

**Town of Concord
Finance Committee
Meeting Minutes - January 23, 2020**

Present: Dean Banfield, Greg Guarriello, Mary Hartman, John Hickling, Richard Jamison, Dee Ortner, Karle Packard, Parashar Patel, Christine Reynolds, Wade Rubinstein, Thomas Tarpey and Brian Taylor

Absent: Peter Fischelis, Phil Swain and Andrea Zall

Others Present: Town Manager Stephen Crane; School Committee Member Cynthia Rainey; LWV Observer Diane Proctor; Finance Director Kerry Lafleur; Recording Secretary Anita Tekle; and about 15 residents, some as noted below

Meeting Opened

Mr. Banfield called the meeting to order in the Select Board Meeting Room at the Town House at 7:00 pm. He announced that the meeting was being televised and recorded by MMN.

Approval of Minutes

On a **MOTION** made by Ms. Ortner and seconded by Ms. Reynolds, the Finance Committee (FC) minutes of January 16, 2020 were unanimously **APPROVED**, as drafted.

Town Manager –Request for FY20 Reserve Fund Transfer

Town Manager Crane reviewed the FY20 Legal Services expenditures to date, which total \$250,000. He explained that this amount represents invoices received through November 2019. Expenditures are \$166,892.56 for Estabrook Road issues, and \$83,107.44 for other issues. He explained that he had originally assumed that most of the expenditures were for non-Estabrook Road issues, but very recently learned that was not true. Legal expenses have been running 2/3 for Estabrook and 1/3 for other issues for the first five months of the year. Although he recognized that the FC's position last year was to not use the Reserve Fund for Estabrook Road legal costs, since those funds are to be used for extraordinary or unforeseen expenditures, he asked the FC for a dispensation for this year since he is new in his role. He equated the legal costs to the snow and ice account, some of which can be viewed as unforeseen or extraordinary. He noted that legal matters are complex, and some aspects cannot be foreseen, noting that some aspects are outside of the control of the Select Board (SB) and Town Manager, since third parties are involved.

In response to a concern expressed that perhaps not all of the funds had been spent responsibly, Mr. Crane indicated that under the Town Charter, Town Counsel works for the SB. A lot of what happens is standard legal processes, with legal steps that need to be taken. He asked for a measure of trust from the FC that the expenditures have been spent responsibly. In response to a question from Mr. Patel, Mr. Crane indicated that the SB is responsible for beginning or ending a lawsuit. Mr. Patel questioned why a member of the SB was not present to defend the unforeseen nature of the Reserve

Fund request. Mr. Crane explained that due to his misunderstanding of the cause of the expected overrun, he did not believe it necessary to invite a member of the SB, and emphasized that this is neither the body nor the forum to debate the merits of the Estabrook litigation, and that he as Town Manager is responsible for the expenditure of funds.

Mr. Banfield expressed concern with what he considers a “disconnect,” noting that this is the third year that the FC has received a Reserve Fund transfer request for the legal services budget. Last year when approving the request, the FC did so reluctantly, making it very clear to the former Town Manager that it did not consider expenses related to the Estabrook Road legal case either unforeseen or extraordinary, and would not welcome any further requests for use of the fund for this purpose. Mr. Banfield emphasized that the FC is an appointed body. He considered it preferable for the request to go either to Town Meeting, or to the SB to sign off on this, since the SB is elected and responsible for litigation. Since the FY20 legal services account has been fully expended, Ms. Lafleur explained the three options for processing payment on any additional legal expenses for FY20:

1. Use of FY20 Budget Line 32, Reserve Fund appropriation of \$225,000 (none of this has been expended yet). She noted that MGL does not define the terms “extraordinary” or “unforeseen,” leaving the discretion to the FC. She does not anticipate any other requests for use of the Reserve Fund during FY20.
2. Request a budget adjustment at the April 2020 Annual Town Meeting (ATM), which would involve transferring funds to the Budget Line 2, Legal Services account from other line appropriations. She explained that this option would have a net impact of \$0. If the transfer request is made from the Line 32, Reserve Fund to Line 2, Legal Services, then there is no need to determine that the transfer is needed due to unforeseen or extraordinary expenses. The downside of this is that no legal invoices could be paid until following the April 2020 ATM, assuming favorable action.
3. If neither Option 1 nor Option 2 is successful, then the Town Manager could seek a year-end adjustment within the last 60 days of FY20 (or the first 15 days of FY21). This process allows for the transfer of funds between any approved budget lines with the approval from both the FC and the SB. This option is available to provide some budget flexibility to close the fiscal year following the ATM, without calling for a Special Town Meeting (STM).

