

BOARD OF SELECTMEN

Minutes of the Meeting of 3 August 2011. The meeting took place in the Public Safety Facility Community Room, 4 Fairgrounds Road, Nantucket, MA 02554. Members of the Board present were Rick Atherton, Robert DeCosta, and Whiting Willauer. Michael Kopko and Patricia Roggeveen were absent. Chairman Atherton called the meeting to order at 6:00 PM.

I. BOARD ACCEPTANCE OF AGENDA

Chairman Atherton extended the Board's sympathies to Ms. Roggeveen on the passing of her mother. He then noted that item VIII. 6 will be moved to the beginning of section VIII. In addition, Chairman Atherton said there will be no approval of minutes tonight, and item IX. 2. has been rescheduled to 17 August 2011. The Board unanimously accepted the agenda as amended.

II. ANNOUNCEMENTS

1. There will be no Board of Selectmen meeting Wednesday, 10 August 2011 as the Board is on its summer schedule.

2. The Nantucket Community Association and Advisory Committee of Non-Voting Taxpayers are hosting a Summer Forum on Tuesday, 16 August 2011 at 9:30 AM at the Nantucket Atheneum which the Board and the Town Manager will attend and provide updates on particular topics.

3. A third Wastewater Action Plan workshop is scheduled for Wednesday, 10 August 2011 from 4:00 pm to 6:00 pm in the Community Room of the Public Safety Facility at 4 Fairgrounds Road.

4. Fire Chief Mark McDougall and Police Chief William Pittman recognized the life-saving efforts of the fire and police departments' first responders pertaining to a carbon monoxide incident earlier this year at 40 Macys Lane, and presented life-saving awards to Fire Captain Thomas H. Holden, Firefighters Earl C. Eldridge and Christopher M. Beamish, Police Sergeant Daniel Furtado, and Police Officers Michael L. Mabardy, Keith A. Mansfield, Michael P. Nee, and Michael J. Cook. Chairman Atherton thanked the fire and police departments for their service.

5. Chief McDougall gave a brief update on the recent Caddy Camp fire at Sankaty Head Golf Club and answered questions from the Board.

III. PUBLIC COMMENT

1. Dick Arnold spoke regarding what he says are Children's Beach boat ramp "deficiencies" and noted he has begun circulating a petition to have the Board hold a public hearing.

IV. NEW BUSINESS

None.

V. APPROVAL OF MINUTES, WARRANTS, PENDING CONTRACTS

1. Approval of Minutes 20 July 2011 at 6:00 PM. The approval of minutes was postponed to the 17 August 2011 meeting.

2. Approval of Payroll Warrants for Weeks Ending 24 July 2011; 31 July 2011. The payroll warrants for weeks ending 24 July 2011 and 31 July 2011 were approved by the unanimous consent of the meeting.

3. Approval of Treasury Warrants for 27 July 2011; 3 August 2011. The treasury warrants for 27 July 2011 and 3 August 2011 were approved by the unanimous consent of the meeting.

4. Approval of Pending Contracts for 3 August 2011. Town Manager C. Elizabeth Gibson reviewed the various pending contracts and answered questions from the Board. Mr. Willauer recused himself from voting on the Nantucket Behavioral Health Services contract. The Nantucket Behavioral Health Services contract was approved 2-0. Mr. Willauer recused. Attorney Brian Riley of Town Counsel's office recommended that the Board hold the Elder Services Memorandum of Understanding for the full Board. It was the consensus of the Board to hold the Memorandum of Understanding until the 17 August 2011 meeting.

VI. CITIZEN/DEPARTMENTAL REQUESTS

1. Town Clerk: Request for Appointment/Re-Appointment of Election Officers. Mr. DeCosta noted that some of the individuals listed for appointment/re-appointment contributed to his Selectmen campaign, and he asked Mr. Riley if he should recuse from the vote. Mr. Riley said a Board member avoids conflict by making a disclosure, and noted that Mr. DeCosta just made a public disclosure. Mr. DeCosta moved to approve the slate of election officers for appointment/re-appointment as presented; Mr. Willauer seconded. So voted 3-0.

2. Marine and Coastal Resources Department: Request for Acceptance of Gift of \$10,000 from Nantucket Community Association for Water Sampling and Analysis Program. Marine Superintendent Dave Fronzuto spoke in favor of the Board accepting the gift and thanked the Nantucket Community Association. Chairman Atherton noted that the Town is providing \$25,000 to continue its water sampling program. Mr. DeCosta moved to accept the gift as presented; Mr. Willauer seconded. So voted 3-0.

