

HAMILTON FINANCE AND ADVISORY COMMITTEE  
Minutes of Meeting  
April 4, 2018

Members Present: Darcy Dale, John Pruellage, Phil Stearns, and David Wanger (Chairman)

Others Present: Marisa Batista (Finance Director), Ray Brunet (Fire Department), Jeff Hubbard (Selectmen), and Bill Wilson (Selectmen)

This Hamilton Finance and Advisory Committee meeting was called to order at 7:00 pm at the Council on Aging Building.

**Public Comments**

**Discussion and consideration of 2018 ATM Warrant Articles 5-1, 5-2, 5-3, 5-4, and 5-6, including voting on recommendations therefor.**

David Wanger noted alternative facts in regard to the cell tower location, the RFP, and possible suspicions regarding it. Mr. Wanger referred to the supermajority aspect of the Planning Board approval and the vote of three people that precluded the supermajority, which was not consistent with the simple majority view of the Planning Board, Selectmen, or Town Manager. Mr. Wanger recalled that Allison Jenkins reportedly said the minority would not have counsel. If Varsity did not do a technical evaluation of alternate sites including the Seminary, it could be argued that the situation would be in violation of the By-law, according to Mr. Wanger.

John Pruellage said it was an interpretation and asked if an alternative site included every potential location or only the ones owned by the Town. Mr. Pruellage said two sites had been approved at a previous Town Meeting and an RFP was issued for those two sites. Varsity would likely not have done an exhaustive search when there were only two sites on the RFP, according to Mr. Pruellage. Mr. Wanger said it was debatable if a technical study was complete. Phil Stearns said Allison Jenkins used the term "alternative available." Mr. Wanger noted that based on PILOT discussions, a site may be available at Gordon Conwell but the possibility would be a matter of inquiry. Mr. Pruellage said if there was a demonstrated need and if the Zoning By-law did not allow that need to be met, Federal law would trump local By-laws. Mr. Pruellage thought it was likely that the case would be lost. Federal law would trump unless there were compelling reasons for the denial.

David Wanger said the three that voted against the cell tower did not say they didn't want a cell tower but they wanted alternate sites for a cell tower. John Pruellage said reasonable limitations could be placed on it and the majority of the Board thought technical evaluation was adequate to fulfill the need. The three that acted according to process, were subjected to criticism and incurred costs, which could create an effect on citizen participation. Mr. Wanger worried about how they were treated. Phil Stearns said individuals voted the way they voted and the Town decided not to defend the decision. Mr. Wanger added that nominally, the town was a defendant, but the Town's interests were in concert with Varsity and once the case was not supported, the case would disappear. Mr. Stearns responded that the three were not sued individually and the Town would not defend a 4-3 vote that lost due to a supermajority. Bill Wilson added that if the Planning Board wanted to defend it or if the three were liable, the Selectmen would have had a longer conversation about it but to fight their own request was not a good use of money.

Darcy Dale said the applicant had demonstrated a need, including public safety and 911 inaccessibility. Bill Wilson added that the goal would be to cover the high school. John Pruellage thought the applicant would win the case and possibly request that their costs be covered. In response to Ms. Dale's question regarding mediation, David Wanger responded that the effort made was unsuccessful. Mr. Wilson said a judge might ask if all opportunities had been investigated to solve the coverage and if the tower would fit the need elsewhere. Mr.

Wilson thought the location in the Gordon Conwell steeple was too small. Mr. Wanger said some people believed there might be alternative locations at the Gordon Conwell property but Mr. Wilson said the high school would not be covered. The cemetery was deed restricted, but the land next to the high school on Longmeadow Way might be appropriate. The sister site for a second cell tower was at the public safety building.

David Wanger circulated Nick Tensen's views to include that he would lean toward providing legal counsel to committee members who voted their consciences and voted in the best interest of the town because the Town must support the committee members against lawsuits. Mr. Tensen did not believe that a party acted in the best interest of the town. Mr. Tensen wondered if the suit was avoidable and if a compromise was available. Mr. Tensen thought the answer was yes but no one pursued a compromise. Mr. Tensen wondered if the three aggrieved members had the authority to engage an attorney and decided that they did not as only the Selectmen had that authority. Bill Wilson added that if the Planning Board voted together, the Selectmen would have supported the Board as a whole. Nick Tensen's third question was if all members knew Federal law would trump Town By-laws so challenging the suit was futile and a waste of Town resources and money. Mr. Tensen wrote that he would vote unfavorably on the three articles if he were present at the meeting.

Motion made regarding articles 5-1, 5-2, and 5-3 to recommend unfavorably by John Pruellage. Darcy Dale seconded.  
Vote: Unanimous in favor.

David Wanger stated that he was concerned with Rick Mitchell's comments regarding another member of the Planning Board at the previous Selectmen's meeting. The four majority members were commenting on the merits of the case, but also denigrating the other members of the Planning Board. John Pruellage agreed that there was acrimony on the Board. Bill Wilson thought opposing views were important but a solution was the best result.

