



Town of Nantucket Finance Committee

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Committee Members: Denice Kronau (Chair), Stephen Maury (Vice-chair), Joseph T. Grause Jr., Peter McEachern, Joanna Roche, Peter Schaeffer, Chris Glowacki, Jill Vieth, George Harrington

MINUTES

Tuesday, February 8, 2022

Called to order at 4:00 pm by Ms. Kronau

Staff in attendance: Libby Gibson, Town Manager; Brian Turbitt, Director of Finance; Mariya Basheva, Financial Analyst; Terry Norton, Town Minutes Taker

Attending Members: Kronau, Maury, Grause, Roche, Schaeffer, Glowacki, Vieth, Harrington

Absent Members: McEachern

Late Arrivals: Roche, Vieth, Harrington

Town Counsel: John Giorgio, K&P Law, PC

Documents used: Draft minutes as listed; Warrant Articles for 2022 Annual Town Meeting.

Adoption of agenda.

Motion **Motion to adopt.** (made by: Maury) (seconded)

Roll-call Vote Carried 5-0//Glowacki, Schaeffer, Maury, Grause, and Kronau

I. ANNOUNCEMENTS

II. PUBLIC COMMENT

1. None

III. APPROVAL OF PRIOR MEETING MINUTES

1. January 29, 2022

2. February 1, 2022

Motion **Motion to Approve.** (made by: Grause) (seconded)

Roll-call Vote Carried 6-0//Glowacki, Schaeffer, Maury, Roche, Grause, and Kronau-aye

3. February 3, 2022

Motion No action at this time.

Roll-call Vote N/A

IV. PUBLIC HEARING ON 2020 ANNUAL TOWN MEETING (ATM) WARRANT ARTICLES

Motion **Motion to Close the Public Hearing.** (made by: Schaeffer) (seconded)

Roll-call Vote Carried 8-0//Glowacki, Schaeffer, Grause, Roche, Vieth, Harrington, Maury, and Kronau-aye

V. REVIEW AND DISCUSSION THE FOLLOWING 2022 ATM ARTICLES & POTENTIAL ADOPTION OF MOTIONS

1. Article 79 (Home Rule Petition: An Act Prohibiting the Application of Fertilizer in the Town of Nantucket)
– Joseph Minella, sponsor

Speakers Lee Saperstein

Emily Molden, Nantucket Land Council Executive Director

Thais Fournier, Water Quality Specialist Natural Resources Department

Discussion **Kronau** – We have received the information requested at the last discussion.

Roche – She thought there was question that Town Counsel had to elaborate on; asked the outcome of that.

Giorgio – He’s been researching how the Town might accomplish further regulations; this article is a repeat of a 2012 ATM article; that went to the State Legislature but was not adopted; it’s not realistic to assume the Legislature would adopt a home rule that is total ban on fertilizer. He’s had discussion with NP&EDC; Chapter 262 of 2012 Special Act provides a mechanism that the

NP&EDC could use to adopt a fertilizer plan more restrictive than the Massachusetts Department of Environmental Protection (MaDEP). There was, however, a deadline of 2014 for municipalities to adopt a new fertilizer plan. He's been talking to the State Attorney General and counsel to Massachusetts Department of Agriculture. If FinCom wishes a positive motion on this, ATM could vote to petition the Legislature for a special act to extend that deadline. The justification is that over the past 10 years, it's understood there's been a continued degradation of the water quality of the Islands harbors. Suggested working with University of Massachusetts (UMass) Extension for sight-specific reasons why more stringent regulations are warranted. FinCom can request he draft a special act to accomplish that goal. The NP&EDC could do it themselves, but it might have more weight if it came from ATM.

Glowacki – He challenges the comment about degradation in water quality due to nitrogen from fertilizer.

Schaeffer – Reading through all the data, he agrees with Mr. Glowacki that this isn't an issue we need to change. We should vote on it now.

