

Town and County of Nantucket Select Board • County Commissioners

Jason Bridges, Chair
Matt Fee
Dawn E. Hill Holdgate
Malcolm W. MacNab
Brooke Mohr



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C. Elizabeth Gibson
Town & County Manager

AGENDA FOR THE MEETING OF THE SELECT BOARD APRIL 5, 2023 - 5:30 PM PSF COMMUNITY ROOM, 4 FAIRGROUNDS ROAD AND REMOTE PARTICIPATION VIA ZOOM WEBINAR NANTUCKET, MASSACHUSETTS

YOU TUBE LINK FOR VIEWING ONLY:

<https://youtu.be/CiyQCjill8I>

ZOOM WEBINAR REGISTRATION LINK TO VIRTUALLY ATTEND MEETING:

https://us06web.zoom.us/webinar/register/WN_T6APY1NSEeiA0HHHxyaDQ

- I. CALL TO ORDER***
- II. SELECT BOARD ACCEPTANCE OF AGENDA***
- III. ANNOUNCEMENTS***
 1. The Select Board Meeting is Being Audio/Video Recorded.
 2. Select Board Announcements/Comments.
- IV. FOLLOW-UP ON COMMENTS FROM PRIOR SELECT BOARD MEETINGS***
- V. PUBLIC COMMENT****
- VI. NEW BUSINESS****
- VII. APPROVAL OF MINUTES, WARRANTS AND PENDING CONTRACTS***
 1. Approval of Minutes of March 15, 2023 at 5:30 PM; March 20, 2023 at 4:00 PM; March 21, 2023 at 5:00 PM; March 22, 2023 at 5:30 PM.
 2. Approval of Payroll Warrants for April 2, 2023.
 3. Approval of Treasury Warrants for March 29, 2023; April 5, 2023.
 4. Approval of Pending Contracts for April 5, 2023 - as Set Forth on the Spreadsheet Identified as Exhibit 1, Which Exhibit is Incorporated Herein by Reference.

VIII. REPORTS

1. Short-Term Rental Registration Program Update.

IX. CONSENT ITEMS

1. Gift Acceptances: Department of Public Works.

X. CITIZEN/DEPARTMENTAL/COMMITTEE REQUESTS

1. Robert B. Our Co., Inc.: Request to Amend Waiver of Town Noise Bylaw Approved March 8, 2023 for Third Sewer Force Main Project on Surfside Road to Start Night Work April 3, 2023 (Instead of April 24, 2023) through June 2, 2023, 4:00 PM to 3:00 AM, Monday through Thursday Nights.
2. Licensing: Review Request for Pedicab License Hearing for “NanTukTuk”.
3. Nantucket Property Owner LLC: Request for Waiver of Sewer Connection Permit Fees and Sewer Capacity Fees for Eight (8) Units of 80% AMI (Area Median Income) Restricted Units and One (1) Unit of 175% AMI within Sandpiper Place II off Old South Road:
 - 5 Beach Grass Road - 80%
 - 2 Indigo Drive - 80%
 - 16 Honeysuckle Drive - 80%
 - 21 Honeysuckle Drive - 80%
 - 6 Beach Grass Drive - Duplex 80%
 - 13 Beach Grass Road - Duplex 80%
 - 15 Honeysuckle Drive - 175%
4. The Richmond Company, Inc.: Request for Waiver of Sewer Connection Permit Fees and Sewer Capacity Fees for Eight (8) Units of 80% AMI (Area Median Income) Restricted Units and Two (2) Units of 175% AMI within Sandpiper Place II off Old South Road:
 - 1 Aster Court Drive - 80%
 - 29 Beach Grass Road - 80%
 - 3 Lilac Court - 80%
 - 7 Sandplain Drive - 80%
 - 24 Evergreen Way - 80%
 - 8 Bluet Court - 80%
 - 9 Bluet Court - 80%
 - 21 Beach Grass Road - 80%
 - 37 Beach Grass Road - 175%
 - 26 Honeysuckle Drive - 175%

XI. SELECT BOARD'S REPORTS/COMMENT

1. Update: Proposed Independent Review of Historic District Commission Operations (Tabled from February 15, 2023; March 15, 2023).
2. Committee Reports.

XII. ADJOURNMENT

****Identified on Agenda Protocol Sheet***

SELECT BOARD AGENDA PROTOCOL:

Roberts Rules: The Select Board follows Roberts Rules of Order to govern its meetings as per the Town Code Charter.

Public Comment: Public Comment is to bring matters of public interest to the attention of the Board. The Board welcomes concise statements on matters that are within the purview of the Select Board. At the Board's discretion, matters raised under Public Comment may be directed to Town Administration or may be placed on a future agenda, allowing all viewpoints to be represented before the Board takes action, if any. Except in emergencies, the Board will not normally take any other action on Public Comment in its sole discretion.

To facilitate that any individual who wishes to provide Public Comment has the opportunity and to ensure the ability of the Board to conduct its business in an orderly fashion, the following rules and procedures are adopted consistent with state and federal free speech laws:

- The agenda for regular Select Board meetings will include a Public Comment period at the beginning of the meeting unless there is more urgent business for the Board to take up first. This time is reserved for speakers to address the Board on matters that are not related to any other Agenda item. If a speaker wishes to address the Board on a matter that is related to another Agenda item, the Chair will accept public comment when that Agenda item is reached during the meeting.
- All speakers are encouraged to present their remarks in a respectful manner.
- All remarks will be addressed through the Chair of the meeting.
- The Chair of the meeting may not interrupt speakers who have been recognized to speak, except that the Chair reserves the right to terminate speech which is not constitutionally protected because it constitutes true threats, incitement to imminent lawless conduct, comments that were found by a court of law to be defamatory, and/or sexually explicit comments made to appeal to prurient interests. Verbal comments may also be curtailed if they exceed three (3) minutes and to the extent they exceed the scope of the Board's authority.

Disclaimer: Public Comment is not a time for debate or response to comments by the Board. Comments made during the Public Comment period do not reflect the views or positions of the Board. Because of constitutional free speech principles, the Board does not have authority to prevent all speech that may be upsetting and/or offensive made during the Public Comment period.

New Business: For topics not reasonably anticipated by the Chair 48 hours in advance of the meeting may be brought up for discussion in accordance with the Open Meeting Law.

Public Participation: The Board welcomes valuable input from the public at appropriate times during the meeting with recognition from the Chair at his/her sole discretion. For appropriate agenda items, the Chair will introduce the item and take public input. Individual Board Members may have questions on the clarity of the information presented. The Board will hear any staff input and then deliberate on a course of action.

Select Board Report and Comment: Individual Board Members may have matters to bring to the attention of the Board during a meeting. If the matter contemplates action by the Board, Board Members will consult with the Chair and/or Town Manager in advance and provide any needed information by the Thursday before the meeting and/or schedule the matter for a future Board meeting. Otherwise, except in emergencies, the Board will not normally take action on Select Board Comment.

Approved on February 17, 2021

EXHIBIT 1
AGREEMENTS TO BE EXECUTED BY TOWN MANAGER
UNLESS RESOLUTION OF DISAPPROVAL BY SELECT BOARD
APRIL 5, 2023

Type of Agreement/Description	Department	With	Amount	Other Information	Source of Funding	Term
Lease	Town Administration	Commonwealth of Mass	(\$6,500/year)	Rental of space at 20 S Water St to Sheriff	n/a	April 14, 2024
Professional Service Agreement	Town Administration	Proforma Shoreline Graphics	\$1,571 + postage	Mailing services for 2023 Annual Town Meeting warrant	Town Administration Budget	April 5, 2023 - December 31, 2023
Purchase Agreement	Fire Department	Shipman's Fire Equipment Co.	\$15,271	Purchase of fire equipment	Fire Budget	April 5, 2023 - December 31, 2023
Sales Agreement	Fire Department	John Phinney	(\$500)	Disposal of surplus property: 1995 Ford 250	N/A	N/A
Grant Agreement	Health	Department of Public Health (DPH) Office of Local and Regional Health	N/A	Master Service Agreement for future Public Health Entity (PHE) Grant Agreement	N/A	April 5, 2023 - June 30, 2038
Professional Service Agreement	Our Island Home	Encore Fire Protection	\$21,600	Fire suppression system contract, including testing and inspection services	OIH Budget	March 20, 2023 - March 19, 2026
Memorandum of Agreement	PLUS - Transportation	Eastern Federal Lands Highway Division (EFLHD)	\$384,000	Wauwinet Road Multiuse Path: Survey, Design, Permitting and Construction of Multiuse path along Wauwinet Road from Polpis Road to Pocomo Road	Article 10 ATM 2019	January 1, 2023 - December 31, 2026
Professional Service Agreement	Police Department	SMRT Engineers-Architects, Inc.	\$47,000	Engineer and architect services for the repairs and upgrade of exterior building of seasonal dormitory facility (Low Beach Rd)	Article 14 ATM 2022	April 5, 2023 - April 4, 2024
Professional Service Agreement	Public Works - Facilities	Amy Manning Landscaping	\$8,040	Planting/maintenance of flower boxes and raised planter bed at 25 Federal Street and adjacent Memorial	DPW Budget	April 1, 2023 - March 31, 2024

Amendment to Professional Service Agreement	Public Works	Stantec Consulting Services, Inc	Increase original contract amount of \$750,000 by \$150,000 for a new contract total of \$900,000	Amendment to increase Engineering, Design and Construction Consulting Services contract for various DPW and capital projects	DPW Budget and DPW Capital Budgets	November 15, 2021 - November 17, 2023
Lease Agreement	Housing/Real Estate	The Residence at Sherburne Commons (RSC)	One Time Community Fee: \$1,500.00 Monthly Rent: \$3,000.00 (utilities included)	One Year Lease Agreement for Apartment (OIH)	OIH Operating Budget	April 1, 2023 - March 31, 2024
Amendment to Professional Service Agreement	Solid Waste	Commonwealth Resource Management Corporation (CRMC)	Increase original contract amount of \$200,000 by \$75,000 for a new contract total of \$275,000	Amendment to Solid Waste Management 2021-2024 for increase in consulting services	Solid Waste Enterprise Fund Budget	July 1, 2021 - June 30, 2024
Professional Service Agreement	Town Clerk	Emergency Production LLC	\$45,000	To provide Audio Visual Services for Town Meeting for the Town of Nantucket. The contractor will perform services as necessary over three years.	Town Clerk - Town Meeting Budget	April 5, 2023 - March 31, 2026

Nantucket, MA Implementation Project

Status Update

Alex Wenglein
Reported: 4/5/23

Presentation Agenda

1

Who We Are

Company mission, solution-driven operations, and our community impact.

2

Local Agencies

Government agencies in New England leveraging Granicus solutions.

3

Short-Term Rental Impacts

Legislative best practices used to mitigate issues with STRs.

4

Listings in Nantucket

An overview of the online platforms where STRs are listed.

5

govService Host Compliance

Outline of the platform used by Nantucket to address challenges & preserve the integrity of the community.

6

Accomplishments & Plans

What was done and what is planned for the next stage?

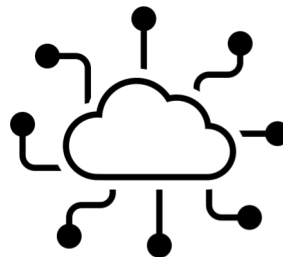


Who is Granicus?

Our Mission, What We Do, Who We Serve



At Granicus, our mission is to help bring government and citizens closer together by transforming the customer experience through digital solutions.



Granicus connects people and government with a unified experience that integrates website, online services, digital communications, records management, and more to serve every resident equally and inclusively.

The Granicus Impact...

A modernized online experience

6,000+ Customers

Granicus supports the missions of over 5,500 government customers - and that number is growing every day.

12 Primary Offices

With offices in Denver, St. Paul, Chicagoland, Washington, D.C., Dallas, Puerto Rico, United Kingdom, Canada, Australia, New Zealand, Armenia, and India, we have flexible options for our employees.

300+ Million Citizens

Every day, roughly 110,000 people sign up to receive information from government through Granicus. This powerful Network of 300 million citizens is growing every day.

950+ Employees

The Granicus family has been fortunate to add new team members across all office locations in the past year.



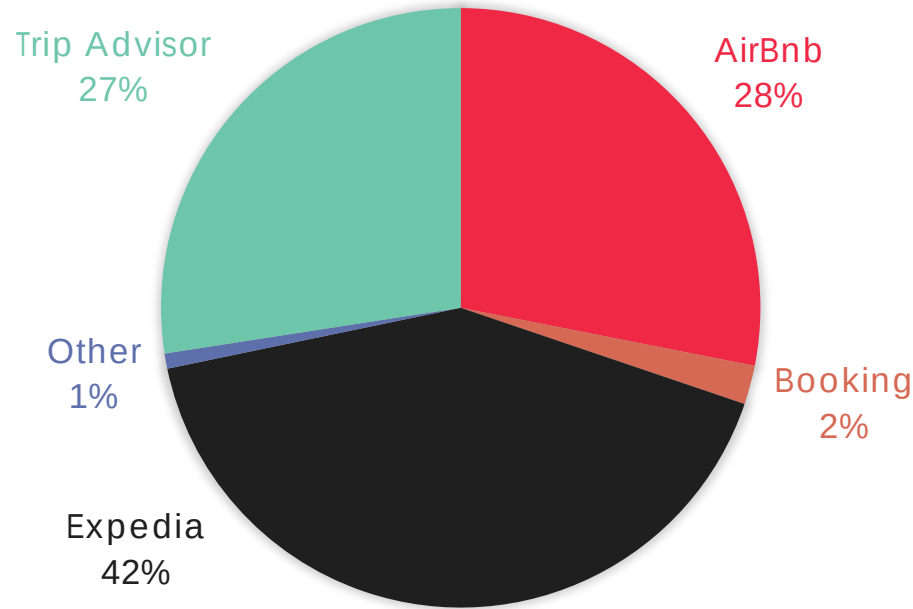
In the broader New England area, we are already serving 15 forward-thinking local government agencies

- South Hadley, MA
- Madison, NH
- Kennebunkport, ME
- Portsmouth, RI
- Falmouth ME
- Boston MA
- Quincy, MA
- Cambridge, MA
- Revere, MA
- Somerville, MA
- Portland ME
- South Portland, ME
- Bangor, ME
- Newport, RI
- Barnstable Town MA

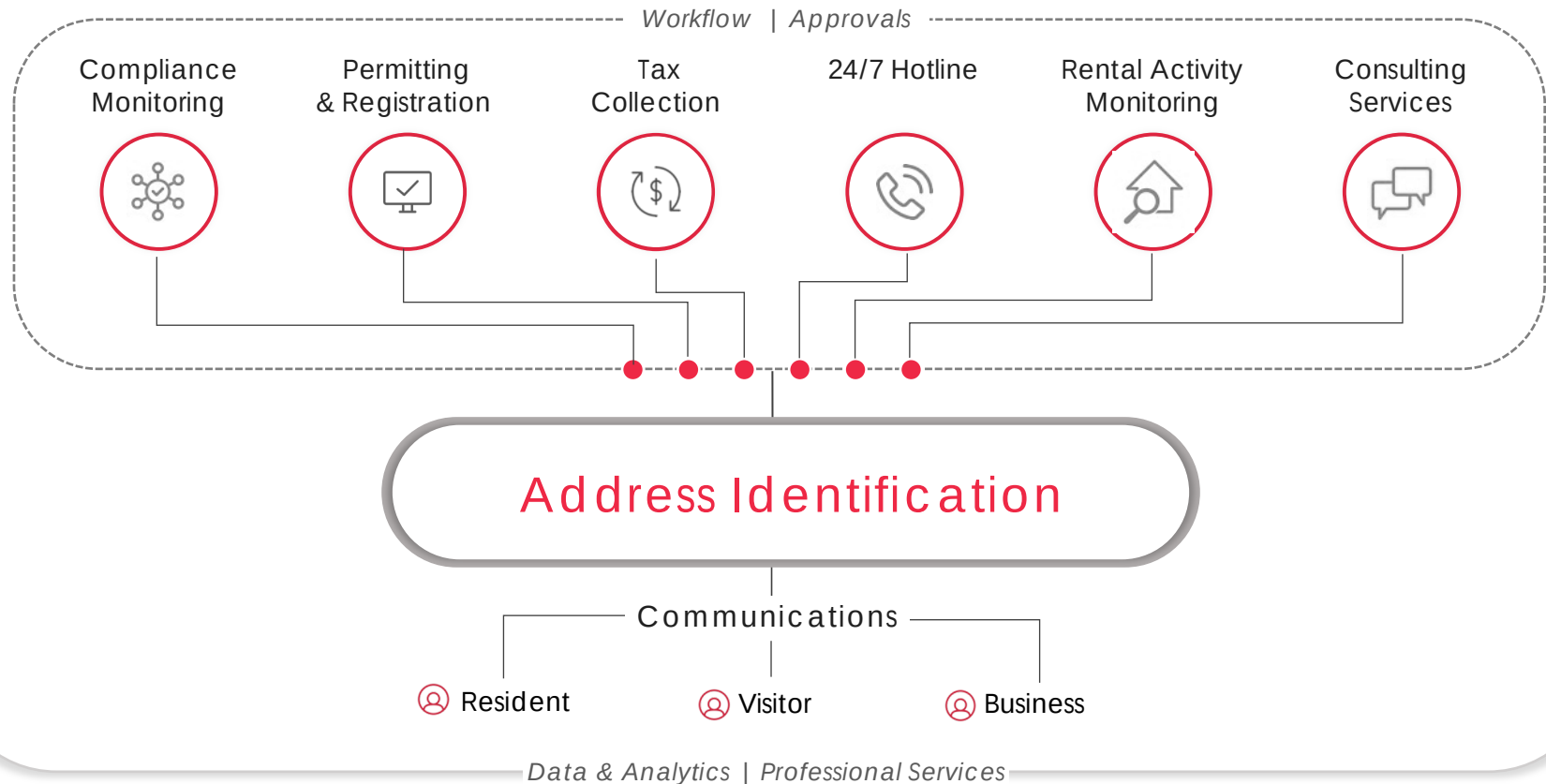
Local governments are finding ways to **mitigate the negative impact** of STRs through thoughtful legislation

STR Policy Objective	Regulatory Best Practices
Housing Availability	• Only allow permanent residents to operate STRs • Disallow rentals in subsidized housing
Neighborhood Preservation	• Set neighborhood quotas • Ban signs
Protect Quality of Life	• Require adequate parking and garbage disposal • Require hosts to post noise ordinance • Require a local contact person
Economic Development	• Encourage hosting in certain areas and time frames
Safety	• Require physical safety and habitability inspections

Nantucket's short-term rental listings are spread across a number of online platforms



govService Host Compliance



Accomplishments & Plans

What was done and what is planned for the next stage:



Accomplished

- » Identified properties operating as short-term rentals in the Nantucket area
- » Specifications unique to Nantucket's short-term rental ordinance completed
- » Systematic outreach through letter communication with property owners
- » Hotline platform created for community engagement regarding STR issues
- » Guided training and resources provided for Nantucket administration support



Looking Forward

- » Digitized registration process to apply and renew short term rental permits
- » Online payment solution to provide citizens option beyond cash/check
- » Outreach program for community awareness and education, including updated website organization
- » Rollout of complete solution projected for June 2023
- » Enforcement to begin January 1st, 2024

CONSENT AGENDA ITEMS FOR 4/5/2023 SELECT BOARD MEETING

1. Gift Acceptances

Recommend the acceptance of the following gifts to Town agencies:

- Dept. of Public Works:
 - o Gift of four (4) large planters from ReMain Nantucket valued at \$5,275 that are located outside 10 Washington Street

Recommended Motion: To accept all gifts for their designated purposes, with thanks to the donors.

Town Administration will ensure that letters of thanks are sent.



Paul Berard Jr.
Deputy Director of Facilities
Dept. of Public Works
188 Madaket Road
Nantucket, MA 02554

February 27, 2023

Dear Paul:

It is our pleasure to inform you that ReMain Nantucket, LLC ("Grantor") would like to donate the 4 large round planters located outside of 10 Washington Street, Nantucket, MA to the Town of Nantucket, Department of Public Works, Nantucket, MA ("Grantee"). The planters were installed in April of 2022 and cost \$5,275.

By accepting this gift, you confirm that the DEPARTMENT OF PUBLIC WORK is a governmental unit within the meaning of sections 170(b)(1)(A)(v) and 170(c)(1) of the Internal Revenue Code and agree to use the grant funds exclusively for public purposes.

Grantee accepts the Gift on an "AS IS" basis, with no representations or warranties, either express or implied, including, without limitation, any implied warranties of fitness. You are responsible for all ongoing maintenance and management of the Gift.

You agree, to the fullest extent permitted by law, to defend, indemnify, and hold harmless Grantor, its officers, directors, trustees, employees, and agents, from and against any and all claims, liabilities, losses, and expenses (including reasonable attorneys' fees) directly, indirectly, wholly, or partially arising from or in connection with any act or omission of You, its officers, directors, trustees, employees or agents, in accepting the Gift, in use of the Gift, except to the extent that such claims, liabilities, losses, or expenses arise from or in connection with any gross negligence or willful misconduct of Grantor, its officers, directors, trustees, employees or agents.

In external communications, acknowledgements, any publication, public relations announcement or press release concerning this Grant, you will acknowledge ReMain Nantucket.

We are very supportive of the Department of Public Works and their mission to provide and maintain Public Services necessary for the economy, growth and quality of life for the citizens and visitors to Nantucket. We wish you every success with your mission.

Regards,

DocuSigned by:

Cecil Cassels Barron Jensen

1CB8C214E2B54FA...

Name:

Title: **Executive Director**

Date: **2/27/2023**

Cecil Barron Jensen
Executive Director
ReMain Nantucket
58 Main Street
Nantucket, MA 02554

Received and Accepted By:
Town of Nantucket, Department of Public Works,

Name:

Title:

Date



Agenda Item Summary

Agenda Item #	X. 1.
Date	4/5/2023

Staff

Erika D. Mooney, Operations Administrator

Subject

Robert B. Our Co., Inc. (RBO) Request to Amend Waiver of Town Noise Bylaw approved March 8, 2023

Executive Summary

Due to severe daytime traffic impacts and because the sewer project has to be relocated into Surfside Road due to conflicts with existing infrastructure in the side of the roadway, RBO, the Town's contractor on the Third Sewer Force Main Project, is requesting for the Board to amend the Town Noise Bylaw waiver granted at its March 8 meeting (which allows for night construction from 4:00 PM to 3:00 AM, Monday through Thursday nights from April 24, 2023 to June 2, 2023) to begin night work on Monday, April 3, 2023.

Staff Recommendation

Approve the amendment to the previously approved Noise Bylaw Waiver as requested.

Background/Discussion

N/A

Impact: Environmental ☐ Fiscal ☐ Community ☒ Other ☐

Construction noise

Board/Commission Recommendation

N/A

Public Outreach

Abutter notification to affected areas will occur prior to the work being done.

Connection to Existing Applicable Plan (i.e., Strategic Plan, Master Plan, etc.)

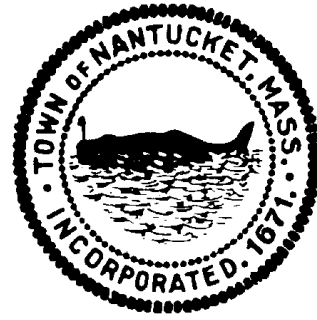
N/A

Attachments

March 8, 2023 Noise Bylaw Waiver



TOWN/COUNTY OF NANTUCKET TOWN ADMINISTRATION OFFICE



MEMO

TO: Abigail Rose, Robert B. Our, Co., Inc.

FROM: Erika Mooney, Operations Administrator *Erika Mooney*

CC: NPD
Sewer Dept.
Ziad Kary, EPG
Frank Ayotte, Hazen & Sawyer

DATE: March 20, 2023

RE: Waiver of Town Noise Bylaw

At its March 8, 2023 meeting, the Select Board voted to approve the request of Robert B. Our, Co., Inc. for a waiver of the Town Noise Bylaw from 4:00 PM to 3:00 AM, Monday through Thursday nights from April 24, 2023 to June 2, 2023 for work associated with the Third Sewer Force Main project on Surfside Road.



Agenda Item Summary

Agenda Item #	X. 2.
Date	4/5/2023

Staff

Amy Baxter, Licensing Administrator

Subject

Pedicab Licenses

Executive Summary

Request for the Select Board to review pedicab proposal received from NanTukTuk and determine if a public hearing should be set to consider issuing pedicab licenses per Town Regulation Chapter 316/Pedicabs (adopted 7-1-2011).

Staff Recommendation

Per Chapter 316: *No person shall engage in the business of transporting persons for hire in a vehicle without first having obtained a license from the Nantucket Select Board (hereinafter "Board") authorizing him/her to engage in such business. The Select Board shall set the number of pedicab owner licenses available in any calendar year at will.*

Staff requests a determination if the Select Board wishes to pursue public discussion on setting a number for available Pedicab licenses to be issued per Chapter 316 requirements.

A public hearing would determine: number of Licenses available, number of pedicabs per license, fees, recommended amendments to regulations as needed.

Background/Discussion

A request for a Pedicab license was received by the Licensing Office from Michael Gormley, dba NanTukTuk. A Business Proposal was requested to outline the proposed services and is attached for review and discussion.

The proposal was reviewed by Town Administration and Police Chief Pittman for comments and recommendations.

Chief Pittman's comments in response to the attached plan:

Questions:



Has the Board adopted a cap on the number of Pedicabs allowed to operate in Nantucket? If so, what is it?

Has the Board adopted a license fee for a Pedicab Owner's License? If so, what is it?

Has the Board adopted a fee for a Pedicab Operators License? If so, what is it?

Observations regarding the Proposal:

The applicant's business plan appears to propose operations outside of the "Pedicab Service Area Map" that was adopted as part of these regulations. The Board could amend the map. I would be hesitant to support any modification outside of very narrow lanes to traverse to the Milestone and Polpis bike paths or the Madaket bike path to facilitate transportation to Sconset and/or Madaket. Unless such an amendment was made, the proposal appears outside of what is allowed per the regulation. Currently such trips would be prohibited.

Impact: Environmental ☐ **Fiscal** ☐ **Community** ☐ **Other** ☐

N/A

Board/Commission Recommendation

N/A

Public Outreach

N/A

Connection to Existing Applicable Plan (i.e., Strategic Plan, Master Plan, etc.)

N/A

Attachments

Chapter 316, Pedicabs; Pedicab Service Area Map; NanTukTuk Business Overview Proposal; Portion of 6/15/2011 Select Board minutes; 2011 emails from Town Counsel



Chapter 316

PEDICABS

[HISTORY: Adopted by the Board of Selectmen (now Select Board) of the Town of Nantucket 7-1-2011. Amendments noted where applicable.¹]

TOWN REGULATIONS REFERENCES

Traffic — See Ch. 375.

§ 316-1. Definitions.

As used in these regulations, the following terms shall have the meanings indicated:

PEDICAB — A bicycle with three or more wheels, which is designed to transport passengers on seats attached to the vehicle, which is operated by one person, which is powered solely by human power, and which is used for transporting passengers for hire.

§ 316-2. Pedicab owners.

- A. No person shall engage in the business of transporting persons for hire in a vehicle without first having obtained a license from the Nantucket Select Board (hereinafter "Board") authorizing him/her to engage in such business. The Select Board shall set the number of pedicab owner licenses available in any calendar year at will.
- B. Pedicabs must be registered to a residential address in the Town of Nantucket.
- C. The applicant must have already had the pedicab inspected by the Nantucket Police Department in advance of receiving a license each year and submit a form completed by the Police Department to the Board upon filing an application.
- D. No pedicab license shall be issued by the Board until the applicant has presented proof of the vehicle's insurance, that the insurance policy covers no more than four passengers, including the driver, riding in the vehicle, and the applicant provides a certificate of vehicle insurance naming the Town as an additional insured.
- E. An applicant shall set forth under oath all information that the Board may require, including, but not limited to:
 - (1) The full name, address and phone number of the owner;
 - (2) The name and address of all legal and registered owners of the pedicab;
 - (3) A description of the pedicab, including trade name, if any, serial number, and body style; and
 - (4) The Physical address of pedicab storage.

