

SELECT BOARD

Minutes of the Meeting of November 13, 2024. The hybrid meeting took place in person at the Public Safety Facility Community Room at 4 Fairgrounds Road; and, via remote participation using Zoom Webinar. Members of the Board present were Brooke Mohr, Thomas Dixon, Matt Fee and Dr. Malcolm MacNab. Dawn Holdgate participated remotely. Chair Mohr noted that due to Ms. Holdgate's remote participation, all votes will be by roll call.

I. CALL TO ORDER

Chair Mohr called the meeting to order at 5:30 PM following the Pledge of Allegiance.

II. SELECT BOARD ACCEPTANCE OF AGENDA

Chair Mohr said that item IX-1 has been tabled and item IX-2b has been stricken from the agenda. The agenda was otherwise accepted as posted.

III. ANNOUNCEMENTS

Town Manager C. Elizabeth Gibson reviewed the Announcements.

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

2. May 3, 2025 Annual Town Meeting Warrant Open for Citizen Warrant Article Submittals through November 18, 2024 at 4:00 PM. Citizen Warrant Article Guide: <https://www.nantucket-ma.gov/DocumentCenter/View/49076/Guide-to-Preparing-a-Citizen-Warrant-Article-PDF>. Ms. Gibson emphasized the importance, for those considering the submittal of citizen warrant articles, of reviewing the Town's guide.

3. Hybrid Public Forum on SouthCoast Wind Offshore Wind Project and Bureau of Ocean Energy Management's (BOEM) Proposed Mitigation for Adverse Effects to the Nantucket Historic District to be Held Tuesday, November 19, 2024 at 5:00 PM at the Public Safety Facility First Floor Community Room, 4 Fairgrounds Road and Remotely by Zoom Webinar (Register to Attend Remotely at https://us06web.zoom.us/webinar/register/WN_yuv6HMokSmSKxTWPDNJhgA).

The public is encouraged to refer to the following informational resources regarding project impacts and proposed mitigation:

- [SouthCoast Wind Final Environmental Impact Statement \(Final EIS\)](#), Released on November 8, 2024, Including:
 - [Appendix I: Finding of Adverse Effect for the SouthCoast Wind Construction and Operations Plan \(Pages 2, 14, 17, 19, 35-38, 41, 50-53\).](#)
- [Section 106 Draft Memorandum of Agreement](#) (as of September 30, 2024), Detailing BOEM's Current Proposal for Mitigation Measures for the Nantucket Historic District National Historic Landmark (page 14).

Preservation Planner Holly Backus announced that on Saturday, November 16th from 10am – 4pm at the African Meeting House, Preservation Institute Nantucket and the Town will kick off a Community Preservation Act funded West Monomoy Neighborhood Architectural Survey Project with a gathering intended to collect information. She urged people with any historical information about this area of the Island to attend the gathering.

4. Select Board Announcements/Comments. None.

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

Chair Mohr said that follow-up responses have been posted on the Town's website.

V. PUBLIC COMMENT

Madeline Hay spoke in opposition to the "Good Neighborhood Agreement" between the Town, Vineyard Wind and Nantucket Preservation Trust, and to offshore wind projects, generally.

Megan Perry spoke in favor of the Board authorizing special counsel for the Zoning Board of Appeals.

Veronica Bonnet questioned the damage claim form, put out by the Town, in connection with the Vineyard Wind blade failure and requested "more guidance". She asked "what kind of pressure is being put on BSEE" [Bureau of Safety and Environmental Enforcement] regarding turbine blade quality issues.

Amy DiSibio commented on a statement put out by the Town earlier today regarding several wind issues, stating that she believes it is "misleading". She commented on the Good Neighbor Agreement and a lack of reference to the height of Vineyard Wind turbines.

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 Mr. Dixon; by roll call vote: Chair Mohr – Yes; Mr. Dixon – Yes; Mr. Fee – Yes; Ms. Holdgate – Yes; Dr. MacNab - Yes; so voted.

