

**Town of Concord
Finance Committee
Meeting Minutes - February 6 , 2020**

Present: Dean Banfield, Peter Fischelis, Greg Guarriello, Mary Hartman, John Hickling, Dee Ortner, Karle Packard, Parashar Patel, Christine Reynolds, Wade Rubinstein and Andrea Zall

Absent: Richard Jamison, Phil Swain, Thomas Tarpey and Brian Taylor

Others Present: Select Board Members Jane Hotchkiss and Terri Ackerman; Planning Board Chair Matt Johnson; Community Preservation Committee Members John Cratsley, Nancy Nelson and Diane Proctor; Resident Holly Cratsley; Finance Director Kerry Lafleur; Recording Secretary Anita Tekle

Meeting Opened

Mr. Banfield called the meeting to order in the Select Board Meeting Room at the Town House at 7:00 pm. He announced that the meeting was being televised and recorded by MMN.

2020 Annual Town Meeting Warrant –Zoning Articles

Planning Board Chair Matt Johnson was present to discuss Articles 32-39, to determine which may have a financial impact on the Town. He summarized Articles 32 (Additional Dwelling Unit) and 33 (Two-Family Dwelling Unit), both of which will increase the number of dwelling units in Concord. **Article 32** Under the current Zoning Bylaw (ZBL), a property owner is allowed to add an accessory dwelling, with restrictions. This is accomplished through a special permit process, which does not remain with the property upon sale of the home. Concord’s Long Range Plan strongly suggested that the accessory dwelling process be simplified, to increase housing and economic diversity. Under Article 32, an accessory unit up to 750 s.f. would be allowed by right in either the main building or in an accessory building on the property, on a conforming lot. The unit could go as large as 1000 s.f., with a special permit. The footprint of the property may also be changed, provided that the setback and dimensional requirements of the ZBL are met. The accessory unit could be retained upon sale of the home.

In response to a question from Mr. Banfield as to how the Floor Area Ratio (FAR) would apply, Mr. Johnson indicated that the FAR would be calculated on all the buildings on the lot. He noted that while a “tiny house” may be built, it cannot be on wheels. In response to a question from Ms. Zall, Mr. Johnson indicated that at least one designated parking spot would be required for any additional unit. Mr. Johnson commented that the financial impact, if any, would be from possible increased property taxes and possible increase in school-aged children. He noted that accessory units are smaller than the main unit on the property, and tend to attract primarily single adults or couples. Mr. Johnson noted that a survey of existing possible accessory units was recently completed, and 23 qualified responses were received. Some interesting facts from the survey:

- 64% have occupants that are not related to the homeowner
- 50% have one occupant

- 60% are either a 1-bedroom or studio unit
- >50% have been in existence for 10 years or longer
- <50% are charging rent

In response to a question from Mr. Guarriello, Mr. Johnson indicated that the Town of Acton allows accessory units in all residential districts. Acton has about 10 new accessory units/year. In response to a question from Mr. Fischelis, Mr. Johnson indicated that Title V requirements must still be met (separate septic system not required) and water-saving devices must be installed in the new unit. In response to a question from Mr. Rubinstein, Mr. Johnson indicated that it is unknown whether property values will increase with the addition of an accessory unit; that depends on the real estate market. In response to a question from Ms. Ortner, Mr. Johnson indicated that no new sustainability requirements are being proposed. The 750 s.f. was determined by the approximate size of a two-car garage—an accessory unit could be built on top. Mr. Banfield commented that the cost of construction of a new unit would be high, and he considers it unlikely that a homeowner would construct an accessory unit just for the rental income that it would generate. He suggested that most of these units would be added for personal reasons rather than speculative reasons.

Ms. Hartman noted that many homes with existing accessory units would likely not trigger an increased assessment; any new taxes would most likely be generated from new construction. In response to a question from Mr. Hickling, Ms. Lafleur noted that once a building permit is pulled, an inspection by the Assessing Department is triggered. In response to a question from Mr. Rubinstein, Mr. Johnson indicated that an accessory unit must have a separate kitchen, but a separate entrance is not required. In response to a question from Ms. Zall, Mr. Johnson indicated that the owner must live in either the main or accessory unit, and the units may not be condominiumized. The units may not be used as a Bed & Breakfast, unless licensed to do so. The consensus of the Finance Committee (FC) was that any financial impact will most likely be minimal, but the FC will decide on whether to take a position prior to Town Meeting.