1. Editor's Note: The Select Board approved the codification of its regulations, as revised, 4-13-2022.

- F. When a pedicab owner changes his/her address or the place at which a pedicab owned by him/her is kept, the owner shall notify the Board within three days of such change.
- G. All pedicabs shall have the business name and the business telephone number posted on rear of the cab in letters no less than three inches high and one-half inch wide. All lettering must be in the form of painted or self-adhesive contrasting lettering. (Magnetic or other removable signs are not permitted.)
- H. Hours of operation shall not exceed the hours of 6:00 a.m. to 2:00 a.m. daily. Hours of operation for applicants less than 18 years of age will not extend past 10:00 p.m. daily.
- I. Pedicab licenses shall be valid only during the calendar year for which they are issued.
- J. A license issued for any pedicab is not transferable.
- K. No placards, banners, or advertisements of any description will be permitted upon the outside of any pedicab without the approval of the Board.
- L. All pedicab operators shall maintain a neat and clean pedicab while on duty.
- M. The pedicab license fee shall be set from time to time by the Select Board.
- N. The Nantucket Police Department, under supervision of the Chief of Police, is hereby designated as the enforcement agency of these regulations and shall notify the Board of any violation thereof. Pedicab owners/operators shall comply with all regulations. Any violation of the Board's regulations or any state or local laws or bylaws may result in a suspension or revocation of the license.
- O. Pedicab owners shall notify the Board when operators leave the company.
- P. Owners/Operators shall charge no fare for pedicab service; operators shall be paid through voluntary payments or tips from passengers only.
- Q. No smoking is allowed in pedicabs at any time.
- R. The operating company will provide a shift supervisor during the hours of 6:00 p.m. to 2:00 a.m. and proof of radio contact upon request for juvenile-manned shifts.

§ 316-3. Pedicab operators.

Pedicab operator licenses are issued by the Nantucket Police Department and applications shall be filed with the Police Department, 4 Fairgrounds Road, Nantucket.

- A. The applicant must be 18 years of age or older, or 16 years of age with written parental/guardian permission.
- B. The applicant must have a valid state driver's license and/or internationally approved driver's license, and present a copy to the Board upon filing an application.
- C. A certificate of physical fitness issued by a practicing physician shall be mandatory

to accompany all new applications for a pedicab operator's license.

- D. Pedicab operator's licenses shall be valid only during the calendar year for which issued.
- E. When a pedicab operator changes his/her address, the operator shall notify the Board within three days of such change.
- F. A neat and clean appearance is expected of all pedicab operators while on duty.
- G. The pedicab operator fee shall be set from time to time by the Select Board.
- H. Pedicab operators shall not, when otherwise available for hire, refuse to transport anyone requesting a ride except under the following circumstances:
 - (1) The transportation requested is such that the operator may not legally accept such passenger.
 - (2) The proposed passenger is disorderly, engaged in the commission of any crime, or is otherwise unfit to be transported as a passenger.

§ 316-4. Operating regulations.

- A. It shall be unlawful for any person:
 - (1) To operate a pedicab while under the influence of alcoholic beverages or controlled substances other than medication prescribed by a physician. No operator shall operate a pedicab within four hours of having consumed any alcoholic beverage.
 - (2) To operate a pedicab in any manner that impedes or blocks the normal or reasonable movement of pedestrian or vehicular traffic unless such operation is necessary for safe operation or in compliance with law.
 - (3) To operate, or cause to be operated, any pedicab upon or along any route unless the Select Board first approves such route. The Board shall approve a map designating a Pedicab Service Area which shall apply to this requirement. The Board may alter the map as it deems necessary.²
 - (4) To operate or cause to be operated at night a pedicab without using headlights and taillights.
- B. There shall be no more than four passengers, including the operator, in a pedicab at any one time. Passengers being transported shall remain seated throughout the ride.

§ 316-5. Revocation of licenses.

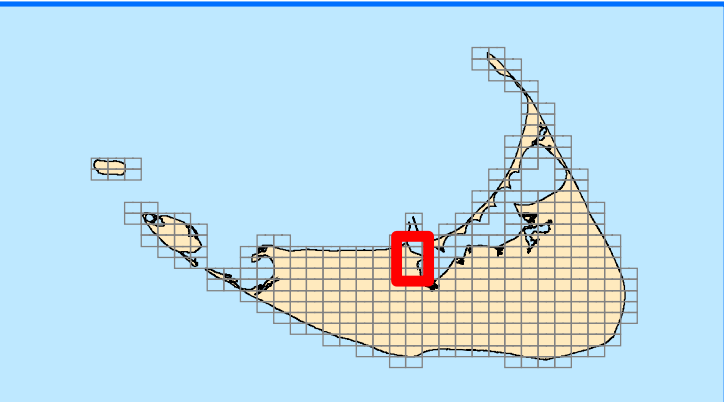
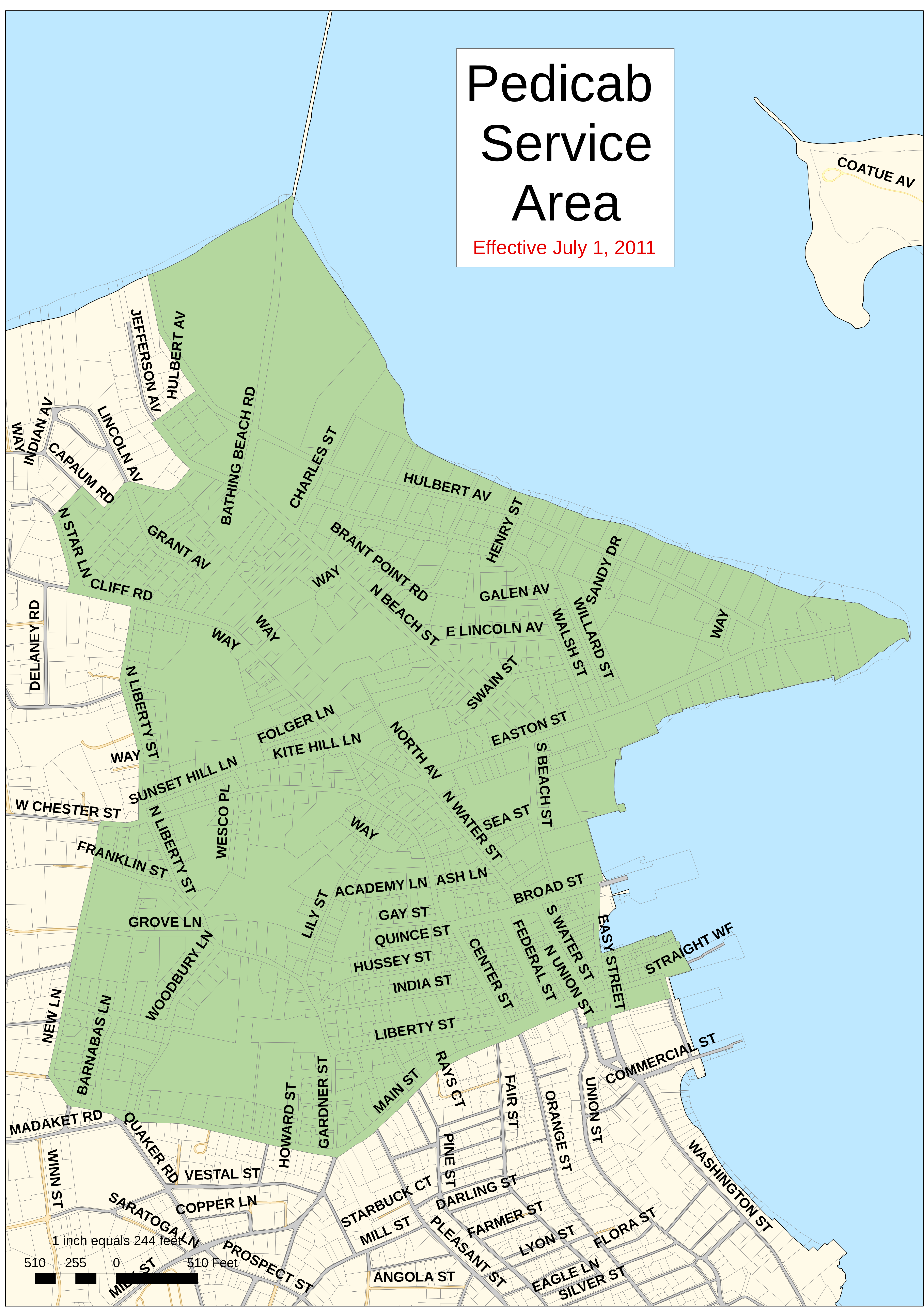
The Board may suspend or revoke any pedicab license or operator's license for failure to comply with these regulations, state law or local bylaw. The Board shall provide notice and an opportunity for a hearing to licensees prior to taking any such action. The Board may suspend or revoke any pedicab license or operator's license immediately at the Board's discretion for public safety reasons.

2. Editor's Note: The Pedicab Service Area Map is included as an attachment to this chapter.

Pedicab Service Area

Effective July 1, 2011

COATUE AV



Data Sources:
The planimetric data on this mapsheet is based primarily upon interpretation of April, 2003 aerial photography. It was compiled to meet the ASPRS Standard for Class I Map Accuracy for 1"=100' scale maps.
The parcel boundaries are based primarily upon the Tax Assessor's data through December, 2006.
Please send identification of any errors and corresponding corrections to:
GIS Coordinator
Town of Nantucket
2 Fairgrounds Rd
Nantucket, MA 02554

Town of Nantucket GIS Mapsheet

Nantucket governmental agencies will not necessarily approve applications based solely on GIS data. Applicants for permits and licenses must inquire of the relevant agency for applicable requirements.
The presence of information of this mapsheet does not necessarily imply public right-of-way or the right of public access.
The data on this mapsheet represents the efforts of the Town of Nantucket and other cooperating organizations to record and compile pertinent geographical and related information utilizing the capabilities of the Nantucket Geographic Information System (GIS). The GIS staff maintains an ongoing program to record and correct errors in these data that are brought to its attention. The Town of Nantucket makes no claims as to the absolute validity or reliability of these data or their fitness for any particular use.



6/16/2011



Pedicab Service Area

NanTukTuk Business Overview



INTRODUCTION

We are submitting this Business Overview in an effort to gain your support to operate a limited number of pedicabs in Nantucket, MA.

NanTukTuk is a small business founded and operated by a passionate team that has worked, lived, and enjoyed Nantucket for many years.

We believe that we have a great solution for a problem that many people face on Island.

BENEFITS

NanTukTuk will allow visitors to experience the island in the best way possible: by bike!

- Reduce vehicular congestion on downtown roads and in its limited parking.
- Reduce impaired or reckless vehicle driving
- Provide a novel, fun, safe, and immersive way to travel on Island

A pedicab is an environmentally friendly solution for anyone to enjoy fresh air and to see the beauty of the Island in an efficient and immersive way...not to mention, getting to their destination safely and quickly!

NanTukTuk is inclusive, including those unable to ride a bike due to age, physical ability, impairment etc., or those who would simply rather sit back, relax and have someone transport them to their destination or show them around!

OPERATIONS

NanTukTuk will provide a safe, fun, and cost effective experience for residents and visitors.

We will partner with local businesses and venues to provide stress-free transportation for their guests.

We will also offer our services to private groups interested in providing a unique transportation experience for their guests, including weddings, parties, and corporate events.

Finally, we will offer a car-free service allowing people an efficient method to travel throughout the core downtown and the surrounding area.

FLOW OF TRAFFIC

NanTukTuks pedicabs will be well equipped, with lighting on the front and rear of the body. Additionally, at roughly half the length and width of a standard car, they will be able to maneuver safely and efficiently within the existing road infrastructure.

Our team and its drivers will be trained and versed in the Island's traffic flows and intersections etc. to ensure that they only enhance the flow of traffic and travel for everyone. We have reviewed the relevant Town regulation and will fully comply with the provisions.

ENGAGEMENT

Our services will either be booked in advance or be available to be hailed for rides around island.

While we are obviously seeking a business opportunity, this proposal is made in the sincere belief that we will be able to enhance the Nantucket experience and have a positive impact on the community that holds a very special place in our hearts. We recognize that would be best accomplished by working in collaboration with the selectboard and community, and we look forward to your input.

CONTACT

Please feel free to reach out to Michael Gormley via email (mgormley17@gmail.com) with any questions.

8. Public Hearing to Consider Appeal of Three Martins Lane LLC of Historic District Commission Disapproval of Certificate of Appropriateness No. 56434 for Property Located at 3 Martins Lane.

Chairman Atherton opened the public hearing. Attorney Steven Cohen, representing the appellant, requested that the Board continue the public hearing to 6 July 2011 or when a full board is present. Historic District Commission chair David Barham said he has no objection to a postponement but said he feels a new public notice should be issued. HDC Administrator Mark Voigt said he would like to recognize the abutters present. Mr. Kopko said he is disappointed in the request and the earliest he can anticipate the matter being heard is 20 July 2011. He added that the Town should issue a notice of a continued public hearing date. Mr. Cohen said his client will pay for readvertisement. Mr. DeCosta moved to continue the public hearing to 20 July 2011 and that the meeting will be readvertised at the cost of the appellant; Mr. Kopko seconded. So voted 4-0.

9. Public Hearing to Consider Establishing Pedicab Regulations for the Town of Nantucket. Chairman Atherton opened the public hearing. Chairman Atherton noted the Board has considered pedicab regulations previously and that at least three members wished to discuss the matter again and he said he feels the Town would be better off having regulations in place. Tom Landry said he feels pedicabs should be regulated like a taxi. Mr. Kopko said he is in favor of enacting pedicab regulations based on Town Counsel's recommendation. Chairman Atherton closed the public hearing. Mr. DeCosta moved to adopt the proposed pedicab regulations with two pedicab owner licenses available per year and to adopt a pedicab service area map as presented (outlined in blue); Mr. Kopko seconded. So voted 4-0.

VII. TOWN MANAGER'S REPORT

1. Town Administration: Request for Approval of FY 2011 Year End Budget Transfers. Assistant Finance Director Irene Larivee reviewed the FY 2011 year end budget transfers. Mr. Kopko said that many transfers are being made from salary line items to non-salary line items and asked why. Ms. Larivee answered questions from the Board.

Mr. Willauer left the meeting at 7:52 PM; he returned at 7:54 PM.

Chief Pittman said regarding the police budget transfers, no items had been planned to be purchased at the beginning of the fiscal year but that items needed came up throughout the year. Mr. Kopko said he feels departments are "spending money to spend it" Chairman Atherton said it sounds like "use it or lose it". Chief Pittman said if the Police Department does not get the items now it won't be able to request them again until FY 2013.

Mr. Willauer left the meeting at 8:02 PM; he returned at 8:05 PM. Mr. Tivnan said it is time to scrutinize the budget and decide what would be nice to have versus what is needed. Chairman Atherton noted that the transfers also need to be approved by the Finance Committee. Ms. Larivee said the Finance Committee is reviewing the budget transfers tomorrow. She reviewed further items. Mr. Kopko said he would like to see further detail on large expenditures from Our Island Home and the Police Department. Some discussion followed. Mr. DeCosta moved to approve the FY 2011 budget transfers with the exception of Our Island Home and the Police Department which will be addressed at the Board's 22 June 2011 meeting; Mr. Kopko seconded. So voted 4-0.

2. Town Administration: Review of Financial Policies. Mr. Tivnan clarified that the Board is reviewing various financial policies tonight, but no action is being requested. He added that the policies, which include accounting and financial reporting, reserves, use of one time revenue sources, and user fees and charges, have been reviewed by the auditor and Mark Abrahams, and that the Finance Committee

Erika Mooney

From: Brian Riley [BRiley@k-plaw.com]
Sent: Thursday, May 19, 2011 4:39 PM
To: Libby Gibson
Cc: Leonard Kopelman; Erika Mooney
Subject: Pedicabs
Attachments: 94p_01!.DOC

Libby: I sent the attached email opinion on April 27 but it may have been lost in the shuffle. In my opinion, the Board of Selectmen is not obligated to adopt pedicab regulations. In my further opinion, if the Board decides not to do so, pedicabs would be able to operate on public ways in Town, without the need of a permit or other approval of the Town.

As noted in my attached opinion, G.L. c.40, §22 authorizes the Selectmen to adopt regulations for the use of vehicles on public ways, and this statute is the basis for all municipalities that have adopted taxicab regulations. Such regulations are not mandatory, however. There is a long history, of course, of municipalities regulating taxicabs. In my opinion, this grew out of the realization that unregulated taxis could result in the operation of dangerously unsafe vehicles, undesirable operators and the practice of price gouging of unsuspecting passengers, so there is a clear public interest in avoiding all of those through thorough regulations and licensing requirements.

Pedicabs are a new phenomenon, but they are clearly "vehicles," in my opinion, and may be regulated just as taxicabs are regulated. The Selectmen may reasonably decide, however, that the proposed use of pedicabs does not pose the same public safety and/or interest concerns that motorized taxicabs do and decide to allow them to operate without Town regulation – while I have no firsthand knowledge of the situation in Chatham, it appears that the Chatham Selectmen decided to put off adopting regulations. If the Board decides not to adopt regulations now but wants to later on, in my opinion, it may adopt regulations and there would be no exemption from such regulations for any pedicab owner already operating.

If the Board would like Counsel there on June 15 and Leonard is not able to attend, I would be happy to attend, but I will leave that up to you two.

Brian

From: Leonard Kopelman
Sent: Thursday, May 19, 2011 3:25 PM
To: Brian Riley
Cc: Libby Gibson
Subject: FW: June 15

Could you please give them an opinion in writing even though we advised on this orally.

From: Libby Gibson [mailto:LGibson@nantucket-ma.gov]
Sent: Thursday, May 19, 2011 12:22 PM
To: Erika Mooney; Leonard Kopelman
Subject: RE: June 15

There is a recurring question from Board members as to whether or not we have the regulations in place, someone can legally operate a pedicab business without Town approval.

C. Elizabeth Gibson
 Town Manager
 Town of Nantucket

5/23/2011

(508) 228-7255

From: Erika Mooney
Sent: Thursday, May 19, 2011 12:17 PM
To: Leonard Kopelman
Cc: Libby Gibson
Subject: June 15

Hello Leonard:

Libby would like you or someone from Town Counsel to attend the Board's June 15 meeting, as we will be discussing the pedicab regulations, again. Please confirm, and let me know who we should be expecting. Many thanks,

Erika

Erika D. Mooney
Executive Assistant to the Town Manager
Town of Nantucket
508-228-7266 Direct
508-228-7255 Town Administration
508-228-7272 Fax

5/23/2011

From: Brian Riley
Sent: Wednesday, April 27, 2011 10:40 AM
To: Erika Mooney
Cc: 'Libby Gibson'; Leonard Kopelman
Subject: Pedicabs

Erika: I will follow up on our conversation yesterday by addressing your questions below. I understand that the Board considered the applicant's information at a public hearing but continued the matter and the regulations for deliberations tonight. First, in my opinion, the Board is not required to adopt regulations for pedicabs. General Laws Chapter 40, §22 authorizes the Board to adopt regulations for the "regulation of carriages and vehicles used therein, and may set penalties for the violation thereof; and may set and receive an annual fee for each license granted to a person to use any such carriage or vehicle therein." But it is not mandatory. Therefore, the Board could decide to allow the current applicant to run his business this season and then evaluate whether regulations and a permitting system are advisable (in the event that there are any incidents or that additional people express an interest in operating pedicabs, for example). This is apparently what Chatham did last year. We have a couple of client towns that adopted regulations up front, but I do not see a risk to the Town associated with waiting to see how the enterprise fares this year.

A formal regulation adopted under c.40, §22 is the only way, other than a by-law, to impose mandatory requirements on a pedicab owner, and so the Board could not forego adopting regulations and then tell the applicant that he must have insurance to operate. As a practical matter, of course, the applicant would be very ill-advised to operate without any insurance, which would serve to protect both him and his passengers. It appears that Chatham requested that their applicant submit a certificate of insurance, and the Board may wish to do the same for Mr. Antonik to have proof that the public has some protection. On a related note, it is conceivable that a passenger suffering injuries could attempt to make a claim against the Town regarding the operation of pedicabs on public ways, whether or not the Board adopts regulations. Such a claim would have a very weak basis, however, in my opinion, as the Massachusetts Tort Claims Act generally exempts a municipality from liability associated with discretionary functions, such as the regulation of public ways.

If the Board does adopt regulations, it has the authority to amend or rescind them later at any time, in my opinion. Moreover, if the Board decided later to adopt regulations, any pedicab operator already in business would not be able to validly claim that they are "grandfathered" or exempted from the regulations. Finally, I would note that one primary reason for the strict regulation of taxicabs is to establish a rate schedule and protect the public from price gouging on the part of taxi operators. Given that Mr. Antonik plans to not charge any fee but depend on tips for his income, this policy reason for regulation is absent, at least as it now stands. It is a policy decision for the Board, therefore, as to whether to adopt the regulations now or to wait and see how the service goes this year.

If you have further questions, please let me know.

Brian W. Riley, Esq.
Kopelman and Paige, P.C.
101 Arch Street
12th Floor
Boston, MA 02110
(617) 556-0007
(617) 654-1735 (Fax)



Agenda Item Summary

Agenda Item #	X. 3.
Date	4/5/2023

Staff

Tucker Holland, Housing Director

Subject

Sewer Fee Waiver Request for Balance of Nantucket Property Owner LLC Income-Restricted Homeownership Sites

Executive Summary

As the Board is aware, Nantucket Property Owner LLC ("NPO LLC") is the successor / assign to a portion of the Sandpiper I and II homeownership development. Therefore, it is subject to certain aspects of the MOA's between Richmond and the Town, and is eligible to avail itself the Select Board's current Sewer Fee Waiver Policy adopted in November of 2022. Accordingly, NPO LLC is seeking Sewer Fee Waivers for the balance of its income restricted homeownership sites within Sandpiper II as described below. The waivers sought cover one (1) 175% AMI restricted units and eight (8) 80% AMI restricted units. Under the policy, the Board can waive the connection fee with respect to the 175% AMI units and both the connection and capacity fees with respect to the 80% AMI units. Per the policy, the total requested waivers amount to \$89,644.80 (\$36,000 in connection fee waivers and \$53,644.80 for capacity fee waivers).

Staff Recommendation

Approve consistent with the 2015 and 2019 MOA's and the Board's current Sewer Fee Waiver Policy

Background/Discussion

Here is a summary of the request:

175% AMI units

15 Honeysuckle Drive (3-bedroom single family home)

One (1) unit. Waiver request is to waive the connection fee, consistent with the current Sewer Fee Waiver policy.

Per the policy, this totals requested waivers in the amount of \$4,000. (\$4,000 per unit)

80% AMI units

5 Beach Grass Road (3-bedroom single family home)

2 Indigo Drive (3-bedroom single family home)



16 Honeysuckle Drive (3-bedroom single family home)
21 Honeysuckle Drive (3-bedroom single family home)
6 Beach Grass Road – Unit A (3-bedroom duplex unit)
6 Beach Grass Road - Unit B (3-bedroom duplex unit)
13 Beach Grass Road – Unit A (3-bedroom duplex unit)
13 Beach Grass Road – Unit B (3-bedroom duplex unit)

Eight (8) units. Waiver request is to waive the connection and capacity fees, consistent with the current Sewer Fee Waiver policy.

Per the policy, this totals requested waivers in the amount of \$85,644.80 (\$32,000 in connection fee waivers and \$53,644.80 for capacity fee waivers).

NPO LLC represents all of the 175% AMI and 80% AMI units noted above have been, or will be, permanently deed restricted for the respective affordability through the respective Regulatory Agreements and deeds.

NPO LLC representatives plan to speak at 4/5/2023 SB meeting to sufficient documentation (e.g., Regulatory Agreements, deed restrictions, Planning Board approvals, etc.) regarding Town Counsel's and DHCD's satisfaction as to 1) all income-restricted unit types are acceptable, 2) all income-restricted units are deed restricted at the respective income levels in perpetuity, and 3) all income-restricted units are in approved locations. A number of these lots had to move or be swapped from the original lots designated due to size constraint, accommodating a pool / amenity center, and increasing restricted unit count (+1 175% AMI unit).

"The moving of the lots have already been approved by the planning board and DHDC. By definition as affordable homes, they will be conveyed with all the required amendments and deed restrictions in place."

- Tamora Flahardy on behalf of NPO LLC

We understand these represent all of the remaining income-restricted homeownership units within NPO LLC's portion of Sandpiper I and II.

Impact: Environmental ☐ **Fiscal** ☒ **Community** ☒ **Other** ☐

Supporting the community's ownership housing needs, and contributing to the Select Board's Safe Harbor objectives with respect to the 80% AMI units.

Board/Commission Recommendation

N/A

Public Outreach

N/A

Connection to Existing Applicable Plan (i.e., Strategic Plan, Master Plan, etc.)

Strategic Plan – Housing



Attachments

- 1) Sewer Fee Waiver Policy adopted November 2022
- 2) Background e-mail chain to the request





TOWN & COUNTY OF NANTUCKET
SELECT BOARD
POLICY FOR SEWER FEE WAIVER REQUESTS
Adopted: 07/20/2016; Revised 10/24/2018, 12/03/2020, 11/02/2022

I. Policy.

The Select Board, acting as the Nantucket Sewer Commission pursuant to Chapter 396 of the Acts of 2008, and in accordance with Chapter 38, Article III, section 38-3B of the Code of the Town of Nantucket, has the authority to waive any town fee or charge, upon a determination that the public interest so requires.

The Select Board hereby determines that it is in the public interest to encourage the production of affordable housing, including workforce housing units for the Island's working population. The Board hereby further determines that is in the public interest to encourage the production of housing units that qualify on the Town's Subsidized Housing Inventory, particularly where they contribute to a period of Safe Harbor relative to the Commonwealth's Chapter 40B law. Therefore, the Select Board will consider, on a case-by-case basis, waivers of one or both of the Town's fees relating to the connection of dwelling units that are located in an existing Sewer District as established under Chapter 396 of the Acts of 2008.

II. Sewer Connection and Sewer Capacity Fee Waivers.

The Select Board may, at its discretion, waive the sewer connection fee or the Sewer Capacity Fee upon the request of a property owner, developer, or public entity seeking to connect one or more dwelling units to the Town's sewer system if such unit or units are bound by a permanent affordable housing deed restriction in a form acceptable to the Town and enforceable by the Town, and provided that the dwelling unit or units are part of a project where a minimum of 25% of the units are eligible for inclusion on the Town's Subsidized Housing Inventory ("SHI") as maintained by DHCD or any successor agency and provided that the developer and/or unit owner shall cooperate fully with the Town in obtaining SHI status for the eligible unit or units by timely providing all required documentation and notifying the Town Manager when a building permit issues and when an occupancy permit issues.

In the case where less than all of the units in the project are income-restricted, the Select Board may waive up to 100% of both sewer fees where the unit is restricted at 80% AMI or less, up to 75% of both fees where the unit is restricted between 81% and 100% AMI, and up to 50% of both fees where the unit is restricted between 101% AMI and 150% AMI. In the case where all of the units in a project are income-restricted, 100% of both sewer fees may be waived as long as a minimum of 25% of the total number of units are SHI-eligible. In exercising its discretion, in applying the policy, the Select Board may consider the total value of Town subsidies for the

project, including closing cost assistance, direct grants, land contribution by the Town, other fee waivers, and market rate sales in the project.

In the case of dwelling units that are subject to a permanent affordable housing covenant meeting the requirements of Chapter 301 of the Acts of 2002, and Chapter 100 of the Code of Nantucket, or are subject to a permanent deed restriction serving households at 175% AMI or less that is satisfactory to the Town, the Select Board may, in its discretion, waive all or a portion of the sewer connection fee.

In addition to those waivers which the Select Board may grant for income-restricted dwelling units, during the period in which the Town is under its 10% requirement relative to the Commonwealth's Chapter 40B law, the Select Board may also determine that it is in the public interest to consider reductions only, on a case-by-case basis, to one or both of the Town's fees required as a condition of the connection of unrestricted, so-called 'market-rate', dwelling units within a Workforce Rental Community, as such is defined and described in Section 139-2 and Section 139-8(D)(2) of the Town of Nantucket Zoning Bylaw, that are located in an existing Sewer District as established under Chapter 396 of the Acts of 2008, to encourage the further development of mixed-income rental housing communities and private investment in the creation, upgrade, extension, replacement, and repair of private and public sewer infrastructure serving the Town of Nantucket and its citizens and landowners.

