Approved 7.23.2020

Town of Concord
Finance Committee
Meeting Minutes
June 25, 2020

Present: Dean Banfield, Mary Hartman, John Hickling, Richard Jamison, Dee Ortner, Karle Packard, Parashar Patel, Christine Reynolds, Phil Swain and Andrea Zall

Absent: Peter Fischelis, Greg Guarriello, Wade Rubinstein, Thomas Tarpey and Brian Taylor

Others Present: Select Board Chair Mike Lawson; Town Counsel Mina Makarious; Finance Director Kerry Lafleur; Regional Housing Services Office Manager Liz Rust; and Recording Secretary Anita Tekle

Meeting Opened

Mr. Banfield called the meeting to order at 7:00 pm via Zoom and broadcast via MMN. He explained the Rules of Engagement, which require all votes to be taken by roll call vote. He explained that when the time comes, he will call for a vote and ask for an audible vote by Finance Committee (FC) members.

Approval of Minutes

On a **MOTION** made by Mr. Hickling and seconded by Ms. Hartman, and on a roll call vote (with Hartman, Banfield, Reynolds, Hickling, Ortner, Swain, Jamison, Zall, Patel, and Packard all voting yes), it was **VOTED** to approve the minutes of the May 4, 2020 regular meeting, as drafted, and the May 4, 2020 public hearing, as amended.

FY20 Year-End Budget Adjustments

Ms. Lafleur presented a request for approval of FY20 year-end transfers, as outlined in MGL Ch. 44, δ33B. She explained that the Town's budget was adopted at the Annual Town Meeting (ATM) in 39 separate line items. Funds cannot be transferred between these line items except under established procedures. She itemized four transfers. She reviewed her Jan. 23, 2020 memo outlining the three options to cover the FY20 legal overrun, as follows:

1. Reserve Fund Transfer – presented to the FC on 1.23.2020, and the request was denied
2. Seek a budget adjustment from Town Meeting – the ATM has been postponed to at least the end of July, which is too late to utilize this option
3. Seek a Year-End Adjustment before July 15, as provided under MGL, Ch. 44, δ 33B

Ms. Lafleur explained that at this point, if option 3 is not exercised, then the Town would close the year with a deficit, which is not legally allowed. If this were to occur, then (1) the Dept. of Revenue would "hit" the Town's free cash and require the Town to raise the deficit amount within the FY21 levy limit; and/or (2) the auditors would issue a management letter finding, making either a recommendation or citing a material weakness; and/or (3) a note about this error would be made in the Town's next bond

rating opinion. She noted that she confirmed with the Town's auditor that all three items above would occur if the Town closed FY20 with a deficit, which would be unfortunate.

The requested transfers are as follows:

Number	To/From	Line Item	Line Description	Amount
1	to	2	Legal Services	$291,000
2	to	3	Elections & Registrars	$ 22,000
3	to	4	Town Meeting & Reports	$ 20,000
4	from	26	Library	$333,000

In response to a question, Ms. Lafleur indicated that the Library has not had any furloughs, but there are a number of vacancies that have not been filled, and there are savings in utilities due to the building closure. Mr. Swain commented that it is extraordinary for legal services for litigation to exceed the budget by such a large amount, noting that the Estabrook Road case is not considered a huge litigation case. He finds it extraordinary that the attorneys would bill an amount so much higher than budgeted. He felt that the matter should have been discussed with the Town Manager (TM) and Select Board (SB), with fair warning that Town Counsel may not be paid in full for services rendered. He suggested that the law firm be asked to withdraw the invoice until after town meeting has had a chance to consider it. Mr. Packard commented that the situation is similar for architectural firms–you have a budget and you live within it; you know you are out on a limb if you go over budget without approval of the client. Ms. Reynolds noted that Town Counsel knew several months ago that they were over budget by $225,000; that number is now $291,000.

