
TO: Andrew Vorce, Director of Planning and Land Use Services (*By Electronic Mail Only*)

FROM: John W. Giorgio, Esq., KP Law, P.C. Town Counsel

RE: Town of Nantucket - Sign Advisory Council

DATE: August 17, 2022

You have asked me to analyze the legal status of the HDC Advisory Committees, including the Sign Advisory Council (SAC).

You have informed me that according to the Nantucket Annual Reports, advisory committees have been created at various times in the past. The practice has been that the HDC appoints the members of each of these advisory committees, including the Sign Advisory Council (SAC – 1980), the Design Advisory Committee (DAC – 1972) (now inactive), Siasconset Advisory Committee (SCAC – 1986/87), Madaket Advisory Board (MAB - 2004), Tuckernuck Island Advisory Council (TIAC – 1994) (meetings are infrequent), and the Historic Structures Advisory Board (HSAB - 2004) . The advisory committees typically conduct a pre-review of applications pending before the HDC. You are concerned that over the years the scope of this pre-review has expanded considerably, and often, the advisory committee recommendations go beyond being merely advisory in nature which results in an intrusion on the discretion of the elected HDC and causes confusion for applicants. As an example, you have provided me with a copy of the HDC’s Sign Book, wherein the HDC created the Sign Advisory Council, which is described as “advisory only.”

I have reviewed the Charter and bylaws of the Town, the HDC Special Act, and Chapter 40C of the General Laws and I can find no legal authority for the creation of any advisory committees by the HDC. An elected body cannot delegate authority to non-elected standing committees without specific legislative authority. In fact, Section 3.5 (c) of the Town Charter reserves to the Select Board the authority to appoint advisory committees. It is my opinion, therefore, that the HDC never possessed the legal authority to create the advisory committees or to delegate any of its authority to such a committee. While the HDC may establish one or more subcommittees of its members and to delegate to such a subcommittee certain function including a pre-review of applications, in my opinion the HDC does not have the legal authority to create an advisory committee consisting of individuals who are not elected members of the HDC. In my opinion, the HDC also has the legal authority, as an administrative matter, to request Town staff assigned to support the work of the HDC, and to conduct a pre-review of applications in order to streamline the application and hearing process.

If HDC wants to continue having an SAC, my recommendation would be that the HDC vote to request that the Select Board formally vote to reconstitute the SAC pursuant to its Charter authority, and in doing so, the Select Board should vote on a charge to the SAC that spells out the scope and limits of authority of the SAC. The charge should make it clear, however, that the SAC is only advisory. If the SAC is to be reconstituted, then Chapter 124 of the Code of the Town of Nantucket should be amended to allow for an advisory committee to be appointed by the Select Board under its Charter provisions.

Unlike the SAC, which functions in the context of the Sign Bylaw (Chapter 124 of the Town Code), the subject matter of the other advisory committees do not have specific recognition in town bylaws and their function is indistinguishable from the HDC's review as an elected Commission. Retaining all or any of these, therefore, will require amending the enabling legislation. Until such time as the advisory committees are legally reconstituted, which may or may not occur, they should discontinue any meetings or deliberations.

Please let me know if you have any questions.