

HAMILTON BOARD OF SELECTMEN &
COMMUNITY PRESERVATION COMMITTEE

MINUTES OF JOINT MEETING

JUNE 18, 2018

Selectmen Present: Chair Shawn Farrell, Scott Maddern,
William Olson, Jeff Hubbard, and Allison Jenkins

Community Preservation Committee Members Present: Chair Tom Catalano, Jay Butler, Ed
Howard, Katherine Mittelbusher,
Robert Preston, and Neil Duggan

CPC members absent: Chris Currier

Interim Town Manager: Robin Crosbie

Other Town Staff Present: Finance Director Marisa Batista, Coordinator Dorr Fox,
and Director of Planning & Inspections Patrick Reffett

Board of Selectmen (BOS) Chair Shawn Farrell called the joint meeting to order for the BOS at 7:02 p.m. Community Preservation Committee (CPC) Chair Tom Catalano called the meeting to order for the CPC. Mr. Farrell read the official public hearing notice, which explained the purpose of the annual public hearing: to inform community members about grants and projects and seek their input.

Introductory Remarks—Tom Catalano, CPC Chair

Mr. Catalano said the CPC is continually striving to engage the public more actively and seek input, especially in light of dwindling reserves. The CPC updates its plan annually and comes to Town Meeting. He gave a brief financial history of CPC grants among the allowable categories: historic preservation, community housing, and open space and recreation. He discussed the status of available funds and future predictions, as well as bonding to fund large projects. A list of the CPC's future anticipated grants may be found on the Town's website. He discussed the debt payment on the Donovan Project and Sagamore Conservation project, funding of the Patton Homestead renovation, awarding of a grant to the Hamilton Affordable Housing Trust to facilitate its efforts, and giving \$30K to the Planning Board to update its comprehensive plan [housing element]. The CPC spends up to 5% of its revenue on administrative expenses, including membership in the Community

Preservation Coalition. Revenues from the Town are approximately \$400K per year, which come from the Town's 2% surcharge. The CPC receives a State match, which used to be substantial (100% match), but has gone way down over the years to only 11% in the last fiscal year. This is due to many communities joining the pool, so it is spread over a wider number of communities. The State match may increase if pending legislation on raising fees at the Registry of Deeds passes. Mr. Catalano said the Town may want to discuss possibly increasing its surcharge from 2% to 3%. Mr. Catalano is leaving the Town of Hamilton July 1. He turned the floor over to Vice Chair Jay Butler.

Town Hall Building Project Status

Mr. Butler, CPC member and newly appointed member of the Town Hall Building Committee, listed the other Building Committee members and said at their last meeting they were given copies of four proposals for the OPM (Owner's Project Manager) to review. The Building Committee will discuss them at its next meeting, June 21. The Committee will be looking at feasibility studies and hiring a designer for the Town Hall renovation project.

Mr. Catalano said the CPC has approximately \$500K in reserves, most in the unrestricted category. The CPC is required to set aside 10% of its revenues to each of the three categories: historic preservation, community housing, and open space and recreation. Mr. Farrell clarified the CPC *will have* \$500K in reserves—that money is being collected now, as the new fiscal year begins July 1.

Rich Property Potential Grant Request—Chris Davis, Hamilton Wenham Open Land Trust

Chris Davis introduced himself. He said he is Vice President and a member of the Hamilton Wenham Open Land Trust along with David Smith, and not actually a committee member with the Chebacco Woods Land Management (as was listed on the agenda). He was involved in the joint acquisition of Chebacco Woods with Hamilton and Manchester. He said the plan for the Rich property is very preliminary and there isn't a project to put before them yet. They are in constructive, but early discussions with the land owners, the Land Trust, and Greenbelt. The Rich property (which is the estate of Frank Rich) is at the intersection of Essex Street (Route 22) and Chebacco Road. It is 66 acres, has Meadowbrook farm on it, and is abutted by Chebacco Woods on two sides. They are working with a consultant to determine the best use of the land—for example, open space, agricultural preservation, water supply, and/or community housing. He hopes to bring a proposal forward at a later date and explore the benefits to the Town with this piece of property, but for now wanted to put it on the CPC's radar.

Mr. Farrell added none of the property is chapter land; it is all fair market value.