Article 33 Mr. Johnson noted that there are 106 existing 2-family homes in Concord, 66 of which are located in Residence C. Almost all were built prior to adoption of the ZBL in 1928. He noted that the current ZBL does not allow new 2-family units except for affordable housing purposes. He noted that the Planning Board sees 2-family houses as attractive, folks are used to seeing them mostly in the Residence C district, and they “fit in” with existing neighborhoods. The Planning Board is proposing that **new 2-family units be allowed initially only in Residence C (¼ -acre lots). Setbacks, height and FAR** constraints are not being changed and would have to be met. He noted that builders are constructing new single-family homes in Residence C right up to the existing zoning constraints, so the footprint would most likely not change. The proposal is to allow two-family homes by special permit, to assure compatibility. Condominium construction would be allowed. The units must have a common wall, and the special permit is transferrable to a new owner.

In response to a question from Mr. Hickling, Mr. Johnson indicated that staff is currently reviewing data in the Assessing Department in order to determine the number of school-aged children in existing 2-family units. He noted that in the Town’s existing 85 PRD units, there are 17 school-aged children. He noted that the Planning Board does not

know whether developers will have an interest in building new 2-family units in Concord. Several FC members felt that 2-family units are a good idea to promote diversity. Mr. Johnson speculated that the total number of children in the two units of a 2-family home is likely to be no more than the number of children in a single-family home of the same footprint. In response to a question from Ms. Ortner, Mr. Johnson indicated that there are no plans in place at this time to track occupancy.

2020 Annual Town Meeting Warrant –Community Preservation Committee Article 44

Mr. Cratsley, Chair of the Community Preservation Committee (CPC), introduced Ms. Nelson and Ms. Proctor. He reviewed the proposed projects under Article 44, which includes 10 projects (six of which are for the Town of Concord; two are for non-profits; and two are for churches). The total recommended appropriation is \$1,960,000, with the category breakdown as follows: Community Housing 16%; Historic Preservation 13%; Open Space 32%; Recreation 37%; and Administration 2%. Ms. Hartman noted that she has observed the CPC and thanked them for the thorough and conscientious process that was used in making its recommendations. She noted that Town Counsel has ruled on the applications of the two churches. Mr. Cratsley remarked that on the advice of the State Ethics Commission, he did not participate in the recommendation vote due to an appearance of a conflict of interest (his wife participated in the application of the First Parish Church). He had asked that the Vice Chair of the CPC be present tonight to respond to questions, but unfortunately the individual is not present.

In response to a question as to whether the Town faces any legal exposure from grants to two church properties, Mr. Cratsley distributed two written opinions obtained from Town Counsel on this issue. One opinion (dated October 4, 2019) on the eligibility of the First Parish project indicated “...this project is likely eligible for CPA funding without running afoul of the Anti-Aid Agreement,” as indicated in the 2018 Supreme Judicial Court Opinion *Caplan v. Town of Acton*. The second opinion (dated November 25, 2019) on the eligibility of the Holy Family Parish project indicated “...this project likely falls within the constitutional protection for government grants required to be given on an equal basis to churches as to other non-denominational organizations, as recently addressed by the Supreme Court in *Trinity Lutheran Church of Columbia v. Comer*.” “Thus, we think that funding of this project could survive a *Caplan* challenge under the Massachusetts Anti-Aid Amendment. It must be noted, however, that the project may be challenged nonetheless.” Mr. Cratsley indicated that he has been authorized to meet with Town Counsel prior to Town Meeting to discuss the following items: (1) ascertain whether Town Counsel is okay with Mr. Cratsley making the presentation at Town Meeting, in light of his not having participated in the deliberations or votes of the CPC; this would be with the understanding that the Vice Chair would respond to questions; (2) ascertain whether Town Counsel will be prepared to respond to any legal questions; and (3) ascertain whether Town Counsel is willing to prepare a handout to include the legal analysis about the two church applications.

Mr. Banfield noted that Wright Tavern (owned by First Parish Church) had received CPC funds in the past, although they had no prior public purpose, and the Masonic Lodge received CPC funds in the past, although the building was not open to the public. The latter argued at the time that they open their doors periodically, and they allow groups and individuals to rent the space. Mr. Banfield commented that Holy Family is

converting a Rectory to parish offices. Mr. Cratsley responded that Holy Family's renovation includes the addition of public meeting rooms, which would provide for the expansion of public use of church facilities. Mr. Hickling questioned the wisdom of possibly opening up the Town to litigation by granting what he considers a modest amount of funds. It was clarified that Town Meeting can vote on individual items within the CPA recommendation—the numbers can be reduced, but cannot be increased.

Ms. Cratsley commented that First Parish was a public facility in the past, noting that the original Meetinghouse was paid for and built by the Town. The current building was constructed in 1900, after the previous building burned down. The separation of church and state was finalized in 1856. The Town Clock was paid for and owned by the Town, and is visible 24/7. When the church was rewired in 1990, the church assumed responsibility for paying the electricity on the clock tower. Mr. Patel inquired as to whether Town Counsel's legal opinions will be made available to voters at town meeting. Mr. Cratsley responded that this is up to the Moderator, but the CPC is proposing to prepare an informational handout.

