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February 18, 2025

Via E-mail and Overnight Mail

Ms. Denise Kronau, Chair
Town of Nantucket
Finance Committee
37 Washington Street
Nantucket, MA 02554

Re: Town Warrant Article 72

Dear Ms. Kronau and Members of the Finance Committee,

This firm represents Nantucket Auto Rental, Inc. d/b/a Nantucket Island Rent-A-Car (“Nantucket Rent-A-Car”) and Affordable Rentals of Whitman, Inc. (“Affordable Rentals”). We have been engaged to assist Nantucket Rent-A-Car and Affordable Rentals in connection with Article 72 of the 2025 Town Warrant which proposes to amend Chapter 58 of the Town Code which deals with car rentals on the Island.

As you know from previous years’ correspondence, my clients have been extremely concerned about the proliferation of illegal car rentals which not only undermine their legitimate businesses but also contribute to the ever-worsening traffic problems which prompted the original passage of Chapter 58. Not only are illegal car rental companies openly operating, with the advent of on-line car share platforms such as Turo, more and more individuals are offering their cars for rent without complying with the bylaw. At the same time, we acknowledge that some members of the public feel that Chapter 58 needs to be updated to increase the cap on the number of car medallions that are available, to make it clear that car sharing services such as Turo must comply with the bylaw, and to allow the Town to claw back medallions that have been issued and are not being used. While we have no firsthand knowledge regarding this latter issue, it is our understanding that this concern, rightly or wrongly, is largely directed against Hertz and not at our clients who use all of the medallions that they hold.

We commend the Select Board for crafting a proposed by-law amendment which, at first blush, seems to address the concerns that have been raised. The proposed amendment increases the cap by an additional 100 medallions, makes it clear that Turo is covered by the by-law, and allows the Town to claw back unused medallions. However, with the law of unintended consequences, the proposed change significantly harms the existing holders of medallions and, by extension, could cost the Town tens of thousands of dollars in terms of lost revenue, primarily excise tax, and a general loss of business income to the community, if passed in its current form. That harm can be wholly ameliorated, however, by an express grandfathering for the existing medallion holders.

Under the current bylaw, once medallions are issued, they become the property of their holder. According to the existing bylaw, each rental car medallion “constitutes the **nonexpiring right** to lease one motor vehicle.” (§ 58-3(B)). Rental agencies do not need to re-apply for medallions. Further, as Article 58 does not currently empower the Town to rescind or revoke a medallion after it has been issued, legally, medallions are durable property. Consistent with this property right, each medallion is “**transferrable, with or without consideration, to any other rental agency or entity.**” (§58-3(D)). If a rental agency possesses more medallions than it needs, “transfers may be made whenever” the medallion holder wishes. (§58-3(D)). In short, medallions are valuable property that local businesses have counted on for nearly 30 years.

Because the number of medallions is limited, they are a valuable asset. Indeed, medallions have been bought and sold over the years. They are included by car rental companies as collateral for obtaining bank loans, and form an essential part of a business’s assets. Our clients have invested hundreds of thousands of dollars in purchasing vehicles for rental, hiring Islanders to staff their locations, and utilizing local businesses to service the vehicles in reliance on their uninterrupted ownership of the medallions. They have paid hundreds of thousands of dollars in excise taxes to the Town. All of this was done with the understanding, guaranteed by the verbiage of Chapter 58, that they have a non-expiring right to the medallions and the ability to transfer them for consideration. However, these rights will be virtually wiped out by the proposed changes to the by-law. Article 72 deletes Section 58-3(D) and Section 58-3(B), which give the current holders the rights outlined above.

The Massachusetts and United States Constitutions prohibit the taking of property without just compensation. (Mass. Const. art. XLIX; U.S. Const. amend. V.) Contrary to what some have argued, car rental medallions **are** property. The Town cannot simply take this property, albeit unintentionally, through legislative fiat. Under Massachusetts law, a property right is created by the government when there is no “express statutory language precluding the formation of a property right in combination with the right to transfer and the right to exclude.” Carney v. Attorney General, 451 Mass. 803, 816-17 (2008). Applied here, it is clear that rental car medallions are property. Chapter 58 has no language precluding formation of a property right. The bylaw expressly permits medallions to be transferred. And they are exclusive: they grant medallion holders the exclusive right to rent vehicles on the Island. See Boston Elevated Railway Company v. Commonwealth, 310 Mass. 528 (1942)(where the legislature granted a company the right to operate a railcar in Boston and then years later changed its mind and attempted to revoke the franchise, court held that this was unconstitutional as the franchise was a property right that could not be taken without compensation). See also Boonstra v. Chicago, 214 Ill. App. 3d 379 (Ill. Ct. App. 1991) (holding that the City could not take back taxi cab medallions without paying compensation to their owners because taxi cab medallions are “securely and durably owned and marketable.”) The logic of Boston Elevated and Boonstra is equally applicable to Nantucket. Rental car medallions are durable and transferable. They are valuable property which cannot simply be taken away.