Mr. Catalano said they need to discuss the big projects on the horizon, how much the Town can undertake, and how much bonding it can take on.

Mr. Butler said they can only bond on the amounts tied to the Town surcharge collection. He said in discussing bonding with Finance Director Marissa Batista, he learned that if, for example, they bond \$2M over 20 years the first full-year payment is \$178K. For a 10-year term, it jumps to \$280K per year. Therefore, it is not likely the Town can take on two such large projects at once.

Hamilton Affordable Housing Trust (HAHT) Grants (\$350K)

Coordinator Dorr Fox said he was standing in for HAHT Chair Russ Tanzer. He detailed CPC grants already awarded to the Trust (\$250K in 2016, \$400K in 2017, and \$100K in 2018; the latter goes into effect July 1.). He said two years ago, there was a major concern about tying up large sums of CPC money for a long time, so expiration dates were put on the grants. The expiration date on the 2016 grant was set at two years out, which is coming up on June 30. (\$50K of the \$250K in grant money has been spent primarily on consultants and legal fees.) Over the last few years, the Trust has been working hard, looking at several properties for affordable housing, including the Longmeadow site, a portion of Gordon-Conwell, and 13 Essex St. The HAHT has a Community Host Agreement with Harborlight Community Partners, and at one point decided \$300K would go to 20 senior housing units at 59 Willow St., and \$300K would go to 40 family housing units at Longmeadow. Recently the Trust found this isn't a viable option—unless the Town would be interested in purchasing a portion of that property for municipal use. Now a proposal is on the table for just developing 7 units at Willow Street (family housing not senior housing), but due to financing options, the project will cost \$800K. If that project goes forward the Trust will need to ask the CPC for approximately \$150K in additional grant money. If they can't get the Willow St. agreement signed by June 30, the Trust will need to ask that its original grant money be re-appropriated.

Hamilton Housing Authority—Kate McGuire, Executive Director

Ms. McGuire said the Housing Authority met earlier this month to discuss their application for funding. They have narrow parameters within which to work. The most important project they have now within the parameters is for the repainting of the exterior of four townhouse-style apartments on Central Ave. and Harris Ave. The total is \$11,796.

Renovation of Basketball Courts at Patton Park—Sean Timmons, Recreation Director

Mr. Timmons thanked the CPC on behalf of the Recreation Committee for how supportive they've been in the past for recreation projects like the Town pool, bleachers and baseball diamond at Patton Park, as well as many playgrounds. The project he is presenting now is

to completely remove two existing basketball hoop systems, which are leaning heavily forward and don't sit at 10 feet, and to install two new gooseneck systems. Kids won't be able to hang on the rims of these. The cost is approximately \$4K plus the cost to install.

Mr. Catalano said there are restrictions on using CPA money for maintenance, although they can spend money on maintenance for projects originally funded with CPA funds.

Mr. Farrell mentioned the idea of increasing the surcharge to 3%, thereby increasing the percentage of the State match and resulting in more CPC grant money for funding projects. William Olson asked where that would take the Town in terms of the match. Robert Preston said it was public record and they could find out, although it does vary from year to year. Jeff Hubbard said they will need to investigate the numbers. Mr. Farrell said the increase would have to come to Town Meeting via a citizen's petition. Mr. Butler said right now, funding is a moving target until they find out if the bill passes [regarding the potential increase in Registry of Deeds fees]. He said if they went to 3%, the amount collected from the Town would jump from \$4K to about \$6K.

Scott Maddern said prioritizing projects is needed. He suggested polling the townspeople regarding the surcharge. His sense and personal opinion is that the Town should stay at the 2% and focus on sustaining what it already has, as opposing to acquiring more. He said it was confusing having taxpayers pay into too many streams. Regarding the Town budget for Fiscal Year '19, the Town looked hard at keeping the total spending increase to less than 1%. He feels an increase in the surcharge is another burden on the taxpayer. Mr. Preston commented that one of the nice features of the surcharge is that it can be waived for those who need it. With other taxes, you can't do that.

Robin Crosbie said it's been her experience that often when a community acquires things, it forgets about budgeting for associated operational costs. She said it might be helpful to have parameters outlined—for example, something under \$10K is not considered a capital project. For things like painting, she said, other funding sources can usually be found.

