

HAMILTON FINANCE AND ADVISORY COMMITTEE  
Minutes of Meeting  
March 7, 2018

Members Present: Darcy Dale, John Pruellage, Phil Stearns (Acting Chair), and Nick Tensen

Others Present: Jeff Hubbard.

This Hamilton Finance and Advisory Committee meeting was called to order at 7:05 pm at the Council on Aging Building.

**Public Comments**

**550 Highland St. Citizen's Petition. Lynnette Fallon and Donna Brewer**

Lynnette Fallon distributed a draft of the Citizen's Petition. A house in Bradley Palmer was vacant for years and in 2011, it was leased under a Historic Curatorship Program, enacted by the legislature in 2004. The house had been substantially improved by the tenants. According to Ms. Fallon, the tax issue had been discussed with Michael Lombardo since 2013. Donna Brewer had a document from the State that took the position that Town Meeting can only vote as an advisory vote, which was what Ms. Fallon would move at Town Meeting. Ms. Fallon wanted the Town Manager and Board of Assessors to hear the view of the residents of the Town.

According to Lynette Fallon, towns could not tax land that was owned by the State. The State funded the Town (Hamilton received more than \$125,000 a year) from the Commonwealth for State owned land as part of the cherry sheet. There was a provision, Chapter 59 Section 2B that a Town could tax a property owned by the State in the event that the property was used for business such as Willowdale, which had been leased under the same program. Ms. Fallon said the provision did not apply as this was just a residence. Another clause in the same section said that if a property was leased for other than public purpose, it could be taxed. The question was if that lease under the Historic Curatorship Program had a public purpose, which the Town believed it did not.

The residents paid tax then stopped paying tax and the Town filed a tax taking, sending the file to an outside counsel, who threatened foreclosure and eviction but no further action had been taken. The Town had taken the position that the building was not for a public purpose. The resident used his own funds to renovate the structure but the house needed to be open to the public twice a year. The derelict building, which was a danger before renovations, was now inhabited. The public benefits were not negated if the people lived there, according to Ms. Fallon.

The Town had relied on the Willowdale opinion but according to Lynnette Fallon, the situation fell under a different part of the statute as Willowdale was clearly a business. The property, even if leased as a business, could not be taxed if it were necessary to the operation of the park.

Topsfield won the case against the Willowdale mansion but the other house being renovated in Topsfield did not pay taxes. Ms. Fallon said there were at least eleven other State owned residential properties that were not being taxed. Ms. Fallon said it was bad public policy and an injustice to the tenants. The Statute said the Town's only remedy would be to sell the lease-hold interest, which no one would buy. The State retained the power to terminate the lease if it were transferred because they chose the individuals to fix up the property due to their skills.

According to Ms. Fallon, the Town faced potential liability and negative press.

Tom Catalano said the fault was in the legislation, noting that the Town may collect taxes but the remedy needed to be legislative. The legislature didn't deal with taxes, but the lease said if tax was asserted, it would be the tenant's responsibility. Lynnette Fallon responded that each Historic Curatorship case should be assessed under Section 2B. The use was not for public

purposes but that was not what the statute said. The statute said the lease would be for public purpose. Ms. Fallon said the purpose was the State deciding to enter into the lease.

The tax was reported to be \$6,700 per year. Tom Catalano said the tenants' arguments were that the improvements were for the public benefit. Mr. Catalano added that if the property were in the Historic District, it would have been deemed worthy of preservation.

Donna Brewer said the Motion would be asking for an advisory opinion and that everything that Lynnette Fallon had described was beyond what Town Meeting could affect. The taxation (if, how much, and if being used for a public purpose) was exclusively directed to the Board of Assessors. Ms. Brewer continued that it was the taxpayers' obligation to say the property was not taxable. It was not the Board of Assessor's job to defeat if it was being used for public purpose. The public purpose was part of the DCR Curatorship Program, which alone would show its status for tax exemption, which according to Ms. Brewer had been repeated for years, even though the appeals court said specifically that it was not true. The determination to preserve historic landmarks served a public good but did not carry with it the determination that it was tax exempt. The governing legislation did not apply exemption from real estate taxes for all historic properties associated with the program. The absence signified that such properties were not to be deemed tax exempt merely because it served the public good. Lynnette Fallon disagreed stating the tax exemption would be available for curatorship programs that met the requirement GL Chapter 59, section 2B because it was for a public purpose.