In response to a question from Ms. Ortner, Ms. Lafleur noted that she has bills in hand for $240,000, with an estimate for bills through the end of the fiscal year. In response to a question from Ms. Ortner, Ms. Lafleur indicated that the TM or SB could ask the law firm to withdraw the bills; however the services were rendered in FY20 and would have to be accrued before the books are closed, leading to a Town deficit for FY20, which is not allowed. Ms. Lafleur further explained that a "legal deficit" is one that is allowed under specific MGL guidelines, such as snow & ice removal, when it is okay to overspend with the understanding that the deficit funds are raised the following year within the levy limit. This option is not available for most expenditures, including legal services. In response to a question from Mr. Patel, Ms. Lafleur noted that if the transfer is not approved by the FC prior to July 15, then the overage amount would be deducted from free cash and the DOR will require the Town to raise this amount within the levy limit in FY21, as noted above. At the close of FY21, then the deficit is wiped out. Mr. Patel noted that the FC is not privy to whether the TM and SB gave prior approval to Town Counsel about going over budget.

Mr. Lawson explained that he shares the concerns and frustration of the FC. He noted that managing the cost of litigation has been challenging, although efforts have been made to keep the costs under control. He noted that Town Counsel has met repeatedly with the SB about new issues that require a legal response, and available options. Efforts continue to be made to resolve the litigation. Mr. Makarious expressed his shared frustration. He noted that the firm, Andersen & Kreiger, has been working with the Town for decades and has rarely if ever exceeded the given budget until the past couple of years. He was aware of the FC's vote in January, and he has limited any work

to that which was required by the court case. Initially, he understood that Town Meeting was scheduled for late April and he agreed that the firm would not be paid until late April. He explained that since the pandemic began in March, there has been little activity in court or in discovery; all recent efforts have been in response to the road closure initiated by the defendants. He also noted that not all the legal costs have been due to Estabrook; there were some COVID items. Some legal items have been deferred to FY21. He emphasized that the TM and SB have been kept in the loop at every step of the way. Mr. Swain commented that it is the lawyer's responsibility to manage the budget, and the law firm could agree that payment be deferred or not made, subject to town meeting approval; if they want to incur $291,000 extra expenses, then they should be willing to accept the risk.

A **MOTION** was made by Mr. Swain and seconded by Mr. Packard to ask the Town's law firm to withdraw all invoices above the budgeted amount until following the ATM.

In response to questions, Ms. Lafleur confirmed that she has discussed the issue with the Town's auditors, and not paying these bills in FY20 would be identified as a material weakness. She noted that there are precedents in other communities that experienced instances of material weakness who then saw a reduction in their credit rating. She also noted that this situation would not impact the Town's ability to utilize free cash for other purposes. Ms. Reynolds commented that the responsibility for managing the legal services budget falls within the purview of those who are authorized to manage the Town's legal cases; if these individuals agree that the invoices should be paid, then it is really up to them and not the FC. Several members concurred. Mr. Hickling was concerned that the FC is being drawn into the matter; if the SB and TM have approved the invoices, then he feels it is beyond the FC's control. Ms. Hartman expressed frustration that the spending is so high, noting that the FC had denied the Reserve Fund Transfer request in January since this was not an unforeseen or extraordinary expense. She felt that the SB entered into these additional expenses knowing the FC's opinion, so they should not have been blindsided.

It was noted that there will be no motion made at Town Meeting under Article 9 (to authorize a FY20 Reserve Fund Transfer), since that option is no longer possible after June 30. In response to a question, Mr. Makarious noted that if a resident makes a motion under Article 9, the Moderator would most likely rule it out of order, although this would be up to the discretion of the Moderator. Ms. Ortner suggested that in the future there be better communication between the SB and the FC Chair so that we don't spin our wheels on issues that are out of our control. Mr. Swain noted that he, as a lawyer, feels that an invoice that exceeds the Town's line item budget by more than double, should be withdrawn by the law firm. The matter could then be brought to town meeting for approval. He felt that the service was provided under risk. Ms. Lafleur noted that the appropriation for FY20 expires on June 30, so there is no legal authority for the September 2020 ATM to do anything to resolve a FY20 invoice.

A **VOTE** was then taken on Mr. Swain's **MOTION**, which **FAILED TO PASS** on a roll call vote (with Hartman, Banfield, Reynolds, Ortner, Jamison, Zall, Patel, Packard and Hickling voting no; and Swain voting yes).