Accordingly, it is the Nantucket Sewer Commission's policy that the Select Board may, at its discretion, reduce the Sewer Connection Fee or the Sewer Capacity Fee, or both, upon the request of a property owner, developer, or public entity (i.e., the 'applicant') seeking to connect one or more unrestricted rental dwelling units to the Town's sewer system if:

- (1) The applicant's project or development has or will provide for the funding and / or physical construction of specific sewer system improvements which are deemed a benefit or improvement to nearby or abutting public and private landowners, in addition to the applicant's project or development; and
- (2) The applicant's project or development has or will provides for the funding and / or physical construction of approved* mitigation measures or capital improvements to the Town of Nantucket's municipal sewer system (or components thereof) including, for example, upgrades to one or more municipal sewer pumping station[s], upgrades to the diameter, capacity, or operating performance of municipal sewer mains, manholes, or other infrastructure); and
- (3) The cumulative cost of the sewer improvements and / or mitigation measures contemplated in subparagraphs (1) and (2) above incurred or reasonably estimated to be incurred by the applicant meets or exceeds a sum equal to fifty (50%) percent of the total amount** of sewer service connection fees and sewer capacity utilization fees that would be due and payable for all unrestricted units which the applicant is seeking connection if no waiver or reduction were to be granted pursuant to the Select Board's Policy for Sewer Fee Waiver Requests; and

- (4) All of the rental dwelling units within the applicant's project or development are eligible for certification to the Town of Nantucket Subsidized Housing Inventory (SHI), as such is established and maintained by the Commonwealth of Massachusetts Department of Housing and Community Development (DHCD).

Provided that in the opinion of the Select Board the applicant's project or development is in the public interest and meets the foregoing criteria then the Select Board may, in its discretion, reduce (A) the per-unit Sewer Service Connection Fee to an amount not less than Five Hundred (\$500.00) Dollars per unrestricted / market rate dwelling unit, or such other amount as determined by the Select Board; and (B) the per-unit Sewer Capacity Fee to an amount not less than Seven Hundred (\$725.00) Dollars per bedroom (within each unrestricted / market rate dwelling unit), or such other amount as determined by the Select Board.

Tucker Holland

From: Tamora Flahardy <tamorasellshomes@gmail.com>
Sent: Friday, March 31, 2023 11:21 AM
To: Tucker Holland; Christos Kuliopulos; rick@nantucketlawfirm.com
Cc: LINDA WILLIAMS; Erika Mooney; Vicki Marsh
Subject: Re: AFFORDABLE UNIT SEWER WAIVERS

Hi Tucker,

The moving of the lots have already been approved by the planning board and DHDC. The request before the board of selectmen is a waiver of sewer fees, not an approval for lot adjustments. Let's not add confusion and unnecessary burden into the process by introducing this language. By definition as affordable homes, they will be conveyed with all the required amendments and deed restrictions in place.

Best regards,
Tamora Flahardy
tamorasellshomes@gmail.com
Cell 978.504.1946

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Please consider the environment before printing this e-mail

On Fri, Mar 31, 2023 at 10:21 AM Tucker Holland <tholland@nantucket-ma.gov> wrote:

Hi Linda and Tamora,

Am planning to get the AIS today to Erika and present at next week's SB meeting (4/5 at 5:30pm) as we have been aiming for. Just want to give a heads up that it would be good if one or both of you planned to attend.

Given all of the swapping of lots – for logical reasons – Town Counsel and I have discussed and have included in the AIS the following language:

We would recommend approval be conditioned on NPO LLC providing sufficient documentation (e.g., Regulatory Agreements, deed restrictions, Planning Board approvals, etc.) to Town Counsel's and DHCD's satisfaction that 1) all income-restricted unit types are acceptable, 2) all income-restricted units are deed restricted at the respective income levels in perpetuity, and 3) all income-restricted units are in approved locations. This is important given that a number of these lots had to move or be swapped from the original lots designated due to size constraint, accommodating a pool / amenity center, and increasing restricted unit count (+1 175% AMI unit).

To the extent you want to provide anything in this regard ahead of next week's meeting, we can note that during the SB discussion.

Best,

Tucker

Tucker Holland

Housing Director



m: Housing & Real Estate Office, 3 Chestnut Street, Nantucket, MA 02554

e: tholland@nantucket-ma.gov

p: 508-228-7200 ext. 7023

c: 802-233-3177

From: Tucker Holland

Sent: Thursday, March 30, 2023 4:43 PM

To: Tamora Flahardy <tamorasellshomes@gmail.com>

Cc: LINDA WILLIAMS <czarinalinda@comcast.net>; Erika Mooney <EMooney@nantucket-ma.gov>

Subject: RE: AFFORDABLE UNIT SEWER WAIVERS

Thank you, Tamora!

Tucker Holland

Housing Director



m: Housing & Real Estate Office, 3 Chestnut Street, Nantucket, MA 02554

e: tholland@nantucket-ma.gov

p: 508-228-7200 ext. 7023

c: 802-233-3177

From: Tamora Flahardy <tamorasellshomes@gmail.com>

Sent: Thursday, March 30, 2023 4:42 PM

To: Tucker Holland <tholland@nantucket-ma.gov>

Cc: LINDA WILLIAMS <czarinalinda@comcast.net>; Erika Mooney <EMooney@nantucket-ma.gov>

Subject: Re: AFFORDABLE UNIT SEWER WAIVERS

Hi Tucker,

Yes, this is correct as you have it below. Thank you for calling to expedite this and helping with the waivers!

Best regards,

Tamora Flahardy

tamorasellshomes@gmail.com

Cell 978.504.1946

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Please consider the environment before printing this e-mail

On Thu, Mar 30, 2023 at 3:53 PM Tucker Holland <tholland@nantucket-ma.gov> wrote:

Just spoke with Tamora and have updated the **below**. Tamora, thanks so much for clarifying all of this. Please review and confirm.

Tucker Holland

Housing Director



m: Housing & Real Estate Office, 3 Chestnut Street, Nantucket, MA 02554

e: tholland@nantucket-ma.gov

p: 508-228-7200 ext. 7023

c: 802-233-3177

From: Tucker Holland
Sent: Thursday, March 30, 2023 3:29 PM
To: LINDA WILLIAMS <czarinalinda@comcast.net>; tamorasellshomes@gmail.com
Cc: Erika Mooney <EMooney@nantucket-ma.gov>
Subject: RE: AFFORDABLE UNIT SEWER WAIVERS

Hi Linda and Tamora,

To confirm, here is what we are requesting waivers for next week:

175% AMI units

10 Beach Grass Road (3-bedroom single family home) **Now a market rate lot.**

24 Honeysuckle Drive (3-bedroom single family home) **Become a pool amenity center. 43 Beach Grass Road (units A + B – a duplex lot) is offset (+1) for allowing conversion for amenity center. No waivers being sought for these – already constructed.**

15 Honeysuckle Drive (3 Bedroom single family home) **Previously 80% AMI home. Replaces 10 Beach Grass Road.**

Net request: 1 unit (15 Honeysuckle). Waiver request is to waive the connection fee, consistent with the current Sewer Fee Waiver policy.

Per the policy, this totals requested waivers in the amount of \$4,000. (\$4,000 per unit)

80% AMI units

5 Beach Grass Road Drive (3-bedroom single family home)

13 Beach Grass Road Drive – Unit A (3-bedroom duplex unit)

13 Beach Grass Road Drive – Unit B (3-bedroom duplex unit)

2 Indigo Drive – Unit A (3-bedroom duplex unit) **No longer a duplex. Single family home. 80% AMI restricted.**

2 Indigo Drive (3-bedroom single family home)

15 Honeysuckle Drive (3-bedroom single family home) **No longer requesting for 80% waiver; now a 175% AMI home.**

16 Honeysuckle Drive (3-bedroom single family home)

21 Honeysuckle Drive (3-bedroom single family home)

6 Beach Grass Road – Unit A (3-bedroom duplex unit) **Previously market rate lot. Replaces 15 Honeysuckle unit**

6 Beach Grass Road Unit B (3-bedroom duplex unit) **Previously market rate lot. Replaces one of the 2 Indigo duplexes.**

*8 units (noted in **blue**). Waiver request is to waive the connection and capacity fees, consistent with the current Sewer Fee Waiver policy.*

Per the policy, this totals requested waivers in the amount of \$85,644.80 (\$32,000 in connection fee waivers and \$53,644.80 for capacity fee waivers).

All of the 175% AMI and 80% AMI units noted above have permanent deed restrictions for the respective affordability through the respective Regulatory Agreements and deeds, correct? Further, these represent all of the remaining income-restricted homeownership units within Nantucket Property Owner LLC's portion of Sandpiper I and II, correct?. You noted below that 9 Honeysuckle Drive and 10 Indigo Drive (both 80% AMI restricted) have already been granted waivers.

Please confirm all of the information above is correct and accurate from your perspective and we will proceed accordingly.

Thanks,

Tucker

Tucker Holland

Housing Director



m: Housing & Real Estate Office, 3 Chestnut Street, Nantucket, MA 02554

e: tholland@nantucket-ma.gov

p: 508-228-7200 ext. 7023

c: 802-233-3177

From: LINDA WILLIAMS <czarinalinda@comcast.net>

Sent: Thursday, March 30, 2023 9:18 AM

To: Tucker Holland <tholland@nantucket-ma.gov>; tamorasellshomes@gmail.com

Subject: RE: AFFORDABLE UNIT SEWER WAIVERS

Only two have been issued so far. You have a record of that already. Lot 74 - 9 Honeysuckle and Lot 77 - 10 Indigo.

On 03/29/2023 3:50 PM Tucker Holland <tholland@nantucket-ma.gov> wrote:

Hi Linda,

Please see attached listing – NPO / CHP information is at the bottom.

Can you confirm that addresses with respect to NPO /CHP are correct, or in the case of the mentioned swaps, provide detail regarding the swapped parcels? Also, for all addresses where the waiver is being sought, please provide bedroom count for each address.

Please also confirm the addresses for which waivers have already been granted.

We are intending to have the Sewer Fee Waiver request on the agenda for next week's SB meeting, but in order to do so, we need this information in the next 24 hours.

Thanks,

Tucker

Tucker Holland

Housing Director



m: Housing & Real Estate Office, 3 Chestnut Street, Nantucket, MA 02554

e: tholland@nantucket-ma.gov

p: 508-228-7200 ext. 7023

c: 802-233-3177

From: LINDA WILLIAMS <czarinalinda@comcast.net>

Sent: Wednesday, March 22, 2023 9:56 PM

To: Erika Mooney <EMooney@nantucket-ma.gov>; Tucker Holland <tholland@nantucket-ma.gov>; tamorasellshomes@gmail.com

Cc: Brian Turbitt <bturbitt@nantucket-ma.gov>; David Gray <dgray@nantucket-ma.gov>; Lora Kebbati <lkebbati@nantucket-ma.gov>

Subject: RE: AFFORDABLE UNIT SEWER WAIVERS

I am sending your email to our project manager. We went over our list that I gave you. There have been some switching of lots for affordable units and added a duplex, and moved it. I will send along ASAP when we check again.

Thanks, Linda

On 03/22/2023 12:40 PM Erika Mooney <emooney@nantucket-ma.gov> wrote:

Hi Linda:

I was comparing your request to the information that David Armanetti supplied us and I see a couple of discrepancies. I assume Capital Hall Partners is the same as Nantucket Property Owner LLC?

I would like to take 9 Honeysuckle Drive and 10 Indigo Drive of your request since those two were already approved last summer. Having them on just adds confusion. Prior approval is attached.

In addition to the comments I made on your document (attached), Richmond has 10 Beach Grass listed as part of Capital Hall Partners' ownership – is this maybe listed as 6 Beach Grass on your list?

Also, you have the two 175% AMI units listed as 15 and 24 Honeysuckle Dr. Richmond has them two 175% Ami units listed as 10 Beach Grass and 24 Honeysuckle.

Can we figure out these discrepancies real quick?

Erika

Erika D. Mooney

Operations Administrator

Town of Nantucket

16 Broad Street, Room 113

Nantucket, MA 02554

508-228-7266

This electronic message and any attached files contain information from the Town of Nantucket that may be privileged and/or confidential. The information is intended for the recipient named above, and use by any other person is not authorized. If you are not the intended recipient, any disclosure, distribution, copying, or use of this information is strictly prohibited. If you have received this message in error, please notify the sender by e-mail immediately. Also, please be advised that the Secretary of State's office has determined that most e-mails sent to and from municipal officials are considered to be public records and consequently may be subject to public disclosure.

From: LINDA WILLIAMS <czarinalinda@comcast.net>

Sent: Sunday, March 5, 2023 10:41 PM

To: Erika Mooney <EMooney@nantucket-ma.gov>; Tucker Holland <tholland@nantucket-ma.gov>

Subject: AFFORDABLE UNIT SEWER WAIVERS

This email was scanned by Bitdefender

TO: TUCKER HOLLAND; SELECT BOARD
FROM: NANTUCKET PROPERTY OWNER LLC
DATE: MARCH 5, 2023
RE: SEWER WAIVER REQUEST FOR AFFORDABLE UNITS

The owner of lots in the Sandpiper II subdivision is seeking further waivers of both fees (sewer connection and privilege) associated with the remaining affordable covenant lots as noted below. Two waivers have already been granted for both fees from the Select Board for the first group of single-family dwellings under construction at that time. The Planning Board has required that these specific units be permanently restricted to 80% AMI, with two at 175% AMI, by covenant.

Built/Building Currently

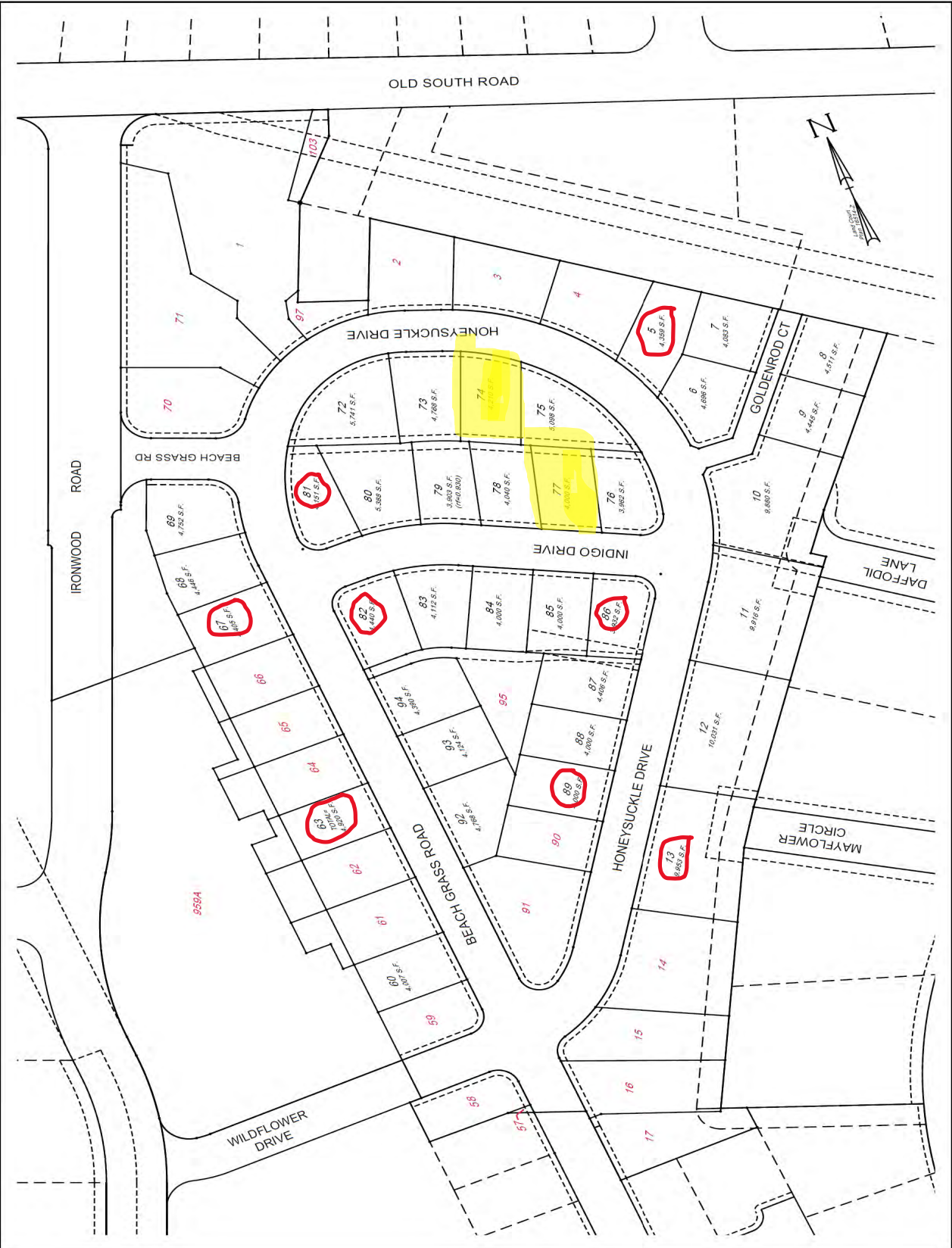
Lot 67 5 Beach Grass Road – 80%
Lot 74 9 Honeysuckle Drive – 80% Waivers already issued
Lot 77 10 Indigo Drive – 80% Waivers already issued
Lot 81 2 Indigo Drive – 80%
Lot 82 6 Beach Grass Drive – Duplex 80%
Lot 89 21 Honeysuckle Drive – 80%
Lot 86 15 Honeysuckle Drive – 175%

To Be Constructed At A Later Date

Lot 5 16 Honeysuckle Drive – 80%
Lot 13 24 Honeysuckle Drive – 175%
Lot 63 13 Beach Grass Road – Duplex 80%

If you have any further questions, please do not hesitate to contact me. Thank you for your consideration.

Linda Williams, Project Consultant





Agenda Item Summary

Agenda Item #	X. 4.
Date	4/5/2023

Staff

Tucker Holland, Housing Director

Subject

Sewer Fee Waiver Request for Balance of Richmond Income-Restricted Homeownership Sites

Executive Summary

Per the MOA's between Richmond and the Town, and in line with the Select Board's current Sewer Fee Waiver Policy adopted in November of 2022, Richmond is seeking Sewer Fee Waivers for the balance of its income restricted homeownership sites within Sandpiper I and II as described below. The waivers sought cover two (2) 175% AMI restricted units and eight (8) 80% AMI restricted units. Under the policy, the Board can waive the connection fee with respect to the 175% AMI units and both the connection and capacity fees with respect to the 80% AMI units. Per the policy, the total requested waivers amount to \$93,644.80 (\$40,000 in connection fee waivers and \$53,644.80 for capacity fee waivers).

Staff Recommendation

Approve consistent with the 2015 and 2019 MOA's and the Board's current Sewer Fee Waiver Policy

Background/Discussion

Here is a summary of the request:

175% AMI units

37 Beach Grass Road (3-bedroom single family home)
26 Honeysuckle Drive (3-bedroom single family home)

Two (2) units. Waiver request is to waive the connection fee, consistent with the current Sewer Fee Waiver policy.

Per the policy, this portion totals requested waivers in the amount of \$8,000. (\$4,000 per unit)

80% AMI units

1 Aster Court (3-bedroom single family home)
29 Beach Grass Road (3-bedroom single family home)
3 Lilac Court (3-bedroom single family home)
7 Sandplain Drive (3-bedroom single family home)
24 Evergreen Way (3-bedroom single family home)
8 Bluet Court (3-bedroom single family home)



9 Bluet Court (3-bedroom single family home)
21 Beach Grass Road (3-bedroom single family home)

Eight (8) units. Waiver request is to waive the connection and capacity fees, consistent with the current Sewer Fee Waiver policy.

Per the policy, this portion totals requested waivers in the amount of \$85,644.80 (\$32,000 in connection fee waivers and \$53,644.80 for capacity fee waivers).

Richmond has confirmed all of the 175% AMI and 80% AMI units noted above have permanent deed restrictions for the respective affordability through the respective Regulatory Agreements and deeds. Further, these represent all of the remaining income-restricted homeownership units within Richmond's portion of Sandpiper I and II.

Impact: Environmental ☐ **Fiscal** ☒ **Community** ☒ **Other** ☐

Supporting the community's ownership housing needs, and contributing to the Select Board's Safe Harbor objectives with respect to the 80% AMI units.

Board/Commission Recommendation

N/A

Public Outreach

N/A

Connection to Existing Applicable Plan (i.e., Strategic Plan, Master Plan, etc.)

Strategic Plan – Housing

Attachments

- 1) Sewer Fee Waiver Policy adopted November 2022
- 2) Richmond request letter – August 2022
- 3) Plan showing lot locations within Sandpiper I and II
- 4) Spreadsheet income restricted units noting addresses and map & parcel information





TOWN & COUNTY OF NANTUCKET
SELECT BOARD
POLICY FOR SEWER FEE WAIVER REQUESTS
Adopted: 07/20/2016; Revised 10/24/2018, 12/03/2020, 11/02/2022

I. Policy.

The Select Board, acting as the Nantucket Sewer Commission pursuant to Chapter 396 of the Acts of 2008, and in accordance with Chapter 38, Article III, section 38-3B of the Code of the Town of Nantucket, has the authority to waive any town fee or charge, upon a determination that the public interest so requires.

The Select Board hereby determines that it is in the public interest to encourage the production of affordable housing, including workforce housing units for the Island's working population. The Board hereby further determines that is in the public interest to encourage the production of housing units that qualify on the Town's Subsidized Housing Inventory, particularly where they contribute to a period of Safe Harbor relative to the Commonwealth's Chapter 40B law. Therefore, the Select Board will consider, on a case-by-case basis, waivers of one or both of the Town's fees relating to the connection of dwelling units that are located in an existing Sewer District as established under Chapter 396 of the Acts of 2008.

II. Sewer Connection and Sewer Capacity Fee Waivers.

The Select Board may, at its discretion, waive the sewer connection fee or the Sewer Capacity Fee upon the request of a property owner, developer, or public entity seeking to connect one or more dwelling units to the Town's sewer system if such unit or units are bound by a permanent affordable housing deed restriction in a form acceptable to the Town and enforceable by the Town, and provided that the dwelling unit or units are part of a project where a minimum of 25% of the units are eligible for inclusion on the Town's Subsidized Housing Inventory ("SHI") as maintained by DHCD or any successor agency and provided that the developer and/or unit owner shall cooperate fully with the Town in obtaining SHI status for the eligible unit or units by timely providing all required documentation and notifying the Town Manager when a building permit issues and when an occupancy permit issues.

In the case where less than all of the units in the project are income-restricted, the Select Board may waive up to 100% of both sewer fees where the unit is restricted at 80% AMI or less, up to 75% of both fees where the unit is restricted between 81% and 100% AMI, and up to 50% of both fees where the unit is restricted between 101% AMI and 150% AMI. In the case where all of the units in a project are income-restricted, 100% of both sewer fees may be waived as long as a minimum of 25% of the total number of units are SHI-eligible. In exercising its discretion, in applying the policy, the Select Board may consider the total value of Town subsidies for the

project, including closing cost assistance, direct grants, land contribution by the Town, other fee waivers, and market rate sales in the project.

In the case of dwelling units that are subject to a permanent affordable housing covenant meeting the requirements of Chapter 301 of the Acts of 2002, and Chapter 100 of the Code of Nantucket, or are subject to a permanent deed restriction serving households at 175% AMI or less that is satisfactory to the Town, the Select Board may, in its discretion, waive all or a portion of the sewer connection fee.

In addition to those waivers which the Select Board may grant for income-restricted dwelling units, during the period in which the Town is under its 10% requirement relative to the Commonwealth's Chapter 40B law, the Select Board may also determine that it is in the public interest to consider reductions only, on a case-by-case basis, to one or both of the Town's fees required as a condition of the connection of unrestricted, so-called 'market-rate', dwelling units within a Workforce Rental Community, as such is defined and described in Section 139-2 and Section 139-8(D)(2) of the Town of Nantucket Zoning Bylaw, that are located in an existing Sewer District as established under Chapter 396 of the Acts of 2008, to encourage the further development of mixed-income rental housing communities and private investment in the creation, upgrade, extension, replacement, and repair of private and public sewer infrastructure serving the Town of Nantucket and its citizens and landowners.

Accordingly, it is the Nantucket Sewer Commission's policy that the Select Board may, at its discretion, reduce the Sewer Connection Fee or the Sewer Capacity Fee, or both, upon the request of a property owner, developer, or public entity (i.e., the 'applicant') seeking to connect one or more unrestricted rental dwelling units to the Town's sewer system if:

- (1) The applicant's project or development has or will provide for the funding and / or physical construction of specific sewer system improvements which are deemed a benefit or improvement to nearby or abutting public and private landowners, in addition to the applicant's project or development; and
- (2) The applicant's project or development has or will provides for the funding and / or physical construction of approved* mitigation measures or capital improvements to the Town of Nantucket's municipal sewer system (or components thereof) including, for example, upgrades to one or more municipal sewer pumping station[s], upgrades to the diameter, capacity, or operating performance of municipal sewer mains, manholes, or other infrastructure); and
- (3) The cumulative cost of the sewer improvements and / or mitigation measures contemplated in subparagraphs (1) and (2) above incurred or reasonably estimated to be incurred by the applicant meets or exceeds a sum equal to fifty (50%) percent of the total amount** of sewer service connection fees and sewer capacity utilization fees that would be due and payable for all unrestricted units which the applicant is seeking connection if no waiver or reduction were to be granted pursuant to the Select Board's Policy for Sewer Fee Waiver Requests; and

- (4) All of the rental dwelling units within the applicant's project or development are eligible for certification to the Town of Nantucket Subsidized Housing Inventory (SHI), as such is established and maintained by the Commonwealth of Massachusetts Department of Housing and Community Development (DHCD).

Provided that in the opinion of the Select Board the applicant's project or development is in the public interest and meets the foregoing criteria then the Select Board may, in its discretion, reduce (A) the per-unit Sewer Service Connection Fee to an amount not less than Five Hundred (\$500.00) Dollars per unrestricted / market rate dwelling unit, or such other amount as determined by the Select Board; and (B) the per-unit Sewer Capacity Fee to an amount not less than Seven Hundred (\$725.00) Dollars per bedroom (within each unrestricted / market rate dwelling unit), or such other amount as determined by the Select Board.



The Richmond Company, Inc.
23 Concord Street
Wilmington, Massachusetts 01887
(979) 988-3900

August 11, 2022

TOWN OF NANTUCKET
ADMINISTRATION
16 Broad Street, Room # 113
Nantucket, Massachusetts 02554

Attention: Erika D. Mooney, Operations Administrator

Subject: Submittal of Request and Documentation (Remaining Sewer Fee Waiver Requests)
AMI Restricted Homes (Sandpiper Place I and II Homeownership Subdivisions)
Richmond Great Point Development LLC (Owner / Developer)

Dear Ms. Mooney:

The purpose of this correspondence is to follow up on the recent email and telephone communication on this subject, in order to: (1) submit the enclosed documentation, and (2) formally request that the Select Board confirm the eligibility of and issue waivers of the sewer connection fees and capacity utilization fees for the (ten) remaining AMI restricted homes that Richmond Great Point Development LLC continues to own and is in the process of building within the Sandpiper Place I and II Homeownership Subdivisions.

The request for the fee waivers is submitted in accordance with and is consistent with the provision set forth in Section 5B ("Monetary Considerations") ("Privilege and Connection Fee Waivers") (Page 10) of the "2019 Memorandum of Agreement Between Richmond Great Point Development, LLC and Town of Nantucket" which stipulates that (the Town) "cause any and all sewer privilege and connection fees to be waived to zero (\$0.00) dollars for all of the for sale 80% AMI affordable restricted units within the Project eligible for the SHI List, and for the two (2) additional 175% AMI workforce affordable restricted units within the Project".

The request is made with respect to the remaining (ten) AMI restricted homes that Richmond Great Point Development LLC continues to own and is in the process of building within the Sandpiper Place I and II Homeownership Subdivisions, which are comprised of eight (8) homes that will be restricted to buyers who qualify at 80% AMI or less, and two (2) home that will be restricted to buyers who qualify at 175% AMI or less.

A home-by-home list / inventory of the proposed homes that qualify for the (requested) waivers, including the street address, the assessor's map and parcel number, the type of home, the subdivision location, and the tier of AMI restriction (80% or 175%) is attached hereto, for further specificity.