Ms. Ortner noted that Mr. Crane had inherited this problem, noting that we are only half way through the fiscal year. She felt that it is too early to commit the full Reserve Fund to pay for legal services, since another emergency could arise between now and June. She also suggested that a STM be considered within the ATM, since the warrant for the ATM has already closed. Mr. Crane noted that he is appointed and is responsible for the expenditure of town funds. He emphasized that we have a projected deficit in the legal services account that has to be resolved. Mr. Banfield noted again that the FC had made it very clear last year that future requests for use of the Reserve Fund should not

be made for the Estabrook Road litigation costs. Mr. Crane indicated that Article 8¹ on the ATM warrant is for a FY20 budget adjustment. He expressed a willingness to modify his request until the ATM, perhaps changing the motion under Article 8 to appropriate supplementary funds for legal services.

In response to a request from Ms. Hartman, Mr. Crane indicated that the options reviewed by Ms. Lafleur are ranked, so use of the Reserve Fund is his preference. Mr. Patel asked if there are any plans to bring the Estabrook litigation to town meeting for funding approval. Mr. Crane recognized that this is a controversial matter. While the FY20 Estabrook litigation costs were not unforeseen or extraordinary, there are parts of the litigation that are outside of the control of either the SB or the Town Manager, and have had a meaningful impact on the costs. Because the litigation is ongoing, he was unable to discuss any of the litigation in detail, but he emphasized that both he and the SB have an established track record of wanting to do what is right for the community.

Ms. Ortner asked where the funds would come from if the request for an additional appropriation is made at ATM. Mr. Crane noted that we are not here to further develop the FY20 budget, which was developed with information that was available to town officials at that time. Ms. Hartman noted that the historical assumption was probably that the Reserve Fund would be available to supplement the Legal Services budget. Ms. Reynolds suggested that the legal services budget was appropriated at the lower end of the range, which could be seen as avoiding disclosure of the cost of litigating this contentious suit; she prefers that budget numbers be developed with more realistic estimates that provide for more transparency. She emphasized the importance of the public seeing where the funds are expended when approving appropriations at town meeting.

Mr. Crane noted that he has increased the FY21 legal services budget by \$75,000, in anticipation that the Estabrook Road matter is nearing its end. He was not here when the FY20 budget was developed. He emphasized that the Town only controls one part of the expenditure—others have legal rights that they are lawfully exercising. He again asked for a dispensation from the FC, noting that he and the SB are managing the matter as effectively as possible. Mr. Banfield inquired what would happen if we can't pay any additional legal bills until following the ATM. Mr. Crane indicated that he would have a conversation with Town Counsel, and asked whether the FC could compromise on the matter. Ms. Hartman noted that she does not have a problem with using the Reserve Fund for legal matters, but in this case wants town meeting approval because of the nature and enormity of the request. Mr. Crane noted that state law allows the FC to approve Reserve Fund requests, and questioned why a town meeting vote is preferable for what he considers an unforeseen expense. Ms. Hartman commented that the Estabrook Road matter is not unforeseen. Mr. Crane commented that he considers it extraordinary, if not unforeseen.

Mr. Guarriello asked whether any bills have been received beyond November, and whether the full Reserve Fund would be needed. Ms. Lafleur responded that additional bills are anticipated, and it is likely that the full amount of the Reserve Fund would be used. Mr. Guarriello inquired whether any assessments would be made as a result of