3. Our Island Home: Request for Acceptance of Gifts Totaling \$2,100 from Various Donors for Our Island Home Gift Fund. Chairman Atherton reviewed the individual gift donors noting the majority of the gifts are in memory of Phyllis Perelman. Mr. DeCosta moved to accept the gift as presented; Mr. Willauer seconded. So voted 3-0.

4. Appointment: Parks and Recreation Commission. The Parks and Recreation Commission appointment was postponed to 17 August 2011 in order to have the full Board vote.

VII. PUBLIC HEARINGS

1. Public Hearing to Consider Application for Public Assembly Permit for New Life Ministries Church Fair to be Held 6 August 2011 at 42 Monohansett Road. Chairman Atherton opened the public hearing. Vanessa Smith, representing New Life Ministries, spoke in favor of the church fair and reviewed some of the activities planned. Chairman Atherton closed the public hearing. Mr. DeCosta moved to approve the public assembly permit as presented; Mr. Willauer seconded. So voted 3-0.

VIII. TOWN MANAGER'S REPORT

6. Mosquito Control Plan Update. Health Director Richard Ray reviewed three possible options for mosquito control: 1) have the Health Department mandate that property owners, under the "nuisance regulations" rid their properties of mosquitoes; 2) have the Town contract a licensed pest

exterminator to treat areas of concern; or 3) for a five member local mosquito control board to create a Nantucket mosquito control project under the umbrella of the state Reclamation Board. He said that option three will allow for certain exemptions from filing procedures associated with the local Conservation Commission and the Army Corps of Engineers regarding access to wetlands and private properties. Mr. Ray recommended option three, noting he has spoken with Representative Madden's office which is willing to support his recommendation. Mr. Riley stated that if the Board wants to move forward with this mosquito control plan it does not require town meeting approval to start communicating with the state Reclamation Board; but, if legislation is to be filed then town meeting approval is needed. Ms. Gibson suggested renaming the group the Mosquito Control Advisory Committee until legislation is passed and the committee has some authority to act. She added that a budget will need to be established. Mr. DeCosta spoke in favor of endorsing Mr. Ray's recommendation but said he feels an override will be necessary to fund it. Ms. Gibson said that the program would most likely cost more than the \$100,000 already appropriated for FY 2012, and if there is no additional override, funding will need to be located somewhere else in the budget. Mr. Ray requested to establish a five member Mosquito Control Advisory Committee; the Board consensus was to move forward with advertising for this committee. A discussion followed on the short term and long term mission of the committee.

Ms. Gibson announced that there will be an open house at the Nantucket Police Department this Saturday, 6 August 2011 from noon to 3:00 PM.

1. Traffic Safety Work Group Recommendations: Additional Accessible Parking Space on Federal Street; Elimination of Parking on West Side of Macys Lane. Commission on Disability chair and Traffic Safety member Mickey Rowland stated there have been many requests for additional accessible parking downtown. Mr. DeCosta moved to approve the Federal Street accessible parking space as recommended; Mr. Willauer seconded. So voted 3-0. Traffic Safety member Erika Mooney reviewed the recommendation to eliminate parking on the west side of Macys Lane. Macys Lane resident Bert Ryder noted he would like to see no parking on Macys Lane but said he is in favor of Traffic Safety's recommendation. Discussion among Board members followed. Mr. DeCosta moved to approve the elimination of parking on the west side of Macys Lane as recommended; Mr. Willauer seconded. So voted 3-0.

2. Request for Amendment of Policy for Ticket Sales on Public/Town Property. Ms. Gibson explained that the Board approved a policy for ticket sales/tables about two months ago and she is hoping to amend it, noting she has been working with Town Counsel on appropriate language. She reviewed the changes, including not limiting the policy to non-profit organizations; clarifying that tables are for ticket sales and information only and not for the sale of merchandise. Discussion among the Board and Ms. Gibson followed. Mr. Willauer moved to approve the amendments to the table policy as discussed; Mr. DeCosta seconded. So voted 3-0.

3. FY 2011 Our Island Home Enterprise Fund End of Year Report. Our Island Home Administrator Rachel Day reviewed the FY 2011 end of year report for the enterprise fund. She reviewed costs versus revenue, noting that there is a revenue excess of \$432,815. Ms. Gibson stated that once this money is certified by the Department of Revenue (DOR) it could be used to offset the General Fund subsidy. Ms. Day reviewed budgeted and actual revenue and expenses for the year, and added that the Adult Community Day Care program ran at a deficit of \$78,034. She then reviewed

cost containment measures. Ms. Day answered questions from the Board throughout her presentation.