Based on the foregoing, we would respectfully request confirmation of the eligibility of and issuance by the Town of Nantucket Select Board of a formal waiver of the sewer connection fees and sewer capacity utilization fees (formerly sewer privilege fees) for the (ten) AMI restricted homes.

We appreciate the guidance that you have provided to date with respect to the submittal and processing of this request, and we look forward to the receipt of confirmation of the waivers, once the request has been considered by and acted upon by the Select Board.

If you have any immediate questions with respect to the proposed request, or any of the related documentation, please feel free to contact me at 978-988-3900, Extension # 12.

Very truly yours,

A handwritten signature in black ink, appearing to read 'D. J. Armanetti', with a stylized flourish at the end.

David J. Armanetti
Director of Real Estate Development
Richmond Great Point Development LLC

Cc: Philip Pastan, TRC
Kathryn Fossa, TRC
Andrew Burek, Esq., TRC
Joe Marino, TRC
David Gray, Town Sewer Department
Tucker Holland, Town Administration

RICHMOND SANDPIPER PLACE I + II SUBDIVISIONS

SITE PLAN - LOCATION OF AMI RESTRICTED HOMES REMAINING TO BE CONSTRUCTED

-  80% AMI RESTRICTED
-  175% AMI RESTRICTED



 1 SITE PLAN
SCALE: 1/64" = 1'-0"

OWNER :
Richmond
Great Point
Development
LLC or Assignee

ARCHITECT OF
RECORD:
KOH
ARCHITECTURE PLLC
87-10 NORTHERN BLVD.
SUITE 204
JACKSON HEIGHTS, NY
(718) 225-6400 phone
Dinah Klamert, RA

KOH ARCHITECTURE, PLLC EXPRESSLY
RESERVES ITS COMMON LAW
COPYRIGHT AND OTHER PROPERTY
RIGHTS TO THESE PLANS. ALL
DESIGNS, SPECIFICATIONS AND
DRAWINGS ARE THE PROPERTY OF
KOH ARCHITECTURE, PLLC WHICH
ARE TO BE USED ONLY AS ISSUED
FOR THIS PROJECT. THEY SHALL
NOT BE USED ON ANY OTHER
PROJECT IN FULL OR IN PART,
WITHOUT FIRST OBTAINING THE
EXPRESSED WRITTEN APPROVAL AND
CONSENT OF KOH ARCHITECTURE
PLLC. THESE DOCUMENTS SHALL
NOT BE TRANSFERRED TO ANY
UNAUTHORIZED THIRD PARTY
WITHOUT THE SAME CONSENT.

PROJECT NAME
SANDPIPER
PLACE

ADDRESS

NANTUCKET, MA

DRAWING TITLE
SITE PLAN

DRAWING NO.
A-1

RICHMOND GREAT POINT DEVELOPMENT LLC - SEWER PERMIT FEE BREAKOUT FOR AMI RESTRICTED HOMES (RELATED TO WAIVER OF SEWER CONNECTION / SEWER CAPACITY FEES)

Unit Count	Property Address	Richmond Lot Number	Assessors Map and Parcel	AMI Restriction Tier (Classification)	Type of Home (Single Family or Duplex)	Subdivision (Location) (Sandpiper Place I or Sandpiper Place II)
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Units Currently Under Construction (with Sewer Permits Issued and Fees Pending)

1	37 Beach Grass Road	# 51	68-369	175 % AMI	Single Family	Sandpiper Place I Subdivision
2	1 Aster Court	# 45	68-372	80 % AMI	Single Family	Sandpiper Place I Subdivision
3	29 Beach Grass Road	# 55	68-379	80 % AMI	Single Family	Sandpiper Place I Subdivision
4	26 Honeysuckle Drive	# 14	68-386	175 % AMI	Single Family	Sandpiper Place II Subdivision

Units in Design and Permitting (with Sewer Permits to be Applied for at a Future Date)

5	3 Lilac Court	# 41	68-360	80 % AMI	Single Family	Sandpiper Place I Subdivision
6	7 Sandplain Drive	# 27	68-350	80 % AMI	Single Family	Sandpiper Place I Subdivision
7	24 Evergreen Way	# 26	68-711	80 % AMI	Single Family	Sandpiper Place I Subdivision
8	8 Bluet Court	# 30	68-347	80 % AMI	Single Family	Sandpiper Place I Subdivision
9	9 Bluet Court	# 32	68-343	80 % AMI	Single Family	Sandpiper Place I Subdivision
10	21 Beach Grass Road	# 59	68-387	80 % AMI	Single Family	Sandpiper Place II Subdivision



Agenda Item Summary

Agenda Item #	XI. 1.
Date	4/5/2023

Staff

Preservation Planner; Town Manager; Town Counsel; Director and/or Deputy Director of Planning

Subject

HDC: Proposed Independent Review; Advisory Committees

Executive Summary

In August, 2022, the HDC advisory committees* ceased as a result of a legal determination that they were not properly established. On September 7, 2022, as requested by the HDC, the Select Board re-established the Sign Advisory Council and the HDC was instructed to determine how it wanted to proceed with the rest of the committees. On November 16, 2022, the HDC re-requested the rest of the advisory committees to be re-instated, concern was expressed as to their value, and it was generally agreed to hold off until "more information" could be gathered and a scope for an independent review developed. The scope was developed and sent to both PLUS staff and the HDC for review. The scope with comments, is attached and we are in the process of determining an outside firm to undertake the review and what that cost would be. In addition, the HDC reviewed and revised the HDC Ops scope, and it is included in the packet.

*Sign Advisory, Historic Structures Advisory, Madaket Advisory, Sconset Advisory, Tuckernuck Advisory

Staff Recommendation

This agenda item is intended to be an update

Background/Discussion

On February 3, 2023, the following met to review the items contained in the enclosed agenda: Town Manager, Planning Director, Preservation Planner, NP&EDC Chair, Select Board Vice Chair, HDC Chair. There was also a report from an HDC subcommittee – attached. This is just general associated information.

The Preservation Planner has been in contact with the National Alliance of Preservation Commissions (NAPC) on the proposed scope and concerns. More information should be provided by the time of the meeting.

Impact: Environmental ☒ **Fiscal** ☒ **Community** ☒ **Other** ☐

The goal is to maintain the HDC's mission under the Act, which is "to promote the general welfare of the inhabitants of the Town of Nantucket through the preservation and protection of historic buildings, places and districts of historic interest through the development of an appropriate setting for these



buildings, places and districts and through the benefits resulting to the economy of Nantucket in developing and maintaining its vacation-travel industry through the promotion of these historic associations.” (HDC Special Act Section 2)

Board/Commission Recommendation

HDC reviewed, revised and adopted a scope of services for HDC Operations Review at their March 9, 2023 meeting.

Public Outreach

N/A

Connection to Existing Applicable Plan (i.e., Strategic Plan, Master Plan, etc.)

Connection to Select Board Strategic Plan Focus Area: Quality of Life

Attachments

Minutes from Select Board meetings: Sep 7, 2022; Nov 16, 2022

Agenda from Feb 3, 2023 Staff/Chairs meeting

DRAFT Proposed Scope for Independent Review of HDC Ops

2/3/23 Email from S Welch re 2/2/23 HDC Special Meeting

8/17/2022 & 9/1/22 Town Counsel legal opinion re HDC adv committees

1/10/23 Alternative legal opinion re HDC adv committees

11/02/22 HDC memo to SB re requesting reinstating adv committees

1/3/2023 HDC minutes

2/9/2023 email from Town Counsel re: alternative legal opinion

11/28/2022 email from Preservation Planner re: HDC review

DRAFT Proposed Scope for Independent Review of HDC Ops with edits from PLUS

2020 National Alliance of Preservation Commissions CAMP report

11/17/2022 HDC adoption of best practices

2/13/2023 letters from Nantucket Historical Commission; Mickey Rowland (former chair of HSAB); Nantucket Preservation Trust and Sconset Trust

2/13/2023 email from Mickey Rowland with HSAB Policies & Procedures

2/15/2023 emails from Christine Sanford, Cathy Ward, Anthony Vale



3/10/2023 email from Stephen Welch with 3/09/23 HDC Adoption: Scope of Services for HDC Operations Review

3/13/2023 email from Preservation Planner with draft s. 124-14

3/13/2023 letter from Hillary Rayport

3/14/2023 email from Preservation Planner with NAPC Draft Outline of Services

3/14/2023 email from Topham Design

3/15/2023 email from Hillary Rayport

3/15/2023 email from Abby Camp





Agenda Item Summary

Agenda Item #	X. 1.
Date	3/15/2023

Staff

Preservation Planner; Town Manager; Town Counsel; Director and/or Deputy Director of Planning

Subject

HDC: Proposed Independent Review; Advisory Committees

Executive Summary

In August, 2022, the HDC advisory committees* ceased as a result of a legal determination that they were not properly established. On September 7, 2022, as requested by the HDC, the Select Board re-established the Sign Advisory Council and the HDC was instructed to determine how it wanted to proceed with the rest of the committees. On November 16, 2022, the HDC re-requested the rest of the advisory committees to be re-instated, concern was expressed as to their value, and it was generally agreed to hold off until "more information" could be gathered and a scope for an independent review developed. The scope was developed and sent to both PLUS staff and the HDC for review. The scope with comments, is attached and we are in the process of determining an outside firm to undertake the review and what that cost would be. In addition, the HDC reviewed and revised the HDC Ops scope, and it is included in the packet.

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Impact: Environmental ☒ **Fiscal** ☒ **Community** ☒ **Other** ☐

The goal is to maintain the HDC's mission under the Act, which is "to promote the general welfare of the inhabitants of the Town of Nantucket through the preservation and protection of historic buildings, places and districts of historic interest through the development of an appropriate setting for these



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Board/Commission Recommendation

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Public Outreach

N/A

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2/13/2023 letters from Nantucket Historical Commission; Mickey Rowland (former chair of HSAB); Nantucket Preservation Trust and Sconset Trust

3/09/23 HDC Adoption: Scope of Services for HDC Operations Review





Agenda Item Summary

Agenda Item #	X. 1.
Date	2/15/2023

Staff

Preservation Planner; Town Manager; Town Counsel; Director and/or Deputy Director of Planning

Subject

HDC: Proposed Independent Review; Advisory Committees

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Impact: Environmental ☒ **Fiscal** ☒ **Community** ☒ **Other** ☐

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Board/Commission Recommendation

N/A

Public Outreach

N/A

Connection to Existing Applicable Plan (i.e., Strategic Plan, Master Plan, etc.)

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Attachments

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1/3/2023 HDC minutes

2/9/2023 email from Town Counsel re: alternative legal opinion

11/28/2022 email from Preservation Planner re: HDC review

DRAFT Proposed Scope for Independent Review of HDC Ops with edits from PLUS

2020 National Alliance of Preservation Commissions CAMP report

11/17/2022 HDC adoption of best practices

**2/13/2023 letters from Nantucket Historical Commission; Mickey Rowland (former chair of HSAB);
Nantucket Preservation Trust and Sconset Trust**



V. PUBLIC COMMENT

Denise Kronau, speaking as a private citizen, voiced concerns over a recently launched recall effort of the Select Board Chair and commended those in service to the Town, especially the Select Board and Chair Bridges. She said she feels the recall effort is polarizing, disheartening and a disservice to the community.

Anne Dewez noted the Select Board has an item on its September 8, 2022 executive section agenda regarding a Planning Board legal matter involving pools and spas. She read aloud an email she recently sent to the Board about this.

Charity Benz voiced her concern about a recent court ruling that upheld a Conservation Commission decision regarding the removal of the Sconset geotube project and the possibility of the Siasconset Beach Preservation Fund (SBPF) appealing that decision.

Butch Ramos spoke out against the use of antifreeze to winterize plumbing, noting that it is an environmental hazard.

Meghan Perry passed out copies of the Housing Appeals Committee (HAC) draft decision for the proposed Surfside Crossing 40B housing project to the Board members. She reviewed sections of the former Fire Chief's testimony to the HAC and asked if new information can be presented to the HAC based on the Veranda House fire in July, 2022.

VI. NEW BUSINESS

There was no new business.

VII. APPROVAL OF MINUTES, WARRANTS AND PENDING CONTRACTS

Ms. Mohr moved approval of items VII 1-2; seconded by Ms. Holdgate. So voted 4 - 0.

1. Approval of Minutes of August 17, 2022 at 5:30 PM.

2. Approval of Payroll Warrants for August 21, 2022; September 4, 2022.

3. Approval of Treasury Warrants for August 24, 2022; August 31, 2022; September 7, 2022. Ms. Mohr recused herself from this matter. Ms. Holdgate moved approval; seconded by Mr. Fee; so voted 3 - 0.

4. Approval of Pending Contracts for September 7, 2022 - as Set Forth on the Spreadsheet Identified as Exhibit 1, Which Exhibit is Incorporated Herein by Reference. Ms. Holdgate moved approval; seconded by Mr. Fee; so voted 4 - 0.

VIII. CITIZEN/DEPARTMENTAL/COMMITTEE REQUESTS

1. Natural Resources and Saltmarsh Senior Center: Request for Acceptance of Gifts. Ms. Holdgate moved approval of the gifts with thanks to the donors; seconded by Ms. Mohr. So voted 4 - 0. Ms. Mooney read the donors' names as indicated in the Board's agenda materials.

IX. SELECT BOARD'S REPORTS/COMMENT

1. Discussion/Potential Action Regarding Historic District Commission Advisory Committees. Chair Bridges noted that the Board has all agenda item materials in the agenda packet with the exception of a letter that

was received today from HDC Chair Ray Pohl. Chair Bridges said the Board will be discussing possible actions, including reinstating one or more of the HDC advisory committees or tabling the matter. Mr. Fee said he wants to understand why the boards were eliminated and how. He said he feels the process was not sufficient and that the Board should not have the burden placed on it to establish committees for the HDC. Mr. Fee added he feels the legal opinion from Town Counsel was used as an excuse to eliminate the HDC advisory boards and that there was not a process involved. Chair Bridges said that he spoke with Ray Pohl today as to a short-term solution whereby the Board could reinstate one or more of the committees until a longer-term solution can be recommended by the HDC and/or Planning. Ms. Holdgate said she wants to talk about solutions, not how we got here. She said that when the Historic Structures Advisory Board (HSAB) was established there was no Nantucket Historical Commission (NHC) and she feels that if the NHC has the bandwidth they should take over the role of the HSAB. Ms. Holdgate went on to say that she feels while the HDC advisory committees were valuable, the way they were established was not legal, and if the Select Board does reestablish any of them, there should be a recommendation from the HDC. Ms. Mohr said she doesn't know the history of the neighborhood committees (Sconset Advisory Board - SAB, Tuckernuck Advisory Board - TAB, Madaket Advisory Board - MAB) and she needs more time to understand their origins, but she does feel the Sign Advisory Council (SAC) is helpful. Ms. Mohr added that once the Town has an understanding that something is not legal it cannot continue. She said she feels the SAC is the most important advisory committee for the HDC and a temporary fix is to reestablish that committee then a long-term solution could be to amend the HDC Special Act to allow the HDC to legally establish the advisory committees. Mr. Fee stated that his original suggestion to the Town Manager was for her to reinstate the committees then spend time on a long-term solution. He added that the discussion of the advisory committees began a year ago so there has been time to work on this. He said the Town was being reactive instead of proactive. Ms. Mohr asked if the Select Board could vote tonight to reestablish any or all of the advisory committees and bypass its committee appointment policy. Attorney John Giorgio from Town Counsel's office said he sees no reason why the Board can't vote tonight to reestablish the SAC and reconstitute it as it was to allow the committee to work uninterrupted. Ms. Mooney reviewed the Board's committee appointment policy and the Board's allowance to bypass it. She noted that the terms and seats proposed in the packet differ somewhat from what previously existed. Ms. Mohr asked for clarification on the Board's ability to appoint members to HDC advisory committees and asked if the SAC is different from the others. Mr. Giorgio said they are all the same in that the Charter grants the authority to establish and make appointments, to the Select Board. Ms. Mohr asked if the Board doesn't reconstitute the committees, what will be the effect to pending applications. Planning Director Andrew Vorce clarified that he consulted with the chair of the HDC over a year ago and discussions included Town Counsel and the Town Manager. Mr. Vorce explained that he didn't "cancel" the committees, he had them stop meeting as staff can't provide support to committees that are not legally constituted. Mr. Vorce cautioned the Board against establishing any new neighborhood committees as it could be a burden on staff time. He added that he is in agreement with Ms. Holdgate and his staff about allocating the review of historic structures to the NHC. Mr. Fee said he wants the HDC to be involved and for the HDC to make a recommendation to the Select Board about reestablishing the committees. Preservation Planner Holly Backus stated the crux of Mr. Pohl's letter is that the HDC cannot do without the SAC. Chair Bridges reviewed possible options for the Board including waiting to get more feedback from the HDC or to reestablish the SAC now. Ms. Holdgate moved to reestablish the SAC tonight with the existing members with all terms ending June 2023 and then getting a recommendation from the HDC on the SAC in terms of mission, membership, etc. which the Board can ratify at a later meeting; seconded by Mr. Fee. Hillary Hedges Rayport asked to speak while the vote was in process. Chair Bridges said she would have to wait to speak until the vote was taken. On the motion, so voted 3 – 1. Mr. Fee was opposed as he wanted to hear from Ms. Rayport. Ms. Rayport stated she is "stunned" by the Board's decision, stating that she does not believe the Select Board has the right to

appoint HDC members. She said she felt this was a “manufactured crisis” and there are management issues that are not being addressed. Ms. Holdgate noted that the Select Board appoints the HDC Alternate members so there is already precedent for Select Board appointments of HDC-related membership. Ms. Mohr stated she sees this as an emergency response to a request from the HDC Chair, not a long-term solution. She added she would like to form a group to review the system that has been in place. Ms. Hedges stated she wants the Select Board to acknowledge that this is a manufactured crisis and management issue. Mr. Fee voiced concerns about how an assessment can be done in time to put forth a town meeting article for a home rule petition to change the HDC Special Act. Bruce Mandel suggested that neighborhoods create groups to review applications and have one person present comments to the HDC. He also suggested that if the MAB is reconstituted that two alternate seats are allowed, and that all members live in Madaket. Mr. Vorce said regarding the so-called “manufactured crisis” that the August 17, 2022 memo from Town Counsel advised discontinuation of advisory committee meetings or deliberations.

2. Committee Reports. None.

X. HDC APPEAL

1. Public Hearing to Consider the Appeal of Charles R. Schwarzapfel of Historic District Commission Disapproval of Certificate of Appropriateness No. HDC2020-10-2033 for a Pool, Patio, Screening and Fence Located at 9 Maine Avenue, Map 60.3.1, Parcel 425 (Continued from April 6, 2022, June 8, 2022; Request to be Continued to December 7, 2022). Ms. Holdgate moved to continue the public hearing to December 7, 2022; seconded by Mr. Fee. So voted 4 – 0.

XI. ADJOURNMENT

At 7:04 PM, Ms. Mohr moved adjournment; seconded by Ms. Holdgate. So voted 4 - 0.

Approved the 21st day of September 2022.

VI. NEW BUSINESS

There was no new business.

VII. APPROVAL OF MINUTES, WARRANTS AND PENDING CONTRACTS

Mr. Fee moved approval of items VII 1 – 3; seconded by Ms. Holdgate; all in favor, so voted.

1. Approval of Minutes of November 9, 2022 at 5:30 PM.

2. Approval of Payroll Warrants for November 13, 2022.

3. Approval of Treasury Warrants for November 16, 2022.

4. Approval of Pending Contracts for November 16, 2022 - as Set Forth on the Spreadsheet Identified as Exhibit 1, Which Exhibit is Incorporated Herein by Reference.

Ms. Holdgate moved approval of the pending contracts as presented; seconded by Ms. Mohr; all in favor, so voted.

VIII. CITIZEN/DEPARTMENTAL/COMMITTEE REQUESTS

1. Historic District Commission: Request for Reinstatement of Madaket Advisory Board, Tuckernuck Advisory Board, Siasconset Advisory Board, Historic Structures Advisory Board. HDC member Diane Coombs spoke in favor of the reinstatement of the advisory boards, stating their input is valuable and there is no cost to the Town. Mr. Fee noted a letter received from a Madaket resident requesting that the Board not reinstate the Madaket Advisory Board. Ms. Coombs said the reinstatement of that board could be postponed. Ms. Mohr noted that there is a fair amount of staff time dedicated to managing these advisory boards and noted there are no minutes from any of the boards posted on-line. She said she would like to hear from the Planning Director on this matter. Planning Director Andrew Vorce said there is a cost to the Town for the staff time necessary to manage these boards, which is significant in order to be done correctly. He noted there is no authority by the HDC to establish these boards, said that the boards have privately reconstituted themselves and have been providing input to the HDC as they had done before they were disbanded last summer. Ms. Mohr asked about transparency with the advice coming to the HDC from informal groups. Preservation Planner Holly Backus explained that all of the comments are made available to the public. She said that from the staff's perspective, the way the process is progressing now is easier, more efficient and the public is encouraged to provide comments. Chair Bridges asked about differences between the prior boards' input and the way it is happening now. Ms. Backus said there is no difference. Ms. Mohr asked if applications, previously, were required to go through these boards. Ms. Backus said no and explained how the process used to work and is working now. She reiterated the efficiency of the process as it currently stands. She added that the input is greatly appreciated. Mr. Fee said the HDC is requesting these boards and he thinks the current situation is adding a burden to the HDC. Mr. Fee asked how the Sign Advisory Committee (SAC) is being utilized. William Saad, HDC administration staff member explained how the SAC is used currently and how it was being used before. He emphasized the efficiency and transparency of the process. Mr. Fee asked for additional input from the HDC. Dr. MacNab agreed with Mr. Fee as to the HDC's request. Hillary Rayport spoke in support of the HDC's request and disagreed that associated staff time is significant. Linda Williams said she herself has served on an HDC advisory board; and, on the HDC. She stated that she represents people who do not support the HDC request and who she says are afraid of retribution by the HDC if they were to speak out against the request. She spoke on self-expansion of jurisdiction of the advisory boards to cover areas not intended to be covered. She spoke

against the HDC request without more specific documented and approved rules and parameters. Rick Atherton spoke in favor of the HDC request. Mr. Saad said he spends a significant amount of time administering the SAC. Esmeralda Martinez, HDC administrative staff member spoke on the amount of time she spends on HDC issues, as well as the time she previously spent administering the advisory boards, stating that it is "a lot of work for the staff". Ms. Holdgate questioned the HDC application backlog, if the advisory boards were in effect. Some discussion followed as to the application backlog, processing time and process. Ms. Holdgate commented that with the current backlog, reinstating the advisory boards could make the situation worse. Ms. Backus suggested that the HDC enabling legislation perhaps could be amended to better streamline the process, to allow some amount of additional staff review and approval of certain types of applications. Ms. Holdgate agreed and said that routine applications could easily be approved by staff. Mr. Fee reviewed some historical discussion as to amending the HDC enabling legislation. He said he believes there are "management solutions". Abby Camp, HDC member, spoke in support of the HDC request. Ms. Mohr said she is not ready to take action tonight and would like additional information as to the specifics of what the advisory boards are supposed to do, expressing concern about an unnecessary slow-down of the process. Dr. MacNab suggested reinstatement for one year. He said the "real issue" isn't the advisory boards, it is the "appropriate review" of items going before the HDC. Ms. Holdgate suggested there could be a more thought-out process prior to reinstatement. Chair Bridges noted that the information desired by the HDC is getting to it through the current process. Ms. Holdgate moved to continue the item until more information can be gathered; seconded by Ms. Mohr. Chair Bridges asked about the type of information needed. Ms. Holdgate suggested detail as to staff time, and parameters that previously existed for the advisory boards with advisory board input. Mr. Fee asked who is going to gather the information. Some discussion followed. On the motion: Ms. Holdgate – Yes; Ms. Mohr – Yes; Mr. Fee – No; Dr. MacNab – No; Chair Bridges – Yes. So voted 3-2. Ms. Gibson suggested an independent review of the HDC processes, meeting structure, staff requirements, application types and that if the Board wants to put forward an article regarding the enabling legislation that could be developed. Ms. Holdgate spoke in favor of an independent review, which could include recommendations for enabling legislation amendments. Ms. Backus concurred. It was generally agreed that Ms. Gibson will come back to the Board with a scope for an independent review. Mr. Fee said he would want the HDC and other groups to have input.

IX. SELECT BOARD'S REPORTS/COMMENT

1. Form of Government/Municipal Charter Change Discussion (Input from Guest Speakers). Ms. Gibson explained that the Massachusetts Selectmen's Association recently held a webinar with a former and current town managers who discussed their experiences with municipal charter changes. She said that Select Board member Brooke Mohr also attended the webinar and thereafter agreed that in light of discussions occurring in the community and with different community organizations, it might be a good idea to provide a summary of the information provided at the MSA meeting, to the Board, with allowance for questions and answers. She introduced Town Managers Julie Jacobsen from Auburn, MA and Andrew Sheehan from Middleton, MA; and former Town Manager Jeff Nutting who has served in a variety of capacities in several municipalities, with service of over 40 years. Each manager spoke on their careers in municipal government in a variety of roles and in different forms of government. Ms. Mohr asked about the process of transitioning from open town meeting to a town council form of government. Mr. Nutting reviewed the legal requirements and said it is a "huge change" to go from hundreds of years of doing something to a new way and suggested the statutory Charter Commission process, for something so significant. Mr. Fee asked about the types of items that come before a council and how they are prepared. Mr. Nutting said that many things are no different than for the Select Board, except that items for town meeting go to the council in a less time-consuming way. Mr. Fee asked about the Finance Committee's role



Planning and Land Use Services

Building ▪ Historic District Commission ▪ Planning Board ▪ Zoning Board of Appeals

AGENDA

HDC, SB & NPEDC Chair Joint Meeting February 3, 2023

FACTS:

PLUS AGREEMENT:

- Between TON & NPEDC (since August 22, 2012) – providing professional services for the Planning Board, Zoning Board, Affordable Housing Trust, Building Department, and Historic District Commission (that make up PLUS.)
- PLUS oversees and administers public meetings staffed by NPEDC.
- ALL personnel, except Planning Director are included in the respective bargaining units with the Town of Nantucket employees.

STAFFING: PLUS is responsible for staff, not any board.

CONCERNS:

- Citizen Warrant Article: HDC Administrator
 - NPEDC - January 23, 2023, voted not to support.
 - FinCom - January 26, 2023, voted not to support.
 - HDC review pending.
- Independent Review
- Alternative Legal Opinion
- Advisory Boards
 - HOME RULE PETITION – Chapter 124
 - Status of advisory comments
- Finances
- Next Steps
- Reportability

DRAFT Scope of Services for HDC Ops Review

As of 11/2022 LG

Review the conduct of Commission meetings and examine/confirm compliance with:

- Open Meeting Law
- Robert's Rules of Order
- Town of Nantucket Committee Handbook, including Code of Conduct
- Conflict of Interest Law/State Ethics Commission Guidelines

And taking into consideration:

- Could meetings be more efficient?
- Is discussion relevant to agenda items?
- Are staff recommendations provided and considered?
- Are applications processed efficiently?
- Number and type of applications over the last 5 (???) years to determine any trends, significant changes

Review HDC enabling legislation for potential amendment so as to:

- Retain HDC authority for ensuring adherence to historic preservation guidelines, rules and regulations while allowing for routine applications (such as fences, door color changes, window replacements and other non-substantive items) to be potentially be processed by staff
- Are "HDC Advisory Committees" "added value"?

Review staffing and operations for the Commission:

- Are staff resources sufficient?
- Do staff members have the necessary qualifications to provide recommendations?
- Are there training/educational opportunities that could be utilized?
- Are HDC regulations current; are any updates recommended (such as coastal resilience, sustainability needs and new requirements, guidelines or best practices)
- Are the HDC fees commensurate with staff time? Should they be modified?
- Are there training programs available to Commission members?
- Are minutes and agenda items processed in a timely manner?
- Is the agenda organized to optimize the Commission's time for more significant applications?
- Is the review of applications sufficient?

Interview:

- Current Commission members
- Former Commission members
- Current staff
- Random selection of: applicants who make application on a regular basis; and, one-time applicants
- Town Manager and/or other Town Administration staff
- ANYONE ELSE?