¹ This Article became Article 9 in the final version of the Warrant

the invoices being paid late. If so, he requested that the FC be informed. In response to a question whether sufficient funds would be available in other line items at the end of the year for transfers, so that use of the Reserve Fund would not be needed, Ms. Lafleur indicated that she anticipates that funds would be available. Ms. Lafleur emphasized that the Town could not put itself into a situation of spending funds without identifying other funds that could cover the expense through a transfer. Mr. Crane noted that when you are in a budget situation, it is necessary to make estimates and assumptions, recognizing fluctuations with the level of activity. Mr. Jamison asked whether someone is monitoring legal expenditures, to be sure that work is stopped before we are in a deficit spending mode. Mr. Crane responded that the SB has decided to not pursue one of the claims in the original litigation, in part due to cost. He noted that this matter is not like an insurance claim—litigation is complicated and we only control one part of it. Costs are a result of the process, with some aspects outside of the Town's control. Mr. Jamison noted that he discusses anticipated costs with his attorney prior to work being done, so he can plan for costs. For three years in a row, legal costs have been significantly higher than budgeted. Mr. Crane noted that some aspects of what drives up the costs are unforeseen. In response to a question from Mr. Rubinstein as to whether the \$225,000 is sufficient for the remainder of the year, Mr. Crane indicated that, based on what we know now, \$225,000 would be sufficient. Ms. Reynolds asked whether the \$225,000 includes any cushion, to which Mr. Crane responded that he thinks there is some cushion. He asked again that the FC afford him some measure of deference on the request. In response to a question from Mr. Patel as to what would happen if the Town experienced a tornado in the coming months, Ms. Lafleur noted that either Option 2 or 3 could be used to pay for tornado expenses.

Follow-Up: Fin Com to be informed if any late fees are assessed due to the late payment of legal services invoices.

At this point in the meeting, Mr. Banfield opened the floor to public comments. William Becklean, 254 Fairhaven Rd., concurred with the FC's statements that legal expenses for Estabrook Woods do not seem to be either unforeseen or extraordinary. Brian Rosborough, 56 Elm St., asked for the amount spent on Estabrook Road litigation in total, to date (see response later in these minutes). Louis Salemy, 687 Great Meadows Rd., commented that he was involved in litigation when he formerly lived in Carlisle, and he feels that the ultimate cost for Estabrook Road litigation could be many times over the current costs. Susannah Kay and Brooks Read, 366 Estabrook Road, defendants in the suit, commented that the public has been left in the dark with how the legal funds have been spent. They expressed their appreciation for the FC's efforts for transparency. They commented that over \$500,000 has been spent on the Town's negotiated agreement with Harvard University. They accused Town Counsel of making misrepresentations about the status of the lawsuit (noting that it was almost completed at one point).

David Meyers, 116 Estabrook Rd., expressed appreciation for what he considers common sense statements made—there is no telling what the expenses are going to be going forward, which he feels gets to the heart of the matter. Shelley Morss, 50 Manuel Dr., asked if anyone knows how to stop the whole process—why can't the lawsuit be dismissed if no additional funding is forthcoming? At this point, Ms. Lafleur responded

to Mr. Rosborough's earlier inquiry, noting that \$855,240.43 has been spent to date, with invoices received through November 2019, for Estabrook Road litigation. The invoices started in November 2017. Mr. Crane also noted that about \$100,000 was spent by the Town on this matter prior to litigation, in an effort to avoid litigation.

Ms. Ortner made a **MOTION** that was seconded by Mr. Jamison, to decline to approve the request to transfer \$225,000 from the Reserve Fund to the FY20 legal services line item. Mr. Patel offered an **AMENDMENT** that was seconded by Mr. Taylor, adding the explanation that the FC does not find that the request meets the bar for an extraordinary or unforeseen expense, given the past history of requested use of the Reserve Fund for legal services; and the FC makes no judgment on the merits of the Estabrook Road lawsuit.

During the discussion, Mr. Banfield commented that the sense of the FC is that the Town as a whole be engaged in the discussion of appropriating additional funds for this purpose. Ms. Reynolds suggested deleting the last portion of the amendment. A **MOTION** was made by Ms. Reynolds and seconded by Mr. Packard to delete the last portion of Mr. Patel's amendment, starting with "...; and the FC makes no judgment..." A vote was taken, and **PASSED** (with 11 voting in favor and Mr. Patel opposed). A **VOTE** was then taken on Mr. Patel's **MOTION TO AMEND** (as amended), which unanimously **PASSED**. A **VOTE** was then taken on Ms. Ortner's original motion, as amended, which unanimously **PASSED**. The final vote reads as follows:

To decline to approve the request to transfer \$225,000 from the Reserve Fund to the FY20 legal services line item. The Finance Committee does not find that the request meets the bar for an extraordinary and unforeseen expense, given the past history of requesting use of the Reserve Fund for legal services.

