

Memorandum

To: Linda Wollschlager, Finance Committee Chairperson

From: Michael Hickey, Select Board Member

Re: Request for Reconsideration – 2021 SATM Art. 22¹

Date: March 30, 2021

I. Introduction

The Finance Committee (“Fin Com”) voted at its March 16, 2021 public hearing to refer 2021 SATM Article 22 back to the Select Board (which sponsored the Article). We spoke the following day and you kindly explained the process by which the Select Board could seek Fin Com reconsideration. Please accept this memorandum as the Select Board’s request that the Fin Com reconsider Article 22.

II. Background/Rationale for the Article

My opening remarks at Fin Com’s March 5, 2020 public hearing provide background and rationale²: *“During a Select Board meeting in May, 2019, we had a discussion of an alcoholic beverage policy and concluded the town needed to take a holistic look at what is / is not allowed ... [given] ... missed opportunities ... for example, high-end cheese shops, butchers, and specialty shops coming to Natick Center. Although they considered coming to Natick Center, unfortunately they decided to go elsewhere because of the inability to sell beer and wine with other primary goods. We were looking at bringing something forth during Fall ... [2019] ... Town Meeting, however due to the fire ... we were delayed ... [t]he town has seven off-premises licenses that are all currently taken ... [t]he board has prepared [the] motion with the input of Town Counsel and Mr. DeLuca, the firm’s expert on alcohol / beverage licensing and policy consistent with the Select Board’s stated vision and values for a continuing vitality of downtown Natick.”*

As additional background and rationale, following is an excerpt of an email from Steve Levinsky, Chair of Natick Center Associates, dated May 6, 2019 and directed to the Chair of the Board of Selectmen, Town Administrator, other Town leaders, and representatives of the Police Department, Natick Center Cultural District (NCCD), and the Economic Development Committee (EDC):

“Last Monday ... the [EDC] held a public session that was well attended. There were great, informal discussions with business owners, landlords and developers. At that night’s Selectmen meeting during the [NCCD] report, I was asked if the Selectmen could help with economic development in Natick Center ...

... I hear two areas come up repeatedly as head-winds:

— Alcohol policy and types of liquor licenses available

¹ Home Rule Petition: Authorization to Issue 3 Wine and Malt Beverages License Not to Be Drunk on the Premises for Downtown Mixed Use District, Natick, Massachusetts (Select Board)

² Appearing that evening in support of 2020 SATM Article 19: Michael Hickey, then-Chair of the Board of Selectmen (Sponsor), Richard Jennett, Board of Selectmen, and Paul Joseph.

** Specialty food shops (cheese, butcher, etc.) and grocery stores want the ability to have customers buy a bottle of wine and take it home. We currently can't offer them that license.³*

We are fresh-off the release of the Master Plan and in 2016/2017 a ... study ... on Natick Center ... [r]egardless of which study or report you look at ... we hear that citizens want Natick Center to be "vibrant, dynamic, lots of retail and restaurants, parking".

III. Procedural History

3/2/20 – Board of Selectmen voted (5-0-0) to recommend favorable action on Article 19.

3/5/20 – Fin Com voted (11-0-0) to recommend favorable action on Article 19. The vote was as follows⁴:

Patrick Hayes, Chairperson – YES	Philip Rooney, Member - YES
Linda Wollschlager, Vice-Chairperson - YES	Mike Linehan, Member - YES
Bruce Evans, Clerk - YES	Jim A. Scurlock, Member - YES
Daniel Sullivan, Member - YES	Guimel DeCarvalho, Member- YES
Jerry Pierce, Member - YES	Dave Coffey, Member - YES
Kristine Van Amsterdam, Member -YES	

2020 SATM was delayed due to the pandemic. To streamline the warrant for what would be the Town's first "virtual" Town Meeting, the Select Board requested referral of Article 19 back to sponsor.

6/16/20: Fin Com voted (9-0-0) to recommend favorable action on referral back to sponsor.

2/10/21: Select Board voted (5-0-0) to (again) sponsor this home rule petition (now 2021 SATM Art. 22).

3/10/21: Select Board voted (5-0-0) to recommend favorable action on the subject matter of Art. 22.

3/16/21: Fin Com public hearing. Following Q&A, the Chair entertained motions.

Mr. DeLuca moved to refer to sponsor. Mr. LaFleur seconded the motion.