From: [Libby Gibson](#)
To: [Erika Mooney](#); [John Giorgio](#); [Holly Backus](#)
Subject: FW: Update: HDC Special Mtg/Unanimous Consensus (HDC re. Advisory Committees, etc.)
Date: Thursday, February 9, 2023 10:51:24 AM
Attachments: [AGENDA HDC-SB-NPEDC 020323.pdf](#)
[Letter to HDC re_ Advisory Committees from Anderson Krieger.pdf](#)
[DRAFT Scope of Services for HDC Ops Review 112022 LG.docx](#)
[Town Counsel op re HDC adv committees 090122.pdf](#)

Erika: 2/15 agenda packet items attached & below; I will attempt an AIS

HOLLY & JOHN: we are going to have an agenda item on the 2/15 SB meeting to discuss the Independent Review and the Advisory Committees. I was planning to put in the packet the attached & the email below.

HOLLY: do you have a Jan 3 email from the HDC requesting the reinstatement of the adv committees?

C. Elizabeth Gibson, ICMA-CM
Town Manager
Town of Nantucket
(508) 228-7255

This electronic message and any attached files contain information from the Town of Nantucket that may be privileged and/or confidential. The information is intended for the recipient named above, and use by any other person is not authorized. If you are not the intended recipient, any disclosure, distribution, copying, or use of this information is strictly prohibited. If you have received this message in error, please notify the sender by e-mail immediately. Also, please be advised that the Secretary of State's office has determined that most e-mails sent to and from municipal officials are considered to be public records and consequently may be subject to public disclosure.

From: Stephen Welch <steph@welch-associates.com>
Sent: Friday, February 3, 2023 5:30 AM
To: Ray <ray@botticelliandpohl.com>
Cc: Andrew Vorce <AVorce@nantucket-ma.gov>; Dawn Hill Holdgate <dhillholdgate@nantucket-ma.gov>; Jason M. Bridges <jmbridges@nantucket-ma.gov>; Libby Gibson <LGibson@nantucket-ma.gov>; Mary Longacre <ml@marylongacre.com>
Subject: Update: HDC Special Mtg/Unanimous Consensus (HDC re. Advisory Committees, etc.)

Ray,

Quick update on yesterday's HDC's Special Meeting, reporting unanimous consensus of HDC members present (6 of 8) as follows:

1. Advisory Groups - Reconstitution: Subject to Andrew's consent, professional staff (Holly, Esmeralda, and Billy) meet with HSAG Chair, and separately SAC Chair, to work through differing assessments (represented at past SB meetings) to resolve operational details for each group, their result taking the form of a brief document. Document to include the: "Who, Why, What, How, Where, and When" nature of the groups, and related matters; reasonably reflecting each party's

concerns. Foregoing document to be forwarded to HDC for policy review, and potential modifications, and a vote, after which HDC moves the matter to SB (with a request they reconstitute the two groups subject to the measures within the document) under their charter powers (near term) and as otherwise required or determined beneficial (long term). As per previous HDC vote, HDC's request to SB to include a provision that the HDC selects successful candidates for SB ratification, or to this effect.

Comments:

- Just these two groups, to start; pilot approach.
 - HDC previously discussed the idea of defining the "Who, Why, What, How, Where & When" nature of the groups. More specifically: *Who* (constitutes the group, including any particular requirements for membership); *Why* they meet (including to clarify their advisory role and mission statement, each to be consistent with HDC mission); *What* (subject matters they address, with added utility of establishing boundaries and guardrails if you will); *How* (they address their business including BWNIM as their sole reference, operating under Robert's rules, their individual and group acts being subject to TON Committee Member Handbook, etc.); *Where & When* (hybrid or not; actual typical location, including for PLUS and TON resource planning, applicant knowledge, etc.), and related matters.
2. Diane's Article: In day-to-day operations, what this distills to i) at time of submission, incomplete applications are no longer accepted, and ii) watchful eyes, capable of discerning higher-level context (historic appropriateness, character and setting) assess proposed work to help prevent approval errors.

Comments:

- The means to these ends are largely in place and working, but staff are thin due to higher volume of applications, which allows for items to fall between cracks. While necessity to address these matters was unanimous, membership split on necessity to in any way overhaul the HDC.
- Full implementation of a recently adopted HDC best practice (that staff not accept incomplete applications, and that checklists are regularly used for this purpose but also to inform applicants of requirements) directly addresses the first intended outcome; that effort is in process. This is welcomed, according to staff comments and our own experience, upper-level staff otherwise spend chunks of time processing and reprocessing (and communicating about) incomplete applications. And at meetings, these are a time-suck for all parties (Commission, staff, other applicants).
- A proper request to PLUS for appropriate, supplemental staff (for a slightly deeper bench, to get and remain caught up, and to level-up from COVID-induced application processing practices, etc.) addresses the second intended outcome—i.e., in essence, needed crack-filling—if employed with rigorous use of existing and supplemented checklists and with appropriate staff authorized by HDC to turn-back inappropriate applications. Note: We, the HDC, requesting PLUS address these concerns—incomplete applications and needed crack-filling—is appropriate vs. directly requesting PLUS provide supplemental staff; while the outcome may be the same, that's PLUS's choice to weight and determine; this was mentioned to our members during the meeting.

3. Related Discussion: Wherever possible, as a continuation of our best practices initiative, we (HDC) must formulate clear thresholds of appropriate (and therefore, inappropriate) applicant proposals. This effort being in manageable chunks which translate into existing checklists to inform applicants and their agents of expectations, and so that staff may efficiently and effectively verify applications pass muster (for completeness, and appropriateness). To reasonable extent, guidance needs to extend to: extensive grade changes, various matters arising in relation to pools, and matters arising in relation to 41-81L applications—each of which we’ve experienced a large influx of, many of which are also contentious.

Properly implemented, including Commissioners’ self-awareness (of time management and a smidge of self-discipline) during meetings, there’s a fair shot at even keel without investing who knows how much time into any type of retooling or overhaul—seems worth a try.

HDC Organizational Focus Committee, Chair
Stephen Welch

TO: Andrew Vorce, Director of Planning and Land Use Services (***By Electronic Mail Only***)

FROM: John W. Giorgio, Esq., KP Law, P.C. Town Counsel

RE: Town of Nantucket - Sign Advisory Council

DATE: August 17, 2022

You have asked me to analyze the legal status of the HDC Advisory Committees, including the Sign Advisory Council (SAC).

You have informed me that according to the Nantucket Annual Reports, advisory committees have been created at various times in the past. The practice has been that the HDC appoints the members of each of these advisory committees, including the Sign Advisory Council (SAC – 1980), the Design Advisory Committee (DAC – 1972) (now inactive), Siasconset Advisory Committee (SCAC – 1986/87), Madaket Advisory Board (MAB - 2004), Tuckernuck Island Advisory Council (TIAC – 1994) (meetings are infrequent), and the Historic Structures Advisory Board (HSAB - 2004) . The advisory committees typically conduct a pre-review of applications pending before the HDC. You are concerned that over the years the scope of this pre-review has expanded considerably, and often, the advisory committee recommendations go beyond being merely advisory in nature which results in an intrusion on the discretion of the elected HDC and causes confusion for applicants. As an example, you have provided me with a copy of the HDC’s Sign Book, wherein the HDC created the Sign Advisory Council, which is described as “advisory only.”

I have reviewed the Charter and bylaws of the Town, the HDC Special Act, and Chapter 40C of the General Laws and I can find no legal authority for the creation of any advisory committees by the HDC. An elected body cannot delegate authority to non-elected standing committees without specific legislative authority. In fact, Section 3.5 (c) of the Town Charter reserves to the Select Board the authority to appoint advisory committees. It is my opinion, therefore, that the HDC never possessed the legal authority to create the advisory committees or to delegate any of its authority to such a committee. While the HDC may establish one or more subcommittees of its members and to delegate to such a subcommittee certain function including a pre-review of applications, in my opinion the HDC does not have the legal authority to create an advisory committee consisting of individuals who are not elected members of the HDC. In my opinion, the HDC also has the legal authority, as an administrative matter, to request Town staff assigned to support the work of the HDC, and to conduct a pre-review of applications in order to streamline the application and hearing process.

If HDC wants to continue having an SAC, my recommendation would be that the HDC vote to request that the Select Board formally vote to reconstitute the SAC pursuant to its Charter authority, and in doing so, the Select Board should vote on a charge to the SAC that spells out the scope and limits of authority of the SAC. The charge should make it clear, however, that the SAC is only advisory. If the SAC is to be reconstituted, then Chapter 124 of the Code of the Town of Nantucket should be amended to allow for an advisory committee to be appointed by the Select Board under its Charter provisions.

Unlike the SAC, which functions in the context of the Sign Bylaw (Chapter 124 of the Town Code), the subject matter of the other advisory committees do not have specific recognition in town bylaws and their function is indistinguishable from the HDC's review as an elected Commission. Retaining all or any of these, therefore, will require amending the enabling legislation. Until such time as the advisory committees are legally reconstituted, which may or may not occur, they should discontinue any meetings or deliberations.

Please let me know if you have any questions.

From: [John Giorgio](#)
To: [Andrew Vorce](#)
Cc: [Libby Gibson](#)
Subject: Sign Advisory Council
Date: Thursday, September 1, 2022 3:52:24 PM

Andrew;

You have asked me to review chapter 340 of the Town Code, which are regulations of the Historic District Commission to determine whether there is anything in those regulations that would change my opinion regarding the need for the Sign Advisory Council to be established as an advisory committee appointed by the Select Board.

I do not see anything in chapter 340 that changes my opinion. I agree that Chapter 340 is intended to constitute regulations of the HDC, but to the extent that c. 340 purports to establish one or more advisory boards, it is still my opinion that pursuant to the Town Charter, which I have previously cited, only the Select Board is authorized to appoint advisory boards. Neither a bylaw of the Town nor a regulation of a town board may vary the requirements of the Town Charter, which would, in my opinion, prevail over any inconsistent bylaws or regulations. Moreover, when it comes to the distribution of the powers and duties of Town boards, a home rule charter that distributes such powers in a manner than is different than the General Laws is deemed to be consistent with those laws under G.L. c. 43B, §20, which provides in pertinent part as follows:

The provisions of any charter or charter amendment adopted pursuant to the provisions of this chapter shall be deemed consistent with the provisions of any law relating to the structure of city and town government, the creation of local offices, the term of office or mode of selection of local offices, and the distribution of powers, duties, and responsibilities among local offices

It continues to be my opinion, therefore, that pursuant to Section 3.5(c) of the Town Charter, the authority to appoint advisory committees rests with the Select Board. Specifically, the Charter vests in the Select Board the authority:

To establish as may be advisable or needed one or more advisory committees to conduct any inquiry or investigation or to make planning, policy, or other recommendations.

I would also point out that there is nothing in the Town's HDC special legislation that purports to authorize the HDC to appoint any committees, advisory or otherwise. While arguably the HDC may have authority to appoint subcommittee of its members to perform certain duties, the Sign Advisory Council, by its nature, is not a subcommittee of the HDC. Rather, it is a Town Committee consisting of citizens appointed by the HDC. That is a very different committee structure than a subcommittee of members of the HDC itself.

I do not think that there is any doubt that the Sign Advisory Council was intended to be an advisory committee that was tasked with making recommendations on planning and other matters. Accordingly, as I have indicated from the outset of this subject, there is nothing that would preclude the Select Board from establishing a sign advisory council to provide planning recommendation to the HDC. This could include recommendations on specific sign applications filed with the HDC pursuant to Chapter 340, or section 124 of the Town bylaws. In order, however, to insure that any sign advisory council remains advisory I would recommend that chapters 124 and 340 be amended to make it clear that while sign applications may be referred to the Sign Advisory Council, the purpose of the referral is to provide any opportunity for the council to make recommendations to the HDC only, and I would further recommend that it be made clear that the ultimate authority to approve a sign application rests with the HDC. In order to give effect to the "advisory" nature of the Sign Advisory Council, the local legislation should include a deadline for the receipt of recommendations from the council after which the HDC must act with or without a recommendation. The same safeguards should be in place for any other advisory boards that the select Board establishes to advise the HDC.

John

John W. Giorgio, Esq.

KP | LAW

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ANDERSON KREIGER

PAUL M. KOMINERS
pkominers@andersonkreiger.com
T: 617.621.6538

January 10, 2023

By email to emartinez@nantucketma.gov

Nantucket Historic District Commission
2 Fairgrounds Road
Nantucket, MA 02554

Re: Historic District Commission Advisory Committees

Dear Commissioners:

I represent the Nantucket Community Foundation's Keep Nantucket Real Fund. In light of the Town's disbanding of the Nantucket Historic District Commission ("HDC")'s standing advisory committees, the Fund has asked me whether the HDC has the legal authority to create standing advisory committees. Based on my research, it does. This letter explains why, and also explains other actions the HDC or Town Meeting can take without amending the HDC's enabling legislation.

In preparing this letter, I have reviewed the HDC's enabling act, Chapter 395 of the Acts of 1970, as amended ("Act"); the Town Charter; applicable case law, Town Counsel's August 17, 2022 memorandum concerning the advisory committees; and other materials.

History of the HDC Advisory Committees

As you know, the Nantucket Historic District Commission ("HDC") exists to "promote the general welfare of the inhabitants of the Town of Nantucket through the preservation and protection of historic buildings, places and districts of historic interest" Act § 2. The HDC was established by the Act, which also designated all 30,000 acres of Nantucket as a historic district. The Historic District includes multiple architecturally-distinct villages and areas.

The HDC's authority within its large jurisdiction is extensive. It covers all construction or alteration of buildings' or structures' exterior architectural features. Act § 5. And consistent with this extensive authority over a large area, the HDC receives an enormous number of applications—well over 2,000 in an average year, based on a review of published HDC monthly data running from 2016 to July 2021. Those applications cover construction and alterations ranging from entirely new dwellings, to signs, to sheds, solar panels, chimneys, and fences.

Processing an application is a significant undertaking. The HDC is charged with evaluating, among other things, the general design, arrangement, texture, material and color of the building or structure in question, the location on the lot and the relation of such factors to similar features of buildings and structures in the immediate surroundings and the position of such building or structure in relation to the street or public way and to other buildings and structures.

Id. § 9(b). In addition, when reviewing applications for new construction, the HDC “shall consider the appropriateness of the size and shape of the building or structures both in relation to the land area upon which the building or structure is situated and buildings and structures in the vicinity” *Id.*

In order to carry out its statutory mandate, the HDC “may make such rules and regulations consistent with th[e] Act as may appear desirable and necessary.” *Id.* § (8). It is specifically charged with promulgating “rules and regulations adopting or establishing guidelines for exterior architectural features and establishing procedures for the processing of applications and conduct of hearings.” *Id.*

Starting in the early 1970s, the HDC created a series of advisory committees to conduct pre-reviews of applications and offer the HDC advice and input on specific subjects:

- the Design Advisory Committee, established in 1972, later inactive;
- the Sign Advisory Council, established in 1980;
- the Siasconset Advisory Committee, established in 1986 or 1987;
- the Tuckernuck Island Advisory Council, established in 1994;
- the Madaket Advisory Board, established in 2004; and
- the Historic Structures Advisory Board, established in 2004.¹

My research has not revealed how these advisory committees were established, except that there appears to have been a regulation authorizing the Sign Advisory Council at least as early as 1990. Town Regulations § 340-6(B); *id.* c. 340, App’x D.

In August of 2022, on advice of Town Counsel, the HDC Advisory Committees were unilaterally disbanded by an email from Planning Director Andrew Vorce to HDC Chair Raymond Pohl. The Select Board subsequently reinstated the Sign Advisory Council by establishing it as an advisory committee under Section 3.5(c) of the Town Charter.

¹ These dates are drawn from Town Counsel’s memorandum.

Analysis

I. The HDC May Establish Advisory Committees by Rule or Regulation

In determining whether the HDC has the power to establish advisory committees by rule or regulation, there are two questions: (1) the scope of the HDC's authority to promulgate rules and regulations in general and (2) whether establishing an advisory committee is a permissible exercise of that authority. I believe that the HDC has broad authority to promulgate rules and regulations and that establishing advisory committees is within the scope of that authority.

First: In *Globe Newspaper Company v. Beacon Hill Architectural Commission*, 421 Mass. 570 (1996), the Supreme Judicial Court held that the BHAC, which functions as an historic district commission, has broad authority to promulgate rules and regulations. Specifically, it held that because "the General Court directly established the [BHAC] by special enabling act" and the BHAC is largely independent of the City of Boston, the BHAC's regulations are entitled to the considerable deference given to an "agency created by the state." *Id.* at 583-84. The BHAC's rules and regulations, therefore, need only have "a rational relation to the statutory purpose ... [and] some express or implied basis in the governing statute." *Id.* Had the BHAC been an ordinary municipal public body, it would have had only the power to issue regulations if that was the "necessary implication" of its governing statute. *Id.* at 583.

The HDC is also an "agency created by the state." Like the BHAC, the HDC was created directly by a special act of the Legislature and is largely independent of the local government.² Accordingly, the HDC's rules and regulations need only have a rational relation to the purpose of the Act, and an express or implied basis therein.

Second: Because establishing advisory committees bears a rational relation to the purpose of the Act, and has an express or implied basis therein, the HDC's authority to issue regulations includes the authority to establish advisory committees.

Rational relation: Where a statute charges a public body with conducting a vast number of proceedings, streamlining those proceedings bears a reasonable relation to the purposes of the statute, especially when the public body retains ultimate decision-making authority. *Town of Hull v. Mass. Comm'n Against Discrimination*, 72 Mass. App. Ct. 525, 529 (2008). In *Town of Hull*, the Appeals Court concluded that a regulation delegating MCAD hearings to non-Commissioner hearing officers was reasonably related to the enabling statute, because MCAD manages thousands of cases annually and the hearing officers' decisions were still "subject to later review by the commission." *Id.* Like the MCAD, the HDC processes an average of more

² The HDC is at least as independent of Nantucket as the BHAC was of Boston. HDC members, unlike BHAC members, are independently elected. Act §§ 3, 11. Both are placed within municipal departments for staffing and administrative purposes. And, because both the BHAC's and the HDC's decisions are ultimately subject to appeals to Superior Court, the Select Board's ability to review HDC decisions does not reflect significant Town control over the HDC.

than 2000 cases per year, and preliminary review by an advisory committee would not divest the HDC of its ultimate authority. Thus, requiring preliminary review by an advisory committee bears a rational relation to the Act.³

Express or implied basis in the statute: At least three cases have approved state agencies imposing substantial, rights-altering procedural steps by regulation, even where those procedures are not explicitly authorized by or even are in tension with the statute.

First, the SJC approved a Department of Public Welfare regulation establishing a Medicaid claims review board and requiring providers to appeal claims denials to that board, even though that structure was “not explicitly authorized by statute.” *Mass. Respiratory Hosp. v. DPW*, 414 Mass. 330, 331-32, 334 (1993). The SJC relied on general authorizing language in both state and federal law. *Id.* at 334.

Second, the SJC held that the Department of Environmental Protection could mandate by regulation that registered water districts channel disputes with DEP through administrative adjudication. *Water Dep’t of Fairhaven v. DEP*, 455 Mass. 740, 750 (2010). The SJC based its decision on DEP’s statutory power to adopt “such regulations as it deems necessary to carry out the purposes of the act.” *Id.* (quoting G.L. c. 21G, § 3(6)). The SJC characterized this power as a “broad latitude to adopt regulations, comparable to” that in *Massachusetts Respiratory Hospital* or in *Globe Newspaper Co.* *Id.* at 750-51. And it came to this conclusion even though the governing statute expressly authorized adjudicatory proceedings only for *other* categories of users. *Id.* at 751.

Third, in *Town*, the Appeals Court approved an MCAD regulation delegating initial hearings to non-commissioner hearing officers, even though the enabling legislation only expressly authorized the MCAD to delegate hearings to commissioners. 72 Mass. App. Ct. at 528 (quoting G.L. c. 151B, § 3(6)). The Court concluded that the regulation was consistent with the enabling statute in key part because the statute empowered the MCAD to adopt “rules and regulations to carry out the provisions of [c. 151B],” because the enabling statute did not “*expressly* prohibit [the MCAD] from delegating public hearings to hearing officers,” and because the “practice ... has been accepted without question over many years.” *Id.* at 529-30 (emphasis added).

In light of these three cases, the HDC has an implied basis in the Act to establish standing advisory committees. In all three cases, an agency with a general grant of authority to promulgate regulations it deemed “suitable” or “necessary” was permitted to promulgate regulations interposing a significant adjudicatory step not expressly authorized by the statute. Here, the HDC has comparable authority: it may adopt regulations it deems “desirable or necessary.” And requiring a preliminary review is a less significant intervention in the process

³ For similar reasons, Town Counsel is correct that the HDC can properly “request Town staff assigned to support the work of the HDC, and to conduct a pre-review of applications in order to streamline the application and hearing process.”

than interposing a mandatory claim review board, mandatory administrative adjudication, or a separate hearing officer.

Also, like the challenged delegation in *Town of Hull*, the practice of referring applications to the advisory committees is longstanding. 72 Mass. App. Ct. at 529. Of course, HDC decisions are not litigated as regularly as MCAD decisions. But at least one case involving the HDC's agreement with the Design Advisory Committee's adverse recommendation did not question the DAC's right to exist. *Gumley v. Bd. of Selectmen of Nantucket*, 371 Mass. 718, 721 (1977). My research has not identified any other case arising from an HDC decision in which a party made an issue of an advisory committee's involvement.

Two contrary arguments in Town Counsel's August 17 memorandum are worth addressing.

First, he states that "[a]n elected body cannot delegate authority to non-elected standing committees without specific legislative authority." This point is not germane. As the analysis above shows, the HDC's power to adopt rules and regulations as "desirable and necessary" constitutes specific legislative authority to create advisory boards. Indeed, in *Massachusetts Respiratory Hospital*, the SJC described the Legislature's delegation of power to DPW to adopt regulations as "authoriz[ing] the department's creation of [the claims review] board." 414 Mass. at 335. Also, seeking advice from an advisory committee is not a delegation of authority.

Second, he argues that "Section 3.5(c) of the Town Charter reserves to the Select Board the authority to appoint advisory committees." This argument appears to rest on the standard principle of statutory interpretation that "[w]hen the Legislature includes a phrase in one subsection of a statute but not in another, this invites the 'negative implication' that the phrase was purposefully excluded." *Commonwealth v. Montarvo*, 486 Mass. 535, 538 (2020). However, this principle always requires "cautious application," *id.*, especially where the relevant "statutes ... vary significantly" in their language and structure, *Commonwealth v. Garvey*, 477 Mass. 59, 65 (2017). Here, the Act and the Town Charter enabling legislation are two different pieces of legislation, structured differently, written differently, serving different purposes, and separated by over 25 years. The Town Charter, therefore, does not implicitly divest the HDC of the power to establish advisory committees. There is no practical conflict either: regardless of whether the HDC's advisory committees exist, the Select Board can create advisory committees as it sees fit.

II. Town Meeting May Grant the HDC the Ancillary Power to Appoint Advisory Committees

As explained above, the Act empowers the HDC to establish standing advisory committees. However, if the HDC wishes to confirm that authority, the Act provides a mechanism. The Act empowers Town Meeting to "delegate[]" or "assign[]" "ancillary ... powers, authority and duties." Act § 9(g). The power to establish advisory committees is ancillary to the HDC's core powers. Thus, the HDC can ask Town Meeting to assign the power to establish advisory committees to the HDC.

Also as explained above, this would not conflict with the Select Board's power under the Charter to establish advisory committees. Town Charter § 3.5(c). The Charter itself provides that, notwithstanding its adoption, "[t]he legislative powers of the Town shall remain vested in the Town Meeting." There is a narrow exception of certain powers "as to real estate acquisitions." Town Charter § 2.1. This exception shows that powers otherwise vested in Town Meeting – such as the power to assign ancillary powers to the HDC, Act § 9(g) – remain with Town Meeting. *Montarvo*, 486 Mass. at 538.

Conclusion

Based on the language of the Act and case law, the HDC may enact regulations establishing standing advisory committees to advise it as it carries out its charge to preserve and protect the historic character of Nantucket. Town Meeting may also assign the authority to establish such advisory committees to the HDC, without amending the Act.

Thank you.

Sincerely,

/s/ Paul M. Kominers

Paul M. Kominers

ecc: Arthur P. Kreiger, Esq.
John W. Giorgio, Esq.



HISTORIC DISTRICT COMMISSION

2 Fairgrounds Road
Nantucket, Massachusetts 02554

Telephone: 508.325.7587

Fax: 508.228.7298

MEMO

To: The Select Board

From: The members of the Nantucket Historic District Commission

cc: Erika Mooney, Operations Manager; Holly Backus, Preservation Planner; Esmeralda C. Martinez, HDC Compliance Coordinator; Billy Saad, Land Use Specialist; Andrew Vorce, Director of Planning

Date: November 2, 2022

Re: Request for advisory board reinstatement

Please see our letter attached for our request of the reinstatement of the disbanded HDC advisory boards. This request is a temporary solution to get these boards operating in a legal manner as quickly as possible. The HDC wishes to manage these boards internally as they act strictly in an advisory role to the HDC's elected members. As we continue to work toward our long-term solution, we will provide supplemental requests and respectfully ask the select board to accommodate further support to develop future regulations to govern these advisory boards.



HISTORIC DISTRICT COMMISSION

2 Fairgrounds Road
Nantucket, Massachusetts 02554

Telephone: 508.325.7587

COMMISSIONERS

Ray Pohl
Chair

Stephen Welch
Vice-Chair

Abigail Camp

Val Oliver

Diane Coombs

ASSOCIATE COMMISSIONERS

Carrie Thornewill

Jesse Dutra

Constance Patten

STAFF

Holly Backus
Preservation Planner
hbackus@nantucket-ma.gov

Esmeralda Martinez
HDC Compliance Coordinator
emartinez@nantucket-ma.gov

Billy Saad
Land Use Specialist
wsaad@nantucket-ma.gov

To Chair Jason Bridges and the members of the Select Board,

We, the members of the Historic District Commission, request the full reestablishment of all HDC advisory boards: Siasconset Advisory Board (SAB) Madaket Advisory Board (MAB), Tuckernuck Advisory Board (TAB), and the Historic Structures Advisory Board (HSAB).

These boards play a vital role in reviewing the lengthy applications and agendas on which the HDC must make rulings. The members of these groups specialize in the subject matter of their respective boards and, in many cases, provide knowledge and insight on historical structures and precedents that could potentially be missed, given the volume of applications reviewed weekly.

We want it to be clear that these boards act strictly in an advisory manner, and the HDC elected members make a formal vote on each application submitted to the town. We understand that the legality of the establishment of the boards and the appointment of members has been called into question.

Therefore, we are asking the Select Board to reappoint the sitting members of each board at the time of disbandment as a short-term solution.

With regards to the long-term solution, we humbly request for the Select Board to ratify the HDC's selections of advisory board nominees.

Respectfully,

Ray Pohl (chair) and all members of the Nantucket Historic District Commission



HISTORIC DISTRICT COMMISSION REGULAR MEETING

2 Fairgrounds Road
Nantucket, Massachusetts 02554
www.nantucket-ma.gov

Commissioners: Raymond Pohl (Chair), Stephen Welch (Vice-chair), Diane Coombs, Abigail Camp, Vallorie Oliver
Associate Commissioners: Jessie Dutra, Carrie Thornewill, Connie Patten

~~ MINUTES ~~

Tuesday January 3, 2023

Community Room, 4 Fairgrounds Road & Remote Participation via ZOOM.

Called to order at 4:07 pm. and announcements by Mr. Pohl

Staff in attendance: Holly Backus, Historic Planner; Esmeralda Martinez, Land Use Specialist; Terry Norton, Town Minutes Taker

Attending Members: Pohl, Welch, Coombs, Camp, Oliver, Dutra, Thornewill

Remote participant: Coombs

Absent Members: Patten

Late Arrivals: None

Early Departures: Welch, 8:07 pm

Adoption of Agenda:

Motion **Motion to Approve as drafted. (Camp)**

Roll-call vote Carried 5-0//Oliver, Coombs, Welch, Camp, and Pohl-aye

I. PUBLIC COMMENT

1. None

II. COMMISSION COMMENTS

1.