Town Manager FY21 Budget Update & Capital Debt Plan

Mr. Crane reported that his proposed budget is still in conformance with the FC FY21 guideline. When asked how he was able to expand services, Mr. Crane responded that attrition was the main source of additional funds. While no details were provided, Mr. Crane advised the FC that the final structure of the budget book will be very different from what has been prepared in the past. It will be a much simpler document, similar to what he had prepared in Longmeadow (which also was the recipient of a GFOA Award). He was pleased that the staff agreed with his proposal to simplify the budget document. He noted that the new document will have more narrative than in the past, and he has consolidated some line items in order to provide him with more flexibility. He did not criticize what has been done in the past, but hopes that the FC will be open to a new way of looking at the budget. He indicated that the budget document will be presented to the SB on January 27.

Ms. Ortner asked whether the \$75,000 increase in FY21 Legal Services is sufficient, to which Mr. Crane responded yes, as far as he knows at this time. She also inquired whether the Salary Reserve Fund can be transferred to other line items if not fully needed. Ms. Lafleur indicated that it is eligible to be transferred like any other unused line item. Ms. Lafleur also noted that no expense is charged directly to the Salary Reserve line—funds are transferred from that line to wherever it is needed to fund salary increases.

Ms. Lafleur noted that FY20 was the first time that the Town incorporated appropriated transfers from other funds into the budget presentation (i.e., General Fund plus transfers from Enterprise Funds, Stabilization Funds, etc.), since the FC had expressed an interest in seeing the full appropriation. This allowed for the total amount of the expenditure to be seen, regardless of the source of funds. She indicated that the presentation model can revert back to the former procedure, if the FC wishes. Mr. Crane noted that including transfers from non-General Fund sources provides for fluctuation year-to-year. He prefers the “goalpost staying put.”

In discussing the proposed capital outlay plan, Mr. Crane indicated that there has been no change in the previous presentation. Ms. Hartman requested increased transparency in the long-term capital costs of a project, as discussed last fall. Mr. Crane took issue with use of the term “transparency,” noting that the use of all funds is presented and open to public view, just not all together at the same time. He noted that the FY21 capital plan is consolidated into one warrant article. Ms. Hartman suggested that when the Town asks for \$600,000 in FY21 capital improvements at White Pond, this would provide a good opportunity to explain to the public what has been appropriated in the past, and what is anticipated in the coming years. Ms. Lafleur noted that every year the Town prepares a five-year capital plan, with the emphasis of discussion only being on Year One. She suggested that perhaps what has been done in the past is not as extensive a discussion as is desired by the FC. Mr. Banfield commented that capital expenditures spanning several years has been more of an issue in the most recent 3-5 years. He feels that it is helpful to present the scale of anticipated expenditures when seeking the initial appropriation, to provide for a larger context for the community to see.

In looking at the FY21 Capital Plan (3-5% of the operating budget), Ms. Reynolds commented that several of the proposed projects are not what she considers “maintenance,” but are rather new improvements. She suggested that the Town consider a different process going forward. Mr. Banfield noted Junction Village as an example of a full picture being provided to the Town—it was explained up front the anticipated funds needed, and what would be requested over a three-year period. The Town approved the original request knowing that it was part of a larger package. Ms. Lafleur commented that she is not aware that 3-5% capital expenditures for maintenance is a documented policy. Ms. Reynolds was concerned that the Town tends to “expend to the cap,” which is a large amount. Mr. Crane commented that a community needs to invest in itself. He prefers the term “target” rather than “cap.” He hit the target on the low side this year in order to meet the FC guideline. He indicated that this is a balancing exercise, with choices made to balance the community’s priorities. Ms. Hartman commented that when a FY21 capital improvement plan is brought to the Town in the amount of \$4.3 million, it should be put into context—we spent “x” amount in the past on this project, and we anticipate needing “y” in the future in order to complete the project. Mr. Crane responded that his understanding is that these details are made at the public hearing, and not at town meeting. Ms. Ortnier indicated that additional details could be included in a town meeting handout. Ms. Hartman urged that the presentation include more clarity and completeness, in order to avoid confusion and possible amendments made at town meeting. Mr. Crane responded that he does not understand the perceived information gap—he feels that the information was

adequate at town meeting; however, he agreed to do his best with the limitations that he has.