The two boards agreed they need to look at all the proposals and prioritize them rather than just determining as they go along whether a project is eligible for CPC funds or not. Projects that tick off more than one box and have multiple uses are best.

Rick Mitchell of the Planning Board and Hamilton Development Corporation said he wanted to support long-range thinking in talking about a potential 3% surcharge with so many projects coming down the rails. He supported the idea of a survey, but said it would be important to specify how a move to a 3% surcharge would impact the taxpayer's bottom line. One of his concerns is that while everybody loves open space, it takes more property off the tax rolls.

Jack Lawrence, 105 Rock Maple Ave., posed the question: What is the impact if the CPA disappears and there are bonding obligations? Planning years out is critical, he said.

Mr. Catalano mentioned the townspeople can vote to retire an existing bond with general funds.

Mr. Farrell presented Mr. Catalano with a citation and commemorative pin for his 30 plus years of service to the Town. He has been on numerous boards and committees, primarily the CPC and Historic District/Historical Commission.

Mr. Farrell thanked everyone for coming and said they would take a five-minute break after adjourning the public hearing and before beginning the regular BOS meeting.

Adjournment of the CPC Portion of the Meeting

Mr. Butler made a motion to adjourn the CPC portion of the meeting at 7:50 p.m. Ed Howard seconded the motion. The CPC voted unanimously among those present (6-0) to adjourn the meeting.

Mr. Farrell resumed the meeting with the BOS.

ANNOUNCEMENTS

- **Board and Committee Openings:** The Historic District Commission/Historical Commission has three openings. The Open Space Committee, Board of Health, and Finance Advisory Committee (FinCom) each have one open position. Mr. Howard, newly appointed Historic District Commission/Historical Commission Chair, said for the three vacancies, the Commission is seeking individuals with “architectural prominence” and/or historic preservation experience.
- The Hamilton Development Corporation is sponsoring a meeting on downtown improvements on June 20, 6-8 p.m., at the Hamilton-Wenham Library.
- Patton Homestead will be hosting Wenham Museum’s Military History Day on July 14, 10 a.m.- 3 p.m. Activities include reenactments, equipment displays and a family archive tour.
- Effective July 1, the Department of Public Works (DPW) will begin its workday at 6:30 a.m. and end on Fridays along with all Town Hall employees at 12:30 p.m.
- Mr. Farrell added that the Two Town Fourth celebration will be June 23 in Patton Park.

Public Comment

Peter Britton, 466 Highland St., said he was confused why the Bell property along with 21 other rental-only properties on DCR land, remains untaxed and why the Town hired Coppola and Coppola to “go charging into Land Court.” From the research he has done, he understands that for the \$7,500 in taxes the Town receives from the 550 Highland St. property, it could possibly be awarded the lease and would need to meet all the requirements of that lease, which could amount to a liability on the Town of \$35K or more in annual expenses. He would like to see an agreement reached, and said he wanted to note the amount of the liability if the Town pursues taxation of the property.

Wayne Russell, 245 Echo Cove Road, said his road is in horrendous shape and his neighborhood is getting together to petition it be repaired. Also, he questioned if zoning allows for the operation of a hotel (air bnb) in his neighborhood. Ms. Crosbie said he could send her an email about the air bnb matter. William Olson noted the Planning Board was working to address air bnb/accessory apartment issues. Allison Jenkins suggested Mr. Russell email DPW Director Tim Olson about the bad condition of the road.

AGENDA

George Hall—Discussion regarding second opinion on 550 Highland Street leasehold

Attorney George Hall, partner at Anderson & Kreiger LLP, said he reviewed case law and produced an opinion he sent to Ms. Crosbie on May 24 concluding that the property is taxable. He said the property is being used and occupied for something other than public purpose—a single family residence.

Jerry Fallon and Lynnette Fallon, 38 Goodhue St., voiced opposition, noting the Willowdale case cited was regarding a for-profit business; this property is not. They noted the residents had committed \$700K of their own money to rescuing what had been a derelict property. Ms. Fallon said she thinks a 22-year maintenance obligation to restore the property to historic preservation standards is a public purpose. Mr. Fallon and Mr. Hall debated specific legal points and what would constitute eligibility for tax exemption. Mr. Hall said this is a problem for the historic curatorship program.

