

Nantucket Planning Board DRAFT Minutes
Remote Participation via Zoom Webinar
January 24, 2022

Board Members: John Trudel, III (Chair), David Iverson (Vice-Chair), Nat Lowell, Barry Rector, and “Fritz” McClure

Alternates: Stephen Welch, Campbell Sutton, David Callahan

Staff: Andrew Vorce (Planning Director), Leslie Snell (Deputy Director of Planning), Meg Trudel (Land Use Planner) and Catherine Ancero (Administrative Specialist)

To view a recording of the meeting, see link below:

<https://youtu.be/Ut09CSFRio>

I. Call to order:

Chair Trudel called the meeting to order at 3:31PM on Monday, January 24, 2022. Chair Trudel stated that the purpose of this meeting is for discussion of the warrant articles relating to the short-term rental and workforce housing.

Chair Trudel read a prepared statement in accordance with Governor Baker’s March 21, 2020 order regarding open meeting law, which outlines how the meeting is conducted via remote participation and states the ground rules for any discussion.

Board Members Roll Call:

Chair John Trudel *Aye*

Vice-Chair Dave Iverson *Aye*

Nat Lowell *Aye*

Fritz McClure *Aye*

Barry Rector *Aye*

Alternates Roll Call:

Campbell Sutton *Aye*

Staff Roll Call:

Town Counsel John Giorgio *Aye*

Leslie Snell *Aye*

Andrew Vorce *Aye*

Meg Trudel *Aye*

Catherine Ancero *Aye*

II. Approval of the agenda:

Mr. Iverson moved to approve the agenda. The motion was duly seconded by Mr. Lowell and the motion carried unanimously 5-0.

Vote By Roll Call:

Vice-Chair Dave Iverson *Aye*

Nat Lowell *Aye*

Fritz McClure *Aye*

Barry Rector *Aye*

Chair John Trudel *Aye*

III. Discussion Items (*Public Hearings to be held at a later date as applicable*):

- **Planning Board Sponsored Articles - Short Term Rentals**

Discussion: Chair Trudel stated that this is not intended for public discussion but will be talking about

this as a Board. Chair Trudel recused stated that he contacted the state and was advised to recuse because he is a professional license real estate agent and any discussion has the potential for a future conflict so will be removing himself. Vice- Chair Iverson will be the acting Chair. Acting Chair Iverson reminding and making things clear that this is a Board discussion only and that there will be no public comment at this meeting however it will be before the Board again next week where it will be open for public discussion.

Mr. Vorce - Generated a list of warrant articles that they were considering, and the last time short term rental was discussed was in early December. At that time, they reviewed 6 concepts that they were going to advance regarding short term rentals. The articles that is before them is a proposal of a Zoning Bylaw Amendment, basically, to include article as written to make any changes or to not include in the upcoming warrant. Final matter is before the Select Board. Staff has been working with Town Administration with Town Counsels. Staff included in the packet a general bylaw change. Chart included in the packet to show concepts. Staff wanted to make sure with the process that was being proposed on the general bylaw side was consistent and again Town Counsel assisted staff with that making sure that our definitions align with State law.

John Giorgio Town Counsel – Gave a brief explanation as to how the definition was developed for short-term rental. Under state statute the rooms tax statute was amended to provide short term rental would be covered for collection of the rooms tax and Planning Staff and I felt it was important to hew to that definition as closed as possible. However, the challenge was that the Zoning Bylaw has its own set of definitions and to be internally consistent with the zoning bylaw we developed the definition of short term rentals that you see before you. The key thing is that under the State statute hotels /motel beds and breakfast and lodging houses are excluded from the definition of short-term rental are excluded in the definition for transient residential facilities. This definition in the Zoning Bylaw now matches the state law and that there are two essentially two exemptions in the state law for the rooms tax on short term rentals, one is if someone rents their unit for less than a total of 14 days a year they are exempt from the tax and they will also be exempt from this provision in the Zoning Bylaw. Any rentals that exceeds 31days consecutive days they are also exempted under the State law for short term rentals. If renting for a full year's lease, then that would not be considered a short-term rental. The concept was to provide that short-term rentals in dwelling units that are not transient residential facilities will be allowed as of right unless the Planning Board issue a Special Permit for example for workforce housing you can as a condition of that Special Permit prohibit short term rentals. Anything that Exceeds thirty days consecutive days would not be considered a short-term rental. How will Town regulate the activity to ensure that short term rentals don't become a nuisance condition? That is dealt with the general bylaw that authorizes the Board of Health to enact regulations to address nuisance conditions so overburdening of parking excessive noise and the like will be regulated through the general bylaw and the regulations will be adopted under. The general bylaw the Town can enact enhances penalties which are now included in that general bylaw provision, there's a concept known as civil penalty. The general bylaw says that if you violate a regulation or the bylaw you're subject to a civil penalty of up to five thousand dollars per violation and there is the non-criminal disposition and that would be the ability to issue tickets. If you have a persistent violator the Board of Health will revoke or suspend a certificate of registration meaning that the individual could no longer operate the short-term rental for whatever period of time.