Ms. Ortner inquired about Line A-22 in the proposed FY21-25 Capital Outlay Plan. Ms. Lafleur responded that funds would be used to retrofit existing smaller Town projects and buildings to improve energy efficiency. Ms. Lafleur explained that funds appropriated under this consolidated capital improvement budget would not need to be expended in one fiscal year. If funds were appropriated in a department's line item budget, they are tied to that specific fiscal year. Under this separate warrant article approach, funds could be retained beyond one fiscal year in order to complete a specific project. Although the intent is to spend funds within a given year, sometimes delays occur which make this difficult to accomplish. In the past, the Town encumbered funds from one year in order to complete a project the following year. She feels this revised way is cleaner—legally the Town should only encumber funds if an actual invoice is in hand. Ms. Ortner asked whether the Town has flexibility in borrowing funds, if the amount needed is lower than expected. Ms. Lafleur responded that the Town only borrows what it needs, and generally waits until a project is almost completed. She also explained that we don't have flexibility to spend borrowed money on different projects; e.g., funds borrowed for road improvements can only be spent on road improvements. Mr. Crane also commented that one of the benefits of a target capital budget is to avoid borrowing spikes; space is created once a project is completed and drops off the debt schedule, avoiding fluctuations for the taxpayer.

Ms. Proctor emphasized the importance of transparency, as noted by Ms. Hartman—the full cost of a project should be presented to the taxpayers, in order to avoid growing confusion and suspicion. She noted that however the information is presented, the full picture must be provided.

Special Legislation to Renew Senior Means-Tested Property Tax Exemption

Mr. Banfield remarked that the SB Chair has asked whether the FC wishes to take a position on the proposed technical adjustments being made to the Senior Means-Tested Property Tax Exemption legislation approved several years ago. In response to a question from Mr. Taylor as to whether income of applicants is verified, Ms. Rainey (former member of the Board of Assessors) indicated that the Board of Assessors exercises due diligence when verifying income and assets, including reviewing tax returns. It was explained that this article is on the warrant since there was a sunset clause in the original legislation, and some technical adjustments are now needed.

Review of 2020 Annual Town Meeting Warrant

Article 22—Appropriate Funds for Affordable Housing (\$500K) - After a brief discussion, it was agreed that further information about this proposed article is not required in order to make a recommendation. Any needed information can be obtained at the public hearing. Ms. Lafleur indicated that the proposed legislation for affordable housing efforts is still pending in the State Legislature—2-year legislative cycle ends in June 2020. So it is not necessary to invite someone to attend a FC meeting prior to the hearing.

Middle School Building Project

It was noted that there is no article on the 2020 ATM warrant for this project. The question was asked whether the FC should provide an observer to the Finance Subcommittee of the Middle School Building Committee (MSBC). Mr. Banfield noted that the Subcommittee has gathered a lot of comparative data from other communities. Mr. Patel suggested that the FC offer itself as a resource, should the committee have any questions or need for financial advice, particularly in the area of the cost of debt estimates. It was noted that Mr. Fischelis is the observer to the MSBC. Mr. Banfield also emphasized that the amount of the request is unknown. Mr. Guarriello asked what information the FC would seek if the Subcommittee were to be invited to meet with the FC. He suggested that the FC emphasize to the Subcommittee that the Town still has a large debt load for existing school projects. Ms. Hartman expressed concern that a “wish list” is being developed to be included in the Middle School project, and perhaps the FC could serve as a balancing voice. It was agreed that Ms. Lafleur will redistribute the debt chart created last spring, listing possible upcoming capital projects.

Follow-Up: Ms. Lafleur to distribute to the FC the long-term debt chart she developed last spring, including unapproved but likely capital projects.