Mr. Hickling noted that he sympathizes with the frustration of the SB and Town Counsel, which is mutual. The FC has spent the better part of two years discussing the legal costs of this litigation.

On a **MOTION** made by Ms. Hartman and seconded by Ms. Zall, it was **VOTED** on a roll call vote (with Hartman, Banfield, Reynolds, Ortner, Jamison, Zall, Patel, Packard and Hickling voting yes; and Swain voting no) to approve the following budget transfers:

Number	To/From	Line Item	Line Description	Amount
1	to	2	Legal Services	$291,000
2	to	3	Elections & Registrars	$ 22,000
3	to	4	Town Meeting & Reports	$ 20,000
4	from	26	Library	$333,000

Mr. Lawson thanked the FC for approving the transfer. He noted that the SB is mindful of these expenses, which have not come as a surprise or shock. He appreciated the concern and time spent by the FC on the legal services budget issues. He indicated that the SB will continue to work hard to control legal costs. Mr. Makarious agreed to move forward with the SB in an effort to resolve the Estabrook Road issues.

FY20 Revolving Fund Budget Adjustment –Regional Housing Services Office (RHSO)
Liz Rust was present to discuss her request of June 9 to increase the FY20 RHSO Revolving Fund expenditure limit by $20,000. She explained that current expenses are projected to be about $283,303 by June 30, which is above the limit of $265,000 set at the 2019 ATM. She noted that the RHSO has increased its expenses (and corresponding income) by about $36,605 over FY19. Lincoln joined the collaboration, and Acton, Concord and Sudbury purchased supplemental hours. Those fees have been received. The FY20 expenditure limit may be increased with approval of the SB and FC. No additional money is due from Concord.

On a **MOTION** made by Mr. Patel and seconded by Ms. Reynolds, and on a roll call vote (with Hartman, Banfield, Reynolds, Jamison, Zall, Patel, Packard, Hickling and Ortner voting yes; and Swain abstaining) it was **VOTED** to increase the FY20 RHSO Revolving Fund expenditure limit by $20,000.

Town Meeting Update
Mr. Banfield reported that the ATM is tentatively set for September 12 beginning at 9:00 am at the Doug White field at the high school. Between now and then the Moderator will reduce the scope of the meeting, and is working in conjunction with the SB, TM and School Committee (SC) and petitioners to identify which articles can be put on the consent calendar, which can be deferred to a special town meeting (STM) on a date TBD, and which are essential to be addressed on September 12. Mr. Banfield reported that he and Ms. Hartman will meet with the Chair and Clerk of the SB and the Moderator to review a tentative list. This will be followed by a joint meeting of the SB and FC with the Moderator.

Mr. Banfield commented that in order to meet the revised ATM schedule, the FC will need to prepare new budget guidelines. If any financial articles are changed, then a public hearing will be scheduled. He noted that Article 30 (Healthy School Buses for Students) was mistakenly omitted from previous FC public hearings, so this will need to

be included on the agenda for the public hearing. A FC Report will need to be prepared and mailed to all households at least 14 days prior to the ATM, so the earlier the report can be completed the better. Mr. Lawson reported that the SB is meeting Monday and will discuss the SB-sponsored ATM articles to determine which ones can be included on the consent calendar, which are essential for the September ATM, and which can be deferred. The Planning Board has provided the SB with a list of essential articles. A zoning amendment that is withdrawn or not moved is considered to be a negative town meeting vote, with a prohibition from being brought back to town meeting for two years. The Moderator is exploring a retraction provision for these articles. Mr. Lawson reported that he received a mixed reaction from petitioners about deferring their articles to a STM. He anticipates that the SB will vote on Monday to sponsor any petition articles that are deferred, to save the petitioners from gathering signatures and resubmitting their articles.

