

**APPROVED**  
**Meeting Minutes**  
**Chilmark Planning Board Meeting**  
**January 23, 2023**  
**4:30PM**  
**Via remote participation**

Present: Ann Wallace, Hugh Weisman, Janet Weidner, Mitchell Posin, Catherine Thompson, Rich Osnoss, Peter Cook

Not Present:

Public & Board/Comm. Members: Clark Goff

Staff: Jennifer Christy, Admin. Asst.

Site: Remote Meeting/Participation on ZOOM

Chairperson Rich Osnoss called the meeting to order at 4:31PM.

**Review of the Zoning Bylaw Amendment Proposal, section 4.2A, 3. Swimming Pool and/or Tennis**

**Court:**

- Discussion occurred about the proposal and what the ramifications may be if the Board members recommended going ahead with the “required” word in the section h. Pool Heaters, a. Ann Wallace mentioned a downside would be that the other proposed changes in other sections of the bylaw section 4.2A, 3. would not have a chance to be passed due to the fact that the bylaw amendments may likely be rejected by the Attorney General.
- It was confirmed that Board member Hugh Weisman and Rob Hannemann of the Chilmark Energy Committee are in favor of submitting a bylaw amendment proposal to the Town voters which includes stronger language in section h. to require the applicant for a pool special permit to “use a fossil fuel-free heating system technology, such as solar thermal panels or heat pumps, and are encouraged to generate the necessary power on site.” Peter Cook inquired what the downsides would be if the Board supported this requirement rather than supporting the language in the bylaw that just encourages applicants to use fossil-fuel free energy sources.
- Cathy Thompson pointed out that Town Counsel has not advocated the use of the required language in the bylaw proposal.
- Rich Osnoss mentioned that he may be in favor of inserting the stronger language in section h. due to the fact that it does align with the Town needing to be more cognizant of climate change issues and energy conservation issues.
- Ann Wallace stated she felt she agreed with Hugh Weisman in spirit, but also felt that she was not sure she wanted to risk the other strengthening aspects of the bylaw proposal by insisting on the “required” language in section h. She thought that if the word “encouraged” in section h. is included in the proposal then the bylaw proposal may be more likely to be approved by the Attorney General and then the Town may go back again to separately try to change the wording in h. to “required”.
- Rich Osnoss read aloud the emailed statement from Town Counsel re their review of the swimming pool bylaw proposal, received by the Planning Board on Dec. 22<sup>nd</sup>:

“I do not think the AG’s office will approve the proposed amendment “requiring” pools to be heated by fossil fuel free heating technology. We have learned in previous efforts to amend zoning by-laws that the Municipal Law Unit takes the position that (as it must), under St. George Greek Orthodox Church v. Fire Department of Springfield, 462 Mass. 120 (2012), zoning by-laws imposing different standards or criteria from the

Massachusetts State Building Code are preempted so that “a patchwork of building regulations” does not “ensue” statewide. See attached response to a previous amendment.

The Massachusetts Building Code has incorporated the International Swimming Pool and Spa Code (ISPSC), with certain amendments. Section 303.3 of the ISPSC states that **“Residential pools and permanent residential spas.** The energy consumption of *residential* swimming pools . . . shall be controlled in accordance with the requirements of ASPP 15.” (Attached). Section 4.3 (“Heaters”) of APSP-15 (Standard for Energy Efficiency for Residential Inground Swimming Pools, and Spas” addresses “Energy Design” (Section 4.3.1) and “Heater Efficiency” (Section 4.3.2). Section 4.3.2.1, for example, states that “[g]as-fired pool heaters and oil-fired pool heaters shall have a thermal efficiency of not less than 78 percent.” While Section 4.3.2.2 establishes efficiency requirements for “[h]eat pump pool heaters”, these sections, read together, permit traditional energy sources to heat residential pools. A local regulation conflicting with these governing state codes, by requiring fossil fuel free heating technology, in my view, would not be approved by the AG or upheld by a court.

The AG’s office will likely advise us, as it has in the past, that the town can petition the Board of Regulation of Building Standards for permission to enact a more restrictive regulation, but the likelihood of gaining approval from that entity is not likely. That route is available to the Town, however. The AG’s office typically will put proposed amendments “on hold” until a municipality has exercised that option.”