Mr. Coburn moved to recommend favorable action. Mr. Evans seconded the motion.

Following discussion and deliberation, Fin Com voted (9-3-0) to refer the matter back to sponsor (Select Board). The vote was as follows:

Linda Wollschlager, Chairperson – YES	Philip Rooney, Member – YES
Jeff DeLuca, Member – YES	Jim A. Scurlock – YES
Julian LaFleur - YES	Bill Grome, Member – YES
Mike Linehan, Member - YES	Bruce Evans, Clerk – NO
Richard Pope, Member – YES	Dirk Coburn, Member – NO
Christopher Resmini, Member – YES	Todd Gillenwater, Member – NO

³ It is worth noting that the other "area" that was reported as a repeated "head-wind" was "Zoning" – in particular, residential density and parking requirements. The Town has made great progress on these items in the past 1-2 years; in particular, Articles adopted at 2020 FATM.

⁴ Per Fin Com Minutes, the following Members were ABSENT: Dirk Coburn, Jeff DeLuca, Bill Grome, and Tony Lista

3/24/21: Select Board voted (5-0-0) to reconsider its previous vote of 3/10/21, and then voted (5-0-0) to recommend favorable action on a modified motion. The intent of the modification is discussed below, and we intend to provide the modified motion to Fin Com in advance of its April 1, 2021 hearing.

IV. Discussion

Fin Com members raised a number of questions during the 3/16/21 public hearing. Mr. Errickson was able to field the vast majority of questions, except for approximately a half-dozen questions that were either not completely understood, answered incompletely, or answered (at least in part) incorrectly. The Select Board representatives (myself and Mr. Jennett) were looking forward to appearing and taking questions, as we did last year. Unfortunately, and as I explained to you the next day, due to a scheduling mix-up at our end, neither of us attended the public hearing. On behalf of the Select Board, we again apologize for this mix-up and any associated inconvenience. We thank you for leaving open the possibility that Fin Com may reconsider the matter and, in advance, for your consideration of this memo. We break the questions down below and attempt to provide clarifying answers, but would respectfully suggest reconsideration so that we can provide more thorough feedback.

Members' questions/concerns fell into two main categories – “business” and “legal”.

A. Business

Q: “Mr. Rooney asked whether the Select Board reached out for feedback from businesses that have off-premises wine and malt beverage licenses.”⁵

A: Mr. Errickson spoke to the rationale for the Article, but additional context has been provided in Part II above. Mr. Levinsky intends to participate in the discussion if Fin Com agrees to reconsider, at which time he would be pleased to expand on the stakeholder engagement efforts that inspired a collaborative group of downtown stakeholders to bring the proposal forward in the first place.

Q: “Mr. Rooney said that he has heard, anecdotally, that some ... smaller liquor stores have experienced a negative impact from Total Wine and Wegmans than anything else.”

A: Total Wines is comprised of approximately 25,000 s.f. of retail space dedicated to the sale of alcoholic beverages. My recollection is that the actual floor space devoted to liquor sales at Wegmans is approximately 25,000 s.f. as well. Many of us are aware, as is Mr. Rooney, of concerns on the part of smaller retailers about competition presented by “big box” retailers such as Total Wines. The licenses envisioned by this home rule are intended to attract small businesses to Natick Center that may wish to sell beer and wine in conjunction with their other retail sales. In Natick Center, the possibility of an operation the size of a Total Wines or a Wegmans is non-existent. It is worth noting that the only full package store located in Natick Center is Dion's, which reports very strong sales and is currently in the process of expanding into the neighboring (soon-to-be former fitness studio) space. In short, any concern about small scale specialty shops in Natick Center presenting a major concern to established package stores (similar to the concerns the owners of some of those stores have raised about “big box” retailers) is likely unfounded.

⁵ Text in quotation marks is taken from the ‘raw’ transcript of Fin Com's 3/16/21 hearing provided by Mr. Evans.

Q: “Mr. LaFleur asked why this is limited to the DM district as opposed to allowing this to be town-wide.”

A: We appreciate the Chair’s summary of the answer that we provided when this question was asked last year, and Mr. Errickson’s explanation of the Board vision for Natick Center. However, we would welcome an opportunity to further expand on these answers.

