

# HAMILTON BOARD OF SELECTMEN

## MINUTES OF MEETING

April 2, 2018

Members Present: Chair Bill Wilson, Shawn Farrell, Scott Maddern, Allison Jenkins, and Jeffrey Hubbard

Town Manager: Michael Lombardo

Members Absent: None

Chair Bill Wilson called the Board of Selectmen (BOS) meeting to order at 7:01 p.m. Fourteen people attended

### **ANNOUNCEMENTS**

- **Board and Committee Openings:** The Open Space Committee and the Town Hall Building Committee each have one open position.

### **Public Comment**

None.

### **Selectmen/Town Manager Reports**

Allison Jenkins reported the Planning Board talked about subdividing 46/47 Winthrop St. There was talk of adding bleachers at Patton Park. She isn't opposed to it, but wondered who on behalf of the Town had approved it. Mr. Maddern said other things, such as dugouts, were included also. He didn't think it was something the BOS had to approve. Mr. Wilson said he did not think it was an "end-around." Mr. Maddern said he will look into it. Ms. Jenkins said the Hamilton Foundation is steadily working to help Hamilton residents.

Shawn Farrell reported the Conservation Committee will be having a site walk he will report on next meeting. The Community Preservation Committee meeting was postponed due to the storm. One of the bigger things he's done is work on the Rain Barrel program. Hamilton and Wenham residents who participate can save money on water bills by purchasing a 60-gallon barrel that can be ordered at a reduced cost through the link on the

Town website or through GreatAmericanRainbarrel.com. The deadline to order is May 13 at midnight; barrel pick-up is May 19.

Jeff Hubbard reported the last Finance Advisory Committee (FinCom) meeting was the joint meeting with the BOS. He and a couple of FinCom members met with the president and vice president of Gordon-Conwell Theological Seminary about the burden of education costs that the 45 school kids living on the Gordon-Conwell campus and attending Town schools put on the community. There was talk about using the steeple at the seminary to perhaps help the Town solve its cell service issue, although whether there's enough space there needs to be determined. Gordon-Conwell has been in front of the Planning Board about cutting off a piece of the property at Bridge St. and Miles River Road. Their intentions are to sell the property to a for-profit developer for multiple houses. Mr. Hubbard said Mr. Wanger presented to Gordon-Conwell the idea this might be good land for affordable housing as a gift [payment in lieu of taxes] to the Town.

Scott Maddern announced it was Mr. Wilson's last BOS meeting and expressed how he will be missed and has contributed vitally to the Town. Mr. Wilson is stepping down to focus on his day job. Mr. Maddern reported he and Mr. Farrell and Mr. Hubbard attended a School Committee meeting last week. The topic was declining enrollment, although much of the public response at the meeting was about the A.L.I.C.E. program (active shooter civilian response training), which will start in August. Mr. Maddern said he did a check-in with State Representative Brad Hill pertaining to the Special Act about accounting at the Patton Homestead, and they will be formatting the financial report. The Historical Society would still like to move to the Homestead, but the north wing, where they'd want to be, isn't part of the project's first phase. The Society will document their needs and pass that to the Patton Homestead and Town Hall Building Committee.

Mr. Wilson, who also attended the School Committee meeting, said it was a good discussion regarding affordable housing and the Schools' list of prioritizations. The Schools approved a statement of interest to the M.S.B.A. [Massachusetts School Building Authority] in an effort to look at opportunities for consolidating schools and other efficiencies. Two meetings ago they had a large audience come in and promoted the A.L.I.C.E. program, which will train 350 teachers. He did not see the Longmeadow Way project on the docket. He had a discussion with Curt Miller, who owns the back parcel at Longmeadow, and for the first time the sales purchase agreement was shared with him, as well as Andrew DeFranza of Harborlight Community Partners. The agreement has challenges and will add to the complexity of the process. He brought it to the attention of the Hamilton Affordable Housing Trust (HAHT), which has not met recently due to quorum issues. Mr. Wilson is also stepping down from the HAHT.