- Discussion occurred about the possibility of separating the bylaw proposals and Hugh Weisman made a motion to approve two separate bylaw amendment articles: one would cover changes to sections g. & h. and the other would address the other suggested changes to the swimming pool bylaw. More discussion occurred.
- Peter Cook expressed concern that Town voters will not be able to understand what may be happening if two versions of the bylaw are presented. Hugh Weisman read aloud from the current bylaw sections regarding covers and heating and expressed the view that what is currently in those bylaw sections is good and should not be changed. Peter Cook thought that Hugh may be correct and Peter Cook suggested that no changes be proposed, from the current existing bylaw, for sections g. & h. as a way to solve the issue of whether to proceed with language that changes g. and h.
- Discussion occurred about whether the Attorney General would review parts of the Town’s zoning bylaw that were not being proposed to be amended. Jennifer Christy stated she did not think that this would occur, but was not sure. The Board members reviewed the bylaw proposal and discussed further the idea to eliminate any of the proposed changes shown in section g. & h.
- After further discussion, it was agreed to not seek further opinion from Town Counsel and Hugh Weisman moved to proceed with just one amendment proposal that is the currently considered amendment proposal of section 4.2A, 3. without any changes to section g. & h. The motion was seconded and voted unanimously by a roll call vote.

**Accessory Apartment Zoning Bylaw Amendment Proposal Discussion:**

- Rich Osnoss discussed his findings after his review of the zoning bylaws. He wondered about the fact that some parts of the bylaw regulate things using total living area measurements and others by square footage.

- Rich Osnoss shared a draft document of his proposed amendment to the Accessory Apartment bylaw, section 6.12, 4. Size Restriction. Discussion occurred regarding stairs to basements, second floors and also screened porches.
- Hugh Weisman will be performing some research on Accessory Apartment bylaws in other towns and will return with information.
- Mitchell Posin had to leave the meeting.
- Laura Silber, of the MVC, attended the meeting and spoke about possibilities for accessory dwellings. She noted the Housing Assistance Corporation as a resource and noted that it may be available to the islands soon. Laura Silber also described the options for timeshare and fractional ownership regulation in the form of general or zoning bylaws.
- Laura Silber shared her screen to discuss a company called Pacaso which purchases properties and then sell off fractional ownership of the property. Laura Silber discussed how Nantucket's timeshare bylaw did not protect it from fractional ownership. She noted that Nantucket sent Pacaso an advisory letter and Pacaso responded to deny they were in violation of timeshare bylaws. Nantucket, Laura Silber noted, is planning to add the term "fractional ownership" to its timeshare bylaw and to bring this amendment before voters this spring.
- Laura Silber noted that there are many model bylaws to review and it may be tailored specifically to the Town. She noted that family co-shares of a home are protected and this would address commercial fractional ownership of a property. Laura stated she would share Park City and Sonoma's fractional ownership bylaw which allows for friends and family to own a fraction while restricting the commercial fractional ownership.
- Laura Silber stated that short-term rental regulations are a different thing from fractional ownership regulations.
- Laura Silber noted that Nantucket's spring town meeting warrant deadline is soon approaching and there may be draft language about regulating fractional ownership available at that point. Rich Osnoss mentioned that a subcommittee may need to be formed to address this topic. Laura Silber noted that a model bylaw may be available soon.
- Ann Wallace requested that this topic be placed on the next agenda.

#### **Master Plan:**

- Ann Wallace spoke about the updated memo she developed about the cost to island towns for Master Plans. Ann Wallace noted that the cost to island towns appears to be close to \$100,000 to create or update a Master Plan.
- Rich Osnoss suggested the creation of a Master Plan Subcommittee to focus the process.
- Rich Osnoss suggested contacting Adam Turner to provide some guidance for updating the Master Plan in a way that saves money.
- Janet Weidner suggested also that Cheryl Doble's ideas for working towards an updated Master Plan would be helpful and asked if Jennifer Christy would please send those documents and information to the Board members.

#### **Town Report 2022:**

- Discussion occurred after a review of the draft and the Board recommended:
  - In first paragraph, please change the year to 2023 rather than 2024.
  - In first paragraph, changes were made to the language.
  - The topic of Peaked Hill Pastures affordable housing warrant article that was passed in 2022 was broached. It was determined to include a short paragraph about this concept plan in the report.
  - Include the swimming pool bylaw work as well and the public hearings held.

#### **Admin. Asst. Topics:**

- FY2024 Budget Hearing Follow-up: Rich Osnoss provided a summary of the presentation.
- King's Highway: Jennifer Christy updated Board members on the status of Caleb Slater's informal discussion and Rich Osnoss updated Board members on the discussion with Town Counsel on the King's Highway.
- Research on building pace: Jennifer Christy updated the Board Members on the status of gathering this data.

**Correspondence:**

- No correspondence was reviewed.

**Minutes:**

- No minutes were reviewed.

**Topics Not Reasonably Anticipated by the Chair at the Time of Posting:**

A motion was made to adjourn the meeting. The motion was seconded and passed unanimously by roll call vote.

**Next Meeting(s):**

- Monday, February 13 , 2023, 4:30PM

**Documents:**

- Proposal for amendments to the swimming pool section of the Chilmark Zoning Bylaws.

Meeting adjourned at 6:23PM. Minutes respectfully submitted by Jennifer L. Christy