B. Legal

Q: “Mr. Rooney asked if there is a provision in the issuance of a liquor license where the license could be downgraded when ... reviewed for renewal as a result of business activity harming local businesses”.

A: Mr. Errickson’s answer focused on the Select Board’s role in the transfer of a liquor license, but it seems Mr. Rooney was interested in whether the Select Board could downgrade a license previously issued to Party A based on a complaint by Party B that Party A’s business wasn’t good for Party B’s business. Mr. Rooney did not clarify his understanding as to the meaning of the term “downgrade”, but assuming we understand the substantive concern that gave rise to his question, the feedback from Attorney DeLuca is that municipalities would have a very difficult time disqualifying an existing license holder [which is otherwise in compliance] based on competition-based complaints of other license holders. We have attached a copy of legal memorandum provided to the Select Board in connection with its 2017 public hearing on the Kentucky Spirits-Wegmans license transfer which speaks to the issue of competition.

Q: “Mr. Pope asked ... how this doesn’t affect the retail marijuana businesses located in Natick.”

A: Mr. Errickson explained that this petition would not impact the Adult-Use Marijuana businesses. Mr. Errickson’s answer reflects common understanding among Select Board members and Town Administration going back over a year – i.e., that the number of Adult-Use Marijuana licenses that can be issued per town bylaws is limited to 20% of the number of off-premises liquor stores (full liquor store licenses). Given, however, that this question has been raised several times – not only by Mr. Pope, but by other Fin Com Members the same evening – I conducted rather extensive research to confirm the basis of this understanding – and Mr. Errickson’s answer (one I’ve given myself on past occasions) – and my findings were inconclusive. In short, this appears to be because most or all discussions and presentations on the topic have focused on the number of “package store” (or “full liquor store”) licenses – of which there are seven (7) presently issued in Natick – but the home rule language of Art. 22 (as did the “Tilly & Salvy’s” home rule over a decade ago) references a provision of the Commonwealth’s alcoholic beverage laws that “covers” both “all alcohol” licenses and “wine and malt beverage” licenses. I therefore conferred with Mr. Errickson who, in turn, conferred with special Town counsel for marijuana licensing and Attorney DeLuca. Both agreed that the answer to the question is “grey” and suggested that to ensure that the issuance of any licenses under this proposed home rule would not have any effect on the number of Adult-Use Marijuana licenses available for issuance, the best thing to do would be to add language to the Art. 22 motion that states as much. As noted above, I briefed the Select Board on this recommendation at its 3/24/21 meeting and the Board voted to recommend favorable action on a modified Article 22 motion including the language described in the preceding sentence (to be approved by counsel).

Q: (part 1) “Mr. Linehan asked, given the restrictions of the issuance of these licenses to the DM district in Section 1, what is the purpose of section 2”. (part 2) “Mr. Linehan asked whether the license had value as an asset that could be sold to another business seeking to locate in the DM district”.

A: In answer to part 1, Mr. Errickson said the idea of Section 2 is to eliminate the transfer of this license outside of the DM district. This is accurate. Mr. Errickson went on to say, however, that the section 2 language is “also included to make it explicit that these licenses are not transferrable”. This requires clarification. In reviewing these particular questions and answers, as well as questions and answers under the broader heading of where a license authorized under this proposed home rule could be issued, discretion as to whom it may be issued, and the Select Board’s role (and the limits thereof) in connection with a proposed transfer of an existing license – vs. cancellation or revocation – it appears that there remains some confusion as to the intent and purpose of the various sections of the home rule motion. In short, Section 1 of the home rule deals with issuance⁶, Section 2 deals with transfer⁷, and Section 3 deals with cancellation or revocation⁸. Regarding part 1 of Mr. Linehan’s question, Attorney DeLuca reminds that the process by which the local licensing authority (in Natick, the Select Board) issues a license is similar to, but separate and distinct from, the process by which the local licensing authority acts on a request to transfer an existing license, hence the need for two separate provisions. It is worth noting that these two provisions are very similar to the provisions in the Tilly & Salvy’s home rule, which passed muster not only with Natick Town Meeting, but with the General Court and the Governor.⁹ Regarding part 2 of Mr. Linehan’s question (about whether a license could have value as an asset that could be sold from one business to another), this depends on the circumstances at the time. If, at the time, the Town had unissued licenses, it would seem unlikely that there would be meaningful value to one of the previously-issued licenses. If, however, there were no unissued licenses, and two private parties were interested in entering into a private commercial transaction where Party B would purchase Party A’s license (which was the case at the time of the Kentucky Spirits-Wegmans transfer) it is likely that Party A would expect to receive value for the purchase. The Select Board has no direct role in the consideration agreed to between private parties, but its approval (as the local licensing authority) is required to transfer a license from Party A to Party B. Before such an approval is presented to the Select Board, it is reviewed by the Town’s professional staff, public safety personnel, and legal counsel. The Select Board considers the transfer in a duly held public hearing following publication of legal notice and notice to abutters. Mr. Linehan has raised this question – or at least a variation of it – on more than one occasion, and it seems to be grounded in a concern that whatever “value as a commodity” a license may have in the future should only be realized by the Town, and not a private party. If we are misunderstanding Mr. Linehan’s concern (or suggestion), we would look forward to an opportunity to respond following clarification, but if we do understand it correctly, it’s important to emphasize that the Town does not get involved in negotiating consideration