1. Approval of Minutes of November 6, 2024 at 5:30 PM; November 7, 2024 at 9:00 AM.

2. Approval of Payroll Warrants for November 10, 2024.

3. Approval of Treasury Warrants for November 13, 2024.

VIII. CITIZEN/DEPARTMENTAL/COMMITTEE REQUESTS/REPORTS

1. Historic District Commission Operations Review (Tabled from September 18, 2024). Chair Mohr introduced the item, noting that a presentation by the consultants was made to the Board in February, 2024 at which, at the request of the Board, some additional interviews were subsequently conducted, and the consultants are now back to review that additional work. Will Cook and Kimberly Rose of the National Alliance of Preservation Commissions reviewed their recommendations as contained in a report in the Board's agenda packet:

1 – amend the Historic District Commission (HDC) enabling legislation. Ms. Rose and Mr. Cook explained the need for changes to the special act due to a variety of changed circumstances since it was initially adopted.

2 – amend *Building with Nantucket in Mind*. Mr. Cook explained the need to update this guide used by the HDC in its decision-making.

3 – adopt clear rules of decision-making. Ms. Rose explained that the HDC’s rules are not particularly clear, currently. She said it is typical for such rules to be updated periodically.

4 – additional staff resources. Ms. Rose explained that the current Preservation Planner does not have the capacity to manage the multitude of issues brought to the HDC.

5 – annual legal training. Mr. Cook stated that this type of program is considered a best practice for municipal preservation groups.

Mr. Fee asked about the rules of decision-making. Mr. Cook and Ms. Rose explained. Mr. Fee spoke in favor of the recommendations, saying they are “great” and fully supports the additional staffing recommendation. Dr. MacNab commented that the draft report went to staff first and he feels it should have gone to the Board first. He said he hopes the report will be implemented and expressed some concern for how it will be implemented. Some discussion followed. Stephen Welch, HDC Chair, said he is uncertain about Board comments regarding implementation and emphasized that the HDC is an elected board with its own regulatory authority. He stated that he agrees with the staffing recommendation. He expressed concern about other recommendations, and the interviews and re-emphasized the independence of the HDC and the improvements he said have occurred since he was elected. Dr. MacNab stated that he believes the report was intended to help the HDC and if there are concerns as to issues not addressed in the report, he would like to hear them. Mr. Fee said he is not aware there has been a cry for staff, although he does fully support additional staff. Planning Director Leslie Snell spoke in support of the report, acknowledged that staffing is an issue and said that some of the staffing issues relate directly to changes the HDC itself needs to make. Vallorie Oliver, HDC Commissioner, spoke in favor of additional staff. Chair Mohr spoke in favor of the recommendations. Ms. Backus spoke in favor of the report and thanked the Select Board for its authorization to solicit the report. She added that NAPC are subject matter experts.

2. Finance Department: Request for Approval of Grant Anticipation Note (GAN) in the Amount of \$875,000 for Various Chapter 90 Projects. Finance Director Brian Turbitt reviewed the request. Mr. Fee moved approval; seconded by Dr. MacNab; by roll call vote: Chair Mohr – Yes; Mr. Dixon – Yes; Mr. Fee – Yes; Ms. Holdgate – Yes; Dr. MacNab - Yes; so voted.

3. Request for Waiver of Town Noise Bylaw for New Water Service Connection for 26 Washington Street from 9:30 PM to 6:00 AM, November 20, 2024 to November 21, 2024. Operations Administrator Erika Mooney reviewed the request, noting the proposed night work is necessary to accommodate the Nantucket Regional Transit Authority (NRTA) Wave buses and truck traffic to and from the Steamship Authority. Mr. Dixon moved approval with a start at 10:30 PM instead of 9:30 PM as recommended by Ms. Mooney; seconded by Mr. Fee; by roll call vote: Chair Mohr – Yes; Mr. Dixon – Yes; Mr. Fee – Yes; Ms. Holdgate – Yes; Dr. MacNab - Yes; so voted.

4. Zoning Board of Appeals: Request for Independent Special Counsel for Surfside Crossing, LLC Application 25-24. Zoning Board of Appeals (ZBA) Chair Susan McCarthy reviewed the history of the request, using the timeline document attached to the minutes. Ms. McCarthy reviewed the ZBA’s response to questions the Select Board requested answers to, in September, through the Town Manager, using the memo document contained in the Board’s agenda packet. Mr. Fee asked if the ZBA has anyone in mind and if that person could be brought up to speed in time. He added that he would like the Select Board and ZBA to be aligned on the project in question. Ms. McCarthy acknowledged that Town attorney George