Phil Stearns referred to the press coverage of the situation and hoped other solutions could be found so as not to bring it up at Town Meeting. The topic would not be simple to explain and have citizens vote. Mr. Stearns did not think an advisory vote would solve anything. The State would render an opinion by March 15, 2018. Lynnette Fallon added that the Town of Hamilton was the only town on the North Shore taxing properties in the program. Donna Brewer responded that every taxpayer had a path to go through if they did not agree with their taxes. The path included filing for an abatement and beyond to the appellant tax board, which the tenants did not do. Ms. Brewer said the Assessor and Board of Assessors were doing their job while the tenants had not provided evidence to obtain the exemption. Phil Stearns noted the legal procedure established that the tenants could avail themselves to move it forward.

Peter Britton referred to the issue that an appeal could not be filed because the tenants owed taxes, which created a double situation for them. Donna Brewer responded that they could appeal, but needed to pay the taxes, which would apply to anyone who appealed by State Statute. Ms. Brewer added that during the Curatorship Program, the tenants were informed that they might need to pay local taxes.

Jack Lawrence (Rock Maple) said the State was the owner and lessor, who already paid a \$125,000 PILOT and as the owner was paying a tax already, the Town was actually double dipping.

#### **Discussion Regarding Town Manager's Salary Citizen's Petition. Jack Lawrence and Donna Brewer**

Jack Lawrence distributed the Petition, which requested that the Town Manager's salary be reduced. Mr. Lawrence referred to the Act setting up the Town Manager position in 2008, which stated that the Town Manager would run day to day operations guided by Town policies set by the Board of Selectmen. The Act specifically stated the Town Manager shall not set Town policy but rather coordinate all aspects to cover all departments under the jurisdiction of the Board of Selectmen, excluding the Board of Assessors and the Planning Board, who were separately elected. The Town Manager had fallen short in his full time position as he was seldom present and his door was always closed.

According to Jack Lawrence, items were neglected until the FinCom pressed the need and the Finance Director was hired. Mr. Lawrence said the Town Manager resisted the FinCom's participation endeavors. The Town Manager was supposed to prepare and present detailed annual and interim Operating and Capital Budgets to the Board of Selectmen and FinCom at Annual Town Meeting, provide current analysis relative to the performance and long range plan, and develop and implement a long range Capital Plan. Mr. Lawrence added that a three to five year projection of the tax rate would be under those assumptions.

The Town Manager was supposed to prepare and implement descriptions for Town Department Heads. Jack Lawrence said Patrick Reffett was hired as a Director of Planning and Inspections and had not done either under the supervision of the Town Manager. Planning had not occurred

as Mr. Reffett was too busy. The Town Manager was the Chief Procurement Officer and there were two areas of clear dereliction of duty including the Willow St. building, which was proposed to be 41' but was constructed at 57' and the pool skimmer, which was not properly vented with the kinked manifold needing replacement. The Plumbing Inspector would not sign off and left his position. Mr. Lawrence referred to the Kaminsky (550 Highland St.) harassment and Varsity Wireless (Town Hall cell tower) issues, noting the Town Manager did not uphold the Town By-law.

Jack Lawrence added that Town Counsel failed to mention that there was insurance for the Planning Board members' defense in the Varsity Wireless case that should have covered them if they were sued. The Town Manager was reported to have told the Planning Board how to vote on the cell tower and because some didn't listen to him, they were suffering the consequences, which Mr. Lawrence found unacceptable. Mr. Lawrence said the Town Manager did not cultivate and maintain relationships with citizens of the town, particularly volunteers on boards because he wanted to hire consultants who didn't know anything about the town. Mr. Lawrence said delegation came from the DOR in 2008 about how the Town should govern itself. Mr. Lawrence said that Patrick Reffett was essentially doing the Town Manager's job and that the Town was paying two people to do that one job.