Saperstein – Suggested FinCom Take No Action on the article but supply substantial information as to why. Most nitrogen in the water is from the atmosphere and animal waste then fertilizer and septic. We have drafted regulations that are available as part of the Department of Health (DoH) regulations. We really need education and enforcement programs; Natural Resources has been using their shellfish warden for enforcement of the licenses; the Town should review those regulations and if those are lax, move it from DoH and hire a person to come up with ways to solidify those regulations.

Roche – At the 1st meeting, Director DoH Roberto Santamaria said they can't go onto private property, so enforcement is difficult; the Fertilizer Advisory Group (FAC) did this 10 years ago with the impact having become greater in the past 10 years. She supports Mr. Giorgio's suggestion.

Molden – Agrees with Mr. Saperstein regarding sources of nitrogen. We need to address those factors over which we have control; the information she submitted reviews those sources. Also agrees that Mr. Giorgio's proposal is a good way for FinCom to move forward to tighten up the Fertilizer Regulations.

Glowacki – All, but one, in-harbor test sites are outside the sewer district.

Molden – Septic and waste water are contributing factors.

Saperstein – The Article 68 Workgroup was replaced by the FAC. We should not establish internal conflict within the Town but migrate the regulations from DoH to the Town and close down Regulation 74.

Kronau – We have been presented with an excellent suggestion to rework to establish the authority of NP&EDC and UMass to establish workable fertilizer regulations for Nantucket and to do that, we must request an extension on the State deadline.

Fournier – She heard at this hearing that there's data which doesn't support our TMDL; you can see over the past 10 years that we exceed our harbor TMDL and that is extending into our great ponds.

Motion **Motion to Close the Public Hearing.** (made by: Roche) (seconded)

Roll-call Vote Carried 8-0//Glowacki, Maury, Harrington, Vieth, Grause, Schaeffer, Roche, and Kronau-aye

Kronau – Asked how the motion would be worded.

Giorgio – Move for Town Counsel to draft a revised Home Rule Petition under Article 79 that would extend the deadline by which NP&EDC would have to adopt a fertilizer plan in conjunction with UMass Extension.

Discussion on the motion as stated.

Glowacki – Asked if the moderator would find that is within the scope of the article.

Giorgio – He sees no reason why; it's less extensive than the total ban. He will consult with the Moderator.

Glowacki – He thinks the appropriate motion is Not to Adopt.

Vieth – Asked if the Board of Health (BOH) would have to certify the action with a 4-5th vote.

Maury – This motion is a recommendation; he doesn't understand the objections.

Glowacki – Town bodies can do as Mr. Giorgio suggested now. There is a path to attain this goal without a home rule petition. He's okay with further study and FAC getting involved.

Vieth – She looks at this as how we evaluate this body; we aren't a regulatory board.

Giorgio – The window option written into the legislation that allows for adoption of more stringent fertilizer regulations this has been closed. We need an act of the legislature to extend that deadline. That extension would allow the NP&EDC in conjunction with UMass Extension to draft a fertilizer plan for more regulations, which would then be adopted by the BOH. The BOH is the actual regulatory agency who has the authority to adopt the regulations, but under this procedure it must be under the recommendation by the NP&EDC.

Vieth – Asked if BOH could ask the NP&EDC to put together an updated fertilizer plan.

Gibson – Early on it was thought that wasn't necessary because the regulations could be enacted. Issues arose subsequent to that and the deadline came and went.

Grause – Town Counsel has said the article as written would die in the Legislature. We aren't going to get any reduction in nitrogen if you go that route. Mr. Giorgio offered a reasonable alternative to get tighter fertilizer use on Nantucket. He feels that's a reasonable compromise and path forward.

Vieth – That sounds like you don't like this article but want to insert a new article. This would be changed to a huge extent.

Grause – Town Counsel has told us the article as written would die in the Legislature. There might be other ways to affect what the BOH does; but this seems a reasonable and creative compromise in tighter fertilizer rules, which he feels necessary.

