

**TOWN OF NAHANT**

**Planning Board**

**March 21, 2023**

The Chairman called the hearing to order at 6:05 pm, stating that the meeting was properly noticed, and then calling the roll of those members attending:

Rob Steinberg – Chairman - Here  
Calvin Hastings, Vice Chairman – Joined at 6:28  
Sheila Hambleton –Joined at 6:28  
Patrick O'Reilly –Here  
Steven Viviano – Here  
J Shannon Bianchi, Corresponding Secretary – Not Present  
John Stabile– Recording Secretary –Here

James Dolan – Not Present  
Michelle Capano – Here

The Chairman asked for approval of the minutes of February 21, 2023. The motion was made by John and seconded by Steve. The vote was as follows:

Rob Steinberg – Chairman - Yes  
Calvin Hastings, Vice Chairman – Not Present  
Sheila Hambleton – Not Present  
Patrick O'Reilly – Yes  
Steven Viviano – Yes  
J Shannon Bianchi, Corresponding Secretary – Not Present  
John Stabile– Recording Secretary – Yes

The meeting was suspended at 6:10 and restarted at 6:28 due to technical difficulties for two Board members.

The Chairman asked for approval of the minutes of March 13, 2023. The motion was made by John and seconded by Steve. The vote was as follows:

Rob Steinberg – Chairman - Yes  
Calvin Hastings, Vice Chairman – Abstain  
Sheila Hambleton – Yes  
Patrick O'Reilly – Not Present  
Steven Viviano – Yes  
J Shannon Bianchi, Corresponding Secretary – Not Present  
John Stabile– Recording Secretary – Yes

The Chairman asked for approval of the minutes of March 15, 2023. The motion was made by Cal and seconded by John. The vote was as follows:

Rob Steinberg – Chairman - Yes  
Calvin Hastings, Vice Chairman – Yes  
Sheila Hambleton – Abstained

Patrick O'Reilly – Yes  
Steven Viviano – Yes  
J Shannon Bianchi, Corresponding Secretary – Not Present  
John Stabile– Recording Secretary – Yes

A suggestion has been made that the notice of our hearing was legally insufficient.

The Chairman noted that he extensively consulted with Town Legal Counsel on this issue. As far as notice of the proceeding, the required notice, after review and revision by Legal Counsel was timely sent and published in the Lynn Item both in February and early March, and the confirmation of approved publication was sent to the Town Clerk. In addition to notification of the Chairman of the Short-Term Rental By-Law Advisory Committee ("STRC") and leader of the Citizens' Group (who had confirmed with me his agreement to represent the Citizens' Group before the PB), I also notified the Building Department, Health Department and ZBA via email. In addition, the Chairman stated that he sent emails to the following persons/entities [mmeaney@swampscottma.gov](mailto:mmeaney@swampscottma.gov) (for Swampscott PB); [jjicerulli@lynnma.gov](mailto:jjicerulli@lynnma.gov); [Mdraisen@mapc.org](mailto:Mdraisen@mapc.org); [alinehan@mapc.org](mailto:alinehan@mapc.org); [lrobbins@mapc.org](mailto:lrobbins@mapc.org), [cbrandt@mapc.org](mailto:cbrandt@mapc.org) [Maryssa.mclean@mass.gov](mailto:Maryssa.mclean@mass.gov) (Department of Planning and Community Development). The proposals for the STRC and Citizens' Group were posted on the Town Website and distributed to the Planning Board members prior to the hearing. The Town Clerk conspicuously posted the approved legal Notice at Town Hall and on the Town Website.

After inquiry by the Chairman as to the sufficiency of notice, Town Legal Counsel wrote about the Town of Worthington matter: "As for mistakes in notice and/or procedure, the attached MLU decision outlines the AG's power to waive defects. In that case, not only did the Town of Worthington Planning Board failed to send notice to the DHCD, et al., but it also failed to post the ad twice before its hearing. Notwithstanding, the AG waived those defects and allowed the matter to proceed."