Donna Brewer responded that the drafting of the article was problematic on a legal standpoint as the Article was requesting to call back monies that had been paid for two months. Ms. Brewer said the Town ran a high risk of a legal lawsuit. Jack Lawrence did not think the claw back was necessary. Mr. Lawrence said the article referred to the clause in the Town Manager's contract for the Town to appropriate his pay. Bill Shields added that it also stipulated to take any action thereon or relative thereto. It was noted that the contract stipulated that it was subject to Town Meeting approval, according to Mr. Shields. It was agreed to make the date from April 15, 2018 onward. Ms. Brewer said the Board of Selectmen had reviewed the Town Manager. Mr. Shields said they did not give him notice to review him in a timely fashion. Jack Lawrence said the people at Town Meeting could vote on how they felt the job was done.

Bob Curry (Bay Road) wrote a short observation about the Town Manager, but Phil Stearns responded that it was not the place to get into an evaluation but rather to determine if the Warrant Article was being acceptable and legal. Mr. Stearns thought as the Town Manager reported to the Board of Selectmen, those behind the Petition could have approached the Board of Selectmen first and work with them to achieve an objective to gather input to evaluate the Town Manager. After no satisfaction was gained through that process, the proponents would be justified to go to Town Meeting. Jack Lawrence responded that the Board of Selectmen were a large part of the problem so Town Meeting was an appropriate venue. Bill Shields said the Town Manager was to be reviewed at the end of the summer or his contract would continue until the next fiscal year. Mr. Shields continued that the notice was not given so his contract would continue. The appropriate action would be to go to Town Meeting, which funded his salary.

#### **Hiring Counselor for Litigation with Varsity Wireless and Other Potential Citizen's Petitions. Bill Shields and Donna Brewer**

Donna Brewer noted there were three motions within two articles. John Pruellage said Article 5.2 was the first part. There was case law around the Board of Selectmen's authority to engage counsel if Town Meeting approved the first half of Article 5-2. Ms. Brewer said it would still be up to the Board of Selectmen to hire counsel and that Town Meeting could not direct the Board of Selectmen to do so. The article would be an advisory vote, according to Ms. Brewer.

#### **Discussion of Community Preservation Committee (CPC) Warrant Articles. CPC Members and Affordable Housing (AHT) Members**

John McWane presented the application to hire an architectural firm to renovate the Patton Homestead property. The application covered doing work on the core area of the building where events would take place. The cost was around \$1M. The Committee had \$350,000 through the sale of the Patton Property, plus \$45,000. The CPC was being asked for \$200,000 for renovations of the exterior, windows, and siding. MA Cultural Counsel grant was \$225,000.

The CPC funding would be the resource for the matching grants. The work was scheduled to be completed by December 2018 with the venue opening in the spring of 2019. If grants in their entirety or partially were not gifted, a smaller scale of work would occur, according to Mr. McWane. Work would include getting the shell secure, heating, ventilation, painting, and lighting.

Russ Tanzer (AHT Chair) was present to discuss the \$100,000 request from the CPC. CPC funding was the sole source for the AHT. Mr. Tanzer said the AHT had committed \$300,000 for Willow St. with \$200,000 assigned to a next to be named affordable housing project. The

\$100,000 ask was to keep the AHT afloat and pay for Dorr Fox's salary. Mr. Tanzer announced a 10% down program for first time home buyers in exchange for a 10 to 20 year deed restriction. The program would be an open market concept for homes in the \$350,000 range. The remaining money would be used for other small projects that may come in the future.

Tom Catalano would be updating the housing component for the Housing Plan, hiring a consultant for a comprehensive plan. CPC administrative expenses were capped at 5% of the overall budget. The budget also included open space and recreation debt obligations.

#### **Blighted, Unsafe, and Dilapidated Buildings By-law. David Smith**

David Smith (Home St. and Board of Health Chair) distributed the latest draft of the By-law. Mr. Smith offered the history of the By-law's inception and noted that there were ten properties on file at the Board of Health that presented problems. The Town did not have the tools to do anything about a problem property. The State Sanitary Code was for rental tenants. Mr. Smith said after reviewing other Towns' By-laws, he researched the legality of terms as he wanted the By-law to be objective with legal precedent set.