Ms. Jenkins noted that locally a similar case had gone to Land Court and another municipal firm came to the same conclusion Mr. Hall did—that taxes should be assessed. She said in some other cases, the State was unaware how the properties were being used.

Ms. Crosbie commented the State doesn't assess the buildings, only the land.

Ms. Jenkins said \$700K over a 22-year lease is \$2,600 a month, which she said isn't a huge amount for living in that property. Mr. Farrell said according to the lease certain benchmarks had to be met over a period of time.

Attorney Hall said the tax should have been paid by the residents with an abatement request. He said that what the Town had was an unpaid tax that has not been challenged.

Mr. Britton asked if Mr. Hall's finding meant that not taxing those other 21 properties was in violation of State law.

Ms. Crosbie said the remedy of the situation wasn't what's being discussed this evening. It was a legal matter for BOS and Board of Assessors to decide how to go forward.

Reappointments—Vote to reappoint Town Board and Committee members whose terms are expiring as detailed on the attached list

[*Maureen Hickey and Melanie E'Orio to the Hamilton Foundation; Gretel Clark, Anne Gero and Jane Roundy to the Recycling Committee]

Decision:

Mr. Maddern made a motion that the BOS make the reappointments for Town boards and committees as indicated in the attachment. Mr. Olson seconded the motion. The BOS voted unanimously (5-0) to approve the motion.

Vote to release Executive Session Minutes—Dec. 18, 2017, March 5, March 19, March 29, and April 2

Decision:

Mr. Maddern made a motion to release the Executive Session Minutes of Dec. 18, 2017, March 5, 19, 29 and April 2. Ms. Jenkins seconded the motion. The BOS voted (4-0) to release the Executive Session Minutes. *Mr. Olson did not vote because he was not a Selectmen at the time of the meetings and was not present.

Special Town Meeting (STM) Schedule

Ms. Crosbie had put together and distributed a timeline for STM and an optional form citizens can use for submitting citizen's petitions. She said the BOS had been interested in getting STM organized and launched, as well as looking at how budget hearings were scheduled.

Mr. Maddern mentioned some important dates: STM is Oct. 13; warrant articles need to be in by Aug. 6; the warrant hearing is Aug. 20; warrant signing is Sept. 10. [Citizen's petitions can be submitted and certified up until signing date.]

Mr. Farrell noted 100 signatures are required when submitting a citizen's petition to STM as opposed to the 10 signatures needed for citizen's petitions to ATM in the spring.

Mr. Olson asked if the Town Moderator had reviewed the schedule. Ms. Crosbie said she had sent it to him.

Mr. Maddern suggested Ms. Crosbie start assembling a list of potential bylaw changes and warrant articles that may be coming in. She said she had started that.

Decision:

Mr. Olson made a motion that the BOS approve the issuance of the Special Town Meeting schedule, as well as the citizen's petition form as presented by Ms. Crosbie. Mr. Maddern seconded the motion. The BOS voted unanimously (5-0) to approve the motion.

Gordon Conwell Theological Seminary—Authorize Charge of Committee

Mr. Hubbard gave an overview of The Charge. The draft the BOS had received read: *BOS hereby authorizes its members Allison Jenkins and Jeffrey Hubbard, and such non-members of the BOS as Allison and Jeff may designate to investigate and evaluate the Town's relationship with the Seminary, to engage in negotiations with the Seminary regarding subject matter related to Seminary contribution to the community, to report to BOS periodically, and to ultimately provide the BOS with recommendations for BOS consideration and disposition.*

Mr. Maddern asked why the group wouldn't be a committee. Mr. Hubbard said it was a negotiation process and might be more difficult/cumbersome to conduct negotiating as a committee. Also, if it were a formalized committee, it would preclude members of the Finance Advisory Committee (FinCom) David Wanger and John Pruellage from being members, which would be a detriment. Mr. Maddern said his concern is that having a committee lends a position of authority. He said in his negotiations with Green Meadows, they do have a committee. Also, he said it gave transparency.

Ms. Jenkins said the group can keep the BOS informed. It is a 30- to 40-year-old problem and Mr. Wanger has experience in professional negotiating. If it is a committee, he can't be on it.

