

## BOARD OF SELECTMEN

Minutes of the Meeting of 5 August 2009. The meeting took place in the Court Room, Town and County Building, 16 Broad Street, Nantucket, MA 02554. Members of the Board present were Rick Atherton, Brian Chadwick, Michael Kopko, Allen Reinhard, and Patricia Roggeveen. Chairman Kopko called the meeting to order at 6:01 PM.

### ANNOUNCEMENTS

Town Manager C. Elizabeth Gibson reviewed 2009 committee/board/commission vacancies not yet filled from June appointments.

The Nantucket Community Association will be holding a public forum with the Board of Selectmen and Town Manager on Tuesday, 18 August 2009 at 9:00 AM at the Nantucket Atheneum.

The Landfill will be closed Sunday, 23 August 2009 for scale repair.

Health Inspector Richard Ray gave a brief update on mosquitoes, noting that complaints have been received that the Town has not "stepped up" to address the problem. Mr. Ray explained there is a lack of funding for a Town-operated mosquito control program and said that property owners can take steps to mitigate mosquito issues by emptying containers with standing water, contacting individuals certified to spray, and install mosquito "traps". He added that neighborhood associations could also get involved since many mosquito breeding areas are on private property.

### PUBLIC COMMENT

Frank Spriggs, president of the Nantucket Town Association, said his organization is working to assist businesses in the off-season, beautify the Broad Street "strip" area, and would like to actively be involved in the Wilkes Square redevelopment discussions.

Steve Bender said he feels the recent vote for building the new police station is invalid because of unethical activities that he believes influenced voters, specifically campaigning by the Police Chief, Fire Chief, and Town Manager.

Finance Committee Chairman Jim Kelly said the Finance Committee has been developing its goals and objectives and that at its 24 July 2009 meeting, it unanimously voted to support a revenue-based budget for FY 2011.

### APPROVAL OF MINUTES, WARRANTS, PENDING CONTRACTS

Approval of Minutes of 4 February 2009 at 6:00 PM; 5 February 2009 at 9:00 AM. The minutes of 4 February 2009 at 6:00 PM and 5 February 2009 at 9:00 AM were approved by the unanimous consent of the meeting.

Approval of Payroll Warrants for Weeks Ending 26 July 2009 and 2 August 2009. The payroll warrants for weeks ending 26 July 2009 and 2 August 2009 were approved by the unanimous consent of the meeting.

Approval of Treasury Warrants for 29 July 2009 and 5 August 2009 and Pending Contracts for 5 August 2009. Department of Public Works Director Jeff Willett updated the Board on the Surfside Wastewater Treatment Facility, noting it is now fully operational, and that he will be meeting with

the engineers tomorrow to get a final contract number so the Town can start preparing to implement the charge of privilege fees. The treasury warrants for 29 July 2009 and 5 August 2009 and pending contracts for 5 August 2009 were approved by the unanimous consent of the meeting.

#### CITIZEN/DEPARTMENTAL REQUESTS

Finance Department: Request for Approval of Department Head Designees for Payroll Reporting Purposes Pursuant to MGL c. 41, s. 41. Ms. Gibson said that implementation of recommendations contained in a report issued last fall concerning improvements to the Finance Department is underway, and that the department head designee list is an action that furthers one of the recommendations. Mr. Reinhard moved to approve the department head designee list as presented (attached); Mr. Atherton seconded. All in favor, so voted.

Friends of the Adult Community Day Care Center: Presentation of Special Town Meeting Warrant Article. Jeanette Topham read a proposed warrant article for the Adult Community Day Center (ACDC) and requested the Board sponsor the article for the 21 September 2009 Special Town Meeting. Mr. Atherton explained that the warrant article has already been submitted as a citizen-sponsored warrant article and recommended it continue through the process as such. The Board was in agreement.

Request for Approval of Application of J & B Nantucket, Inc. d/b/a Old South Liquors for a Change of Manager for Annual All-Alcoholic Beverages Package Store License, from Joseph Armstrong to Manjur Elahi for Premises Located at 2 Lovers Lane, Nantucket. Mr. Chadwick moved to approve the application for change of manager for Old South Liquors; Mr. Atherton seconded. All in favor, so voted.