As for specific issues raised by the objecting party, Town Legal Counsel wrote:

**No address was listed in the legal advertisement for where the hearing would take place.**

MGL c 40A, §5 (Adoption or change of zoning ordinances or by-laws; procedure) outlines the procedure for amending zoning by-laws, including notice requirements. Section 5 requires the Notice to include the "time and place" of the hearing. Your notice indicated that the hearing would take place at "Town Hall". That sufficiently identified the place of the hearings.

**2. No names of petitioners.**

**3. No addresses of petitioners.**

Section 5 does not require this information to be in the notice. It seems Shannon is grabbing this language from MGL c 40A, §11 which is aimed at hearings regarding administrative appeals, variances and SPs. Even more, Section 11's language does not stand up to reason because including all the petitioners' addresses in the notice would be unreasonable. As I recall, the CP has over 20 such petitioners (and a STM requires 100 petitioners).

**4. Two hearings on two different dates were consolidated into one legal ad; each hearing should be individually noticed.**

The hearings were noticed. The notice clearly identified the different dates and subject matters of each hearing. Section 5 does not prohibit the notice we used. Moreover, Section 5 contains a failsafe: "No defect in the form of any notice ... shall invalidate any zoning ... by-laws unless such defect is found to be misleading." Your notice is not misleading, not to mention defective.

## **5. Notice was emailed, not mailed via USPS.**

This is a distinction without a difference. Section 5 was passed in 1975, long before e-mails existed. As such, it is reasonable today to interpret "sent by mail" to include e-mailing. Even more, Section 5 requires mailings to "the department of housing and community development, the regional planning agency ... and to the planning board of each abutting .. town." If I recall correctly, in years past our PB never even bothered to do this.

Based on this legal advice, the Chairman has determined to move forward with proceedings.

Sheila asked whether the proceedings will be waived by AG. Dan Skrip said email is tantamount to mail in the court realm. There is nothing that doesn't permit joint notice – in fact, joint notice is arguably better.

On issue of whether who can deliberate and vote, the Chairman has determined that all members present today can deliberate regardless of whether present at one or both hearings; however, only members who attend the STRC hearing on March 13 can vote to approve the recommendation and comments on the STRC proposal.

Dan Skrip said up to Selectmen create the rules and regulations that apply to all short-term rentals. As far as the ZBA, they apply the criteria and there will not be regulations for ZBA.

Chairman asked Michelle to summarize the key differences between the STRC proposal and the Citizens Petition.

Patrick said there should have been more specificity in the STTC proposal and amendments could be offered. The Chairman noted that we have to either accept or reject the proposal and don't have authority to rewrite it.

The Chairman and Steve said that STRC offers a better framework and the criteria.

Rob Tibbo said that with respect to more specific regulations, STRC, with Dan Skrip's counsel, focused on designing a more general by-law and what was considered to be regulations were set aside.

The Chairman then asked the 3 other members present whether they would vote in favor of the STRC proposal. Sheila noted that she had not read it and needed more time. The Chairman then noted he would submit a draft proposal recommending approval of the STRC amendment and then described in details 6 potential comments on the recommendation along with a statement as to the objective the Town seeks in put forward restrictions on short-term housing. More specifically, the Chairman noted that the Planning Board should note the benefits of short-term housing with restrictions to avoid disruption of neighborhood to the Town and the reliance interest of those persons who operate short-term housing of the tacit acceptance by the Town.

The Chairman noted he would draft a proposed statement for consideration by the PB.

The Chairman asked for a motion to adjourn. Sheila so moved, seconded by Steve. The vote was as follows:

Rob Steinberg – Chairman - Yes

Calvin Hastings, Vice Chairman – Not Present

Sheila Hambleton – Yes

Patrick O'Reilly – Yes

Steven Viviano – Yes

J Shannon Bianchi, Corresponding Secretary – Not Present

John Stabile– Recording Secretary – Yes

Public meeting adjourned at 7:58 pm

Meeting Minutes prepared by Recording Secretary and Rob Steinberg.

Approved by Planning Board on March 27, 2023 .