Ms. Crosbie commented the discussion was wrestling with open meeting law. She said in her past experience as town manager, she formed a task force identifying the scope of a

project and asking that within a certain period or when the task is complete, the task force report back with recommendations. Also, she said, this opens it up to the public if desired. She said the Town Manager takes guidance from the BOS in determining who those parties would be. She is not saying it is the only option, but it is an option to deal with some of the trickier issues. With a task force, they can also gather input from department directors.

The BOS discussed the merits of assembling a task force. Mr. Maddern mentioned timing—for example, at the start of budget hearings, it would be good to see some results and/or known some milestones they are shooting for. Ms. Jenkins said the Town can budget what it has been getting so far from the Seminary (\$35K). Mr. Farrell said he'd like to know if they can count on the \$35K.

Decision:

Mr. Maddern made a motion that the BOS authorize the Town Manager to create a task force that defines its purposes, what it wants to accomplish, as well as defines the background of the relationship with Gordon-Conwell Theological Seminary utilizing this current working group. Mr. Olson seconded the motion. The BOS voted unanimously (5-0) to approve the motion.

Follow-up on April Annual Town Meeting Citizen's Petitions

Ms. Crosbie said she didn't include the petitions that were tabled.

Article 5-1, appropriation for legal fees: Mr. Farrell said Town Counsel Donna Brewer's opinion and the opinion of the BOS is that this is not possible. He read the reasons from the written legal opinion. Bill Shields, 721 Bay Road, asked for a copy.

Article 5-2, retention of counsel for Planning Board: Mr. Farrell said when this came up the Planning Board voted not to ask for counsel and have not since asked for counsel, so the BOS will not be moving forward with it.

Article 5-3, report to the Town: Mr. Farrell said they will be doing that, but things are in flux, currently tied up in court. Ms. Brewer and Director of Planning & Inspections Patrick Reffett have put together a report and a timeline, but will not issue it until everything is said and done.

Mr. Shields commented that the BOS is running in the face of what Town Meeting has said. He wanted to know which Town Counsel had issued the opinion. Mr. Farrell said it was Ms. Brewer. Mr. Shields asked if the BOS had questioned Ms. Brewer about issuing an opinion in a case in which she has a conflict.

Mr. Farrell said the citizen's petitions were advisory.

Mr. Hubbard asked for clarification. He said the BOS could pay the legal fees of the three Planning Board members using monies from Varsity Wireless if there was a want to do so.

Mr. Shields and the BOS discussed that Executive Session minutes pertaining to the Varsity Wireless case have not yet been released. Mr. Shields said the minutes should be open right now since they pertain to the citizen's petitions. Ms. Jenkins argued that the minutes pertain to strategy and the case is not yet finished. The BOS will look into whether to release the minutes.

Article 5-4, DCR Property: This was skipped as it was covered in a previous agenda item.

Update on Varsity Wireless vs. Town of Hamilton Resolution (i.e., Cell Tower)

Mr. Farrell gave an overview of the history of the cell tower and ensuing litigation, giving a detailed timeline of what had transpired and when, ending with the Town submitting an Agreement for Judgment.

Mr. Shields said it seemed to him what was decided was to bypass the zoning bylaw, the chapter 40A provisions for an appeal, and what Town Meeting wants. He said the BOS filing an Agreement for Judgment was admitting the Town violated the Communications Act. He asked who had voted for it. The BOS said they had all voted. When questioned further by Mr. Shields, Mr. Maddern said they should proceed to release the Executive Session minutes relating to this.

Mr. Shields brought up that Mr. Olson had participated in the BOS decisions and said it was a conflict of interest since he had voted on his own decisions made as a member of the Planning Board. Mr. Olson said he was no longer a Planning Board member and did not have a conflict.

Mr. Mitchell said Mr. Shields forgets that the majority of the Planning Board agreed the applicant [Varsity Wireless] met all requirements of the zoning bylaw. Three Planning Board members disagreed because they did not want the cell tower located behind Town Hall, but their logic was flawed. The Federal Communications Act is the rule. If they find a gap in service and demonstrate it to the extent necessary under law, they have a right to build a cell tower.

Jack Lawrence, 105 Rock Maple, said the case named two sites, but the bylaw specifies that the best site must be determined. He doesn't think the two sites considered are the best sites. He said there was space at the top of Brown's Hill and Gordon-Conwell has stated

there's space in their tower. He thinks it needs to be on record and properly investigated. Town Counsel can't set aside the vote of Town Meeting.