Finance Director Report

In response to a question from Ms. Reynolds, it was noted that we have no firm dates for when the TM and School Department will submit their revised FY21 budgets. Ms. Lafleur reported that she is scheduled to meet with the TM tomorrow and will let the FC know shortly thereafter when the revised Town budget will be available. She anticipates that the FY20 meals tax receipts will be down significantly. She reported that there is a significant balance in FY20 cash capital funds due to the Town's limited ability to carry out those projects. Those funds can be carried forward, with the potential for reducing the FY21 cash capital budget request made under Article 11. She presented the FC with a detailed estimate of FY21 revenue and expenditures, which will be revised again once the revised FY21 Town budget is prepared. She assumes a $3 million reduction in revenue (-20% in Ch. 70 funds--$1.3 million; -15% in local receipts--$1.2 million; and $500,000 buffer).The Governor has extended to September the deadline for meals tax, rooms occupancy tax and sales tax due March-August. Estimated expenditure savings are: debt service (-$138,258); health insurance (-$200,000); Retirement COLA base (Art. 7) won't impact FY21 (-$309,000); recapture of unspent FY20 appropriations (estimated -$500,000 to $1 million); and reduction in FY21 cash capital request to account for diminished capacity to complete FY20 cash capital projects & purchases.

Nomination of Officers

The Nominating Committee (Mr. Packard, Mr. Tarpey and Mr. Banfield) met twice. At the first meeting, the potential slate was discussed, followed by Mr. Banfield calling each of the nominees to determine their interest and willingness to serve. All agreed to serve. The Nominating Committee then met and unanimously voted to recommend the following slate of officers for FY21:

- Finance Committee Chair - Mary Hartman
- Finance Committee Vice Chair & Guidelines Subcommittee Chair - Chris Reynolds
- Finance Committee Clerk - John Hickling
- Guidelines Subcommittee Clerk - Parashar Patel

On a **MOTION** made by Ms. Ortner and seconded by Ms. Zall, and on a roll call vote (with Hartman, Banfield, Reynolds, Ortner, Jamison, Zall, Packard, Swain, Hickling and

Patel all voting yes), it was unanimously **VOTED** to approve the slate of officers proposed by the Nominating Committee, as noted above.

Mr. Banfield remarked that he is not sure when the change in officers will be made–there may be parallel activity over the next few months. He thanked all for their willingness to serve. Mr. Banfield noted that the Moderator is looking to identify some new FC members. Suggestions are welcome, preferably with financial, legal or business acuity.

Observer Reports

2229 Main St. Committee–Ms. Zall reported that Starmet has planned a presentation and update on the cleanup to the Council on Aging; she plans to attend.

> **Follow-up:** Mr. Banfield agreed to contact Gary Kleiman to determine what input, if any, committees have to the NMI Starmet reuse survey.

School Committee–Mr. Banfield reported that the SC has been meeting weekly, working through Phase 4 (how to safely open schools in the fall). The Superintendent is considering that the SC revisit the teachers' early retirement program. She surveyed other communities and the teachers unions and received a tepid response from one union. The idea has been tabled for now. Preliminary calculations indicated that CPS could have saved $200-$500,000 per year for five years. The CCRSD savings were not as robust. He noted that unlike many communities, Concord is not required to provide layoff notices to teachers in the spring when there is financial uncertainty; this is due to Concord's collective bargaining agreements, which provide for more flexibility. Ms. Hartman noted that a task force for reopening the schools has been assembled, and they are working through the possible scenarios for reopening (transportation, food services, simultaneous online learning, etc.). Mr. Banfield reported that the $900,000 in the FY21 capital budget for schools (Article 26–under the TM's 5-year capital budget) is not really needed this year, so the appropriation of these funds could be deferred for one year. The vote on this by the SC has not yet occurred. Ms. Reynolds reported that Carlisle held its ATM. They deferred a vote on the regional school budget until a revised budget is available. The Regional SC has asked Dr. Hunter to prepare three budgets–(1) assume 100% of classes will be held remotely; (2) assume there will be a blend of in-person and remote learning; (3) assume that all students will return to in-person learning. Ms. Hartman commented that Dr. Hunter and Jared Stanton are "ahead of the game" in their preparations for the fall during the pandemic.