David Smith said the Building Commission would determine if a structure fit the definitions of being vacant for 180 days and if the structure displayed the characteristics of a blighted structure that an owner had failed to maintain. The complaint driven By-law focused on the common interest of the general public not just an individual. If the Building Commissioner decided the building met the definitions, he would start the process by negotiating with the owner to fix the problems. If that didn't work, the Building Commissioner would seek help from other Town agencies especially the Council on Aging to avoid throwing elderly people out on the street due to financial, emotional, or physical issues when they could not take care of the property. If violations were confirmed, the negotiation process had failed and no one in Town government was able to find a reason why the By-law should not be followed, the Building Commissioner would have the ability to issue violations with fines.

Nick Tensen was concerned about individuals who might be attacked by neighbors. In response to Mr. Tensen's concern that fines were too lenient, David Smith responded that the fines accumulated daily. Donna Brewer added that the fines embedded in the By-law could become a lien against the property if not paid. Mr. Smith added that the fourteen residents who attended the public hearing were unanimously in favor of the By-law. Mr. Smith profiled the typical owner of a problem property with attributes to include a refusal to communicate, belligerent, loner, disrespectful of others, not original owners but someone who inherited the property, and a person who had enough money to fix the problem. 300 people were adversely affected by the ten problem properties, which was 5% of the town population indicating that the problem was not trivial. Mr. Smith thought the workload of the ten properties would be a minor work burden on the Building Commissioner.

Phil Stearns and Nick Tensen debated if a person had a right to allow their property to deteriorate. Mr. Smith responded that it would be determined by the Building Commissioner. Mr. Smith added that realtors had confirmed that being an abutter to one of the problem properties could cause a 10% devaluation of their property value. Nick Tensen asked what right the Town had to impose upon individual property rights. Mr. Smith responded that absent the By-law, the Town had no rights. John Pruellage said other communities had similar By-laws. Mr. Smith said a couple dozen towns had the By-law. Ed Howard (Meyer Lane) referred to the problem property in his neighborhood and recalled that the Attorney General was to do something regarding the issue but did not. Mr. Howard wanted to ensure that compassion was a safeguard built into the legislation. Peter Britton (Highland St.) said he thought owners were holding properties to be sold in the future and that the By-law would ensure the property was maintained until that time.

#### **Discussion of FY19 Budget including:**

##### **Discussion regarding School Budget and Capital Expenditures.**

The Warrant being reviewed was published on March 7, 2018. There were five different articles relating to the School Budget. Article 2-5 was a general town departmental appropriations with the School Budget of a 2.5% level service increase. The increase was 3.5% versus the FY18 Budget, which was split up before the critical priorities. The 3.5% level service budget was split between Wenham and Hamilton. The first Article 5-5 was for 2.5% and the second included overages on 2.5%. Article 2-6 appropriated money to pay existing school debt, which was previously obligated and non-controversial. The debt was included in the operating expense plan, but needed to be approved. Article 2-12 included the Winthrop fire suppression system for \$1M. The School Budget indicated \$850,000 and it would be corrected. Town Counsel would analyze the assessed value which was too low and triggered the 25% addition causing the need

for a fire suppression system. The appeal was not filed within the six month timeframe. Article 2-13 would approve the \$2.6M critical needs proposed for a bond issue.

If either of the two Operating Budgets were voted down, the whole School Budget would fail. A Special Town Meeting and another ballot would be held, but if the debt was voted down and the Operating Budget was approved, the School Budget would pass, but no additional debt would be incurred. It was noted that the FY20 Capital Improvement Plan was moved to FY19 as critical needs. The Budget increased 5% when critical priorities were added. Level services caused a 3.5% increase while Hamilton had suggested a Budget increase of 2.5%. The School Committee had the ability to accept the 2.5%. Wenham voted against anything greater than 2.5% and the critical needs.