Acting Chair Iverson - Health Department will be the entity. Multiple levels of enforcement.

Counsel Giorgio – the Building Department as well.

Ms. Sutton – Based on the definition of short-term rentals it was her understanding that property couldn't do short term rentals that have three eligible dwelling units for rent but are rented to different entities. Thought that in the past discussion they were going to ensure that per property there was only one rental person or entity doing the renting.

Giorgio – Andrew and Leslie prepared a very helpful chart and item number one is what Ms. Sutton is referring to. Additional data is needed to really see how many structures on each lot are being used for short-term rentals and it might be not covered in this bylaw however it could be subject of a future amendment.

Vorce – Thanked Counsel Giorgio for explaining and it's important for the Board to understand the enforcement procedure is more effective through the general regulation enforced through the Board of Health. It will produce results faster than our Zoning Enforcement procedure which is very

cumbersome.

Counsel Giorgio – The legislature what they did with the short-term law was provide a very enhanced authority for Boards to regulate this use through a bylaw or regulation. Once we receive the data it is possible that it could be regulated through the Board of Health regulations rather than Zoning.

Mr. McClure – Where do you draw the line between what is zoning matter and what is a matter that can be regulated by a general bylaw. To what extent would conditions on short term rentals be imposed by the Board of Health as opposed to having to be imposed by a Zoning bylaw?

Counsel Giorgio – Short term rental law has a broad language in terms of ability of the Town to enact bylaws and regulations. It does not specify whether they can be done by general bylaw. Last year's Town meeting there was a proposal to enact a general bylaw that would regulate short term rentals significantly and for the benefit of the Planning Board a very extensive opinion about whether or not the kinds of regulations that were in that general bylaw would withstand a legal challenge under the series of cases that essentially says if you're regulating land use it has to be subject of Zoning. There was a lengthy discussion as to who and how the short-term rental is regulated.

Mr. Welch – Biggest issues are noise and parking. Health Department in support of that concept.

Acting Chair Iverson – Likes the flexibility through Special Permit.

Mr. McClure – Board have power to without any other legislation or Zoning Bylaw to impose a restriction as a condition of any special permit or subdivision to prohibit short term rentals.

Counsel Giorgio – Someone can challenge the denial or a condition in a Special Permit prohibiting short-term rentals as being something that exceeds the authority of the Planning Board.

Mr. Vorce – Asked that the Planning Board make a recommendation to the Select Board to include this article either as written or with any changes that anyone is proposing for inclusion in the 2022 warrant.

Motion/Vote: Mr. Rector moved to put in the Warrant. The motion was duly seconded by Mr. Lowell and the motion carried with a 3-1.

Vote By Roll Call:

Barry Rector *Aye*

Nat Lowell *Aye*

Fritz McClure *Nay*

Vice- Chair Dave Iverson *Aye*

John Trudel returned to the meeting and will take over as the Chairman.

• **Planning Board Sponsored Articles – Affordable Housing**

Mr. Vorce - expand workforce homeownership housing propose. Bonus lot in the R-5 zoning and possibly in the R-10 Zoning. Recommend not including currently. 2009 Master Plan R-20 belongs in the Town overlay District. R-20 doesn't work in this bylaw however R-10. Change density bonus.

Motion/Vote: Mr. Lowell moved to give a positive recommendation to be included in the 2022 warrant. The motion was duly seconded by Mr. Rector and the motion was carried unanimously 5-0.

Vote By Roll Call:

Nat Lowell *Aye*

Barry Rector *Aye*

Vice- Chair Dave Iverson *Aye*

Fritz McClure *Aye*

Chair Trudel *Aye*

IV. Other Business:

- **Special Planning Board meeting (Warrant Articles) Monday, January 31, 2022 @ 4:00PM via Zoom**
- **Special Planning Board meeting (Warrant Articles) Monday, February 7, 2022 @ 4:00PM via Zoom**
- **Regular Planning Board meeting Monday, February 14, 2022 @ 4:00PM via Zoom**

V. Adjournment:

Mr. Rector moved to adjourn the meeting at 4:50PM. The motion was duly seconded by acting Chair Iverson and the motion carried unanimously 5-0.

Vote By Roll Call:

Barry Rector *Aye*

Vice- Chair Dave Iverson *Aye*

Fritz McClure *Aye*

Nat Lowell *Aye*

Chair Trudel *Aye*

**NOTE-Meeting must adjourn prior to 5:00pm*

Submitted by:

Catherine Ancero