Vieth – We're here to analyze the article as written. We could have a comment that we don't support the article but encourage the BOH to update their fertilizer regulations.

Kronau – The conversation is that there is a path forward without saying no to the article. What Mr. Giorgio has pointed out is that the deadline has passed, and that NP&EDC can do it without us, but it will have more weight if we recommend the article as amended effectively endorse NP&EDC taking action.

Glowacki – It might seem easy to say the data is inconclusive, but it's also easy to not care. There is a real risk – an industry group that has come to the table in a positive to engaged to be a partner to the community. If you don't keep them engaged, you create a horrible precedent against inviting other trade groups to the table regarding the environment.

Kronau – Asked how the suggestion as presented by Mr. Giorgio turns our back on the partners we've had so far.

Glowacki – As presented it's a work-around for a fertilizer ban and not through Town Meeting. Referenced the Inquirer and Mirror of January 27th, front page, which supports his opinion.

Grause – He thinks Mr. Giorgio's suggestions provides an interesting avenue to achieve more restrictive fertilizer regulations. He doesn't support the article as present it is a total ban on fertilizer.

Motion

Move to authorize Town Counsel to draft a revised Home Rule Petition under Article 79 that would extend the deadline by which NP&EDC would adopt a Fertilizer Plan in conjunction with UMass Extension which would then go to the BOH for public hearing, discussion, and approval. (made by: Roche) (seconded)

Roll-call Vote Carried 5-2//Schaeffer, Maury, Roche, Grause, and Kronau-aye; Glowacki and Vieth-nay

2. Article 84 (Rescind Article 77 of the 2018 Annual Town Meeting) – John F. McGrady, Jr., sponsor

Speakers John McGrady

Discussion **Kronau** – We can't make a recommendation on a legally defective article. Asked Mr. Giorgio to explain the problem.

Giorgio – The problem with this article is that you can't rescind a vote that has taken legal effect. Under Article 77, the Town voted to transfer the custody of 10 Surfside Road from the Nantucket

School Committee to the Select Board. That also required a vote of the custodial board to declare the land is no longer needed. As he understands, the School Committee hasn't made that vote, but they will; when they do, that land is effectively transferred to the Select Board. You would have to start the process all over again. The Select Board would have to vote to declare the land is no longer needed and ATM would have to vote by 2/3rd majority to transfer the land back to the School Committee. This article isn't sufficient to accomplish Mr. McGrady's goal.

Motion **Motion to Take No Action.** (made by: Grause) (seconded)

Roll-call Vote Carried 8-0//Glowacki, Schaeffer, Harrington, Grause, Roche, Vieth, Maury, and Kronau

3. Article 83 (Scheduling of Annual Town Meeting and Annual Town Election) – John F. McGrady, Jr., sponsor

Speakers John McGrady

Discussion **Kronau** – This would allow for there to be 14 days between ATM and the subsequent election.
McGrady – This is the way it used to be; we cut that time short making it difficult for some people to express their thoughts and position. This gives them back that time. Feels we stifle those people who couldn't attend ATM.

Gibson – Read Town Administration's comments, "Traditionally there has been 8 to 10 days between ATM and Town elections depending on the day of the week ATM occurs." She questions the purpose of an additional 4 to 6 days. Holidays and school vacation could interfere with the vote. People can voice their opinions at any time to include before ATM.

Giorgio – This is a non-binding directive. Under the general laws, the Select Board determines the date of Town Meeting and the date of Town elections.

Grause – He doesn't agree with Mr. McGrady; to him this is a take no action type article.

Motion **Motion to Close the Public Hearing.** (made by: Schaeffer) (seconded)

Roll-call Vote Carried 8-0//Schaeffer, Glowacki, Grause, Harrington, Roche, Vieth, Maury, and Kronau-aye
Schaeffer – Other than it might be mechanically difficult to extend the time 3 or days, asked if there is any other reason to be against this.

