; all in favor, so voted.

Approved the 7th day of December 2022.

SELECT BOARD
NOVEMBER 30, 2022 – 5:30 PM
PSF COMMUNITY ROOM, 4 FAIRGROUNDS ROAD
AND REMOTE PARTICIPATION VIA ZOOM WEBINAR
NANTUCKET, MASSACHUSETTS

List of documents used at the meeting:

III. 2. Public Forum flyer
III. 3. Committee Membership/Applicant list; Committee applications
IV. 1. Email from Town Manager re: SBPF NOI; Baxter Rd Sand Replenishment Map
VII. 1. Draft minutes of 10/19/2022; draft minutes of 11/16/2022
VII. 4. Pending Contracts spreadsheet
VIII. 1. Current membership list of Council on Aging; Suzi Spring resignation; Alison Forsgren resignation
VIII. 2. AIS re: Valet Park 2022 review; 2022 Valet Park car counts; 2022 Valet Park bag checks
VIII. 3. AIS re: CRAC request; Draft letter to MassDEP from Select Board & CRAC; 8/11/2022 ConCom letter to MassDEP
IX. 1. AIS re: Taking of portions of Hollister Rd; Order of Taking of portions of Hollister Way; Taking plan
X. 1. Memo from Traffic Safety Work Group Chair; Mill St GIS map
X. 2. Communications Plan presentation
X. 3. Outline #4 for 2023 Annual Town Meeting; Planning concept articles as of 11/30/2022
X. 4. Town Management Report
XI. 1. Letter from ConCom Chair - special counsel request