4. FY 2011 Sewer Enterprise Fund; Solid Waste Enterprise Fund End of Year Reports. Assistant Department of Public Works Director Mohamed Nabulsi reviewed the Sewer Enterprise Fund (SEF) and Solid Waste Enterprise Fund (SWEF) end of year reports for FY 2011 and answered questions from the Board throughout the presentation. He noted that mixed solid waste (MSW) tonnage is almost the same as FY 2010 but the three year average shows the numbers trending downward. Mr. Nabulsi stated that construction and demolition (C&D) tonnage is up 2.6% over last fiscal year with revenues up 2.2%. A discussion followed regarding the recycling of glass. He reviewed budgeted and actual revenue and expenses for the year, noting there is a revenue surplus of \$774,972 which needs to be certified by the DOR.

At 7:59 PM Mr. DeCosta left the meeting; he returned at 8:01 PM.

A discussion followed on reselling items such as appliances that have been brought to the landfill which may have value. Mr. Nabulsi noted that the SEF year to date billable flow is up 13% from last year.

At 8:04 PM Mr. Willauer left the meeting; he returned at 8:08 PM.

Mr. Nabulsi reviewed budgeted and actual revenue and expenses for the year for the SEF, noting there is a surplus of \$664,931 which needs to be certified by the DOR in order to be used. He reviewed the numbers of sewer permits issued for Town and Sconset in FY 2011 and SEF and SWEF next steps.

5. Request for Endorsement of Proposed Town Department Community Preservation Fund Projects for FY 2013. Ms. Gibson reviewed the policy for departmental applications to be submitted to the Community Preservation Committee (CPC) and reviewed the various requests for FY 2013, including submissions from the Town Clerk, the Marine and Coastal Resources Department, and the Parks and Recreation/DPW. Mr. Willauer moved to endorse the projects as recommended by the Town Manager; Mr. DeCosta seconded. So voted 3-0.

7. Wastewater Action Plan Update. Ms. Gibson noted that the first Wastewater Action Plan newsletter has been issued and is in the mail this week and is available on the Town's website. She added that the next workshop scheduled is on 10 August 2011 at 4:00 PM where there will be an overview of Nantucket's Massachusetts Estuaries Projects and other agenda items. Ms. Gibson discussed rescheduling the September and October wastewater workshop dates, noting the Woodard and Curran scope of services for the Madaket Wastewater Treatment Facility project is likely to be revised to allow more time on Madaket and other alternatives. She encouraged citizens to submit comments, questions, and issues to her.

IX. SELECTMEN'S REPORTS/COMMENT

1. Execution of Motion Voted at July 20, 2011 Board of Selectmen's Meeting to Deny 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 explained that the Board, at its 20 July 2011 meeting, voted 4-1 to deny the appeal of 3 Martin's Lane LLC

and asked Town Counsel to draft the denial. Mr. DeCosta moved that the Board adopt the draft as its decision in the appeal of the Historic District Commission's decision concerning 3 Martin's Lane, Certificate No. 56434; Mr. Willauer read the decision (attached) and seconded the motion. So voted 3-0.

2. Sherburne Commons Update. This matter was continued to 17 August 2011.

3. Discussion Regarding Petition from Surfside Association in Connection with July 4, 2011 Activities. Chairman Atherton reviewed the petition urging the Town to acknowledge the use and abuse of alcohol during the Fourth of July weekend, and added he feels the Town has made progress and the Police Department has helped deal with the issues. Surfside Association president Tom Quigley agreed but said he feels the situation was still "out of hand" and he urged the Board to continue a "round table discussion" with various Town departments to deal with the mass of individuals who descend on the Surfside neighborhood. He said he wants Fourth of July to be a safe event enjoyed by all. Alliance for Substance Abuse Prevention vice president Linda Sperry said ASAP wants to take a leadership role in this process.

4. Discussion Regarding Draft Regional Transportation Plan (continued from July 20, 2011). Chairman Atherton said the Board needs to draft a written statement to the NP&EDC regarding what it recommends not be included in the Regional Transportation Plan, such as a parking garage. He said the matter will be continued to 17 August 2011 to allow for full Board discussion.

5. Acknowledgement of Recently-enacted Special Legislation for Nantucket Cemetery Commission. Chairman Atherton noted that Chapter 47 of the Acts of 2011 has been passed by the legislature and signed by the Governor to establish a cemetery commission for Nantucket. Ms. Gibson reviewed the advertising, public hearing, and appointment schedules.

6. Committee Reports. Mr. Willauer reported that the proposed Madaket wind turbine is currently being reviewed by the HDC.

IX. ADJOURNMENT

The meeting was unanimously adjourned at 8:49 PM.

Approved the 21st day of September, 2011.