Gibson – Not really.

Giorgio – There would be no legal reason not to do this. For your information, under the general laws, if the Town Meeting and Town Election are less than 35 days apart, you can issue a single warrant for both. Having a 14-day period would still comply with that provision.

Motion **Motion to Adopt.** (made by: Schaeffer) (seconded)

Roll-call Vote Carried 5-3//Glowacki, Schaeffer, Harrington, Vieth, and Kronau-aye;
Maury, Roche, and Grause-nay

4. Article 69 (Bylaw Amendment: Single-Use Plastics – Alcoholic Beverages of Less Than or Equal to 100 Milliliters) – Bruce Mandel, sponsor

Speakers Bruce Mandel

Discussion **Giorgio** – This and 70 aren't written in a manner that if they don't both pass or fail, they create difficulty within the Town Code. The FinCom should focus on what the petitions are trying to accomplish. If the Committee chooses, he can draft motions, so each article can stand alone.

Kronau – She and Mr. Mandel exchanged emails and she said would state that anyone had questions, they could ask him.

Schaeffer – On the nips, asked if the liquor store has the option to buy the glass nip bottles versus the plastic, realizing it would cost more.

Mandel – The manufacturers and distributors offer them in either a small glass or plastic container; he's not aware of an option. There are alternatives such as slightly larger containers.

Motion **Motion to Close the Public Hearing.** (made by: Maury) (seconded)

Roll-call Vote Carried 8-0//Glowacki, Schaeffer, Maury, Vieth, Harrington, Grause, Roche, and Kronau-aye
Schaeffer – He agrees with the reasoning but he's uncomfortable with asking small businesses to drop part of their revenue, especially in a limited market. Also, in his opinion, having people buy

larger containers of alcohol could be a bigger problem in the future. Feels it will negatively impact the liquor stores; we're talking about \$100,000 a year.

Maury – He didn't get that impression that it would be a big deal for the liquor stores from a financial standpoint, especially considering the amount of money they gross.

Harrington – He looks at the effect on the population that utilizes these; the money or profit is secondary to the issue. Smoking and drinking aren't our problem. He feels both of these are poor articles and won't have the expected result.

Glowacki – He's uncomfortable with banning products when we don't understand people's use of the products. His primary consideration is making a decision for the consumer. He'd like a more creative way to deal with this such as recycling.

Roche – We have an environmental concern regarding trash and agencies dealing with the Island addiction issues. For her it's hypocritical to not support this article when we have to reduce plastic in our land fill and deal with addiction.

Giorgio – Thought the discussion has focused on the containers, there also appears to be another addition that defines and prohibits products in plastic/non-compostable containers – Sub-section E of Section 2.

Mandel – He submitted these in 2 forms for Town Counsel's review; this is the version including a tweaking from a prior discussion with Mr. Giorgio that would define these items. The issue is containers that are not recyclable or compostable and need to be shipped off.

Giorgio – This article would also ban boxed water, carbonated water, energy drinks, and flavored water in plastic or non-compostable package. If the intent is to add the new sub-section, he can draft the motion that way; he wants to ensure the FinCom is aware this article bans more than just nip bottles.

Kronau – Pointed out that the ban also includes "single-use" glass products, not just plastic. All of our discussion was about plastic nip bottles when it's plastic or glass nip bottles.

Grause – This article will ban any container of 1 liter or less regardless of contents.

Giorgio – Those prohibitions take effect on July 1 2020, which has passed; he's unsure of the intent. If the FinCom want's a positive motion, he can discussion it with Mr. Mandel. Otherwise the appropriate action is to take no action.

Harrington – He's concerned about confusion and unanticipated consequences.