Pucci does have a tremendous amount of knowledge about this project and said she does believe a land use attorney could be found. She spoke on concerns the ZBA members have had with possible "other conversations going on" about the project with various town officials and also agreed that alignment between the ZBA and Select Board is desired. James Mondani, ZBA member asked to speak. Ms. McCarthy expressed concern about having more than one ZBA member speak. Chair Mohr asked Town Counsel John Giorgio if there were any issues with this. Mr. Giorgio said "no" as long as Ms. McCarthy and Mr. Mondani are not a sub-committee of the ZBA. Mr. Mondani commented on a letter he sent to the Board a few weeks ago regarding this issue. He spoke in favor of special counsel for the ZBA. Chair Mohr questioned the letter Mr. Mondani referenced, stating that it is her understanding that he was not authorized by the ZBA to send that letter. Mr. Mondani responded and spoke again in support of special counsel stating that he believes Town Counsel has a "conflict". Ms. Holdgate stated she disagrees there is a conflict and said that a bad precedent is being created when other boards are seemingly at odds with the Select Board. She spoke in favor of current Town Counsel. Mr. Fee agreed with Ms. Holdgate and asked if the specific concerns of the ZBA could be brought forward to be addressed by the Board. Mr. Dixon commented on Ms. McCarthy's letter and said he is not clear on the reasons why special counsel is needed. Dr. MacNab said that while he has complete faith in Town Counsel, he supports the ZBA request and does not believe it sets a precedent. Chair Mohr asked Ms. McCarthy if there have been specific points at which the ZBA believes Town Counsel was not adequately representing the ZBA. Ms. McCarthy said it was "sparked" by a public records request relating to another issue with the project which involved discussions with various Town officials and the project property owner. Chair Mohr responded that the other issue referenced was unrelated to any votes or any discussion by the Select Board. She said that in her opinion Town Counsel does not have a conflict as is being described. Mr. Mondani said the ZBA's request came before the issue being described. Chair Mohr suggested a potential engagement with another firm to review any advice provided by Town Counsel that may be of concern to the ZBA. Discussion followed on how to proceed. Mr. Giorgio recommended that in order for the Board to appropriately consider this request, a letter of engagement should be provided so that the Board may consider cost, experience and scope of work. He stated that the cost could be substantial. Mr. Fee asked if a different attorney from KP Law could be utilized, other than or in addition to Attorney Pucci. Mr. Giorgio responded affirmatively. Mr. Giorgio said a well-known 40B consultant, Ed Marchand, while not an attorney might be able to potentially be engaged to assist with this. Mr. Pucci spoke on the limited availability of special counsel who have the necessary experience and knowledge with 40B projects. Mr. Pucci spoke further about the history of this matter and his role in it. Mr. Dixon asked if the engagement of a 40B expert like Mr. Marchand would be helpful. Ms. McCarthy said "yes". Mr. Mondani said he supports engaging Mr. Marchand but still supports engaging special counsel. Mr. Mondani commented that the ZBA is not currently represented by counsel because of a conflict. Chair Mohr asked Mr. Pucci about current representation. Mr. Pucci said the ZBA is currently represented by Town Counsel. Ms. McCarthy confirmed that the ZBA is represented by Town Counsel. She added that she personally does not believe there is a conflict with Town Counsel. She spoke on discussions at ZBA meetings about this. Mr. Mondani spoke about the discussions as well. Discussion continued as to how to proceed. Mr. Dixon suggested that allegations of conflicts should not be made lightly and should be backed up with facts. He added that he does not see a conflict with Town Counsel in this matter. He moved to authorize the ZBA to potentially engage Mr. Marchand or an equivalent professional and to see how that goes; seconded by Ms. Holdgate. Dr. MacNab said he thinks that is reasonable. Discussion followed as to getting a contract on the Board's agenda for next week and determining a funding source. Ms. Gibson was asked for input. She stated that she sees no need for special counsel and that getting something before the Board next week might be aggressive. She noted a funding source will have to be determined. After some additional discussion, Mr. Dixon restated the motion: to authorize the ZBA Chair and administration and Town Administration to

engage Mr. Marchand or an equivalently qualified consultant to provide expertise for ZBA in its processes with an engagement letter to be put before the Board for consideration at its December 4th meeting with the developer to be asked to fund the cost of the services; seconded by Ms. Holdgate. By roll call vote: Chair Mohr – Yes; Mr. Dixon – Yes; Mr. Fee – Yes; Ms. Holdgate – Yes; Dr. MacNab - Yes; so voted.