Sustainable Nantucket: Update on Climate Protection Action Plan. Michelle Whelan of Sustainable Nantucket updated the Board on progress in drafting a Climate Protection Action Plan on behalf of the Town, noting the Board previously approved Sustainable Nantucket's request for the Town to participate in the International Council of Local Environmental Initiatives (ICLEI) Cities for Climate Protection (CCP) campaign. Ms. Whelan explained that there are five milestones of the CCP campaign and that the Town has already met the first two. She reviewed the benefits of developing a climate protection action plan and said Sustainable is working with Town Administration and department heads to develop a rough draft of the plan, which she hopes will be ready in early fall. Ms. Whelan also reviewed future steps, including the possible formation of an implementation committee, a Town-sponsored website, and public relations. Ms. Gibson explained that she has met with Ms. Whelan a few times and that some aspects of the plan will necessitate funding by the Town, noting that some funds could come from the Cape and Islands License Plate fund. Mr. Atherton said he would like the Board to see the draft before it goes public. A discussion followed on the process. Chairman Kopko thanked Sustainable Nantucket for its cooperative effort in helping the Town. Ms. Gibson acknowledged the Energy Study Committee for its help as well.

Nantucket Land Council: Request for Approval of Conservation Restriction to be Held by Nantucket Land Council, Inc. for Portion of Land Located on Tuckernuck Island. Nantucket Land Council Executive Director Cormac Collier reviewed the request, noting if approved, this will be the 21<sup>st</sup> restriction held by the Land Council on Tuckernuck. He added that the requested conservation restriction is in the public interest. Mr. Chadwick said he is opposed to the conservation restriction and asked if the restriction allows public access. Mr. Collier said it is up to the property owner to

allow access, and that it is not required in the restriction. Mr. Chadwick asked if the owner would consider the Town's "One Big Beach" easement program. Mr. Collier said the owner wants the restriction to be held by the Land Council, not "One Big Beach". Mr. Chadwick said he feels that the benefits offered by the conservation restriction are private, not public. Ms. Reinhard disagreed with Mr. Chadwick, noting that former Boards have already approved 24 conservation restrictions on Tuckernuck. Mr. Chadwick added that the restriction allows for a private dock, possibly stairs down to the beach, and said that two-thirds of the property is already protected by federal, state, and local regulations. A discussion on docks followed, with Mr. Atherton inquiring why language allowing a dock would be included when there is currently a moratorium against docks. Planning Director Andrew Vorce explained that the prohibition on docks does not extend to Tuckernuck, adding that approval must still be granted by the state through a Chapter 91 license, as well as the Conservation Commission. Mr. Atherton voiced his disappointment in the "lack of enthusiasm" for the "One Big Beach" program by the grantor. Mr. Collier said he doesn't feel a "One Big Beach" easement should be a requirement of granting a conservation restriction. Mr. Reinhard moved to approve the conservation restriction on the Dammin land on Tuckernuck; Ms. Roggeveen seconded. So voted 3-1. Mr. Chadwick was opposed and Mr. Atherton abstained from the vote. Mr. Chadwick said he would like the public interest to be stated on the Board's approval form.