Town Manager Mr. Lombardo said he spoke briefly with Robert Patton about setting up a conference call with Mr. Patton and Town Counsel Donna Brewer regarding putting

together a community host agreement. This week leading up to Town Meeting will consist of heads-down work finalizing presentations.

**Pole Hearing**

*Petitioner proposes the installation of one (1) JO Pole on Bay Road. National Grid to install new class 3, 40' stub pole 71-84 and sidewalk anchor guy to replace tree guy on customer property at 625 Bay Road, Hamilton, MA 01936.*

Mr. Lombardo gave an overview and said this action did not pose any issues for the Town. Sibhita Mahabier-Sheehy of National Grid, gave details of the project.

**Decision:**

Mr. Maddern made a motion to approve the installation of the pole. Mr. Hubbard seconded the motion. The BOS voted unanimously (5-0) to approve the installation.

**CONSENT AGENDA**

- **Approve Minutes from the Joint BOS/FinCom meeting on Feb. 13.**
- **The YuKanRun requests permission to have Half Marathon-By-Sea scheduled for Sept. 23.**
- **The Community House and the Sundays in Patton Park Summer Concert Committee request permission to hang banner on the Bay Road building for the eight-week summer season from June 11 through Aug. 5.**
- **The Hamilton Garden Club seeks permission to use the front lawn of the Hamilton Senior Center and to hang a banner advertising the Annual Plant Sale from May 6 through May 19.**
- **Confirm appointment of the Recycling Committee Members: Thomas Rogers, Charlotte Lidrbauch, and Linda Morey.**

**Decision:**

Mr. Hubbard made a motion to approve the Consent Agenda. Mr. Farrell seconded the motion. The BOS voted unanimously (5-0) to approve the Consent Agenda.

**Logistics of Annual Town Meeting**

Mr. Wilson said he wanted to make sure everyone knew who was reading what motions and speaking to what articles. They had a copy of the tentative script and discussed timing, location, overflow room, lobby tables, etc. Town Moderator Jeffrey Melick, who was present, will be the moderator on everything except the Citizen's Petitions. When he steps aside on those, Bruce Ramsey will moderate. Mr. Farrell shared information regarding the daycare they will offer and what was happening in Town regarding kids' sports that day.

FinCom Chair David Wanger said, regarding Articles 2-5 and 2-7, which he had assigned to himself, he was seeking guidance on making it known he is “the mover, not the shaker.” Although he is making the motions, he doesn’t want it perceived he supports them. Mr. Melick suggested one of the Hamilton members of the School Committee make the motion. He had already discussed doing that. Ms. Jenkins noted she had been told by Town Counsel that one can’t make a motion at Town Meeting for something they weren’t in favor of, although they could speak about the article.

**Continued Discussion and Votes on Warrant Articles**

The BOS went through the Warrant and assigned who would be reading each section at Town Meeting. The BOS also voted on the articles they’d not yet voted on.

**Warrant Article 2-7—School Debt—Safety, Accessibility, and Critical Infrastructure Capital Projects**

**Decision:**

Mr. Maddern made a motion to recommend unfavorable action on Article 2-7. Ms. Jenkins seconded the motion. The BOS voted unanimously (5-0) to recommend unfavorable action.

**Warrant Article 2-13—Hamilton Development Corporation (HDC)**

Brian Stein of the HDC asked about question on Article 2-13. The Fiscal Impact reads: *The proposed transfer will increase the estimated tax rate by approximately \$0.04.* He noted the four cents pertains to the meals tax, not tax rate. The BOS decided to strike the statement.

**Warrant Article 4-2—Demolition Delay Bylaw**

The Selectmen couldn’t recall their vote on this bylaw. After checking, they found they had recommended unfavorable action (4-0) with 1 abstention.