III. DISCUSSION & VOTE

1. Ms. Coombs' letter to Select Board about reinstatement of advisory boards.

Voting Pohl, Welch, Coombs, Camp, Oliver

Alternates Dutra, Thornewill

Discussion **Coombs** – Presented the letter signed by all to Select Board to reestablish the advisory boards. The Select Board hasn't provided an answer. Along with this is for next week she'd like to have on the agenda is discussions for staffing and commission interaction and her citizen's warrant.

Mickey Rowland – Read a statement regarding the letter and urges the HDC push for reinstatement of the advisory boards.

Angus MacLeod – He's speaking as chair of Nantucket Historical Commission and 'Sconset advisory. We need an update on how they can best assist to get these boards legally up and running.

Pohl – We sent the request; SB deliberated but didn't act upon it. They want to reconvene and discuss it further.

Camp – Suggested a follow-up letter asking about the status of the Select Board's decision.

Motion **No action necessary**

Roll-call vote N/A

IV. CONSENTS

Property owner name	Street Address	Scope of work	Map/Parcel	Agent
1. 137 Hummock Pd, LLC 12-7531	137 Hummock Pnd Road	New Shed	65/72	Brook Meerbergen
2. Dean Lampe 01-7630	142 Surfside Road	Retaining wall	80/98.1	Dean Lampe
3. Dean Lampe 01-7632	142 Surfside Road	Revise MH dormers	80/98.1	Dean Lampe
4. Dean Lampe 01-7635	142 Surfside Road	Revise garage dormers	80/98.1	Dean Lampe
5. J.J. Jonas 12-7617	9 Columbus Avenue	Change windows	59.3/112	NAG
6. Michael Noonan 11-7452	53 Union Street	Roof replacement	55.14/88	Alvaro Castro
7. Susan Mitchell 12-7614	10 Skyline Drive	Rev. MH color	79/7.1	Susan Mitchell
8. Susan Mitchell 12-7613	10 Skyline Drive	Rev. GH color	79/7.1	Susan Mitchell
9. Robert Rios 12-7618	23 Tashama Lane	Replace windows & doors	55/464	Thornewill Design
10. One Bloom, LLC 12-7619	1 Bloom Street	New shed	42.3.3/140	Emeritus
11. Flotron & Newman 12-7550	13 Arkansas Avenue	Add door to garage	59.4/158	NAG
12. John Reddett 12-7620	8 Galen Avenue	Roof replaced – red cedar	29/113	Carey Company
13. Pennel Ames 12-7594	5 Nobska Way	Renew COA 11906	66/26	NAG
14. 4 Amigos, LLC 12-7578	8 F Street	Rev. 07-4257: shed	60.2.1/7.1	Structures Ultd
15. Willauer & Harmon 01-7628	Maple Lane Lot 2	New shed	67/303	LINK

From: [John Giorgio](#)
To: [Libby Gibson](#)
Cc: [Erika Mooney](#); [Andrew Vorce](#)
Subject: FW: Update: HDC Special Mtg/Unanimous Consensus (HDC re. Advisory Committees, etc.)
Date: Thursday, February 9, 2023 12:20:56 PM
Attachments: [AGENDA HDC-SB-NPEDC 020323.pdf](#)
[Letter to HDC re Advisory Committees from Anderson Krieger.pdf](#)
[DRAFT Scope of Services for HDC Ops Review 112022 LG.docx](#)
[Town Counsel op re HDC adv committees 090122.pdf](#)
[KP-#826580-v1-NANT Memo to PLUS Re Sign Advisory Council.DOCX](#)

Dear Libby;

I have attached my original opinion to PLUS regarding HDC Advisory Committees. It is the last attachment. I think that should go in the packet as well.

Furthermore, I want to provide my thoughts on the legal opinion provided by Anderson and Krieger and explain why that opinion does not change my original opinion.

As I have indicated since the issue whether the HDC has the authority to appoint advisory committees first came up, the Nantucket Town Charter places with the Select Board the exclusive authority to appoint advisory committees. Section 3.5(c) of the Charter provides as follows:

[The Select Board shall have the power] to establish as may be advisable or needed one or more advisory committees to conduct any inquiry or investigation or to make planning, policy or other recommendations; ...

Furthermore, Section 4-4(b) of the Charter provides that the Historic District Commission is classified as an administrative department of the Town. In my opinion, although the HDC was created by a special act, under the Charter it is a board or commission of the Town and, therefore, subject to the provisions of the Charter.

Private counsel suggests the authority of the HDC to appoint advisory committee stems from its authority under its Act (§8) to enact regulations, which may include the establishment of advisory committees. I respectfully disagree. In my opinion, any explicit or implied authority found in the HDC special act would not take precedence over the Town Charter. Pursuant to G.L. c. 43B, §10:

The provisions of any charter or charter amendment adopted pursuant to the provisions of this chapter shall be deemed consistent with the provisions of any law relating to the structure of city and town government, the creation of local offices, the term of office or mode of selection of local offices, and the distribution of powers, duties and responsibilities among local offices.

I do not believe there is any doubt that the Select Board's Charter authority to appoint advisory committees constitutes "the distribution of powers, duties, and responsibilities among local offices." As such, the Charter takes precedence over any General Law or special act that provides for a different distribution of powers, and certainly would take precedence over any implied authority found in such laws.

I would also point out that the Town bylaws require a public hearing be held before any Town board or committee adopts regulations. See Section 2.1 of the Town Code. Although Section 340 of the Town Code relative to the HDC's Sign Advisory Committee states that it is a regulation, I have been informed that no public hearing was ever held prior to the adoption of that section.

Moreover, to the extent that Section 9(g) of the HDC special act authorizes Town Meeting to delegate authority to the HDC, this section cannot be interpreted to allow a delegation of power that is inconsistent with the Town Charter. The Town Charter is the preeminent legislation that governs the distribution of powers and duties of Town officials, and boards and commissions, and takes precedence over any inconsistent laws, bylaws, regulations, or town meeting votes.

My understanding is that the Select Board already voted on September 22, 2022, to re-establish the Sign Advisory Committee, and that there are ongoing efforts to address the remaining advisory committees. Therefore, rather than engaging in a back-and-forth discussion of differing legal opinions, my recommendation is that the Select Board work with the HDC to identify what other advisory committees are needed at this time and come to a consensus on a process for appointment of members of other advisory committees to serve the needs of the HDC.

Please let me know if you need anything further.

John

John W. Giorgio, Esq.

KP | LAW

101 Arch Street, 12th Floor

Boston, MA 02110

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From: [Libby Gibson](#)
To: [Holly Backus](#); [Andrew Vorce](#)
Cc: [John Giorgio](#); [Erika Mooney](#)
Subject: FW: HDC Review
Date: Thursday, February 9, 2023 11:56:09 AM
Attachments: [image001.png](#)
[Post-CAMP Nantucket Report.pdf](#)
[DRAFT Scope of Services for HDC Ops Review 112022 HB AV edits.docx](#)
[HDC-OFC Recs \(HDC Adopted 11-17-22\) colorized.pdf](#)

This could go in that packet too - ?

C. Elizabeth Gibson, ICMA-CM
Town Manager
Town of Nantucket
(508) 228-7255

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From: Holly Backus <hbackus@nantucket-ma.gov>
Sent: Monday, November 28, 2022 5:23 PM
To: Libby Gibson <LGibson@nantucket-ma.gov>; Andrew Vorce <AVorce@nantucket-ma.gov>; Leslie Snell <LSnell@nantucket-ma.gov>
Subject: RE: HDC Review

Hi Libby,

Sorry for the delay.
Here are our edits.

I have attached our 2020 NAPC (National Alliance of Preservation Commissions) CAMP Report. NAPC provides technical support for local commissions and I was very appreciative of Andrew allowing us to host them (virtually) in 2020. The training included: Preservation Planning & Community Resilience, Ethics, Outreach & Design Review Exercise. The report outlines the historic district (including the both commissions) strengths and weaknesses along with recommendations. We've already been working or achieved some of their recommendations, but in particular, they recommended "exploring way to delegate discretion to staff to approve or deny minor architectural changes to reduce workload for regular HDC meeting." Also, "consider amending the Special Act....only where necessary....not to be entered into lightly." I apologize if I never sent this along before.

NAPC maybe a great resource in this review effort?

I have also attached the HDC's recent adoption of best practices.

Please let me know if you have any questions.
Thanks,

Holly E. Backus
Preservation Planner**
Local CLG Coordinator
Local Hazard Mitigation Plan Coordinator
Town of Nantucket
hbackus@nantucket-ma.gov

**Staff liaison to the Nantucket Historic District Commission (HDC)
& Nantucket Historical Commission (NHC)**



DRAFT Scope of Services for HDC Ops Review
As of 11/2022 LG

Review the conduct of Commission meetings and examine/confirm compliance with:

- Open Meeting Law
- Robert's Rules of Order
- Town of Nantucket Committee Handbook, including Code of Conduct
- Conflict of Interest Law/State Ethics Commission Guidelines

And taking into consideration:

- Could meetings be more efficient?
- Is discussion relevant to agenda items?
- Are staff recommendations provided and considered?
- Are applications processed efficiently?
- Number and type of applications from 2019 to present (in Energov) over the last 5 (???)
~~years~~ to determine any trends, significant changes

Review HDC enabling legislation for potential amendment so as to:

- Retain HDC authority for ensuring adherence to historic preservation guidelines, rules and regulations while allowing for routine applications (such as fences, door color changes, window replacements and other non-substantive items) to be potentially be processed by staff
- ~~Are "HDC Advisory Committees" "added value"?~~

Commented [HB1]: SEE NAPC CAMP 2020 Report

Review staffing and operations for the Commission:

- Are staff resources sufficient?
- Do staff members have the necessary qualifications to provide recommendations?
- Are there training/educational opportunities that could be utilized?
- Are HDC regulations current; are any updates recommended (such as ~~coastal resilience~~, sustainability needs and new requirements, guidelines or best practices)
- Are the HDC fees commensurate with staff time? Should they be modified?
- Are there training programs available to Commission members?
- Are minutes and agenda items processed in a timely manner?
- Is the agenda organized to optimize the Commission's time for more significant applications?
- Is the review of applications sufficient?
- Are "HDC Advisory Committees" "added value"?

Commented [HB2]: I forward ALL training opportunities from MHC to both commissions and staff.

Commented [HB3]: This is what "Resilient Nantucket" is. They adopted it June 2021, as an addendum to "Building with Nantucket in Mind."

Commented [HB4]: They just discussed best practices this month. I'll include.

Interview:

- Current Commission members
- ~~Former Commission members~~
- Current staff
- Random selection of: applicants who make application on a regular basis; and, one-time applicants
- Town Manager and/or other Town Administration staff

- Planning Admin Staff (who handle applications and have dialogue with the public)
- ANYONE ELSE?

DRAFT



Nantucket, Massachusetts

November 6 & November 13, 2020

CAMP trainers: William Cook, Lisa Craig, Friederike Mittner,

Program Manager: Marie Snyder

Contact Information: will@culturalheritagepartners.com, lcraiggroup@gmail.com, fhmittner@yahoo.com, marie@napcommissions.org

*The information contained in this document is for informational purposes only and not for the purpose of providing legal advice. Use of this information does not give rise to an attorney-client relationship and does not represent a comprehensive analysis of any particular legal issue. Contact an attorney in your jurisdiction to obtain advice with respect to any particular issue or problem

CAMP Nantucket was presented virtually via Zoom on two consecutive Friday mornings, November 6 and November 13, 2020. With representation from numerous preservation and conservation based organizations and commissions including the Nantucket Historic District Commission, the Nantucket Preservation Commission, the Coastal Resilience Advisory Commission, the Conservation Commission, Nantucket Preservation Trust, ACKclimate and the Town of Nantucket agency staff, there was a significant amount of local preservation knowledge and a diversity in disciplines evident with the attendees.

With its well-established framework for preservation in place, (*i.e.*, the Special Act legislation pre-dating the National Historic Preservation Act and *Building with Nantucket in Mind*, the island-wide design guidelines) there is a strong ethic for preserving the historic character, architectural heritage and natural landscape of this National Historic Landmark island. That said, the increasing pressure of development in an overheated real estate market coupled with the long-term reality of climate change impacts (coastal erosion and sea level rise) has created significant challenges for balancing the preservation of historic places with the increase in new housing and the prioritization of land conservation.

Thus, this CAMP focused on those issues of greatest concern to the combined preservation and conservation commission members represented at this training. The training was led by experienced CAMP trainers with backgrounds in preservation law, local and state government, planning, and property development. Will Cook addressed Legal Basics and the Ethics and Role of Preservation Commissions; Friederike Mttner spoke to the Secretary of the Interior's Standards and Guidelines for Design Review and conducted a Design Review Exercise, and Lisa Craig shared best practices in Preservation Planning, Resiliency and Community Outreach.

Additionally, Christopher Skelly, Director of Local Government Programs with the Massachusetts Historical Commission provided background on the critical context for the establishment of historic preservation law in Massachusetts, how Nantucket fits into that context and why status as a Certified Local Government is of value to the community's long-term preservation and resilience planning.

Lastly, a Strengths, Weaknesses, Opportunities and Threats assessment was completed allowing the participants to identify the existing Town of Nantucket preservation program strengths and challenges as well as the greater opportunities and threats posed to preservation on the island, in general. It is from this SWOT assessment as well as the issues discussed and concerns addressed by participants during the two half-days of training that this report relies on for follow-on recommendations to Nantucket's preservation commissions and organizations. A recap of the SWOT information is provided below, followed by recommendations for the Town of Nantucket and its preservation advocates to jointly pursue.

STRENGTHS

- Nantucket has a wealth of historic resources.
- There are many strong preservation organizations on the island.
- Commissions understanding of NHLs character-defining features.
- Strong and well-established legislation (Special Act) and design guidance (Building with Nantucket in Mind).
- Knowledgeable and professional preservation staff qualified under the Secretary of the Interior's professional qualifications.
- Dedicated commissioners who are personable, experienced and committed to preserving Nantucket's historic places.
- Electeds tend to work toward consensus.
- Commitment of interested parties.

WEAKNESSES

- Transparency of application flow and staff / commission responsibilities.
- Booming and expensive real estate market.
- Non-island architects and realtors.
- A high volume of applications is overwhelming staff and HDC.
- A lack of coordination & communication between HDC / NHC & neighborhood advisory boards.
- A lack of regular training and representation of commissioners at workshops and trainings.
- Too much volunteer time is being required of commissioners.
- A lack of understanding by the community of the value of historic preservation.
- Potential for arbitrary outcomes on appeal and increased litigation risk to the Town of Nantucket by allowing appeals to the Select Board without any required standards for appellate review or deference to the expertise of the HDC on issues of fact and the local historic preservation ordinance.

OPPORTUNITIES

- Update design guidelines.
- Outreach at unconventional places.
- Securing resources from the Town to establish an education and enforcement program.
- Making the economic case for historic preservation (ie sustainability, jobs, tax revenues, and tourism).
- Lots of preservation-related partners to work with on island.
- Developing a preservation plan and community engagement process.
- Preservation should be reorganized as an integral part of Town management and planning.
- There are engaged and supportive partners such as PIN, NPT and ACKlimate.
- There are Federal, state and local funding sources available.
- Development of a preservation plan.
- Needed update of historic district surveys (to include significant public interiors).
- A better understanding for and appreciation of our recent past resources.
- Explore desirability for designating historic interiors if subject to public view as contemplated by the local preservation ordinance.

THREATS

- The exploding real estate market.
- Climate change and weather-related impacts causing erosion and sea level rise.
- Undersurveyed resources of the post 1960's.
- Poorly planned, over-development.
- Uninformed, indifferent property owners, builders, designers and realtors.
- Inadequate number of preservation staff.
- HDC review process is less accessible to non-design professionals.
- Disenfranchised community members.

- Preservation is seen as an impediment vs. a driving force and HDC is viewed as adversarial.
- Funds flow to the land bank, yet there is no mechanism set up to fund preservation.

Recommendations

1. **Become a Certified Local Government.** CLG status provides technical assistance and access to additional funding that will assist with developing a stronger and more comprehensive preservation program for Nantucket.
2. **Launch a preservation plan process.** This is about more than having the island's first preservation plan. This is about building a network of engaged community members interested in shaping the future of preservation on Nantucket. This is an opportunity to include those identified as disenfranchised, uninformed, and indifferent to preservation.
3. **Resurvey.** Like many communities, Nantucket needs to update its survey of historic resources. This can be completed at a neighborhood level using residents as volunteers and resources from the state or local organizations conducted in partnership with NPT.
4. **Improve HDC's efficiency to reduce delay and increase public support.** Explore ways to delegate discretion to staff to approve or deny minor architectural changes to reduce workload for regular HDC meetings. Explore new funding to hire additional staff to assist with review or contractual consultants.
5. **Develop a Preservation Education and Enforcement program.** This is the carrot and stick approach to preservation, providing information on the benefits of preservation while at the same time demonstrating the importance of holding all property owners accountable to the Town's preservation laws and regulations. This must be done jointly between the HDC/NHC/Advisory Commissions and local preservation partners such as NPT.
6. **Complete a Preservation Economics Benefit Assessment.** This is a critical tool in the efforts of the Town and its preservation partners to make the case for why preservation builds long-term value for the community's assets.
7. **Consider amending the Special Act legislation.** This should be considered only where necessary structural changes to the law must be put in place to allow for a more effective, efficient and enforceable preservation program in Nantucket. This should not be entered into lightly as this could open up the law for changes that might not be beneficial to preservation in the long-term.
8. **Offer training opportunities and funding support to Commissions.** Ensure commissioners and staff are informed about preservation training opportunities online and in-person at the state and national levels. This can include workshops, conferences, webinars and other formats through historic preservation organizations, the American Planning Association, the

American Institute of Architects and other organizations providing training specifically for those working with historic resources.

9. **Take advantage of your NAPC membership.** Whether it includes regularly accessing the NAPC list serv, reviewing past and current copies of The Alliance Review, attending the 2021 NAPC FORUM in Cincinnati or continuing with an annual CAMP training, this is a targeted source for information and best practices that is invaluable to historic preservation commissioners, their staff, and their advocates.

Please let us know if you have any questions regarding our comments. The “M” in CAMP is for mentoring so NAPC’s role continues even after the training is over.

HDC-OFC – Best Practice Recommendations (as adopted 11/17/22)

1) Establish protocols for “Digital Review of Applications” (using tablets & projector at Meetings):

- a) *Initiative:* Go full-digital for more effective use of time. Use tablets and projector to: reduce significant staff and Commissioner paper-shuffling; provides independent, quick access to drawings and information during meetings, provide zoom-capability, also creates a quieter process (with respect to paper rustling and member-to-member discussion re. clarifications).
- b) **11/17/22 HDC APPROVED BY UNANIMOUS VOTE THE FOLLOWING REQUIREMENTS:** Secure tablets (already ordered). And, all application materials submitted i) digitally via email, ii) timely, iii) with pages presented right-side up, iv) with drawings and imagery compiled legibly into PDF-format; application materials submitted v) per our established deadline schedule, vi) submissions loaded to the HDC agenda view-packet, per normal, and new step vi) digital files verified as accessible (e.g., 146 Main, 2 Stone Alley). Projector to be used as back-up at meeting (for Commissioners) and for so long as Zoom-meetings continue, for applicants and abutter monitoring.
- c) *Action Item(s):* Deliberate, offer modifications if any; vote these requirements ().

2) Establish protocols for “Conduct of Application Hearings”:

- a) *Initiative:* For effective proceedings and responsive duty to applicants and the community, the HDC requires reasonable control over its application hearings.
- b) **11/17/22 HDC APPROVED BY UNANIMOUS VOTE THE FOLLOWING REQUIREMENTS:** Adopt the following “Conduct of Application Hearings” protocol, to be linked to our web page and followed at each meeting:

Conduct of Application Hearings: The HDC role is to review and deliberate on the appropriateness of structures and architectural elements (consist with its mission under its Act, its guidelines including Building with Nantucket in Mind, and its established policies). With respect to consistently functional meetings: i) the HDC functions under Robert’s Rules and all meeting participants are expected to act accordingly, and ii) applicants and their agents are expected to provide application materials timely (to allow Commissioner preview, and for abutter and public viewing). In addition, the following protocols shall be observed:

- 1) The Chairperson opens the application hearing and announces the sitting board.
- 2) Subject to a time allotment (2 minutes for applicant and their agent, 1 minute per for 1st three abutters randomly selected; thereafter, 30 seconds per):
 - a) Applicant or agent provides a description of matters in front of the Commission.
 - b) The Commissioners, through the Chair, may ask questions to solidify their understanding of matters at hand.
 - c) Commission receives staff comments.
 - d) Abutters and public may then speak for or against the matters at hand.
 - e) The applicant or agent is allowed a rebuttal.
- 3) The Commissioners deliberate on the merits only. Note: Except for questions arising of the Commission’s deliberations, no further applicant, agent nor public comments are received by the Commission.
- 4) Through the Chair, Commission makes its determination; where applicable, its decision is recorded on the application (including as fitting, through use of an Exhibit).
- 5) In each of the foregoing, comments of Commissioners, applicants, agents, abutters, and the public, are reserved to the *merits of the design with respect to appropriateness*. And, unless as a Point of Information through the Chair, no comments (Commissioner, applicant, agent, abutters, or public) are to involve policy or procedure—under Robert’s Rules, such matters are properly addressed as separate, noticed agenda items. **Throughout each hearing, both off-topic redundant comments are strongly discouraged.**

- c) *Action Item(s)*: i) Deliberate, offer modifications if any; ii) vote the protocol, iii) print and post the protocol, iv) bring copies of the protocol to meetings for reference until it becomes integrated as standard practice. A copy of this protocol shall, as a separate page, be attached to each printed and web-posted HDC agenda.

3) Establish protocols to “Responsibly Advance Consent Items”:

- a) *Initiative*: Applications which are “Consentable” currently languish in the queue due to a lack of timely review, these applications also take up unnecessary time at meetings; process steps include as we know: setting up then opening the hearing, listening to introductions, then determining that in fact the application is consentable; each such application takes on average 10 minutes on the clock, which in person-hours, including both Commissioners and staff, equates to a minimum one-and-a-half hours. Instead, Commissioner review of queue to determine consentables effectively eliminates this circumstance providing too, more effective, and timely review of other applications while ensuring appropriate oversight. There are however benefits to staff involvement. This initiative includes a “staff apprenticeship component” ... an interactive, Commissioner-directed mini-review session (a teaching while determining approach). Note: An onboarding process is required of any staff to quickly become accustomed to, and proficient in, determining factors which constitute a consentable application. In large, “consentable” is more an art than a science; certainly, some are straightforward, but some are not and wrong decisions due to lack of understanding the art can create significant issues. The “art of it” involves not only HDC guidelines and policies, but also specifics, including but not limited to: application-vs.-application circumstances, institutional knowledge, matters of location and proximities, etc. Take for instance a retaining wall—there are widely different, specific circumstances that make one instance consentable and the other a pox (which leaves the community wondering “What the hell were they thinking?”). The same applies to “a shed.” Certainly, there are many consentable retaining walls and sheds; an apprenticeship program i) addresses how staff identifies relevant specifics, ii) providing necessary tools for their independently processing consentables (with confidence and correctly).

- b) **11/17/22 HDC APPROVED BY UNANIMOUS VOTE THE FOLLOWING REQUIREMENTS:** Commissioners’ review incoming applications for an hour or so, on a rotating basis, in a Zoom environment or in person, with staff. As the Commissioner progresses through review of an application, they share with staff a brief explanation of relevant specifics; an approach akin to a design charrette is perhaps most helpful if time allows, but bullet-point approach works too. Under current application load, each Commissioners contribution of an additional hour or so on a rotating basis is once every two months—i.e., 7 members, so once every two months give-or-take. *Any item placed on Consent shall bear the name of the person having elected such consent.*

- c) *Action Item(s)*: Deliberate, offer modifications if any; vote these requirements, and in relation, respectfully request necessary administrative assistance of PLUS, ii) as may be required, scope implementation and related matters (resources, timeline to implement, etc.).

4) Establish rule to eliminate “Material Non-responsiveness by an Applicant/Agent”:

- a) *Initiative*: A tremendous amount of time and good-will are expended reviewing application revisions. For every minute a requested revision is required to be reviewed, another minute is taken from other applicants. A reasonable amount of revision review is to expected. Where on a repeated basis, requested and material revisions are not made, the result (wittingly or not) is an abuse of process that is unfair to other applicants, and abutters; it is also disrespectful to the Commission. The cure is to curb such activity.

- b) **11/17/22 HDC APPROVED BY UNANIMOUS VOTE THE FOLLOWING REQUIREMENTS:** Commission adopt the following rule, named here for convenience as the “Three-and-out Rule”: After an initial hearing, applicants, through their agents or themselves, who submit revisions without materially responsive changes in keeping with Commissioners consensus request, will, upon discretion and vote of the Commission, have their application denied. Any such application will be “Denied due to lack of responsiveness to the Commissions’ requests.”
- c) *Action Item(s):* Deliberate, offer informed modifications if any, vote rule; post rule (in Legal Notice form) at the PLUS Building, Town Building, and with the Inquirer & Mirror; and, compose and post to HDC web page a compilation of rules.

5) Revisit protocols for “Incomplete Applications”:

- a) *Initiative:* Commission hearing incomplete applications is wasteful and time consuming, often resulting in additional wasteful time when the same application is extended into a follow-up meeting; this waste of time includes staff time, and time of other applicants and the public. Instead, staff shall redirect applicants, requiring submission of materially complete applications for an application to be accepted and processed for a hearing; such redirection creates and perpetuates more effective use of staff and Commissioner time and a fair and even playing field for other applicants, and reasonable review by abutters.
- b) **11/17/22 HDC APPROVED BY UNANIMOUS VOTE THE FOLLOWING REQUIREMENTS:** Applications are reviewed by staff for material completeness prior to acceptance by HDC; this, using existing checklists; materially incomplete applications are not accepted; staff shall redirect applicants, requiring submission of materially complete applications for an application to be accepted and processed for a hearing.
- c) *Action Item(s):* Deliberate, offer modifications if any; vote these requirements, and in relation, respectfully request necessary administrative assistance of PLUS, ii) as may be required, scope implementation and related matters (resources, timeline to implement, etc.) w/PLUS.

6) Revisit rule addressing “Waiting Period after Denial”:

- a) *Initiative.* Eliminate wasteful, painful, unproductive review time spent rehearing previously denied applications; and, to create prophylactic, non-punitive effect on similar behavior, initiate a rule requiring a waiting period after denial.
- b) **11/17/22 HDC APPROVED BY UNANIMOUS VOTE THE FOLLOWING REQUIREMENTS:** Commission adopt a rule to establish a two (2) year waiting period to re-hear an application that is substantially the same or like the application previously denied, which waiting period shall automatically become effective upon a unanimous vote for denial of an application.
- c) *Action Item(s):* Deliberate, offer informed modifications if any, vote rule; post rule (in Legal Notice form) at the PLUS Building, Town Building, and with the Inquirer & Mirror; and, compose and post to HDC web page a compilation of rules.

7) Revisit protocol for timely submission of “Supplemental Application Materials”:

- a) *Initiative.* Eliminate meeting delays, tendency for incoherent reviews, and processing burden on staff, which arise when material, supplemental information is provided “at the table.”
- b) **11/17/22 HDC APPROVED BY UNANIMOUS VOTE THE FOLLOWING REQUIREMENTS:** Supplemental application material shall be submitted to staff, in hard copy and digitally, not later than one week before the applications next anticipated hearing date; late submissions will not be accepted. In the event of late submission, hearing will proceed without the supplemental materials, or applicant/its agent may elect to delay hearing of their application

one week. Except due to extenuating circumstances, delays are one-time per application. Accommodation by exception shall be provided for additional images, limited-volume background information, and other quick-clean information that is not a design change.

- c) *Action Item(s)*: Deliberate, offer modifications if any; vote these requirements, and in relation, respectfully request necessary administrative assistance of PLUS, ii) as may be required, scope implementation and related matters (resources, timeline to implement, etc.) w/PLUS.