Open Action Items Policy

Ms. Ortnier indicated that she has identified four open action items from the School Committee and School Finance Department. She suggested that the FC institutionalize a follow-up process, so items do not fall between the cracks. Ms. Hartman was concerned that we not overburden staff. The consensus was that the list be reviewed periodically by the FC to determine whether follow-up is still needed. Ms. Ortnier agreed to send the list that she created to Ms. Lafleur to distribute to the FC. Ms. Hartman suggested that the list be included on the agenda on an ongoing basis.

Follow-Up: Ms. Ortnier to send to Ms. Lafleur the list of identified open action items. Ms. Lafleur will distribute to the FC.

Finance Committee Report

Mr. Banfield noted that he had not received any draft reports from FC members. Ms. Lafleur indicated that she had received two drafts. He urged others to complete the drafts soon. He noted that the Town Clerk has sent a reminder for all members to complete the online ethics training (required every two years).

Observer Reports

Comprehensive Sustainable Energy Committee—Mr. Packard reported that this group now meets on Thursdays, so it is difficult for him to attend due to conflicts with FC meetings. He has reviewed their posted minutes. The Committee is promoting energy-efficient carbon neutral updates to Town buildings. The capital costs are significant, but the reduced operating costs will partly offset the capital costs. He noted that energy cost tradeoffs are hard to identify. Mr. Rubinstein noted that constructing solar arrays at the new middle school is estimated to cost \$1 million. Energy savings over time will change, and are difficult to estimate.

Library Committee—Mr. Taylor reported that the capital campaign has raised \$9.3 million, with the goal of \$10 million. There is a lawsuit pending, concerning primarily handicapped parking and sustainability issues, which could delay the project. The

Library Trustees would like to have shovels in the ground soon, and delays will increase costs. The Trustees are discussing the disputed issues with the plaintiffs, and Town Counsel is also involved. A \$200K anticipated grant from the Mass. Historical Commission has been withdrawn, so it will be necessary to make up the difference.

Middle School Building Committee—Mr. Fischelis submitted a written report as follows: (1) the schematic design is now ready to move to the detail design stage; (2) if the debt exclusion question is to be added to the November State Election ballot, the request to do so must be made to the Secretary of State by early August; (3) the proposed STM will most likely be held in October, so that it can be completed prior to the November State Election; (4) more community forums are being scheduled, and there are lots of subcommittees working on various aspects of the project; (5) they are working on finalizing enrollment numbers; and (5) conceptual options for the building footprint should be available by February 27.

Correspondence

Correspondence was received by Neil and Anna Rasmussen (Estabrook Road litigation); Ardis Bordman (LWV Town Government Committee—proposed Warrant Article requesting a TIF for the Grantham Corporation assisted living project in West Concord—since the SB is divided on this issue, then town voters should weigh in; and Ellen Emerson/Bruce Kohler (Estabrook Road litigation). Mr. Banfield also noted receipt of a letter from Janet Rothrock concerning the apportionment of CCRSD costs. He noted that he had pressed hard on this issue when he met with Mr. Crane last fall, and Mr. Crane has no interest in allocating any portion of the High School Resource Officer to the Town of Carlisle, since the individual reports to the Concord Police Chief. He noted that a portion of the operating costs of the bus depot are allocated to the CCRSD, although none of the capital costs have been allocated to CCRSD. The School Department is sensitive to the fact that taxpayer antennas are up about this issue. Mr. Banfield also noted that when cost estimates for road improvements at the high school were made by the Public Works Department, the CCRSD paid the Town for those services.

Adjournment

The meeting adjourned at 10:15 pm.

Respectfully submitted,

Anita S. Tekle
Recording Secretary

Documents Used or Referenced at Meeting:

- Reserve Fund Request Form for \$225,000 for Legal Services
- Memo from Kerry Lafleur to Stephen Crane RE: Options to cover FY20 legal overrun
- Draft Article 11—Capital Improvement & Debt Plan
- Listing of Draft Articles for 2020 Annual Town Meeting
- Update Guideline Summary for FY21 Budgets
- FinCom Town Meeting Planner for Upcoming Meetings
- Correspondence: Ardis Bordman, LWV Town Government Committee (dated 1.17.2020)
- Correspondence: Neil & Anna Rasmussen Re: Estabrook Road (dated 1.19.2020)
- Correspondence: Ellen Emerson & Bruce Kohler Re: Estabrook Road (dated 1.23.2020)