**Warrant Article 5-1—Citizen’s Petition: Appropriation for Legal Fees**

**Warrant Article 5-2—Citizen’s Petition: Retention of Counsel for Planning Board and Report to Town**

**Warrant Article 5-3—Citizen’s Petition—Report to Town**

When asked for his input, Mr. Wanger said FinCom would be voting on the Citizen’s Petitions on Wednesday. He said if they were to vote solely along the lines of the legal advice given, they would be voting unfavorably on all of them. He said he was troubled, though, by the underlying dynamics regarding the cell tower issue. He explained there was some thought of a preconceived notion that Varsity Wireless would be the contract for the tower behind Town Hall and it was conceptually a done deal before the start of the process. He is not stating that as a fact, just flavor. From that flows a thought that the Planning Board exercised its due process by denying the special permit ration of votes. Without his making a judgment about whether that was correct to do, they were entitled to take that vote, he said. If a citizen board takes a position on an issue and complies with their internal

process and the bylaws governing their procedure and if another board (the BOS) that has the power of counsel disagrees with the Planning Board decision, how is that adjusted so the Planning Board members are still given a voice consistent with their vote? Although he tried to resolve the issue through negotiations, he said he was unable to do so amicably. It has an impact of being argued as a deterrent to citizen participation in government, which he called a serious consideration. Some people may say he's overcomplicating a simple matter and if something is not legal, it's not legal. But there is a lingering thought about the citizen participatory context and having that shaded a bit. He added Gordon-Conwell (the steeple idea) might provide a solution, although not before Saturday (Town Meeting).

Mr. Maddern noted no Planning Board member had come to the BOS at the start asking them to pay legal fees. Mr. Jenkins added the majority of the Planning Board said there would be no funding for legal counsel if a lawsuit were attempted. She agreed with Mr. Wanger they had every right to vote as they did, but the majority of their board said no legal counsel and they hired a lawyer, not to protect themselves individually from a lawsuit, but to fight the case in Federal Court, which was against what the majority of their board wanted. She questioned whether there was enough space in the Gordon-Conwell steeple and whether it was actually available, and she had written to the college to inquire. The Town wouldn't have the ability or authority to put it there now, although they may have the capacity to negotiate it at a future date. Mr. Wilson added there is a reason the steeple has remained vacant. He didn't think there was enough room for a full macro. He added that when a citizen goes on a Town board, they have to act on behalf of the board. They can't have individual board members committing to monies on the Town's behalf.

Planning Board member Rick Mitchell said he was troubled by the statement this could be a deterrent to citizen participation. He presented the idea could be a deterrent to citizens becoming elected officials if they thought members of a board could ignore the law and facts and go off on their own and make him, as a citizen of the Town, pay for what he says is an error in judgement. That would hurt citizens' participation, he said, and be a huge deterrent if they see that happens with no consequences.

Mr. Wanger said among the few things he's learned in 50 years of law practice is one can't be certain what the law is until it's declared by a tribunal and one shouldn't surmise motivation.

Carin Kale, who is president of Patton Homestead's Board of Directors, asked if the fiscal impact of the petition would be stated at Town Meeting. Mr. Lombardo said he thought it was about \$9K for the attorney, who was Dan Hill.

**Decisions:**

Ms. Jenkins made a motion that the BOS recommend unfavorable action on **Article 5-1**. Mr. Farrell seconded the motion. The motion to recommend unfavorable action was approved (4-1).

Ms. Jenkins made motion that the BOS recommend unfavorable action on **Article 5-2**. Mr. Maddern seconded the motion. The motion to recommend unfavorable action was approved (4-1).

Ms. Jenkins made a motion that the BOS recommend unfavorable action on **Article 5-3**. Mr. Maddern seconded the motion. The motion to recommend unfavorable action was approved (4-1).