Capital Planning Task Force–Ms. Ortner reported that the task force has received an extension in its tenure from the SB. The final report is now due by June 2021. Todd Benjamin has stepped down from the task force, and there is an opening for a citizen representative to the committee. The committee's charge has not changed.

Middle School Building Committee–The committee has paused, but they are still waiting for the designers to come back with a draft feasibility study. It was noted that it will be difficult to operate in zoom mode for a public hearing.

Minuteman Vocational School Committee–Ms. Reynolds reported that the SC plans to spend $6 million on constructing new athletic fields--$4.1 million from the balance remaining in the construction fund; $600,000 from the rental income balance; and $1.3 million from the capital stabilization fund reserve. They do not anticipate requesting additional capital funds for the fields from member communities. The $6 million

expenditure will not include a football field, bleachers, or lights. The SC believes that the more the fields can be used, the more rental income will be generated. Ms. Reynolds noted that most member towns have held their town meetings, so Minuteman has a sufficient number of positive votes for its FY21 operating budget. She noted that the Minuteman Regional budget approval process is different than the Town process, which is why a 1/12 budget will not be necessary for Minuteman. Ms. Hartman noted that when Minuteman recently met with the FC, they did not yet have a firm budget number. She does not want this warrant article to be on the consent calendar for this reason.

> **Follow-up:** Ms. Lafleur will contact Minuteman to confirm that its budget is considered approved with a majority of towns having voted prior to June 30.

Warrant Articles –Resume Discussion of Recommendations

Mr. Banfield noted that at the FC's last meeting, he was asked to write a letter to the SB and TM asking that the Parks & Playground capital projects (from borrowing) be deferred. He did that, with a copy sent to John Cratsley, Chair of the CPC. He subsequently had phone conversations with the TM Stephen Crane; Director of Natural Resources Delia Kaye; and Mr. Cratsley. Mr. Crane understands from where the FC is coming, but he feels that the Town approved the first round of funding for these projects, and questioned why additional funding would stop now. Ms. Kaye was concerned that Warner's Pond dredging would be delayed. She noted that although this project is listed under Parks & Playgrounds, the dredging is being conducted and coordinated by the Natural Resources Department. She explained that the purpose of the project is to clear certain sections of the pond for silt control, so it is unfortunate that it is being lumped together with Parks & Playgrounds. Mr. Banfield asked Mr. Cratsley if any of the CPC projects could be deferred. Mr. Cratsley responded "no," noting that the funding is in hand and available. Mr. Banfield noted that the Gerow and Warner's Pond dredging projects are proposed to be funded from both Articles 11 (Town Capital Projects) and 44 (CPC), and the funding is tangled.

Ms. Ortner asked whether the TM had responded to the FC's letter, and Mr. Banfield indicated that he had a phone conversation with Mr. Crane, but no written response. Mr. Crane emphasized that the Town had approved these projects in the past, and questioned why the FC wishes to "stop the train" now. He also indicated that the Emerson Playground Improvements proposed under Article 11 include replacement of the rubber surface under the play structure. Wood chips are not allowed, so deferring this funding would be problematic. Ms. Hartman suggested that an attempt be made to "decouple" the CPC funding from the Capital Budget funding. She felt that discretionary projects receiving town funding could be delayed during the current economic uncertainty. Ms. Ortner suggested that it's possible that the bathrooms and trail work could be accomplished with just the CPC funds. After further discussion, it was agreed that the CPC projects could proceed, if they have received the recommendation of the CPC. Ms. Reynolds noted that the Town still has a revenue shortfall, and it would be helpful to determine what discretionary spending could be deferred if we need the funding elsewhere.

On a **MOTION** made by Ms. Hartman and seconded by Ms. Ortner, and on a roll call vote (with Hartman, Banfield, Reynolds, Ortner, Jamison, Zall, Packard, Patel, Hickling

and Swain all voting yes), it was **VOTED** to recommend **AFFIRMATIVE ACTION** on Article 44, Items F & G.