Motion **Motion Not to Adopt.** (made by: Schaeffer) (seconded)

Roll-call Vote Carried 7-1//Glowacki, Maury, Vieth, Harrington, Grause, Schaeffer, and Kronau-aye; Roche-nay

5. Article 70 (Bylaw Amendment: Single-Use Plastics – Single-Use Plastic Fiber Tobacco Filter Products) – Bruce Mandel, sponsor

Speakers Bruce Mandel

Brian Fojtik, National Association of Tobacco Outlets

Discussion **Giorgio** – As he reads this, this article bans the defined products as well as plastic, fiber tobacco filters.

Schaeffer – This essentially bans cigarettes, which he supports. However, if nips are going to hurt revenue, this is worse. People would still bring them back from the main land. There is no real option.

Fojtik – It would be impossible to replace current filtered cigarettes with a different filter without a huge inconvenience. Blanket prohibitions aren't effective; the products would be brought to the Island regardless. This would harm retailers by impacting up to 35% of their revenue. Education is a better way to affect meaningful long-term change.

Mandel – The intent is to protect our Island's environment; these discarded toxic pieces of plastic are "unfriendly" to our ground water. We've tried education and get cigarette receptacles placed. We're talking profitability versus our environment. Nips and filters are the Nr. 1 litter items on Nantucket.

Gibson – Regarding receptacles, the BOH has adopted regulations the prohibit smoking on all Town properties; that’s nearly impossible to enforce, so we’ve fallen back on education.

Motion **Motion to Close the Public Hearing.** (made by: Schaeffer) (seconded)

Roll-call Vote Carried 8-0//Schaeffer, Maury, Vieth, Harrington, Grause, Roche, Glowacki, and Kronau-aye
Kronau – Confirmed it has the same definition/prohibition language regarding containers.

Motion **Motion Not to Adopt.** (made by: Schaeffer) (seconded)

Roll-call Vote Carried 6-2//Schaeffer, Vieth, Harrington, Grause, Glowacki, and Kronau-aye;
Roche and Maury-nay

6. Article 82 (Ombudsman Establishment - Complaints) – Theresa Williams, sponsor

Speakers None

Discussion **Giorgio** – We’ve seen this article in various forms over the last several years and never received a positive vote at ATM. The biggest change appears that it’s intending to adopt an act; he thinks that means a home rule petition. It is extremely scant on detail and so would never pass the Legislature. If the article as written passed at ATM, there is almost no detail on jurisdiction and types of complaints to be decided. You don’t want to create a scenario where an ombudsman doesn’t have clearly defined jurisdiction. If this something Ms. Williams wants to develop and get passed at Town Meeting, she needs to talk to me, so I can get a better sense of her intent. Recommends this not be adopted.

Motion **Motion to Close the Public Hearing.** (made by: Schaeffer) (seconded)

Roll-call Vote Carried 8-0//Schaeffer, Maury, Vieth, Harrington, Grause, Roche, Glowacki, and Kronau-aye

Motion **Motion Not to Adopt.** (made by: Glowacki) (seconded)

Roll-call Vote Carried 8-0//Schaeffer, Maury, Vieth, Harrington, Grause, Roche, Glowacki, and Kronau-aye

7. Article 72 (Amend Town Wharf and Waterways Prohibited Activities) – Campbell Sutton, sponsor

Speakers Campbell Sutton

Discussion **Kronau** – She doesn’t think this is within the FinCom purview and so can’t make a decision.

Sutton – That is how she understands it as well. It is under Chapter 250 for the Select Board. Asked if this it could still get a non-binding vote.

Gibson – The current regulations requires dinghies be removed from certain locations at certain times. This seeks to change that by 2 weeks in one location and by 1 day at another. If the Shellfish Advisory Board (SHAB) feels this is important, they can make that recommendation directly to the Select Board. Suggested taking this request to SHAB.

Sutton – Asked if it could still get a sense-of-meeting vote.