Selectmen/Town Manager Reports

Mr. Hubbard said he had nothing to report

Mr. Maddern thanked the DPW for improvements at Patton Park, such as the gazebo and cleaning up behind the baseball diamond. He said he had updates with FinCom Chair Phillips Stearns, talking about the agenda for the next joint meeting and getting input about FinCom goals. They want to discuss potential asks from the School Committee and issues of OPEB funding and a school resource officer. He thought a calendar for Special Town Meeting (STM) and Annual Town Meeting (ATM), which Ms. Crosbie is working on, is crucial. There is a bill pending that could facilitate \$1M in State funding for the Patton Homestead. Mr. Farrell asked about contacts for writing letters. Mr. Maddern said the timing isn't right yet; funding isn't likely to be released until after January. He met regarding the Green Meadows Farm Host Community Agreement and will update the BOS on July 2.

Ms. Jenkins said the Town Hall Building Committee will review the OPM submittals June 21. The Screening Committee for the new Town Manager will have their first meeting June 25.

Mr. Olson reported Harborlight Community Partners backed away from its proposal of two projects: 40 units at Longmeadow and 20 at Willow Street due to lawsuits they thought would happen. They came back with the option to build 7 family housing units for \$800K. The amount per unit had gone up and it is a big ask. The Hamilton Affordable Housing Trust (HAHT) was concerned about the cost per unit. Other proposals were 100 at Longmeadow and 20 at Willow Street, or 200 units with 80 percent market-rate and 20 percent affordable. The HAHT is struggling with whether to approve the \$800K for the 7 units or look at other options. Regarding the Planning Board, three things came up: voting on the Associate Member from among three applications, voting on the bylaw for Accessory Apartments, and polishing up the RFP for the Master Plan.

Mr. Farrell said previous to tonight's CPC Public Hearing, the CPC met last Thursday. At that meeting, it took a straw poll on whether the CPC would be willing to kick in another \$200K for the 7 units at Willow Street. The vote was no. They want more affordable housing units for the money. The Conservation Committee (ConsCom) had a site walk, but there wasn't much news to report. The Open Space Committee deferred discussion on the Rich property.

Mr. Maddern voiced some concerns relating to meeting minutes, agendas and policies. Mr. Farrell said they are trying to streamline minutes, which is a work in progress. The BOS minutes are funneling through Mr. Olson. They will be two meetings behind (rather than

one meeting behind) with the minutes, as the Minutes Secretary works for a number of Town boards. Mr. Olson asked about Executive Session minutes and was instructed to send them to individual email addresses rather than the BOS group email address.

Ms. Crosbie said Ms. Clark will be emailing the BOS about formally creating an Open Space Committee as opposed to having it as a subcommittee of the Cons Com. Regarding the HAHT, she thought it might be good to go ahead with the 7-unit project to have a "win" since the larger projects are contestable. She said it would be a shame to become mired in litigation with nothing to show for their efforts. She would like to close Town Hall for an office clean-up day on a Thursday in August and look at what records to keep and what can be thrown away.

Ms. Jenkins said she thought they needed a standardized naming procedure for files.

Ms. Crosbie spoke with Finance Director Marisa Batista and they were able to find \$1,000 in the budget for doing some outside clean-up at the Patton Homestead. Regional inspection services are expected to go live Oct 1, which will allow the Electrical Inspector to perform work in Town as long as he doesn't inspect his own work. Textile Recycling is up and running. Ms. Crosbie said the front page of the website could be better utilized. Pertaining to the water treatment plant, she expects all four filters to be completed by the end of July.

Consideration of topics for discussion at future BOS meetings

- Minutes Policies
- Bylaw change to allow some establishments to be open 24 hours, namely gas stations. Ms. Jenkins cited a few reasons for doing this having to do with fueling Town vehicles.
- Bylaw change for the Conservancy District.
- Update on Varsity Wireless case.

Adjournment

Ms. Jenkins made a motion to adjourn the meeting at 9:50 p.m. Mr. Olson seconded the motion. The BOS voted unanimously (5-0) to adjourn the meeting.

Prepared by:

Mary Ann Costello 8/13/18

Mary Alice Cookson
Minutes Secretary

Date

Attest:



8/13/18

William Olson
Board of Selectmen Clerk

Date