⁶ SECTION 1. Notwithstanding the provisions of Sections 12 and 17 of Chapter 138 of the Massachusetts General Laws, or any other general or special law to the contrary, the local licensing authority of the Town of Natick may issue three (3) additional licenses for the sale of wine and malt beverages not to be drunk on the premises, pursuant to Section 15 of Chapter 138, said licenses to be restricted to issuance only to establishments within the zoning district known as the Downtown Mixed Use District, Natick, Massachusetts, upon approval of and under conditions set by the local licensing authority of said Town, provided that the General Court may reasonably vary the form and substance of the requested legislation within the scope of the general public objectives of the petition. A license granted hereunder shall be subject to all of said Chapter 138 except said Section 17.

⁷ SECTION 2. Once issued, the local licensing authority shall not approve the transfer of these three licenses to any other locations outside of the Downtown Mixed Use District.

⁸ SECTION 3. If a license granted pursuant to this special act is cancelled, revoked or no longer in use, it shall be returned physically, with all of the legal rights, privileges and restrictions pertaining thereto, to the licensing authority, which may then grant the license to a new applicant within the Downtown Mixed Use District under the same conditions as specified in this section.

⁹ See Chapter 92 of the Acts and Resolves of 2012 (attached).

between private parties. If the suggestion is that the Town should foreclose the possibility of any transfer under Section 2, and instead require that a license may only be cancelled, revoked (etc.) and returned to the Town pursuant to Section 3, Attorney DeLuca advises that this would be unusual. He also points out that had such a restriction applied in the case of the Kentucky Spirits-Wegmans transfer, Wegmans would have been the only party to benefit.

V. Conclusion

The foregoing represents a significant effort to isolate and address questions that left uncertainty among Fin Com members and we believe establishes definitively that we are prepared to bring “new information” in the form of clarifying answers and feedback, as well as a modified motion, all of which we would look forward to expanding upon as much as Fin Com’s schedule would permit¹⁰. Respectfully, the time and effort we have put into preparing and submitting this written request should serve as clear evidence of the Sponsor’s commitment to the advancement of Article 22 and its belief in the merits thereof. It should also serve as evidence that the Sponsor would greatly appreciate the opportunity to earn the Finance Committee’s favorable recommendation on Article 22.

Accordingly, we respectfully request that the Finance Committee vote to reconsider.

¹⁰ It is important to note that, after the Q&A portion of the hearing, and during debate on motions, certain concerns and suggestions were raised for the first time, which did not afford Mr. Errickson an opportunity to respond. (For example, Mr. DeLuca suggested that this home rule “misses the mark” given his understanding that people want more pubs and restaurants, rather than “beer and wine” stores. As to the first point, the Select Board is well aware of the interest in more pubs and restaurants, and would remind Fin Com members that we sought and obtained authorization to pursue a location-specific license for the St. Patrick’s redevelopment site just this past year. As to the second point, the characterization of the licenses being sought under this home rule as “beer and wine” store licenses deserves clarification. The intent here is to create opportunity for small businesses to sell beer and wine as an ancillary product.) However, given the Chair’s direction to focus solely on the Q&A portion of the 3/16/21 hearing, we have refrained from addressing each of the concerns and suggestions made during debate, but we would welcome an opportunity to speak to them if the Chair would see fit during reconsideration.