Giorgio – The Town is getting into the habit of loading the warrant with non-binding resolutions; that is getting out of hand. It doesn’t mean anything to get a non-binding vote; it just creates confusion. It’s better to follow Ms. Gibson’s recommendation to go the SHAB to request the change. It’s dangerous to cross jurisdictions. Town Meeting it to appropriate money and pass bylaws.

Motion **Motion to Close the Public Hearing.** (made by: Maury) (seconded)

Roll-call Vote Carried 7-0//Glowacki, Roche, Grause, Harrington, Vieth, Maury, and Kronau-aye

Giorgio – Recommends a motion to take no action.

Motion **Motion to Take No Action.** (made by: Maury) (seconded)

Roll-call Vote Carried 8-0//Glowacki, Maury, Vieth, Harrington, Grause, Roche, Schaeffer, and Kronau-aye

8. Article 80 (Home Rule Petition: Historic District Commission - Solar) – Jeff Booms, sponsor

Speakers Jeff Booms

Discussion **Maury** – Asked how many applications for solar he was involved in were denied.

Booms – He’s been indirectly involved with 3 denials; 9 Denis Drive and 34 Meadowview Drive are not in the old historic district. The objections were that the panels faced the street.

Maury – The article still allows the commission to reasonably deny applications; asked how that is different.

Booms – We believe there would be less denials with a directive to allow panels outside the OHD that face the road. There was a comment about the small percentage of denials by the HDC; what isn't being considered is the immense amount filtering that happens before they get to the HDC. First is nearly 100% of properties on the north side of a street won't apply because they won't get approved; second is the installers telling clients that an application has a high probability of not passing so they aren't willing to spend the money. Our energy consumption is growing at 6% annually; we are passing up half of our capacity.

Grause – You said there were three denials; Ms. Holly Backus in her material talked about HDC's willingness to work with contractors. He takes it the 3 projects didn't come back with acceptable modifications.

Booms – The roof array faced the street and there were no large trees. Sometimes HDC will ask for changes; the experience can cause an array to become non-viable. These sat about 50' from the road with no screening. The south facing roof can provide up to 90% capacity while the north-facing roof provides only 34% capacity; the payback goes from 6 to 12 years.

Kronau – Ms. Backus wanted to participate in this, but she had to leave to go to the HDC. She asked if we can hear this again when she can participate. That seems reasonable to her.

Maury – Suggested that if there's a negative recommendation on this and see if that passes.

Motion **Motion to Close the Public Hearing.** (made by: Glowacki) (seconded)

Roll-call Vote Carried 8-0//Glowacki, Schaeffer, Grause, Roche, Vieth, Harrington, Maury, and Kronau-aye
Maury – He's not unsympathetic to Mr. Booms' concerns; we ought to support renewable energy. However, he's also sympathetic to the efforts of the HDC and its value to the Island. Suggested Mr. Booms go back to the HDC and work with them to come up with something that would be less arbitrary. He feels doing an end run around is inappropriate.

Motion **Motion Not to Adopt.** (made by: Maury) (seconded)

Roll-call Vote Carried 8-0//Glowacki, Schaeffer, Grause, Roche, Vieth, Harrington, Maury, and Kronau-aye

VI. COMMITTEE REPORTS

1. Contract Review Committee: Roche
2. Capital Program Committee: Vieth

VII. NEXT MEETING DATE/ADJOURNMENT

Date: Thursday, February 10, 2022; 4:00 p.m.

VIII. OTHER BUSINESS

1. **Turbitt** – He will follow up to find out when the CRC report will be done; he thinks the end of February.
2. **Giorgio** – Explained how Article 79 will go forward with the FinCom sub-section motion.

Adjournment:

Motion **Motion to Adjourn at 6:13 pm.** (made by: Grause) (seconded)

Roll-call Vote Carried 8-0//Glowacki, Schaeffer, Grause, Roche, Harrington, Maury, Vieth, and Kronau-aye

Submitted by:

Terry L. Norton