#### **Warrant Article 5-4—Citizen's Petition: Taxation of DCR Property**

Although the BOS had recommended unfavorable action on this article at the last meeting, they continued their discussion. Ms. Jenkins said Ms. Brewer stated the Town is following the law, but the people living at the property haven't followed what's outlined in Mass. general laws to get an abatement. They have to go in front of the Assessors and haven't taken the steps. For it to be a public purpose, they had to have held two annual open houses. She researched and didn't see that any open houses were advertised. Mr. Wilson said they've been comparing this situation the property at Willowdale, which is a business, not residence. Mr. Hubbard said a letter was provided from the Department of Revenue that stated the residents had fulfilled their requirements [of curatorship], which did go to the Assessors. Mr. Lombardo said when the residents filed for an abatement and were denied, they had an opportunity to file an appeal, but chose not to. They tried to have the law amended to provide some tax exemption, but that is buried in committee and not likely to come out. Mr. Hubbard said he is the dissenting view. Towns are doing things differently and it isn't clear what the stance should be. He said he thinks it ironic this building would fall under the Delinquent and Dilapidated Building Bylaw and the Demolition Delay Bylaw if not for those living there and improving the property.

Mr. Wilson said legally if the lessees aren't compliant with the existing programs, they have to tax it. He added they've done a great job on the house, but is the Town seeing any benefit from that house? Should we subject other citizens in the community to pay for it? Mr. Lombardo said the Assessors were responsible for making the determination if the property is taxable and made the decision to tax it. There is a process for the lessees to vet that, but they haven't availed themselves of it. It is putting the Town in a bad spot because the Treasurer/Collector has to act. Mr. Maddern said, from what he's learned, the owners knew it was taxed property when they entered the deal and paid the taxes for a while. Mr. Wanger asked if Mr. Lombardo would share the email from Ms. Brewer. He said he would send it around again. Mr. Hubbard said he had been waiting for a response from the Department of Revenue Municipality Office to see if it is something they recommend as being taxable or not.

Ms. Jenkins said even if the warrant article passes, there's no actionable item to it. Mr. Lombardo added the Town can't pay back taxes already paid. Whether it is voted up or down, Mr. Farrell said the decision would be advisory-only. They decided to end the discussion and move on to the next item.

### **Warrant Article 5-5—Citizen's Petition: Town Manager Salary in FY'18**

#### **Decision:**

Mr. Farrell made a motion to recommend unfavorable action on Article 5-5. Mr. Maddern Seconded the motion. The BOS voted (3-1) with 1 abstention to recommend unfavorable action.

### **Warrant Article 5-6—Citizen's Petition: Zoning Bylaw Amendment Table of Use Regulations**

Mr. Melick said when he saw Rosemary Kennedy's presentation on TV he felt physically sick about her allegations. He was on the Planning Board at that time and said all members acted appropriately. They spent about a year and a half rewriting the Town bylaws. Mr. Melick said he spent over 100 hours outside of meetings and was tasked with making them easier to read. They hired Attorney Mark Bobrowski to help them. He said Director of Planning & Inspections Patrick Reffett did an enormous amount of work, as well. The issue in this article, he said, pertains to whether there should be a mixed-use in the business district. In Nov. 2015, the Town voted to have mixed-use there. It had been a specific article that was overwhelmingly approved. Ms. Kennedy spoke against it, but it was put into the zoning bylaws. The rewritten version included a table of use, which is standard. They prepare in chart form what uses are permitted in certain areas of Town. Ms. Kennedy's complaint is that Paragraph 7 in the Table of Use regulations included the same bylaw that the Town had adopted in Nov. 2015, which was: mixed use is available. It was reworded with specific language that a lawyer for the HDC asked them to put in. The idea of changing that language was placed in an errata sheet along with other suggested changes. It was given to everybody at Town Meeting and discussed on the Town floor. Ms. Kennedy brought up and complained about mixed use, but nobody else did, he said. Neither she nor anybody else made a motion to amend what they placed on the Town Meeting floor and it was adopted overwhelmingly. Her complaint is that there was no due process and they did something wrong. If she—or anyone—wants to amend the zoning bylaws to take out mixed use in the business district, they can try to do it. He advised looking back to the votes made in 2015 when it was discussed and voted on.