8) Establish rule for “Repeated Postponement of Hearings by Applicant/Agent”:

- a) *Initiative*. Applicants, directly or through their agents, repeatedly postponing hearings can amount to an abuse of process. When deployed, or deployed by multiple applicants’ agents, the course of other hearings is disrupted causing ripple-effect issues throughout the system (including with respect to needs of other applicants). A rule to prevent repeated postponements is both reasonable and beneficial. ...The Commission deems the following a reasonable approach to postponements, including to provide notice to abutters (both opponents and proponents) and the public, including to allow generally sufficient advance notice for travel arrangements.
- b) **11/17/22 HDC APPROVED BY UNANIMOUS VOTE THE FOLLOWING REQUIREMENTS:** Commission adopts a rule to establish that: More than one hearing postponement by an applicant or their agent shall result in the application being moved to a later point in the queue, two calendar meetings from the date of the second postponement. In the event of a third or subsequent postponement, the application shall be moved to the then current bottom of the queue—i.e., last in line in the list of applications remaining to be heard, which list is appended to each agenda under the heading “Upcoming Matters”. *Note*: Applicants or their agents that i) submit, two or more weeks before an application’s likely hearing date, a request for postponement to the HDC ii) with that request acknowledged by the HDC, are iii) in that instance excluded from this rule. In instances of an acknowledged request for postponement, notice of such postponement shall be posted i) as a notation to the application ii) within the “Upcoming Matters” list, indicating “HOLD until ___/___/___”; the HOLD notation shall remain in place until the meeting at which the application was held initially scheduled to be held until.
- c) *Action Item(s)*: Deliberate, offer informed modifications if any, vote rule; post rule (in Legal Notice form) at the PLUS Building, Town Building, and with the Inquirer & Mirror; and, compose and post to HDC web page a compilation of rules.

9) Establish protocol for “Reflecting Material Grade-changes in Applications”:

- a) *Initiative*: When an application proposes a grade change of >2’, accurate Grading Site Plan, Cross Section, and Retaining Wall Information are required as follow:
- b) **11/17/22 HDC APPROVED BY UNANIMOUS VOTE THE FOLLOWING REQUIREMENTS:**
 - i) Cross Section Elevation(s) to show existing in black line with notations in black, proposed in maroon, and of course the structure(s); cross section(s) shall be of areas i) of greatest proposed change and ii) of typical interest to HDC review; where grade change is within 5’ of an abutting property, cross sections grade lines shall accurately project over the lot line(s) of the applicant’s property (into the abutting lots) a minimum 10’.
 - ii) Grading Site Plan shall be 1’ contour lines; all structures shall be shown; show existing in black line, proposed in maroon line and notation color; contour lines shall be of the entire property; where grade change is within 5’ of an abutting property, contour lines shall accurately project over the lot line(s) of the applicant’s property (into the abutting lot(s) a minimum 10’.

iii) Accurate Retaining Wall Notations: Grade changes of >2' shall show existing and proposed retaining walls accurately, including their location and "Top of Wall (TOW)" and "Bottom of Wall (BOW)"; any existing retaining walls and notations shall be shown in black, proposed in burnt sienna.

c) *Action Item(s)*: Deliberate, offer modifications if any; vote these requirements, and in relation, respectfully request necessary administrative assistance of PLUS, ii) as may be required, scope implementation and related matters (resources, timeline to implement, etc.) w/PLUS.

10) Establish rule for "Flood Resistant portion of Approvals – Wet-proofing Type":

a) *Initiative*: Ensure structures are not constructed higher than the Design Flood Elevation required under 780 CMR.

b) **11/17/22 HDC APPROVED BY UNANIMOUS VOTE THE FOLLOWING REQUIREMENTS:** As a condition of review, applications that include Wet-Proofing Type Flood Protection shall include a i) Flood Elevation Certificate, a ii) licensed surveyor stamped certification to indicate "for [insert Property Address and Scope of Work] the maximum floor structure height is [insert Feet and Inches], which height is no higher than the minimum 780 CMR required Design Flood Elevation for the property based on [insert Flood Zone]; and iii) submission of the applicable Firmette. Such applications shall, as a matter of submitting a complete application, include all information required to be in conformance with the HDC's "Resilient Nantucket Guidelines".

c) *Action Items(s)*: Deliberate, offer informed modifications if any, vote rule; post rule (in Legal Notice form) at the PLUS Building, Town Building, and with the Inquirer & Mirror; and, compose and post to HDC web page a compilation of rules.

11/17/22 HDC APPROVED BY UNANIMOUS VOTE THE FOLLOWING: With respect to each of the foregoing, the Commission may waive strict conformance subject i) to a public vote in favor, ii) which vote is consistent with the spirit and intent of the respective initiative.



NANTUCKET HISTORICAL COMMISSION

Town of Nantucket
2 Fairgrounds Road
Nantucket, Massachusetts 02554

COMMISSIONERS

*Angus MacLeod (Chair) Georgia U. Raysman (Vice Chair) David Silver (Secretary)
Clement Durkes, Abby De Molina, Thomas M. Montgomery, Milton Rowland*

February 13, 2023

To: The Nantucket Select Board
Via email to: emooney@nantucket-ma.gov

Dear Members of the Nantucket Select Board:

Thank you for your continued consideration of Historic District Commission operations. I hope at your meeting this week you will take action and reappoint the remaining HDC Advisory Boards, with membership nominated by the HDC.

The HDC relies on its Advisory Boards to provide information about applications in Nantucket's various distinctive historic neighborhoods. The Advisory Boards are advisory only. The HDC has affirmed their need for these Boards.

While some boards are meeting in private as "groups" and offering citizen advice, it is incorrect to conclude that this is equivalent for the HDC or the public. The only way to give the public and the HDC the best service is to have the Advisory Boards be official public bodies, with members selected by the HDC, acting as advisors to the HDC.

The Town of Nantucket is a Certified Local Government for Historic Preservation, and the NHC, HDC, and Select Board are partners in ensuring Nantucket remains an example of best practice for protecting historic structures and their context. Select Board meeting minutes indicate discussion that the NHC might take on responsibility held by Advisory Boards. The NHC has discussed this and would like to formally communicate that we are not the correct body to advise the HDC on architectural review. The NHC is unanimous in our support of the HDC's request to have its Advisory Boards back as official public bodies.

Regardless of any overall review of the Historic District Commission operations, further refusal to honor the HDC's request to reappoint its Advisory Boards as public bodies is harmful to the Historic District.

Sincerely,

Angus MacLeod
Chair
Nantucket Historical Commission

Georgia Raysman
Vice Chair
Nantucket Historical Commission

February 13, 2023

To the Select Board

From Mickey Rowland, former chair of HSAB

Why does the HDC need the Historic Structures Advisory Board?

- Preserving the historic character of our downtown is a priority for all of us. Unlike the HDC, HSAB only reviews projects within the downtown area. This means that we are able to spend much more time researching and discussing in depth each application than the HDC has time for during their weekly meetings.
- Due to the varied first hand experiences of our group in local architectural design and the preservation field, we can provide important information to supplement what the HDC staff provides.
- Our recommendations are read at the beginning of each application providing the HDC with a list of concerns that we feel should be addressed. They then use that information as they see appropriate.
- The HDC has stated multiple times that our recommendations are helpful and have asked us to continue providing them.

Why make it officially part of the HDC structure?

- Bringing HSAB back under the town's authority allows us to publish our agenda and invite the applicant and neighbors to join the discussion. This isn't happening now because it is a private Zoom meeting without any way to invite each applicant.
- Having a dialogue with the applicant and neighbors helps us better understand the project, and it helps the applicant to understand our approach and how we use *BWNIM* to inform our recommendations.
- Our recommendations can then be posted on the HDC's website giving the applicant a head's-up on what the HDC will be hearing and thinking. In some cases the applicant may wish to revise their applications accordingly before the meeting saving considerable time for the HDC.

How much time will HDC staff need to spend on this?

- HSAB will create its own agenda as we are doing now, but the HDC staff will need to post it on their website. This shouldn't take more than a few minutes.
- After we have submitted our recommendations, staff will post them also – another few minutes.
- Done.

The HDC has asked HSAB to establish official policies for how we conduct our meetings, and we are submitting those to the HDC this week. We hope that after the HDC accepts these policies we can rejoin the public domain which will benefit all of us.

From: [Mary Bergman](#)
To: [Erika Mooney](#); [Jason M. Bridges](#)
Cc: [Libby Gibson](#); [Elizabeth Grubbs](#)
Subject: Letter to BOS 2/15
Date: Monday, February 13, 2023 11:43:43 AM
Attachments: [image001.png](#)

Hi Erika,

I hope you had a good weekend. I'm writing with a letter to the Select Board from the 'Sconset Trust and Nantucket Preservation Trust that I hope you might be able to include in this week's packet.

Thank you,
Mary

Dear Chair Bridges,

We are writing once again to express our concern about the need to re-instate the Nantucket Historic District Commission (HDC)'s Advisory Committees. The Historic Structures Advisory Board, 'Sconset Advisory Board, Madaket Advisory Board, and Tuckernuck Advisory Board all play important roles in supporting the work of the HDC.

The advisory committees provide specialized, localized expertise that helps the HDC in their review of applications and frequently provide supplementary historical information to the HDC. Only the HDC is empowered to approve or deny an application, and these committees act strictly in an advisory manner.

We are also writing in support of HDC Chair Ray Pohl's recent letter to the Select Board (included in the agenda packet for the 2/15/23 meeting) which proposes the Select Board ratify the HDC's nominations to the various advisory boards. The HDC commissioners understand best the knowledge and skills required for the advisory boards to work successfully and compliment the work of the HDC.

Thank you for your attention to this matter.
Sincerely,

Mary Bergman, Executive Director
Betsy Grubbs, Executive Director
Nantucket Preservation Trust
'Sconset Trust

Mary Bergman
Executive Director

NANTUCKET PRESERVATION TRUST

11 Centre Street
PO Box 158
Nantucket, MA 02554
508.228.1387
mbergman@nantucketpreservation.org
Become a [MEMBER](#) and support our work!



This email was scanned by Bitdefender

From: [Mick Rowland](#)
To: [Erika Mooney](#)
Subject: HDC Advisory Board discussion
Date: Monday, February 13, 2023 11:27:32 AM
Attachments: [HSAB letter to SelectBoard.docx](#)

Hi Erika

Could you please include this letter in the SelectBoard packet for this week and distribute it to the SelectBoard?

Thank you very much

Best

Mickey

This email was scanned by Bitdefender

Historic Structures Advisory Board – Policies and Procedures

From HDC Minutes of February 2, 2023:

Subject to Andrew's consent, professional staff (Holly, Esmeralda, and Billy) meet with HSAG Chair, and separately SAC Chair, to work through differing assessments (represented at past SB meetings) to resolve operational details for each group, their result taking the form of a brief document. Document to include the: "Who, Why, What, How, Where, and When" nature of the groups, and related matters; reasonably reflecting each party's concerns. Foregoing document to be forwarded to HDC for policy review, and potential modifications, and a vote, after which HDC moves the matter to SB (with a request they reconstitute the two groups subject to the measures within the document) under their charter powers (near term) and as otherwise required or determined beneficial (long term). As per previous HDC vote, HDC's request to SB to include a provision that the HDC selects successful candidates for SB ratification, or to this effect. • To come to a solution that or procedure that will allow to develop a kind of a common perspective to be presented to the Select Board. • Suggesting that Historic Structure Advisory Group, Sign Advisory Council, and professional staff with support of the Director of Planning, to try to develop the who, what, where, when, and why. To accomplish who's involved, what are they accomplishing, when are they doing it, why are they doing it.

Who:

- 5 members (plus an alternate?)
- Desired experience for candidates:
 - Professional experience in the exterior architectural design field
 - Professional experience in a preservation related organization
 - Academic studies in historic architecture and/or preservation
 - Personal experience and an avid interest in the preservation of multiple historic buildings
 - All candidates should have a strong understanding of Nantucket's architectural history and traditions

Why and What:

- To provide the HDC with a detailed opinion regarding the appropriateness of applications submitted for properties within the HSAB map of jurisdiction or immediately neighboring properties that might affect the character of the area within the map. Also to include isolated historic structures anywhere else on the island.
- Discussion during the meeting will be focused on all matters within the HDC's jurisdiction and purview.
- Discussions will center on whether or not the proposed changes meet the guidelines established in *BWNIM* and other common HDC concerns.

How, Where, and When:

- Meetings are held once a week prior to the regularly scheduled Tuesday HDC meeting.
- Meetings are held on Zoom.
- Meeting agendas will be posted on the appropriate town website inviting the public to join.

- HSAB recommendations will be posted on the same website giving the public access to review prior to the HDC meeting. Due to unavoidably tight scheduling, this may be posted on the day of the HDC meeting.
- Robert's Rules will be followed.
- Members will elect a chair and vice-chair
- Members will delegate responsibilities for:
 - o Coordinating with town admin for access to the town Zoom account
 - o Creating a specific agenda for the weekly meeting
 - o taking minutes during the meeting
 - o submitting the final list of recommendations to the HDC staff
 - o which member will represent the advisory board at the next HDC meeting

Other:

- HDC staff may be asked to briefly attend the Zoom meeting on the rare event that relevant information regarding past HDC applications will benefit the discussion.
- HDC staff will be asked to read HSAB recommendations during the HDC meetings only if an HSAB representative is not present at the meeting.

Related HDC Staff responsibilities:

- Posting the agenda once per week. This will be the same stock agenda every week. The public will be instructed to review the actual HDC agenda for the week to see which applications HSAB will be discussing at each meeting.
- Posting the HSAB recommendations (usually Tuesday morning) on the HSAB website.
- On the rare occasion that an HSAB member is not present at the weekly HDC meeting, a staff member will need to read HSAB's recommendations.
- On the rare occasion that HSAB sees a benefit in asking staff to briefly attend a specific application review, a staff member will attend if available.

From: [Town Manager](#)
To: [Brooke Mohr](#); [Dawn Hill Holdgate](#); [Jason M. Bridges](#); [Malcolm MacNab](#); [Matt Fee](#)
Cc: [Holly Backus](#); [Andrew Vorce](#); [Erika Mooney](#)
Subject: FW: Nantucket advisory boards
Date: Wednesday, February 15, 2023 9:56:22 AM

FYI

*Town Administration Staff
On behalf of Town Manager
Town of Nantucket
16 Broad Street
Nantucket, MA 02554
508-228-7255*

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From: Christine Sanford <ccsanford48@gmail.com>
Sent: Wednesday, February 15, 2023 7:56 AM
To: Town Manager <townmanager@nantucket-ma.gov>; jbridges-@ma.gov; Hillary Hedges Rayport <hrayport@mac.com>
Subject: Nantucket advisory boards

At the Select Board meeting tonight ,Wednesday 2/15/23, please appoint the volunteer HDC Advisory Boards with members nominated by the HDC .

The HDC needs the support of these groups of volunteers who are helping to protect the island's historic buildings.

Thank you ,
Christine Sanford
3 Mill Street
Nantucket , MA 02554

From: [Town Manager](#)
To: [Libby Gibson](#)
Cc: [Erika Mooney](#)
Subject: FW: Advisory Councils
Date: Wednesday, February 15, 2023 8:56:19 AM

Katie Cabral
Town Administration
Town of Nantucket
508.228.7255

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-----Original Message-----

From: Catherine ward <catherinersward@hotmail.com>
Sent: Wednesday, February 15, 2023 8:25 AM
To: Town Manager <townmanager@nantucket-ma.gov>; Florencia Rullo <frullo@nantucket-ma.gov>
Subject: Advisory Councils

Good morning Libby and Jason, I am traveling and won't be able to attend the meeting tonight to hear the discussion on the reinstatement of advisory councils. This is a great way for citizens to be involved with helping the town, trying to preserve the town as we know it, which has made it a very special place. I hope you will listen to the discussion tonight with open ears and open minds about reinstating the advisory councils that support the different areas of interest on this island. Thank you.

Cathy Ward
4a Silver Street
Nantucket, Ma
Sent from my iPad

This email was scanned by Bitdefender

From: [Town Manager](#)
To: [Brooke Mohr](#); [Dawn Hill Holdgate](#); [Jason M. Bridges](#); [Malcolm MacNab](#); [Matt Fee](#)
Cc: [Holly Backus](#); [Andrew Vorce](#); [Erika Mooney](#)
Subject: FW: HDC Advisory Committees
Date: Wednesday, February 15, 2023 1:01:19 PM

*Town Administration Staff
On behalf of Town Manager
Town of Nantucket
16 Broad Street
Nantucket, MA 02554
508-228-7255*

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From: Anthony Vale <achvale@gmail.com>
Sent: Wednesday, February 15, 2023 12:56 PM
To: Town Manager <townmanager@nantucket-ma.gov>; Florencia Rullo <frullo@nantucket-ma.gov>
Subject: HDC Advisory Committees

Good afternoon: I write in support of HDC advisory committees, which I understand the Town Manager cancelled or abolished last year.

My wife and I have owned a house in Nantucket for over twenty years, and hence have a significant stake in the Island. I served for ten years on an advisory board relating to planning applications in my Township in Pennsylvania. I also sit on our local zoning board.

I urge the Town to reinstate the advisory boards as soon as possible. It is clear to me from the opinion of Paul Kominers that there is adequate statutory authority for such boards.

It is significant that a member of an advisory board need not be a registered voter on the Island -- hence wider participation in the important decisions regarding building, planning and historic preservation is possible through advisory boards. I believe many local governments use advisory boards for planning and many other important roles.

Thank you.

Anthony Vale
610-202-2951
508-257-4135

From: [Stephen Welch](#)
To: [Erika Mooney](#)
Cc: [Andrew Vorce](#); [Libby Gibson](#); [Holly Backus](#); [Ray Pohl](#)
Subject: Fwd: HDC Request - Scope of Services for HDC Ops Review (for SB review and consent)
Date: Friday, March 10, 2023 1:31:37 PM
Attachments: [HDC adoption Scope of Services for HDC Ops Review 03-09-23.pdf](#)

Good Afternoon Erika,

Please see attached, which I am forwarding on behalf the HDC Commissioners per their unanimous vote.

The attachment pertains to:

- A Select Board initiated draft concept, for an HDC operations assessment; and,
- the HDC's motion to implement that concept (as proposed within the attachment).

...please include the attachment in the Select Board packet for their March 15th meeting. The Commissioners appreciate the efforts of the Select Board and Town Manager to-date and going forward:

- Their draft precipitated Commission focus, resulting in meaningful discussions amongst the Commission; and,
- the Commission's discussions culminated in necessary self-assessment, identifying elemental needs to be passed on to a consultant (under an RFP) for more granular assessment and recommendations. The foregoing is captured within the attachment.

The Commission respectfully requests the attachment be adopted by the Select Board, to be included as the basis of any Request for Proposal for service to review HDC operations.

Best regards,

HDC Organizational Focus Committee

Stephen Welch, Chair

This email was scanned by Bitdefender

HDC Adoption: Scope of Services for HDC Operations Review (as revised 03/09/23)

Background & Commentary:

HDC Commissioners met February 23, 2023 and March 9, 2023, to review, revise and finalize a scope of services pertaining to assessment of HDC operations. The HDC's intention was to have the product of these meetings forwarded to the Select Board.

At these meetings:

- 1) Commissioners identified certain "Areas of Concern" (included within the below text); and,
- 2) By unanimous consent of Commissioners, the Commission adopted a multi-part-motion that an HDC operations review be conducted:
 - a) Subject to the goals, objectives, and targeted-outcomes, stated below within this document under **Scope of Services for HDC Operations Review (Mtg. of March 9th, 2023).**"
 - b) Subject to incorporation of the entirety of the "Areas of Concern" also stated below within this document; and,
 - c) Subject to the bid selection committee including an HDC member, selected by the HDC, who shall serve in equal capacity in all aspects of the Request for Proposal and any matters arising in relation.

Note: HDC support presumes the consultant shall have appropriate credentials assessing and making recommendations upon municipal commissions whose missions are parallel the HDC's.

Areas of Concern:

- 1) The complexity, contentiousness, and number of recent applications has created two backlogs: One having to do with length of time to hear applications; this backlog has brought into focus a second backlog, which is operational self-assessment and subsequent course corrections.
- 2) As a regulatory authority, understanding and ownership of its powers to contribute under the HDC's establishing Act (and concomitant responsibilities) are missing from the process in various degrees. This, due in parts to awareness, acceptance, and will. More specifically:
- 3) Powers to Contribute, as stewards. While some of these powers are well-established, they are not fully tuned (e.g., commissioners' understanding of the extent to which the HDC can, through objective standards, plan and shape our built environment to preserve -or create- a sense of character and setting, while positively guiding development). An understanding and ownership of the power to establish, foster, and maintain, functional practices (guidelines, practices, regulations, and standards) and effects in operations, to consistently provide applicants a principle and merit-based review process revolving around clear expectations, is missing; this includes a better sense of exercising judicious denials. Mastery of these and like matters results in positive outcomes for everyone.
- 4) Responsibilities include: To strive for better-than-conversant familiarity with HDC guidelines, regulations, standards, and references, in order to address applicants with declarative statements focused on, and consistent with, HDC guidelines, regulations, and standards. Along a different line, appropriate preparation prior to a meeting is lacking, including commissioner preparation and complete and properly presented applications; the result is a waste of multiple person-minutes per effected application, adding up to considerable minutes per meeting. Along yet another line, steps and focus are required to be put into place for the Commission to regularly practice and promote appropriate behavior (including to follow Robert's Rules, the TON Committee Handbook, and the

TON Code of Conduct for boards, commissions, and committees). Note: Exercising such responsibility, including preparation prior to meetings, sets a standard that translates into an expectation for other Commissioners, Staff*, applicants, applicants' agents, abutters, and general public to follow; when regularly practiced, a functional regulatory environment becomes established—this is not a novel concept, it is simply out-of-mind under pressure of seemingly endless application reviews and work to change direction is inevitably pushed off. Time is high.

Supplemental Observation. An HDC Training & Reference Manual, developed as used as co-bible to BWNIM, would clarify expectations and procedures, establishing a common understanding amongst and between Commissioners, Staff, applicants, applicant agents, abutters, and the general public—knowing where the goal posts are, and the rules to get to them through a transparent process, serves everyone. Such a manual, comprised of multiple expert opinions will help address current areas of concern while preempting recurrences; a single person cannot be relied upon to effectively accomplish this task.

Scope of Services for HDC Operations Review (as revised 03/09/23)

By unanimous consent of Commissioners as voted March 9th, the Commission adopted the concept of a review subject to certain conditions (stated above) and the following goals, objectives, and targeted-outcomes:

- 1) To review Commissioner and Staff operations, and their interactions with applicants, applicant agents, abutters, and the general public, to provide operations-related assessments and recommendations, including:
 - a) To confirm or help ensure observance of the Town of Nantucket Committee Handbook and Code of Conduct, the Open Meeting Law, the Conflict-of-Interest Law, and State Ethics Commission Guidelines;
 - b) to help ensure hearings are appropriately managed (following Robert's Rules of Order), with Commissioner concerns reserved to agenda items targeting the appropriateness of proposals (i.e., measured against HDC-established guidelines, practices, regulations, and standards); this, to address the length of time it takes to hear applications, making meetings reasonably more efficient.
 - c) to help ensure application processing is effective and efficient (from initial submission through issuance of a Certificate of Appropriateness) including regular submission of properly prepared applications, and appropriate Staff resources.
 - d) to support development of tools from which the HDC may benefit:
 - i) to help limit time-drag processing an ever-increasing level of contentious applications; examples include the obvious (e.g., meeting management), but educational effort (the Commission, through the CLG or otherwise, may initiate or support thru authorized parties, to (1) facilitate and maximize understanding of the inherent value of preserving historic homes, to (2) inform the public of the HDC purview with respect to pools and 41-81L subdivision development).
 - ii) in relation, to enhance the Commission's maturity and ability appropriately addressing inappropriate applications, and to compel adherence to its guidelines, rules, and regulations (in a focused and timely manner), and to help the current and future Commissions establish clear understanding and ownership of its powers to contribute and its concomitant

responsibilities, under the HDC's establishing Act ("The Act").

2) *Review Staff operations on behalf the Commission (in addition to assessments and recommendations addressed in the above):*

- a) Are Staff resources sufficient to meet day-to-day needs (to assess appropriately complete application submissions, and otherwise) and to assist the HDC with planning or other initiatives within its purview?
- b) Are Staff recommendations provided and considered? Do Staff have the necessary qualifications to provide recommendations? If so, is there sufficient capacity amongst Staff's other work priorities?
- c) Are minutes and agenda items processed in a timely manner?
- d) Are Staff training/educational opportunities available? Are they utilized?

3) *Other Important Items:*

- a) What added value do the HDC Advisory Committees provide in their current form, or as previously composed? If any modifications or changes are beneficial (with respect to their operations and composition), what are they?
- b) Are HDC fees commensurate with Staff time? Can fees and/or fines be directed back to HDC to fund betterment of HDC functions (including Staff)?
- c) Assess quantity and type of applications and application outcomes recorded to date within the TON's EnerGov application processing system, to determine whether any type or timing of submission trends (or significant changes in the same) exist.
- d) Scope action(s) required to establish appropriate procedures, standards, and if necessary, regulations, without altering The Act:
 - i) To provide that qualified Staff may advance routine applications outside the OHD's (such as fences, door color changes, window replacements, and other non-substantive items), subject to current Consent procedures.
 - ii) to bring processing of "Like Kind Applications" into the regulatory scheme, perhaps under a Consent procedure.
 - iii) To strengthen the HDC's ability to compel performance (as a matter of enforcement) when unapproved work is occurring or found at time of inspection(s) after such work is complete; foregoing to include but not be limited to inspection and fining strategies and tools.

Note: Subject to provisions of The Act and noticing requirements of the Town Charter, HDC may of its own volition promulgate regulations consistent with The Act.

- e) Are Commissioner training/educational opportunities available? Are they utilized?

4) *HDC agrees further, to complete this review only the following are to be interviewed:*

- a) Current Commissioners and a random sample of past Commissioners;
- b) current Staff and a random sample of past Staff;
- c) a random selection of applicants and agents (who make applications on a regular basis);

* = Staff, where capitalized is meant to denote PLUS personnel providing oversight or actual f services to the HDC.

From: [Holly Backus](#)
To: [Erika Mooney](#); [Libby Gibson](#)
Subject: RE: HDC Advisory Boards
Date: Monday, March 13, 2023 8:36:41 AM
Attachments: [Advisory Board with Ch 124.docx](#)
[image001.png](#)

Good Morning Erika,

No, I was remiss in doing that. I'm sorry.
I did, however, incorporate HSAG's info into the draft Ch 124 (for a long term solution, as it is difficult to see how a short-term solution would work – legally.)
The first draft was sent to John Giorgio, but this was not.
I did provide this draft to the HDC on Friday for future comments.

Holly E. Backus
Preservation Planner**
Local CLG Coordinator
Local Hazard Mitigation Plan Coordinator
Town of Nantucket
hbackus@nantucket-ma.gov

**Staff liaison to the Nantucket Historic District Commission (HDC)
& Nantucket Historical Commission (NHC)**



From: Erika Mooney <EMooney@nantucket-ma.gov>
Sent: Friday, March 10, 2023 6:42 PM
To: Holly Backus <hbackus@nantucket-ma.gov>; Libby Gibson <LGibson@nantucket-ma.gov>
Subject: RE: HDC Advisory Boards

Holly, did you ever send me your comments on this?

Erika

Erika D. Mooney
Operations Administrator
Town of Nantucket
16 Broad Street, Room 113
Nantucket, MA 02554
508-228-7266

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immediately. Also, please be advised that the Secretary of State's office has determined that most e-mails sent to and from municipal officials are considered to be public records and consequently may be subject to public disclosure.

From: Holly Backus <hbackus@nantucket-ma.gov>
Sent: Monday, March 6, 2023 8:39 AM
To: Libby Gibson <LGibson@nantucket-ma.gov>
Cc: Erika Mooney <EMooney@nantucket-ma.gov>
Subject: RE: HDC Advisory Boards

Good Morning,

Mickey created this after HDC's "Organizational Focus Committee meeting" on 2/23. He did send it to me for review the following week.

I've briefly looked at it, but will do more so this week to see how it can be combined with the draft Ch. 124 (which I have sent to John Giorgio, per Andrew's request.)

I will be providing comments on this to the HDC's next "OFC" meeting on March 9th. (This is when they will be voting on their comments on the draft scope.)

I would like to provide that with my comments to it (along with their recommendation) for the SB packet to Erika by Friday 3/10.