Marisa Batista said that legally she could not pay the expense if the three members did not have authority to hire an attorney. Bill Wilson added the preface would include that this was an advisory vote.

Article 5-4 was discussed. The DOR division of municipal finances had not responded to the letter written in November. The law seemed clear to David Wanger. John Pruellage said it was the assessor's responsibility to determine tax and the article would be advisory. Mr. Pruellage added that the article could not force the assessor to tax or not tax. Even though the appeal process was not followed by Mr. Kaminsky or Ms. Clark (curators of the property in question), the assessor could do something going forward or take it under advisement for back taxes. In response to Darcy Dale's suggestion about a partial tax, Marisa Batista said the assessor needed to determine if the property was tax exempt or not. Mr. Kaminski had not followed the process for tax exemption.

The Town should have looked to see if it was for public benefit before the assessors decided to tax the curators, according to Ray Brunet. Mr. Brunet noted the property was open to the public twice a year for the benefit of surrounding people. The Town decided to tax the property based on the Willowdale court case. A letter from the DOR was received. A letter from the Assessor was also received by Bill Wilson who would send it to David Wanger. The DOR curatorship letter indicated that the Kaminski/Clark curators had fulfilled their agreement, according to Jeff Hubbard. Bill Wilson said there was a case for discretion but the Assessor's office said that they had not been provided information to date.

Marisa Batista said she had asked the Assessor about the letter, but the Assessor had not seen it yet. Bill Wilson noted the building was not dilapidated, but services were provided for the residents and there were charges for the services. David Wanger mentioned the PILOT that the State paid for the property. Marisa Batista said the PILOT was for multiple properties in Hamilton.

John Pruellage thought the language was too broad for a specific case but was sympathetic regarding this particular case. Jeff Hubbard referred to the Salem Evening News article (October 10, 2017) and that the DCR agreed that open houses had been held for the public to see the restoration. A letter, dated November 14, 2017 had been received from the DCR regarding how the historic curatorship program was a public benefit. Jeff Hubbard read the letter. The letter indicated the benefit was to the State. The letter said the property should not be subject to taxation. Bill Wilson responded that if the Town did not have the documentation, they had to

send a tax bill.

John Pruellage said the article was one of advisement only and was specifically related to the one property. The Selectmen had voted on the motion based on the Assessor's opinion. Jeff Hubbard said the curators could not go through the appeal process unless they were current on their tax payments. Bill Wilson spoke about paying for Town services, but Phil Stearns responded that the Town would need to cover services if the curators were in the building or not and that if the building became dilapidated, it could be a higher risk. \$125,000 PILOT was for both State properties and the amount was based on the State's calculations. Mr. Stearns added that if the curator did not own the property, he would not be responsible for the taxes, but if the curator was in the arrears, he could not file for an abatement. Mr. Stearns said he would be surprised if the Assessors would refund taxes paid in the past.

David Wanger opinioned that if the curator met the standards for public purpose, then upon application to the assessors, he would be entitled to relief. Mr. Wanger wondered if the curator met the applicable standards for public purpose determination. The assessors had said they had not been supplied with information sufficient to determine the property untaxable. Bill Wilson read the letter from Tina Zelano. The property was subject to taxation unless it was expressly exempt. The Assessors were required to determine fair cash value and the tax. Neither the Board of Selectmen nor Town Meeting had the authority to determine the taxable status of a property as it was a State law applied by the Board of Assessors. If Mr. Kaminsky or Ms. Clark disagreed with the status, the remedy was to apply for an abatement and if denied, to appeal to the ATB.

Phil Stearns said a positive vote would send a message to the Assessors that no taxation would be suitable. Bill Wilson as a Selectmen, he took guidance from the attorneys and Assessors but once he heard the counter discussion, he might vote in favor as a citizen.

Motion made by Darcy Dale to take no action on the article.

John Pruellage seconded.

Vote: Unanimous in favor.

Article 5-5 David Wanger commented that he had spoken with Jack Lawrence and considering the circumstance, he might withdraw or take no action. Bill Wilson said he thought Mr. Lawrence would take no action.

Article 5-6 David Wanger read from the comments of Nick Tensen who said enough evidence had been presented on the article that he would conclude all procedures had been followed correctly to establish the By-laws and found the petition to be a poor attempt to rewrite history. Mr. Tensen would have voted unfavorably. Mr. Wanger said the Planning Board voted unfavorably subject to Rosemary Kennedy taking no action. After Town Meeting, they would have an open public hearing regarding limitations on the size of buildings downtown. John Pruellage did not think anything underhanded had occurred but the technical draft might have been confusing, especially the errata table, which outlined non-substantive changes.

Motion made by John Pruellage that the FinCom recommend unfavorably.

Darcy Dale seconded.

Vote: Unanimous in favor.