**BOARD OF SELECTMEN
3 AUGUST 2011 – 6:00 PM
PUBLIC SAFETY FACILITY COMMUNITY ROOM
4 FAIRGROUNDS ROAD
NANTUCKET, MASSACHUSETTS**

List of documents used at the meeting:

- V. 4. Pending contracts spreadsheet for 3 August 2011
- VI. 1. Memo from Assistant Town Clerk, re: appointment of election officers
- VI. 2. Memo from Marine Superintendent, re: gift acceptance
- VI. 3. Email from Our Island Home Administrator, re: gift acceptance
- VI. 4. Parks and Recreation Commission membership; applications for appointment
- VII. 1. Letter from Visco Pumping; public assembly permit for church fair; insurance certificate
- VIII. 1. Memos from Traffic Safety and maps, re: Federal Street accessible parking space and Macys Lane parking restriction
- VIII. 2. Email from Town Counsel, re: table policy; revised Policy for Ticket Sales or Distribution of Information from Tables of Public Sidewalks
- VIII. 3. Our Island Home Enterprise Fund FY 2011 year end report
- VIII. 4. Sewer and Solid Waste Enterprise Funds FY 2011 year end report
- VIII. 5. CPC application requests spreadsheets and back-up material
- VIII. 6. Draft mosquito control options; email from Town Counsel; copy of mosquito initiative from Health Director
- IX. 1. 3 Martin's Lane HDC appeal written decision; email from Town Counsel
- IX. 2. Letter from Servant Healthcare dated 28 October 2009
- IX. 3. Cover letter and petition from Surfside Association, re: Fourth of July issues
- IX. 4. Memo from Transportation Planner, re: Regional Transportation Plan
- IX. 5. Chapter 47 of the Acts of 2011

TOWN OF NANTUCKET

BOARD OF SELECTMEN

Appeal of Decision of the
Nantucket Historic District
Commission Relative to
3 Martin's Lane, Certificate No. 56434

DECISION

Pursuant to Section 11 of Chapter 395 of the Acts of 1970 ("Act"), as amended, the Board of Selectmen held a public hearing on July 20, 2011, relative to an appeal filed by 3 Martin's Lane, LLC, "(Appellant)" to a decision of the Nantucket Historic Commission ("HDC") decision dated April 26, 2011, in which the HDC denied the application for a Certificate of Appropriateness filed by the Appellant for the purpose of a curb alteration, fence, gate, and driveway to be constructed at 3 Martin's Lane.

In rendering its decision, the HDC made the following written findings:

- the project will breach the solid granite curb line of Martin's Lane, creating a gap of 15'-7".
- the project will break the sidewalk with an 11'-7" wide, modern driveway apron.
- the project will interrupt the continuous fence line with a 10-foot-wide gate.
- the project will add fence posts where none exist today.
- the project will result in the parking of automobiles on the property in such a way that they will be visible from the street and will have a negative visual impact on the iconic 19th century setting.

In reviewing the HDC's decision, the Board of Selectmen is mindful of the standard of review for decisions of the HDC, as set forth in Gumley v. Board of Selectmen of the Town of Nantucket, 371 Mass. 718 (1977). In that case, which involved a decision of the HDC, the Court stated that a decision of the HDC cannot be disturbed, either by the Board of Selectmen or by the Court, unless it is based on a legally untenable ground or is unreasonable, whimsical, capricious, or arbitrary. Further, the Board of Selectmen understands that it should not substitute its judgment for the HDC's. This means that even if members of the Board of Selectmen do not agree with the decision of the HDC, the decision should not be disturbed, unless the Board of Selectmen determines after the hearing that the HDC decision was not supported by the facts before the HDC or the HDC's decision was based on factors that are beyond the jurisdiction of the HDC under the Act.

Applying that standard of review to this appeal, the Board of Selectmen finds that the decision of the HDC was not based on legally untenable grounds, nor was it unreasonable, whimsical, capricious or arbitrary.

11 AUG 11 AM 11:55
TOWN OF NANTUCKET

Section 2 of the Act provides:

SECTION 2. The purpose of this Act 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.

It is uncontested that 3 Martin's Lane is located within the Historic District and that a driveway constitute a structure within the meaning of the Act. Finally, all parties concede that the construction of a driveway within the Historic District requires the issuance of a Certificate of Appropriateness. (See Section 5(b) of the Act.)

The Board of Selectmen finds, therefore, that it was within the jurisdiction of the HDC to determine whether the installation of a driveway at 3 Martin's Lane would have a detrimental effect on the historic interests of the district and whether a driveway at this location is appropriate for this setting. The Board of Selectmen further finds that the reasons given by the HDC for determining that the installation of a driveway at this location would be inappropriate are fully supported by the evidence before the HDC at the initial hearing and during the hearing of the Board of Selectmen.

Therefore, the Board of Selectmen votes (4 in favor and 1 opposed) to deny the appeal and to uphold the decision of the HDC.

Signed this 3rd day of August, 2011.

Town of Nantucket
By its Board of Selectmen