IX. TOWN MANAGER'S REPORT

1. Review of Preliminary Operational Cost Projections for Proposed New Our Island Home Facility. This matter was tabled.

2. Continued Preliminary Review of Town-Sponsored Warrant Articles for 2025 Annual Town Meeting, Including:

a) Proposed Noise Bylaw Amendment (Sconset Civic Association; Nantucket Civic League). Ms. Gibson reviewed "Outline #4" of potential warrant articles in the Board's packet, noting that items shown in bold are new or modified since the Board's November 6th meeting. Karel Greenberg, president of the Sconset Civic Association, reviewed a proposed noise bylaw amendment, noting that as suggested by the Board recently, she and others attended a Nantucket Builder's Association meeting to review the proposal. She proceeded to review the specific differences between the existing noise bylaw and the proposed amendments, using a chart in the Board's agenda packet. Dr. MacNab said he has no problem supporting the proposed amendments. Chair Mohr spoke in favor of consistency. Dr. MacNab agreed and spoke in favor of education as well. Some discussion followed. Ms. Greenberg was asked to get some additional clarification from a contractor (Toscana) that operates early in the morning and then return to the Board.

b) Nantucket Planning and Economic Development Commission Home Rule Petition. This matter was stricken from the agenda.

X. SELECT BOARD'S REPORTS/COMMENT

1. Review/Adoption of Select Board Comment Letter for Surfside Crossing 40B Zoning Board of Appeals Remand Hearing (continued from November 6, 2024). Ms. Gibson reviewed the updated letter contained red-lined additions resulting from the Board's November 6th discussion. Some discussion followed regarding language about short-term rentals as had been brought up last week. Ms. Holdgate suggested that the state guidelines be followed: no short-term rentals of 31 days or less, and a 14-day exemption which allows a property to be rented for 14 days or less in a calendar year and not pay taxes on it. Dr. MacNab moved adoption as presented, with a language clarification as discussed regarding short-term rentals; seconded by Mr. Dixon; by roll call vote: Chair Mohr – Yes; Mr. Dixon – Yes; Mr. Fee – Yes; Ms. Holdgate – Yes; Dr. MacNab - Yes; so voted. Mr. Fee commented that the letter is not intended to "tell the ZBA what to do". Ms. McCarthy thanked the Board for the letter.

2. Committee Reports. Mr. Fee said the Board needs to determine how it is going to proceed with African Meeting House issue, noting he does not want to lose track of it.

XI. PUBLIC HEARINGS

1. Public Hearing to Consider the Appeal of Doherty ACK LLC of Historic District Commission Disapproval of Certificate of Appropriateness No. HDC2023-12-9708 to Raise the Height of Previously Approved Pool at 2 Mariner Way, Map 55.1.4, Parcel 72.4. Chair Mohr opened the public hearing and asked Attorney George Pucci of Town Counsel's office to review the HDC appeal process. Mr. Pucci did so, referencing the information in the Board's agenda packet. Ms. Mooney elaborated on the procedure. Paul Santos of Nantucket Surveyors, representing the appellant, spoke on the appeal using documents contained in the

Board's agenda packet. HDC Chair Stephen Welch spoke on the HDC's review of the project, as well as the issues it took into consideration. Mr. Santos commented on some of the design specifications. Linda Williams, representing the appellant, spoke on the appeal and the HDC decision, stating that the HDC demonstrated dislike for pools, which she said are allowed in this location. Mr. Welch disputed some of Ms. Williams' statements, noting some inaccuracies. Abutter Amy Keohane, referencing a letter she sent to the Board this morning, spoke against the appeal and in support of the HDC decision on this matter.

Dr. MacNab moved to close the public hearing; seconded by Mr. Dixon; by roll call vote: Chair Mohr – Yes; Mr. Dixon – Yes; Mr. Fee – Yes; Ms. Holdgate – Yes; Dr. MacNab - Yes; so voted.

Chair Mohr asked about the application of the pool as related to what the zoning bylaw allows or does not allow. Mr. Pucci responded.

Mr. Fee moved to deny the appeal finding that the HDC did not act arbitrarily or capriciously, and to uphold the decision of the HDC; seconded by Dr. MacNab; by roll call vote: Chair Mohr – Yes; Mr. Dixon – Yes; Mr. Fee – Yes; Ms. Holdgate – Yes; Dr. MacNab - Yes; so voted.