**Discussion regarding materials to be presented at ATM and other process related items regarding ATM including the roles of FinCom members.**

Phil Stearns had prepared a slide show to accompany David Wanger's statement. Paper copies would be distributed. Phil Stearns' presentation on Article 2-4 was detailed and would include information about the school. The presentation would show how the article would affect the whole budget. Gene Lee would read the motion on 2-5. Dr. Harvey would have spoken regarding 2-5 and David Wanger would discuss the topic. Mr. Wanger noted the flyers were printed and sent with taxpayers' money. Mr. Wanger had asked Dr. Harvey about the leaflet with no response received. Mr. Wanger would ask again.

Phil Stearns recalled that the FinCom had approved \$40,000 for OPEB which was never put into an OPEB account. Books were not available for viewing but Jeff Sands had indicated that the Schools had not put anything toward the account. Mr. Stearns said it would become a Town liability. Jeff Sands reportedly said he was able to reconcile based on Marisa Batista's information, but that the FinCom was mis-leading Hamilton's Town Meeting by not being up front about that reconciliation. Jeff Sands was reportedly critical on the fact that the FinCom hit upon the proper level service appropriation to be included in Article 2-4 based upon being

consistent with Wenham's approach. Mr. Sands was also critical of bifurcating the budget into two separate articles, according to David Wanger. Mr. Stearns said Hamilton residents had the same right to make the same decisions as Wenham.

David Wanger recalled that Mr. Sands said there would be no impact on the tax rate until FY20 at the earliest for the sprinklers and safety items. Mr. Wanger questioned the costs for plans for the sprinkler installation, which would be done in FY19. Marisa Batista said costs might be short-term debt with a bond anticipation note of one year. After the first year, the School would issue long term debt with principal and interest. \$16,000 was listed for interest payments on short terms debt. Ms. Batista referred to the \$39,000 on Article 2-6 as part of what was considered to be no debt. Phil Stearns said it was a minor point if the 20 year implication needed to be voted upon now or next year. Mr. Wanger noted credibility.

Members of the Committee discussed the accuracy of Jeff Sands' e-mail sent to David Wanger. Phil Stearns said the assumptions were based on Hamilton's declining enrollment. John Pruellage said isolating Hamilton's assessment was not as important as the School budget in its entirety. Bill Wilson thought Mr. Sands was setting the stage for the apportionment issue. David Wanger said Dr. Harvey's newspaper editorial ended by saying that he realized it imposed a burden on Wenham because of the apportionment, indicating to Hamilton that in addition to the 65%, they should be paying more. The newspaper article did not consider Hamilton at all. Mr. Wilson, who thought the overarching issue was the overall budget, said the teacher's contract was non-sustainable. Mr. Wanger said the employment trends were not consistent with the enrollment trends. Mr. Wilson said he had asked for a comparative analysis with other comparable districts. Mr. Wanger responded that student teacher ratios were more advantageous in Hamilton than other districts and the administrative staff complement had increased over the years. Mr. Wilson said Jeff Sands' job was in the best interest of the Schools. The blue ribbon study had called out a couple million dollars that were still there. Mr. Stearns said there was no way to hold the Schools accountable. Mr. Wanger recalled his efforts to meet with Josh Liebow, the Wenham FinCom Chair and Gene Lee with little progress. Mr. Wanger said the FinCom could not move the motion as they were recommending unfavorable action.

The tax rate would be 16.43 if everything passed, according to Marisa Batista who added that the increase was due to the decrease in free cash application. David Wanger added that the rate was an estimate as it would remain for the two fall quarters. There could be a modification in the Fall if necessary. The FinCom wanted to set money aside for capital improvements. Tax rate and tax valuations were increasing so the tax burden was increasing. As Wenham's tax rate would be over 20.00, Bill Wilson thought they might be willing to consider shared experiences.

The Selectmen and FinCom disagreed regarding the Demo Delay By-law. Jeff Hubbard thought a 12 month delay was too long rather than 6 months as there was a burden selling a home. Bill Wilson was concerned about restricting residents from a use for 12 months. John Pruellage said his preference was for the By-law but did not have strong convictions. Phil Stearns commented that the ability to apply for the By-law at any time was a mitigating factor for the one-year delay, which would be something a historic home owner would want to do. Mr. Wilson suggested alerting historic homeowners.

A Selectmen's meeting was set for 8:30 the morning of Town Meeting to discuss Russ Stevens being the immediate Town Manager. An interim Town Manager would be appointed with a nine to ten month multi-group search for a permanent candidate. David Wanger offered the assistance of the FinCom. Mr. Wanger said there was one Town Manager for two towns in western MA. Phil Stearns added that if Hamilton and Wenham combined, the regional district could be dissolved.

Marisa Batista described the fiscal impact of the HDC article, noting that if the \$65,000, generated by meals tax, were not given to the Corporation, it would be added to the General Fund. The Town would not need to raise the \$65,000.

### **Adjournment**

Darcy Dale made motion to adjourn the meeting.  
Seconded by Nick Tensen.  
Vote Unanimous to adjourn at 8:51 pm.

Prepared by:

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Marcie Ricker  
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Attest

Date

A large, stylized handwritten signature in black ink, consisting of a large loop on the left and a horizontal line extending to the right.

5/17/18