#### PUBLIC HEARINGS

Public Hearing to Consider Appeal of Three Martins Lane LLC of Historic District Commission Disapproval of Certificate of Appropriateness No. 53732 for Property Located at 3 Martins Lane (continued from 17 June 2009; 8 July 2009). Chairman Kopko reminded all parties that the public hearing has already been opened and he reviewed the Historic District Commission (HDC) appeal process. HDC Administrator Mark Voigt was then sworn in by Town Counsel to give testimony. Attorney Steven Cohen, representing the appellant, reviewed the appeal of the HDC's denial, noting he believes the HDC acted *ultra vires* (outside of its authority) and that the decision was arbitrary and capricious. Mr. Cohen argued that the curb requested is part of the road, not the driveway or property; therefore the HDC has no authority. He added that under Chapter 139 section 20.1 of the Town zoning code, the Planning Board has jurisdiction over curb cuts and approval is to be given by the DPW, and noted that his client has a valid DPW curb cut permit. He concluded by saying the HDC has never ruled over the design, layout, or materials of Island roads, including curbing, and that the HDC erred by refusing to look at the materials involved, and did not consider the application past the denial of the curb cut. Attorney Rich Hucksam of Town Counsel's office spoke in favor of the Board upholding the HDC's denial decision, saying that the HDC "clearly has jurisdiction" over the application. He said the HDC Act has a clear definition of structure and that the application also included the alteration of a fence, the installation of a driveway in addition to a curb cut. Mr. Hucksam said the HDC did have authority to disapprove the application, adding that the HDC is supposed to consider the historical setting in which work is to occur. He said that Martins Lane is one of the most historic streets on Nantucket and approving the application would be a "radical" alteration to the status quo, noting that no other address on Martins Lane has a curb cut. He concluded by saying that in the context of the application the curb cut is a part of the driveway and it is disingenuous of the appellant to apply to the HDC for approval then appeal to the Board saying the HDC has no jurisdiction. Mr. Chadwick noted nowhere in the language denying the application is the fence discussed, only the curb cut. Mr. Cohen said he agrees the HDC has jurisdiction over the fence and driveway, just not on curb cuts, noting that at the HDC meeting, there was no discussion of the fence or driveway; only the curb cut was discussed and when the HDC said no to the curb cut that ended the discussion. Mr. Cohen added,

for the record, he objects to counsel for the HDC being from Town Counsel's office. A discussion among Board members followed regarding the curb cut request. Mr. Chadwick said he doesn't feel a curb cut is within the authority of the HDC or the Board, and as far as he knows an applicant has never gone before the HDC for curb cut approval; he added he feels the HDC's denial is based on the curb cut, not the fence or the driveway. Chairman Kopko said the Board can uphold the appeal, deny the appeal, or remand the issue back to the HDC. Chairman Kopko closed the public hearing. Mr. Atherton said he feels the HDC considered the application as a whole. Mr. Chadwick said what the HDC wrote in the denial was solely based on the curb cut. Chairman Kopko said he agreed with Mr. Atherton. A discussion followed among the Board members whether the denial was based on the curb cut or the application as a whole. Mr. Reinhard said he would like to see the HDC discuss the application in more detail and clarify its language on the denial. Mr. Reinhard moved to remand the decision to the HDC and ask it to clarify its decision; Ms. Roggeveen seconded. Chairman Kopko asked Town Counsel whether the curb cut is within the jurisdiction of the HDC. Town Counsel Paul DeRensis said the HDC decision is not clear and that the Board should stick to the particular application before the Board. Mr. Cohen said the one question before the Board is whether the HDC has jurisdiction over curb cuts. On Mr. Reinhard's motion, so voted 2-3. Chairman Kopko, Mr. Atherton and Mr. Chadwick were opposed. Mr. Atherton moved to deny the appeal and uphold the decision of the HDC; Mr. Reinhard seconded. So voted 4-1. Mr. Chadwick was opposed.

#### TOWN MANAGER'S REPORT

Ms. Gibson said the first meeting of the Taxi Advisory Committee was held recently and she reviewed what was discussed and the proposed meeting schedule.

Ms. Gibson said the Audit Committee met last week and discussed the status of the Abrahams Report recommendations. She noted the department has come a long way in the last year and a half but there is still progress to be made. She said the FY 2009 audit is expected to be completed by 31 December 2009, and the goal of implementing Phase I and II of the Abrahams Report should be moved from September 2009 to October due to the work which must be done for the upcoming September Special Town Meeting. Ms. Gibson thanked the Finance Department for its hard work.

Ms. Gibson explained that the state sheriff take-over legislation has been approved by the Senate and is in front of the Governor for approval. The language allows the Town to realize up to \$9 million in deeds excise funds for the police station. She thanked Representative Madden, Senator O'Leary, Mr. Chadwick, Assistant Town Manager Malachy Rice, the County Commissioners, Finance Department, and the Massachusetts Association of County Commissioners for assistance in getting Nantucket's needs recognized.