Not only is the deletion of Section 58-3(D) problematic, the deletion of Section 58-3(B) is also of grave concern. Section 58-3(B) currently states:

“The Select Board shall issue each rental agency one rental vehicle medallion (RVM) for each motor vehicle listed in its 1996 application and which received a rental sticker. Each RVM constitutes the **nonexpiring right** to lease one motor vehicle.” (Emphasis added).

In other words, medallions have existed for 30 years ago as a “nonexpiring right” that need not be renewed. In reliance on this nonexpiring right, local car rental companies have heavily invested in the local economy by purchasing rental cars and operating on the Island. The proposed amendment, however, seeks to make issuance of the medallions only a temporary right. The amended language states:

“The Select Board **may** issue each rental agency one rental vehicle medallion (RVM) for each motor vehicle listed in its annual application. Each RVM constitutes the right to rent one motor vehicle for the calendar year.” (Emphasis added).

Thus, rental agencies would need to reapply annually for their medallions and the Select Board would have the discretion to deny medallions if it chooses. This is a fundamental change. Businesses which have relied on their medallions for decades will now have no guarantee that their medallions will be renewed. Any company that has pledged this asset in reliance on their nonexpiring property interest will likely be held in default by their banks. The potential loss of medallions would be catastrophic to these businesses and, by extension, to the Town.

We sincerely believe that the Select Board did not intend to punish existing car rental companies who, for years, have been good corporate citizens and have deep personal ties to the Island. A simple amendment to the Article, that provides that existing companies are grandfathered, will avoid this whole issue and provide the necessary protection that my clients need. Simultaneously, it will assure that all future medallion holders play under the “new” rules. This provides all stakeholders with the best of all worlds.

If the proposed Article is adopted without grandfathering and Sections 58-3(D) and 58-3(B) are deleted, car rental companies will need to reconsider whether they can afford to continue investing in Nantucket. Given the threat to their very existence that this amendment poses, car rental agencies will have to consider their legal right to challenge the taking of their property without just compensation – something that they do not wish to do and hope to avoid. As noted above, these issues are easily addressed by an express grandfathering for the existing medallion holders. We recommend that both the Finance Committee and Select Board support Article 72, with the proviso that there be an express grandfathering clause for the protection of existing medallion holders.

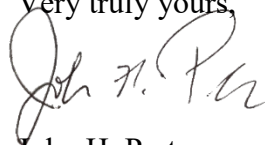
Ms. Denice Kronau

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Thank you for your consideration. We look forward to speaking with you further, and will be prepared to respond to any questions when this Article is taken up at the Finance Committee's meeting on February 20th.

Very truly yours,

A handwritten signature in dark ink, appearing to read "John H. Perten". The signature is fluid and cursive, with the first name "John" being the most prominent.

John H. Perten

JHP/lmb

cc: Select Board members (via e-mail)
 Brian Riley, Esq. (via e-mail)
 John Giorgio, Esq. (via e-mail)
 Avery Topel, Esq. (via e-mail)
 Clients (via e-mail)



Fw: Turo

From Denice Kronau <dkronau@nantucket-ma.gov>

Date Thu 2/20/2025 7:25 AM

To Jill Vieth <jvieth@nantucket-ma.gov>; Christopher Glowacki <cglowacki@nantucket-ma.gov>; Denice Kronau <dkronau@nantucket-ma.gov>; Joanna E. Roche <jeroche@nantucket-ma.gov>; Peter Schaeffer <pschaeffer@nantucket-ma.gov>; Stephen Maury <smaury@nantucket-ma.gov>; Rob Giacchetti <rgiacchetti@nantucket-ma.gov>; Joseph Wright <jwright@nantucket-ma.gov>; Jeremy Bloomer <jbloomer@nantucket-ma.gov>; christopher.glowacki@gmail.com <christopher.glowacki@gmail.com>

Cc Steven Hunter <shunter@nantucket-ma.gov>; Brian Turbitt <bturbitt@nantucket-ma.gov>; Libby Gibson <LGibson@nantucket-ma.gov>

Dear all:

FYI, for today's discussion on article 72.

Denice

From: plamka manova <plamkamanova@gmail.com>

Sent: Wednesday, February 19, 2025 6:05 PM

To: Denice Kronau <dkronau@nantucket-ma.gov>

Subject: Turo

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello, my name is Plamka Manova and I have lived with my family on Nantucket for 20 years. We found jobs and settled in wonderfully. Now I am retired and I have two jeeps that I rent out in the summer, and thanks to Turo this helps with the shopping and rent. Everyone knows how expensive Nantucket is, so please, accept Turo's offer. Although the cars are only rented in the summer, I am grateful to Turo. This money helps me live here a little easier with my family. Thank you!