#### Discussion regarding Budget Meeting Schedule.

A joint meeting with the Board of Selectmen would occur on the following Monday. Phil Stearns was concerned about the economic effect as part of the Warrant for each article and wanted to see an illustration of what an approval tax rate increase would be for each article.

There were no figures in the Warrant to date. It was agreed that a \$100,000 increase would be reflected as a \$.07 increase in the tax rate. The Warrant would close on March 15, 2018.

Articles would be voted upon on March 12, 2018 with the Board of Selectmen.

#### Discussion of other Warrant Articles including Demolition Delay By-law and Elimination of the Conservancy District.

The Historic District Commission was proposing the Demolition Delay By-law with revisions having been made after the joint meeting with the Planning Board. Donna Brewer would make further revisions. The purpose of the By-law was to create an interim tool to attempt to protect buildings that were important to the community from demolition. The By-law would buy some time to negotiate with the owner of the pre-1940 structure to come up with an alternative to demolition. Of the 750 properties, 5 % (50 to 75) would actually qualify. Qualifications included a structure being in the Historic District, being eligible or on the National or State Registrar of Historic Places, being part of an important cultural, political or social history or having been occupied by a person who was important in the town.

The process included filing with the Building Commissioner who would determine eligibility, then an expedited process of ten days for the Chair or staff to see if the building met the criteria.

If the structure did not, the Building Commissioner would be notified. The absolute maximum time from application until demolition would be one year. The majority of towns in eastern Massachusetts had adopted Demolition Delay By-laws with terms from six to 24 months with 12 months being the norm. The building could be moved to a different site or repurposed.

Demolition was construed as changing or moving more than 50% of the original historical structure. The permit could be applied for at any time and would be transferable. The By-law was considered a tool to stabilize property values within a community and the fees would cover the administrative costs. John Pruellage thought it was a proactive By-law for a historic owner but wanted to ensure the fees were not excessive.

#### Committee Members Comments/Reports.

Darcy Dale wanted to give an opportunity for the Fire Chief to speak. Phil Stevens reported that the 1996 pumper truck had been inspected and didn't pass emissions. Chief Stevens said the truck should be replaced. Chief Stevens said parts were unavailable due to the age of the 1996 truck. The truck needed new turbo and had a rebuilt transmission. While sharing was being investigated, another truck would be needed in five to seven years. The Fire Department answered 60 calls the previous weekend. A new pumper truck would cost \$600,000 but a demo could be purchased for \$500,000. The request had been removed from the Capital Plan until the pre-inspection report was received.

Ray Brunet (Grant Ave and Fire Department Captain) said the item was inadvertently taken off the capital expenditures and if the purchase was pushed up further, it would be colliding with another future truck purchase. Mr. Brunet suggested that if shared services were considered, it would be useful for the second truck acquisition, but not for this front line piece. The truck, which was 23 years old, should be replaced every 20 years.

John Pruellage reported on the Planning Board's discussion of the Demolition Delay By-law.

The Planning Board had reportedly discussed the difference between creating a By-law that would affect 10 to 15 homes (50 to 75 including the Historic District) or creating a list of those homes affected. The Planning Board was also concerned about the administrative timing. Phil Stearns announced that the Town Hall Building Committee would meet. Mr. Pruellage, Jeff

Hubbard and David Wanger would meet with Gordon Conwell. Jeff Hubbard described the Patton Estate improvements, which totaled \$2.3M for initial phases to include the interior and exterior. Mr. Hubbard noted total renovations would total \$8M and that there were plans for renovations, but not for revenue.

**Review Minutes of 12/4, 12/6, 12/7, and 12/20/2017 as well as 1/10, 1/20, 1/24/2018.**

John Pruellage made motion to approve the minutes of 12/4, 12/6, 12/7 and 12/20/17 as well as 1/10, 1/20, and 1/24/2018.

Nick Tensen seconded.

Vote: Unanimous in favor.

**Adjournment**

Darcy Dale made motion to adjourn the meeting.

Seconded by Nick Tensen.

Vote Unanimous to adjourn at 9:50 pm.

A large, stylized handwritten signature in black ink, followed by the date "5/17/18" written in a similar style.

Prepared by:

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Marcie Ricker  
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Attest

Date