Mr. Chadwick recommended sending a letter to the Sheriff asking him to rescind his opposition to the release of \$700,000 for the new police station currently being held up at the County Government Finance Review Board. The Board agreed to send a letter.

#### SELECTMEN'S REPORTS/COMMENT

Review and Adoption of 21 September 2009 Special Town Meeting Warrant. Chairman Kopko said that a Special Town Meeting will be held 21 September 2009 and the Board is not taking a position on any articles at this time; it is only sponsoring specific articles, and not endorsing them. Ms. Gibson reviewed a modification to the town meeting timeline and reviewed each draft warrant

article with the Board. Chairman Kopko explained that the Board's only decision tonight is to adopt the warrant and decide which articles become part of it. He said a more in depth discussion of the articles will occur at a later time. Regarding the zoning articles for Sherburne Commons, Joe McLaughlin, of the Sherburne Commons board, read a prepared statement. Chairman Kopko reiterated that the Board's support at this time is limited to placing the articles on the warrant, and it is not necessarily supporting the articles themselves at this time. Ms. Roggeveen thanked the Sherburne Commons board for being present. A discussion followed among Board members, Town Counsel, and Sherburne Commons attorney Steven Cohen regarding the zoning articles. Mr. Reinhard moved to adopt the warrant as discussed; Ms. Roggeveen seconded. All in favor, so voted. Ms. Gibson said the warrant will be on the Town's website tomorrow and published in the newspaper next week. A brief discussion followed regarding citizen warrant articles, generally.

Action to Schedule Public Input Session to Discuss Boulevard, Lovers Lane, Okorwaw Avenue, and Monohansett Road. It was agreed to schedule a public input session to discuss the future of the Boulevard area roads on Monday, 31 August 2009 at 4:00 PM, location to be announced. The meeting will be advertised.

Establish Committee to Study, Review and Make Recommendations Regarding Future Options for Senior Services. Ms. Gibson explained that there was a brief discussion last week about establishing a senior services committee to look at options and alternatives for Sherburne Commons and Our Island Home. Since then, Mr. Atherton and Mr. Reinhard have had discussions on other possible options. Mr. Reinhard said he and Mr. Atherton have had informal ad hoc meetings and the goal is to get all the information and advice they can. Chairman Kopko said a long-range elder services committee is a good idea but he's not sure if one needs to be set up immediately.

Mr. Atherton said Ms. Gibson sent the Board a draft memo regarding the budget process, and in these times the Town needs to move to revenue-based budgeting. It was agreed to revisit the matter at the Board's 19 August 2009 meeting.

The meeting was unanimously adjourned at 9:42 PM.

Approved the 14<sup>th</sup> day of April, 2010.



Department Head      Department

Designated Alternate

Al Peterson	Airport	Tina Smith
Andrew Vorce	Planning	Leslie Woodson Snell
Bernie Bartlett	Building	Anne Barrett
Catherine Stover	Town Clerk	Margaret (Peggy) Altreuter
Constance Voges	Finance Director	Irene Lynch-Larivee
Dave Fronzuto	Marine	Sheila Lucey
Dirk Roggeveen	Con Com	Catherine Dickey
Jeff Willett	DPW	Mohamed Nabulsi
Jimmy Manchester	Park & Rec	Alice McWade
Kate Hamilton	Visitor Services	David Sharpe
Ken Beaugrand	CPC	Rich Brannigan
Libby Gibson	Town Administration	Malachy Rice, <i>Erika Mooney</i>
Linda Roberts	Council on Aging	Virginia Carrera
Mark McDougall	Fire	Edward Maxwell
Mark Voigt	HDC	James Grieder
Maryanne Worth	Human Services	Ann Medina
Pamela Meriam	OIH	Rachel Day
Richard Ray	Health	Artel Crowley
Robert Gardner	Water	Heidi Holdgate
Robert Pellicone	School	Glenn Field
William Pittman	Police	Charles Gibson
Pat Perris	Human Resources	Libby Gibson, <i>Malachy Rice</i>