Thanks,

Holly E. Backus
Preservation Planner**
Local CLG Coordinator
Local Hazard Mitigation Plan Coordinator
Town of Nantucket
hbackus@nantucket-ma.gov

**Staff liaison to the Nantucket Historic District Commission (HDC)
& Nantucket Historical Commission (NHC)**



From: Libby Gibson <LGibson@nantucket-ma.gov>
Sent: Sunday, March 5, 2023 10:14 AM
To: Holly Backus <hbackus@nantucket-ma.gov>
Cc: Erika Mooney <EMooney@nantucket-ma.gov>
Subject: FW: HDC Advisory Boards

Any comments on this? Should it go in the Board's 3/15 agenda packet?

C. Elizabeth Gibson, ICMA-CM
Town Manager
Town of Nantucket
(508) 228-7255

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From: Mick Rowland <mickrow@comcast.net>
Sent: Wednesday, February 22, 2023 10:57 AM
To: Libby Gibson <LGibson@nantucket-ma.gov>
Subject: HDC Advisory Boards

Hi Libby

I did this specifically for HSAB, but it could be used as a template for the others if that is desired.

Let me know if you have any questions, and feel free to share this with the Select Board members.

Thanks very much

Mickey

This email was scanned by Bitdefender

Article VI
HDC Advisory Boards

Section 124-14 Procedures for the Establishment and Operation of HDC Advisory Boards

1. Authorization

Pursuant to Chapter A301; Special Act A301-4 Historic District Commission, as amended, and Chapter 340 Signs, as codified 3-15-2022, and Section 3.5(C) of the Town Charter.

HDC Advisory Committees to the Historic District Commission (HDC) may be appropriate in some cases, and citizen groups and Town Administration, may wish to make recommendations to the HDC on the appointment of the advisory committee members. These members will be appointed by the Select Board under the Town Charter, with HDC membership input weighed heavily.

2. Purpose

- a. To assist and advise the HDC in the review of applications within specific Advisory Board areas; Signs, Old Historic District of Downtown Nantucket, Old Historic District of Siasconset, Madaket, and Tuckernuck Island.
- b. To serve as the liaison, along with professional staff, between the local historic district residents and the HDC;
- c. To act as the “educational arm” of the HDC within the local historic district and provide a detailed opinion regarding the appropriateness of applications that might affect the character and setting of areas. Reviews will be based upon the guidelines established in “Building with Nantucket in Mind,” and other common HDC concerns; and,
- d. To provide a valuable public service to the Town and follow the *Town of Nantucket Committee Handbook*, as adopted September 23, 2009, and last updated February 23, 2022.

3. Membership

- a. Number: Advisory Boards will consist of five (5) full-time members, the majority of whom will be residents of the area they represent, and two alternates. Representatives of organizations concerned with the protection of the historic district may be appointed.
- b. Terms: The term of membership shall be a minimum of three (3) years. The original appointment will be one (1) member for one (1) year, two (2) members for two (2) years, and two (2) members for three (3) years. One member will serve as a Chairperson, appointed annually at the first Advisory Board meeting following Town Meeting. The Chairperson shall maintain a channel of communication with the HDC and staff.

4. Appointment Procedures: Appointments of members will be made by the Select Board with HDC membership input.

Once appointed, all members must be sworn in by the Town Clerk prior to the member's first meeting and before the commencement of each term for re-appointed members.

In addition, new Advisory Board members should attend an HDC meeting at the earliest possible date for orientation purposes. The HDC will schedule a special meeting with all Advisory Board members at least once a year. Vacancies on Advisory Boards should be filled within 30 days after they occur. In the case of expiration of terms, members may continue to serve until their successors are appointed.

5. Qualifications: Members, when possible, shall include professionals, active or inactive, in the fields of architecture, history, design, historic preservation, and landscape architecture.
 - a. All members should have a strong understanding of Nantucket's architectural history and traditions.
6. Termination of Appointments: In keeping with the *Town of Nantucket Committee Handbook*, members are expected to attend all regular meetings of the Advisory Board.
7. Meetings: Advisory Boards will hold meetings as necessary, before the weekly HDC meeting. All meetings will be open to the public and held in a public place and/or virtually. All meetings must adhere to Massachusetts Open Meeting Law, the Code of the Town of Nantucket and follow "Roberts Rules of Order.". All meetings will be posted with an agenda and minutes kept of every meeting.
8. Responsibilities:
Each Advisory Board shall, in its capacity as an advisory body to the HDC:
 - a. Review applications of Certificate of Appropriateness (COA) within the respective Advisory Board area (Sign, HSAB, SAB, MAB, Tuckernuck) to determine what is appropriate. It is the responsibility of the Advisory Board to forward comments and recommendations to the HDC, through Town staff, in a timely manner.
 - b. Encourage property owners/applicants to seek Advisory Board and/or HDC assistance through professional staff, early in the planning process, so that plans are compatible with the character and setting of the local historic district and the property in question.
 - c. Educate residents of the role of the HDC and the COA processes; the HDC guidelines, "Building with Nantucket in Mind," "The Sign Book," appropriate materials; and local, state, and federal financial incentives for preservation, as relative to the Board.

9. COA Application Review Process and the Advisory Boards:

- a. After an application is submitted to the HDC for a COA, staff will create the appropriate agenda for the Advisory Board to review the application for the proper board (ie: Sign, HSAB, SAB, MAB, Tuckernuck.)** However, it is up to the discretion of the HDC Chair to allow applications to be reviewed by the HDC without Advisory Board comments. It is also up to the consent of the HDC whether an application “held for revisions,” is to go back to the respective Advisory Board for further review. This would be done by the HDC in their respective motion for revisions. Applications do not go back to Advisory Boards for review automatically.
- b. The Advisory Board will be responsible for submitting written comments to the HDC, through Town staff, in a timely manner following its meeting.
- c. Where new construction is concerned, the Advisory Board will be primarily concerned with building materials (including colors), scale and massing, in determining compatibility with “Building with Nantucket in Mind.”
- d. The Advisory Board will be responsible for all minutes of each meeting and provide to Town staff in a timely manner following its meeting.

**each advisory area is to have a respective MAP of the subject area, approved by the HDC by a public hearing.

From: [Hillary Hedges Rayport](#)
To: [Erika Mooney](#)
Subject: letter
Date: Monday, March 13, 2023 9:56:24 AM
Attachments: [Respect the Independence of our HDC.docx](#)

Good Morning Erika,

I wrote this letter to the editor which I would like to share with the Select Board.
Could you forward it? Thank you.

Hillary

Hillary Hedges Rayport
hrayport@mac.com
(617) 697-6429

This email was scanned by Bitdefender

Respect the Independence of our HDC

The Select Board is meeting this Wednesday, March 15th, to discuss the Historic District Commission's Advisory Boards and overall operations. As many of you know, the HDC Advisory Boards were abruptly cancelled last August because the Planning Director and Deputy Planning Director produced an opinion saying these boards were illegally constituted. That opinion has been taken as definitive. But what if it's wrong? There is substantial evidence, drawn from legal precedent, that cancelling the Advisory Boards infringes on the powers of our specially created independent Historic District Commission. The Select Board is wading into dangerous waters. Shouldn't this be something we at least endeavor to understand?

The Advisory Boards have existed for decades. They are advisory only, and offer the HDC important eyewitness and educational information about historic structures and Nantucket's distinctive neighborhoods, including far away Tuckernuck. For this reason, the HDC appoints people to the Advisory Boards based on their qualifications and their ability to provide useful advice.

Town Counsel said these boards are illegal because Nantucket's Town Charter gives the Select Board the authority to appoint advisory boards, and the HDC cannot usurp that authority. Of course the Select Board could appoint these advisory boards for the HDC, with the HDC nominating the members. So far they haven't, and it's been over six months.

There is, in fact, another Commission that creates its own Advisory Boards. The NP&EDC created the Bicycle and Pedestrian Advisory Committee (BPAC) to advise it. I've inquired about this and quickly been told that the NP&EDC was created by the state through a Special Act, so it's separate from the Town. Well guess what? The Nantucket HDC was also created by the state through a Special Act. It's one of only two local historic districts that was – the other is the Beacon Hill Architectural Commission. The BHAC was created in 1955, alongside Nantucket.

The independence of the BHAC is irrefutable. In 1996, the BHAC asserted that it had broad power to promulgate rules and regulations, independent from the City of Boston. The case, *Globe Newspaper Company v. Beacon Hill Architectural Commission*, 421 Mass. 570 (1996), went all the way to the State Supreme Court of Appeals. The court ruled that the BHAC is largely independent of the City of Boston and the BHAC's regulations are entitled to the considerable deference given to an "agency created by the state." This includes the right to create advisory boards, so long as those boards are strictly advisory in nature.

Yes, the HDC was declared a "Town Board" for staffing purposes, under Nantucket's Town Charter. But allocating management of HDC staff to the Town Manager does not alter the HDC's power under its Special Act. The Act and the Town Charter are two different pieces of legislation. There is no practical conflict either: regardless of whether the HDC's advisory committees exist, the Select Board can create advisory committees as it sees fit. There are other reasons that have been held up, to support the cancelling of the Advisory Boards. They are all equally flimsy.

Taking away the HDC's right to appoint advisory boards diminishes the autonomy of the HDC. Is the Town trying to whittle away the power of the HDC? Time will tell. Regardless, the Select Board should uphold the independence of the HDC under its Special Act, and allow it to appoint its own Advisory Boards.

From: [Holly Backus](#)
To: [Andrew Vorce](#); [Libby Gibson](#)
Cc: [Erika Mooney](#)
Subject: NAPC Draft Outline of Services
Date: Tuesday, March 14, 2023 10:18:45 AM
Attachments: [NAPC Outline of Services Nantucket.docx.pdf](#)
[image001.png](#)

Good Morning all,

I just received this draft outline on the scope from NAPC ([National Alliance of Preservation Commissions](#).)

It's in draft format for any adjustments. NAPC took the HDC's adopted scope to heart with this outline.

Thanks,

Holly E. Backus
Preservation Planner**
Local CLG Coordinator
Local Hazard Mitigation Plan Coordinator

Town of Nantucket
Planning & Land Use Services
2 Fairgrounds Road
Nantucket, MA 02554

Tel: 508-325-7587 X 7026
Fax: (508)-325-5346
hbackus@nantucket-ma.gov

Check out our adopted "Resilient Nantucket" Design Guidelines:
[RESILIENT NANTUCKET: Designed for Adaptation](#)

**Staff liaison to the Nantucket Historic District Commission (HDC)
& Nantucket Historical Commission (NHC)



Background Information

The Town of Nantucket (TON) has requested a consultant to conduct a Historic District Commission (HDC) Operations Review that will address the following “areas of concern” identified in the Scope of Services for HDC Operations Review (revised and adopted by the TON HDC on 03/09/23):

1) The complexity, contentiousness, and number of recent applications has created two backlogs: One having to do with length of time to hear applications; this backlog has brought into focus a second backlog, which is operational self-assessment and subsequent course corrections.

2) As a regulatory authority, understanding and ownership of its powers to contribute under the HDC’s establishing Act (and concomitant responsibilities) are missing from the process in various degrees. This, due in parts to awareness, acceptance, and will. More specifically:

3) Powers to Contribute, as stewards. While some of these powers are well-established, they are not fully tuned (e.g., commissioners’ understanding of the extent to which the HDC can, through objective standards, plan and shape our built environment to preserve -or create- a sense of character and setting, while positively guiding development). An understanding and ownership of the power to establish, foster, and maintain, functional practices (guidelines, practices, regulations, and standards) and effects in operations, to consistently provide applicants a principle and merit-based review process revolving around clear expectations, is missing; this includes a better sense of exercising judicious denials. Mastery of these and like matters results in positive outcomes for everyone.

4) Responsibilities include: To strive for better-than-conversant familiarity with HDC guidelines, regulations, standards, and references, in order to address applicants with declarative statements focused on, and consistent with, HDC guidelines, regulations, and standards. Along a different line, appropriate preparation prior to a meeting is lacking, including commissioner preparation and complete and properly presented applications; the result is a waste of multiple person-minutes per effected application, adding up to considerable minutes per meeting. Along yet another line, steps and focus are required to be put into place for the Commission to regularly practice and promote appropriate behavior (including to follow Robert’s Rules, the TON Committee Handbook, and the TON Code of Conduct for boards, commissions, and committees).

Outline of Services

The National Alliance of Preservation Commissions (NAPC) proposes to assign and coordinate four Commission Assistance and Mentoring Program (CAMP®) Trainers, with a range of experience working with local preservation programs, to collaborate and conduct a review of the HDC's operations to meet the following goals, objectives, and targeted-outcomes as adopted by the TON HDC on March 9, 2023:

NAPC will:

1) Review Commissioner and Staff operations, and their interactions with applicants, applicant agents, abutters, and the general public, to provide operations-related assessments and recommendations, Including:

- a)** to confirm or help ensure observance of the Town of Nantucket Committee Handbook and Code of Conduct, the Open Meeting Law, the Conflict-of-Interest Law, and State Ethics Commission Guidelines;
- b)** to help ensure hearings are appropriately managed (following Robert's Rules of Order), with Commissioner concerns reserved to agenda items targeting the appropriateness of proposals (i.e., measured against HDC-established guidelines, practices, regulations, and standards); this, to address the length of time it takes to hear applications, making meetings reasonably more efficient.
- c)** to help ensure application processing is effective and efficient (from initial submission through issuance of a Certificate of Appropriateness) including regular submission of properly prepared applications, and appropriate Staff resources.
- d)** to support development of tools from which the HDC may benefit:
 - i)** to help limit time-drag processing an ever-increasing level of contentious applications; examples include the obvious (e.g., meeting management), but educational effort (the Commission, through the CLG or otherwise, may initiate or support thru authorized parties, to (1) facilitate and maximize understanding of the inherent value of preserving historic homes, to (2) inform the public of the HDC purview with respect to pools and 41-81L subdivision development).
 - ii)** in relation, to enhance the Commission's maturity and ability appropriately addressing inappropriate applications, and to compel adherence to its guidelines, rules, and regulations (in a focused and timely manner), and to help the current and future Commissions establish clear understanding and ownership of its powers to contribute and its concomitant responsibilities, under the HDC's establishing Act ("The Act").

2) Review Staff operations on behalf the Commission (in addition to assessments and recommendations addressed in the above):

- a)** Are Staff resources sufficient to meet day-to-day needs (to assess appropriately complete application submissions, and otherwise) and to assist the HDC with planning or other initiatives within its purview?

- b)** Are Staff recommendations provided and considered? Do Staff have the necessary qualifications to provide recommendations? If so, is there sufficient capacity amongst Staff's other work priorities?
- c)** Are minutes and agenda items processed in a timely manner?
- d)** Are Staff training/educational opportunities available? Are they utilized?

3) Other Important Items:

- a)** What added value do the HDC Advisory Committees provide in their current form, or as previously composed? If any modifications or changes are beneficial (with respect to their operations and composition), what are they?
- b)** Are HDC fees commensurate with Staff time? Can fees and/or fines be directed back to HDC to fund betterment of HDC functions (including Staff)?
- c)** Assess quantity and type of applications and application outcomes recorded to date within the TON's EnerGov application processing system, to determine whether any type or timing of submission trends (or significant changes in the same) exist.
- d)** Scope action(s) required to establish appropriate procedures, standards, and if necessary, regulations, without altering The Act:
 - i)** To provide that qualified Staff may advance routine applications outside the OHD's (such as fences, door color changes, window replacements, and other non-substantive items), subject to current Consent procedures.
 - ii)** to bring processing of "Like Kind Applications" into the regulatory scheme, perhaps under a Consent procedure.
 - iii)** To strengthen the HDC's ability to compel performance (as a matter of enforcement) when unapproved work is occurring or found at time of inspection(s) after such work is complete; foregoing to include but not be limited to inspection and fining strategies and tools. Note: Subject to provisions of The Act and noticing requirements of the Town Charter, HDC may of its own volition promulgate regulations consistent with The Act.
- e)** Are Commissioner training/educational opportunities available? Are they utilized?

4) Interview the following individuals:

- a)** current Commissioners and a random sample of past Commissioners;
- b)** current Staff and a random sample of past Staff;
- c)** a random selection of applicants and agents (who make applications on a regular basis);
- d)** these interviews will be conducted through a series of surveys combined with in-person focus meetings

5) CAMP Trainers will travel to Nantucket to attend an HDC meeting and facilitate separate focus meetings with current/past Commissioners and with Staff.

Deliverable:

Four of NAPC's CAMP Trainers will collaborate and produce recommendations to incorporate into the HDC Training & Reference Manual that would clarify expectations and procedures, establishing a common understanding amongst and between Commissioners, Staff, applicants, applicant agents, abutters, and the general public—knowing where the goal posts are, and the rules to get to them through a transparent process, serves everyone.

Approximate Length of Time Needed - 6-8 months

Travel Timeframe - October 2023

Completion of Project - December 2023

Work Timeline

- **Pre-Nantucket Travel**
 - 90-minute planning meeting with Staff and CAMP Trainers
 - 60-90-minute CAMP Trainer follow-up meeting to debrief and assign tasks
 - Create Shared Drive folder and compile documents for CAMP Trainers to review
 - CAMP Trainers review materials
 - 60-minute check-in meeting and survey discussion
 - Development of surveys
 - Send surveys
 - 60-minute meeting to discuss survey results
 - Develop questions for in-person meetings with 1) Staff, and 2) Commissioners
 - CAMP travel coordination and logistics
 - 60-minute meeting with CAMP Trainers and Staff to discuss itinerary for in-person visit
 - Additional meetings as needed
- **Travel to Nantucket (tentative date)**
 - Monday, October 2, 2023
 - CAMP Trainers arrive on Nantucket
 - Tuesday, October 3, 2023
 - CAMP Trainers meet with Staff for in-person interview
 - CAMP Trainers meet with Commissioners for in-person interview
 - CAMP Trainers attend HDC meeting
 - Wednesday, October 4, 2023
 - CAMP Trainers meet with Staff for continuation of in-person interview
 - CAMP Trainers meet with Commissioners for continuation of in-person interview
 - Thursday, October 5, 2026
 - CAMP Trainer wrap -up and travel day
- **Post-Nantucket Travel**
 - CAMP Trainers meet for 60-90 debrief and discuss recommendations
 - CAMP Trainers collaborate to develop recommendations
 - Additional meetings as needed
 - CAMP Trainers present recommendations to Staff via Zoom

Total Cost - \$26,000

Initial deposit - \$5,000

Payment upon completion of in-person meeting - \$10,000

Final payment upon completion of report - \$11,000

DRAFT

From: [Erika Mooney](#)
To: [Brooke Mohr](#); [Dawn Hill Holdgate](#); [Jason M. Bridges](#); [Malcolm MacNab](#); [Matt Fee](#)
Cc: [Rick Sears](#); [Gregg Tivnan](#)
Subject: FW: HDC Application 3.14 9 Sherburne Way HSAGroup Recommendations for HDC
Date: Tuesday, March 14, 2023 2:21:00 PM
Attachments: [image001.png](#)

FYI

Erika

Erika D. Mooney
Operations Administrator
Town of Nantucket
16 Broad Street, Room 113
Nantucket, MA 02554
508-228-7266

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From: Brenda Johnson <brenda@tophamdesignack.com>
Sent: Tuesday, March 14, 2023 1:04 PM
To: Erika Mooney <EMooney@nantucket-ma.gov>; Joseph Topham <joseph@tophamdesignack.com>
Subject: Re: HDC Application 3.14 9 Sherburne Way HSAGroup Recommendations for HDC

From: Holly Backus <hbackus@nantucket-ma.gov>
Date: Tuesday, March 14, 2023 at 12:20 PM
To: Brenda Johnson <brenda@tophamdesignack.com>, Esmeralda Martinez <emartinez@nantucket-ma.gov>
Cc: Joseph Topham <joseph@tophamdesignack.com>, rick@nantucketlawfirm.com <rick@nantucketlawfirm.com>, Kerry Flynn <kerry@tophamdesignack.com>, Ray Pohl <ray@botticelliandpohl.com>, Andrew Vorce <AVorce@nantucket-ma.gov>
Subject: RE: HDC Application 3.14 9 Sherburne Way HSAGroup Recommendations for HDC

Hi Brenda and Topham Design Team,

As you know, the Advisory Boards have not been legally re-established. These comments are still being provided as members of the public and their meetings are not monitored by

the Town.

This topic will be at the Select Board meeting tomorrow. I recommend those who are concerned to attend.

Thanks,

Holly E. Backus
Preservation Planner**
Local CLG Coordinator
Local Hazard Mitigation Plan Coordinator
Town of Nantucket
hbackus@nantucket-ma.gov

**Staff liaison to the Nantucket Historic District Commission (HDC)
& Nantucket Historical Commission (NHC)**



From: Brenda Johnson <brenda@tophamdesignack.com>

Sent: Tuesday, March 14, 2023 12:11 PM

To: Holly Backus <hbackus@nantucket-ma.gov>; Esmeralda Martinez <emartinez@nantucket-ma.gov>; Brenda Johnson <brenda@tophamdesignack.com>

Cc: Joseph Topham <joseph@tophamdesignack.com>; rick@nantucketlawfirm.com; Kerry Flynn <kerry@tophamdesignack.com>

Subject: Re: HDC Application 3.14 9 Sherburne Way HSAGroup Recommendations for HDC

All,

Who are HSAGroup Recommendations for HDC and is this a reestablished group? And if so, how did this happen? Did the Select Board and Town Council bless this and if that's the case why haven't the impacted professionals been advised. And if they are meeting, why wasn't Joe invited as a professional curtesy? And why are they discussing something outside the OHD?

Please clarify,

Brenda

Brenda Johnson

Topham Design, LLC
18 Hummock Pond Road
Nantucket, MA 02554

Tel.: 508-325-5890
Fax: 508-325-5812
brenda@tophamdesignack.com
www.tophamdesignack.com

From: Holly Backus <hbackus@nantucket-ma.gov>
Date: Tuesday, March 14, 2023 at 11:30 AM
To: Kerry Flynn <kerry@tophamdesignack.com>, Esmeralda Martinez <emartinez@nantucket-ma.gov>
Cc: Joseph Topham <joseph@tophamdesignack.com>, Brenda Johnson <brenda@tophamdesignack.com>
Subject: RE: HDC Application 3.14 9 Sherburne Way

Hi Kerry,

My apologies, I had received the letter from NPT that afternoon and frankly, in the middle of reviews of applications on Tuesdays (as I am currently.)
With that said, I did forward it on (as promised) to Brenda (see attached.)

We try to make sure applicants receive copies of email comments/concerns, however with the magnitude of applications and precious staff time, sometimes it doesn't happen instantly. We appreciate your patience and understanding.

The only other comments I am aware of from the public are these:

HSAGroup Recommendations for HDC

Zoom meeting on March 13, 2023

Mickey Rowland

Angus MacLeod

Jascin Finger

Lucy Dillon

Mary Bergman

9 SHERBURNE WAY – MOVE OFF, DEMO, ALTERATIONS.PDF

- The 1923 Sanborn map clearly shows the main house plus the east addition.
- The 1938 aerial photo on slide 8 shows the two story gambrel roofline. This is evident by the small notches shown at either end of the east dormer. They are very small notches because the dormer runs nearly the full length of the eave line. If the gambrel roof was not a full two stories, the ridge of the east addition would have overlapped onto the main roof, but it doesn't because it is butting into the side of the dormer as shown on slide 17.
- The roof of the two-story bay which is darker in color overlaps the west dormer roof indicated

by an indent in that roofline.

- The rear wing to the south was mostly two stories also. It is easy to see the drop to one story in the following slide no. 9. This also confirms that the main mass had to be a full two stories.
- Knowing that this dwelling dates back to at least 1923 and probably much earlier, there should be no question that this historic building should be retained on-site along with the north porch and the east wing – all of which appear in the 1938 photo.
- This house represents an era of early summer cottages in this neighborhood and deserves preserving – not dismantling.

These comments do not include staff's.
Thanks,

Holly E. Backus
Preservation Planner**
Local CLG Coordinator
Local Hazard Mitigation Plan Coordinator
Town of Nantucket
hbackus@nantucket-ma.gov

**Staff liaison to the Nantucket Historic District Commission (HDC)
& Nantucket Historical Commission (NHC)**



From: Kerry Flynn <kerry@tophamdesignack.com>
Sent: Tuesday, March 14, 2023 11:00 AM
To: Esmeralda Martinez <emartinez@nantucket-ma.gov>; Holly Backus <hbackus@nantucket-ma.gov>
Cc: Joseph Topham <joseph@tophamdesignack.com>; Brenda Johnson <brenda@tophamdesignack.com>
Subject: Re: HDC Application 3.14 9 Sherburne Way

Dear Holly and Esmerelda,

Has your office received any letters, photos or other information regarding our application since last week? For instance, last week a letter from Mary Bergman was submitted to your office but it was not shared with us prior to our presentation at the meeting. Joe would appreciate it if you would share anything like that with our office prior to tonight's meeting, please.

Thanks very much,

Kerry Flynn
Topham Design, llc

From: Kerry Flynn
Sent: Monday, March 13, 2023 12:25 PM

To: Esmeralda Martinez <emartinez@nantucket-ma.gov>; Holly Backus <hbackus@nantucket-ma.gov>

Cc: Joseph Topham <joseph@tophamdesignack.com>; Brenda Johnson <brenda@tophamdesignack.com>

Subject: HDC Application 3.14 9 Sherburne Way

Dear Esmerelda and Holly,

Please be sure to share any and all information, correspondence, photographs or other pertinent miscellany submitted to your office in support or opposition to our application so that we may be fully prepared to support it at tomorrow's meeting.

Thanks in advance,

Kerry Flynn
Topham Design

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From: [Hillary Hedges Rayport](#)
To: [Jason M. Bridges](#); [Dawn Hill Holdgate](#)
Cc: [Libby Gibson](#); [Erika Mooney](#); [John Giorgio](#)
Subject: HDC regulation in packet tonight
Date: Wednesday, March 15, 2023 1:05:25 PM

Dear Jason, Dawn, and town leaders:

I see that a proposed regulation about Advisory Boards was added to the Select Board packet on Monday. It's not immediately clear from Holly's email, so I wanted you to know that **the HDC has not seen or discussed this draft Article**.

While Holly added information Mickey Rowland proposed to the draft article, **no members of the Advisory Boards have seen Holly's draft article**. This is a bit surprising because I know she has been working on it since September. I requested a copy of it at least six weeks ago, but no one ever sent it to me (perhaps I should have put in a FOIA request?).

Anyway, the article is problematic for a whole host of reasons:

- It gives the Select board complete discretion to appoint a board of their liking to influence the HDC
- It leaves historic structures outside of the specific neighborhoods uncovered (by replacing HSAB with neighborhood boards).
- The instruction regarding appointing qualified advisors is weak and can be ignored at the Board's discretion.
- What does "educational arm" of the HDC mean? This presents a conflict with the NHC, which educates the public about historic structures and places. It also potentially prohibits the HDC from doing their own education.
- It says the Advisory boards will be the liaisons to the public. Does this reduce the HDC's ability to liaise directly with the public? Potentially.

In short, this proposed regulation or amendment, whichever it is, is a threat to the independence of our Historic District Commission under the Special Act.

I hope you will oppose it.

I'm also noticing that information pertinent to the HDC keeps coming to the Select Board from Staff that has not been reviewed and discussed by the HDC. Isn't this a concern? Why does it keep happening?

Thank you,
Hillary

Hillary Hedges Rayport

hrayport@mac.com
(617) 697-6429

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From: [Florescia Rullo](#)
To: [Abby Camp](#)
Subject: Re: Advisory Boards
Date: Wednesday, March 15, 2023 1:29:18 PM
Attachments: [image001.png](#)

Hi Abby,

If this is for Jason, please email him at jmbridges@nantucket-ma.gov.

Thank you,

Florescia Rullo
Communications Manager
[Town of Nantucket](#)



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From: Abby Camp <abigailcamp@comcast.net>
Date: Wednesday, March 15, 2023 at 1:07 PM
To: Florescia Rullo <frullo@nantucket-ma.gov>
Subject: Advisory Boards

I'm sorry I can not be there tonight. Ray and Stephen will be attending and we can't be more than 2. I wanted you to know that we, the HDC have not discussed with Holly what she is proposing which is odd as we are supposed to be working together. Personally, I think the advisory boards are very important as they were to help the HDC make intelligent decisions.

Please support the HDC letter which we all signed, to bring back the advisory boards!

Thank you for all your time and efforts. You will be missed.

Abby

Sent from my iPhone

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