Ms. Jenkins said it was an overwhelming amount of information coming to the BOS to decide on. She thought Ms. Kennedy's point was more to do with two or more dwellings above the mixed-use. She is not questioning whether they voted mixed use, she is questioning if the Town voted for two or more dwelling units above the commercial space.

Mr. Melick said if someone looks at the bylaw the number of units is not specified. If someone wanted to put one, two or more units above, they would have to go to a Site Plan review and Board of Health review. Mr. Wilson said that in no way does he think the Planning Board was trying to push through something through the back door in the final hour. Mr. Melick said Ms. Kennedy wanted to eliminate mixed use. Mr. Lombardo said the former bylaw limited it to one apartment. What's she's requesting would bring it back to one apartment. Mr. Stein said they had always allowed one unit above. What started this was when the barber asked to be able to add another unit. The whole point of mixed use was to say more than one was allowed. The way they worded it in the zoning bylaws was simply to make that clear.

Mr. Farrell asked for clarification. The interpretation is that Ms. Kennedy's language would roll back two Town Meeting votes. Mr. Wilson noted if it went through that process, they could then go through the process to revert it. Mr. Farrell said there are only a couple of buildings downtown that could actually accommodate more than one unit.

Ms. Jenkins said this came to the BOS late as a citizen's petition and requires a substantial amount of research by every resident to vote on it. She would rather see the petitioner or other interested party bring it to Fall Town Meeting and ask the residents if the bylaw should say one unit or two or more units. Mr. Farrell noted the Town already has that in the form of the bylaw.

Planning Board member William Olson said the zoning bylaws determine the number of units allowed. The way they worded it was to make it clear. He said that if the complaint is that it had been quickly slipped in at the last minute, that is essentially what they are trying to do now. He noted the Planning Board will hold a public hearing on the matter tomorrow night.

Mr. Reffett said, in his opinion, the way the article is written is that it is a simple deletion, eliminating the entire clause without anything in lieu of it, which would make mixed use go away. BOS members again discussed that this would be a rollback of two Town Meeting votes.

**Decision:**

Alison made a motion that the BOS recommend unfavorable action on Article 5-6. Mr. Maddern seconded the motion. The motion to recommend unfavorable action was approved (4-1).

**Further Pole Hearing Discussion**



Trevor and Heidi Hanson, 625 Bay Road, abutters who missed the Pole Hearing, questioned where National Grid was putting its anchor wire because it appeared from the drawing they might want to anchor it in their yard. They said they had to talk to National Grid previously about getting a wire out of a tree they have in their yard so they can remove the tree because it's dead. Mr. Lombardo said the Town can't put things on private property. He will look into the matter and get back to them.

### **Discussion of Pushing Information out to Citizens**

Mr. Wilson said they were looking for ideas about how they can control communications from the Town and prevent things that get out of hand and fly around on Facebook. Should they have a BOS Facebook page? Mr. Wanger said he thought this agenda item related more immediately to messages they might want to communicate to the public prior to Town Meeting. He said the Schools have taken the initiative to have a media campaign to define their position. He suggested that in turn, they could address one warrant article per day on the Town Facebook page. Mr. Wilson asked first, if they agreed it's a good idea. Mr. Farrell noted the Wenham Selectmen have a column that appears in The Chronicle. He thought maybe they might find someone at the high school to come to their meetings and do some reporting. He lamented the fact they are typically only reaching a fraction of the Town. Thanks to FinCom member Phil Stearns' efforts, they now have comments and the financial impact on the Warrant. Perhaps they could link to that.

Duke Seaver, 402 Essex St., suggested they use the alert they use for parking bans on snow days to reach more people in advance of Town Meeting. Mr. Hubbard said the language Mr. Stearns has done is all in the warrant and suggested a phone blast telling people where to go to find it and to remind them of Town Meeting itself. With Code Red, people can set up lists and subscribe to different parts of it. They could be using it more efficiently.