XII. ADJOURNMENT

Mr. Fee moved adjournment at 8:22 PM; seconded by Dr. MacNab; by roll call vote: Chair Mohr – Yes; Mr. Dixon – Yes; Mr. Fee – Yes; Ms. Holdgate – Yes; Dr. MacNab - Yes; so voted.

Approved the 20th day of November, 2024

**SELECT BOARD
NOVEMBER 13, 2024 – 5:30 PM
PSF COMMUNITY ROOM, 4 FAIRGROUNDS ROAD
AND REMOTE PARTICIPATION VIA ZOOM WEBINAR
NANTUCKET, MASSACHUSETTS**

List of documents used at the meeting:

- III. 3. SouthCoast Wind Notice
- VII. 1. Draft minutes of 11/6/2024; draft minutes of 11/7/2024 Open Session
- VIII. 1. AIS re: HDC Operations Review; Addendum of NAPC report; portion of 2/21/2024 Select Board minutes
- VIII. 2. AIS re: Grant Anticipation Note
- VIII. 3. AIS re: Noise Bylaw Waiver request; Toscana request; Noise Bylaw
- VIII. 4. ZBA request for Independent Special Counsel
- IX. 2. Outline #4 for 2025 Annual Town Meeting Warrant; Planning article concept list
- IX. 2a. Civic Association Proposed changes to Noise Bylaw
- X. 1. Updated draft letter to Zoning Board of appeals re: Surfside Crossing 40B Remand
- XI. 1. HDC appeal of 2 Mariner Way; HDC Appeals Procedure; public hearing notice; appeal filed by Doherty ACK LLC; 2 Mariner Way HDC file; HDC letter re: appeal; HDC file; abutter opposition letter

From: [Libby Gibson](#)
To: [Susan McCarthy](#)
Cc: [Brooke Mohr](#); [William Saad](#)
Subject: RE: ZBA Timeline - request for independent counsel.
Date: Tuesday, November 12, 2024 5:14:02 PM

Thank you very much

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

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From: Susan McCarthy <sem@sgriffinlaw.com>
Sent: Tuesday, November 12, 2024 5:10 PM
To: Libby Gibson <LGibson@nantucket-ma.gov>
Cc: Brooke Mohr <bmoehr@nantucket-ma.gov>; William Saad <wsaad@nantucket-ma.gov>
Subject: ZBA Timeline - request for independent counsel.

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.

Libby and Brooke –

In preparation of tomorrow's meeting please find a timeline of the ZBA request for special counsel put together from my email.

I can go over this tomorrow night in as much detail as you think may be helpful.

9/5/24 ZBA votes to request special independent counsel.

9/10/24 ZBA Admin emails letter to SB re: request for special independent counsel.

9/11/24 7:34 pm Town Manager emails ZBA Chair and Staff re: request for more information on special counsel by 9/18 for potential placement on 9/25 Agenda.

9/12/24 ZBA Staff emails Alternate Member Mondani who made Motion for special counsel asking if he could provide answers to Town Manager's questions.

9/16/24 Town Manager responds to ZBA Staff, Chair and Mondani that SB would like to hear details of the request from ZBA Chair at SB Meeting.

9/16/24 ZBA Chair to Alternate Member Jim Mondani requesting a response to Chair and Staff for more detail on his expectation/ request for special counsel for Chair and Staff review and

determination if more Board discussion warranted.

9/16/24 Response from Mondani – away from desk & would respond that evening.

9/17-9/22/24 NO RESPONSE from Mondani.

9/23/24 Mondani (telephone) asked Chair if still needed SB questions answered. Chair confirmed information still wanted and deadline for 9/25 meeting had passed.

10/10/24 Chair email to staff re: ZBA request; No information received to respond to the SB request and/or decide if this request needs to be put back on the agenda under Other Business for further discussion and consideration by the Board.

10/17/24 Mr. Mondani sends an email directly to the Town Manager and SB w/o review or comment by ZBA; Board agreed to meet following week to discuss questions from SB.

10/22/24 ZBA met, discussed questions from SB.

10/23/24 ZBA Chair email to ZBA staff of conflict on 11/6/24.

11/7/24 ZBA Chair submitted ltr to SB to be placed on the next available agenda and present answers to questions from SB.

11/13/24 ZBA on SB agenda.

I will be present tomorrow evening to present the ZBA's request and answer any questions to the best of my ability.

Thank you,

Susan

Susan McCarthy, Chair – Town of Nantucket Zoning Board of Appeals