Ms. Reynolds suggested that a recommendation on Article 11 be deferred until the FC has seen the revised Town budget. She does not feel comfortable approving discretionary spending until more is known. Mr. Banfield noted that if borrowing under Article 11 is approved, it will not hit the tax rate until FY22 at the earliest, when the situation may be worse. There are lots of unknowns. Ms. Hartman suggested that the conversation continue with the TM. She would like to see a better delineation and explanation of how the money would be spent, with a prioritization of the discretionary items in Article 11. It was suggested that Mr. Banfield and Ms. Hartman speak with the TM to discuss the issue, requesting a prioritization of the five Parks & Playgrounds projects in Article 11. Following a question from Mr. Patel, it was noted that the FC does not know how the projects are linked between Articles 11 and 44; if the FC recommends that the $600,000 for Gerow and $500,000 for Warner's Pond dredging under Article 11 be deferred, what does that do to the $500,000 for Gerow and $500,000 for Warner's Pond dredging proposed under Article 44? It was agreed that a position on Article 11 will be tabled, pending further conversation with the TM.

Article 14–Affordable Housing Development

Ms. Hartman noted that there is no other funding source for affordable housing at this time for affordable housing, since Concord's home rule legislation for affordable housing revenue is pending in the state legislature. Mr. Banfield noted that adding this as a line item in the budget would create a very large budget increase. Ms. Reynolds commented that the concept is good, but she feels that this is in the "nice to have" category and she is reluctant to commit to funding from free cash until more is known about the Town and School budgets. Mr. Lawson noted that the transfer tax legislation was voted out favorably from the revenue committee, so there is some hope that it will pass. Ms. Lafleur reviewed the tentative FY21 uses of free cash: (1) $1 million to reduce the property tax levy; (2) $500,000 for Article 14 Affordable Housing; and (3) $2 million for middle school debt stabilization. Mr. Lawson indicated that the SB is leaning towards postponing a vote on the debt stabilization. Mr. Banfield noted that it doesn't look like we will be replenishing free cash in the same manner as in the recent past. Ms. Hartman distinguished between non-essential items and those items which the FC won't support at the ATM. She noted that there are two opportunities for support–the ATM in September or at a STM at a date to be set. Ms. Reynolds suggested that the FC could agree to Article 14 in theory, but hold off on allocating free cash until we have a better idea of the free cash balance. Putting Article 14 into the "non-essential" category kicks the issue down the road. The consensus was to hold off on making a recommendation on Article 14.

Correspondence

Mr. Banfield noted receipt of correspondence from Dorrie Kehoe, of the LWVCC, which was sent to the SB, with a cc to the FC. He also noted receipt of a June 23 letter from Brooks Read & Susannah Kay concerning the Estabrook Road legal matter. Ms. Zall commented that it is not the role of the FC to be involved in the Town's litigation. Mr. Packard noted that the FC has become involved in this matter, although not by choice. Ms. Reynolds appreciated receipt of the communication, but suggested that it would be

better directed to the SB. Mr. Banfield concurred that the FC has had sufficient public discussion of this matter through the budget process, but the level of detail of the correspondence is beyond the scope of responsibility for the FC.

On a **MOTION** made by Ms. Hartman and seconded by Ms. Ortner, and on a roll call vote (with Hartman, Banfield, Reynolds, Ortner, Jamison, Zall, Packard, Patel, Swain, and Hickling all voting yes), the meeting adjourned at 9:36 pm.

Respectfully submitted,

Anita S. Tekle
Recording Secretary

Documents Used or Referenced at Meeting:

- 2020 Annual Town Meeting Warrant
- Memo from Kerry Lafleur to Stephen Crane re: FY20 Revolving Fund Budget Adjustment (dated June 22, 2020)
- Memo from Liz Rust to Kerry Lafleur re: Increase FY20 Revolving Fund total expenditure (dated June 9, 2020)
- Memo from Kerry Lafleur to SB, FC and Town Manager re: Request to approve year-end transfers (dated June 22, 2020)
- Memo from Kerry Lafleur to Stephen Crane re: Options to cover FY20 legal overrun (dated January 23, 2020)
- FY21 Budget Updates from Kerry Lafleur, including update of property tax collections (dated 6.25.2020)
- Correspondence from Brooks Read & Susannah Kay (dated June 23, 2020)