Mr. Wanger and Mr. Stearns left the meeting.

Mr. Maddern said the Town has a Facebook page. He isn't in favor of creating another one. He said it is the BOS's job to get information about the Citizen's Petitions out. He said if the Selectmen observe inappropriate or incorrect things, they should go to the person sponsoring the petition and talk about it. Mr. Wilson commented that the Town had the vehicle, but needs to channel its voice, which was incumbent on them and the Town Manager. If the BOS wants something to get out, it can. Mr. Lombardo said the amount of time Bobby Gates has for working on the website is limited and he himself doesn't have the time to stay on top of it.

Mr. Seaver said he wanted to know the votes of the various boards and have them on the warrant, with the specific persons for and against. He wants the individual votes. Mr.

Wilson said the collective voice is what they're interested in and they could violate terms of open meeting law if they started posting things individually.

**Use of Social Media/Selectmen Protocol**

Mr. Wilson discussed that people sometimes have a hard time differentiating what Selectmen say as private citizens and as board members. Ms. Jenkins questioned who added this agenda item. Mr. Farrell said he had gotten a handful of comments from citizens about Ms. Jenkins' social media activity.

Mr. Seaver asked whether the Warrant for Town Meeting is posted on the Town website. He was told yes. He suggested a policy of not using Facebook.

Mr. Farrell mentioned Ms. Jenkins had done a Facebook poll about preferences for the polling location for the Town election. He said that may have made it look like the BOS wanted to pick a different venue.

Mr. Maddern said the problem with the Town website is it doesn't drive users to it. Also, nobody attends meetings. His conclusion has been that he doesn't use Facebook to push information out to people because things tend to get twisted or misunderstood, but he uses it to gather information and learn what's out there and what's being said. He questioned if the BOS wanted to do more with the website, as they controlled the purse strings if there was a need to do more. Mr. Wilson said Wenham seems to have better feed-outs about what happens at their meetings.

Ms. Jenkins said she read the protocol and social media policy and does not think she has violated protocol. When she spoke to the Mass. State Ethics Commission about this in reference to something else, she was told that not only was it OK to speak out on the issues, but it was their job as elected officials to do so. BOS members discussed there is a broad purview as long as they are clear about when they are speaking for themselves and not on behalf of the board. Mr. Farrell said it was a good idea to check with the board, though.

**New Business**

Mr. Farrell requested they look further into Code Red possibilities and getting people to sign up for the alerts.

Mr. Maddern said they should make it top priority to discuss the draft of the Financial Policies. He was shocked at how many policies they've approved—over 50. He wants to look at prioritizing them.

Ms. Jenkins said she will wait on her list. She recommended that in the future they discuss New Business topics at the beginning of the meeting rather than the end so they can gather comment from residents.


**Adjournment/Entered Executive Session**

Mr. Wilson read the following legal notice:

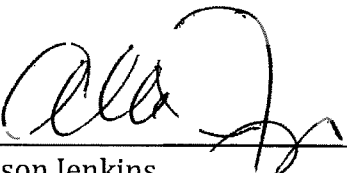
*"I will now entertain a motion to go into Executive Session for the purpose of conducting contract negotiations with the Town Manager, Michael Lombardo, not to convene in open session at the conclusion of the Executive Session."*

Mr. Hubbard made a motion to enter executive session at approximately 9:50 p.m. Mr. Farrell seconded the motion. A roll call vote was taken with "ayes" from Ms. Jenkins, Mr. Farrell, Mr. Wilson, and Mr. Hubbard. The motion to go into Executive Session passed unanimously (5-0).

Prepared by:

 5-8-18  
Mary Alice Cookson Date  
Minutes Secretary

Attest:

 5/22/18  
Allison Jenkins Date  
Board of Selectmen Clerk