In reviewing the list of proposed projects, Ms. Hartman expressed concern about allocating CPC funds to projects when clear deliverables or milestones are not identified, such as this year's Gerow land. Ms. Proctor and Ms. Nelson responded that funds would be used for bathrooms, parking, pathways and trails. The Gerow land is adjacent to the Bruce Freeman Rail Trail, which is ready for public use.

Mr. Banfield noted that no funds are being used this year for the acquisition of new open space. Ms. Nelson responded that open space funds may be used to maintain existing open space property. While open space is not being expanded, it is being enhanced. Mr. Banfield questioned the pedestrian bridge construction project being categorized as open space. Ms. Proctor responded that the Assabet River at this location is surrounded by open space, and the bridge construction will allow pedestrians to traverse the area more safely. Mr. Cratsley noted that CPC funds are expected to increase next year due to increased funding by the state legislature. In response to a question, it was clarified that the public will be allowed access to the accessible outdoor oasis recreation park at Minute Man Arc's property. In response to a question about the proposed Gardens "Hardscape" at Minute Man National Park, Ms. Nelson indicated that the cobblestones and pathways have been neglected over the years, and the gardens receive many visitors. Ms. Proctor noted that Lexington's CPC Committee has allocated funds for park improvements in the past, for a similar project.

In response to a question from Ms. Ortner, Mr. Cratsley indicated that the Town presented long-term development plans for both Warner's Pond and the Gerow property, although no dollar amounts were included for future years.

Observer Reports (part 1)

Middle School Building Committee (MSBC)—Mr. Fischelis reported that the MSBC anticipates that the feasibility study results will be ready by the end of March, and the estimated costs for the schematic design will be available by the end of August. The MSBC considered three timetable options: (1) special town meeting at the end of August/early September, followed by a special election in November; (2) special town meeting Sept. 16, followed by a special election at the end of September; and (3)

special town meeting in September, and the override vote on the ballot at the Presidential Election in November 2020. It was clarified that the override election must take place within 90 days of the conclusion of a special town meeting. The MSBC has voted to request the Select Board (SB) to schedule a special town meeting on September 16, to be followed by a special election at the end of September. Mr. Fischelis noted that a higher voter turnout would take place at the Presidential election.

Mr. Banfield asked about waiting to schedule a special town meeting once a decision is known about the MSBA funding, suggesting that the cart is being put before the horse. Mr. Fischelis responded that the MSBC believes that this, their third MSBA application, is unlikely to be approved, although a decision will not be known until December 2020. Ms. Zall asked for confirmation that an application for funding has been made to MSBA. Mr. Banfield responded in the affirmative, commenting that holding a town meeting vote prior to knowing the decision on MSBA funding would most likely jeopardize any potential for funding. Mr. Hickling noted that MSBA funding, if successful, could be in the vicinity of \$20-30 million. He felt strongly that the process should be given time to work itself out, given that a new middle school is the second largest town funding request in Concord's history. Mr. Fischelis noted that a public open forum will be held on March 27.

In response to a question, Mr. Fischelis noted that the school is being designed for an enrollment of 700 students. Ms. Hartman noted that the sustainability cost is estimated to be approximately \$20 million. In response to a question from Ms. Hartman as to who will decide whether to build a larger auditorium and gymnasium to accommodate town meeting, Mr. Fischelis noted that multiple designs will be considered, and then the preferred designs will be brought forward with estimated costs. In response to a question from Ms. Ortner as to whether there is value to waiting until after the MSBC decision, Mr. Fischelis commented that if the State knows that Concord is willing to fund a middle school without MSBA funding, it will most likely impact the decision on MSBA funding.

Capital Planning Task Force (CPTF) Proposed Threshold

Mr. Banfield reported that the CPTF is considering a \$5 million threshold for "capital projects." He asked for comments from FC members. Ms. Ortner, the FC observer to the CPTF, noted that this is one item that the CPTF voted on in the draft recommendations. Concern was expressed about the size of the threshold--\$5 million is a very large project; many multi-year projects would come close to or exceed that threshold, but not in one year. Ms. Ackerman, who serves on the CPTF, explained that there are three types of capital projects:

1. Boilers, roofs, police cruisers, buses, computers--these items are not included in the charge of the CPTF--they are included in departmental budgets
2. Projects from \$100,000 to \$1 million (or \$3 million, or \$5 million--threshold TBD)
3. Very large projects, most likely defined by a dollar amount (including multi-year, debt-financed projects)

Ms. Ackerman noted that a decision will be made on the threshold after the public hearing. Mr. Packard advised against drawing a hard dollar line, emphasizing the importance of allocating funds to maintain the Town's existing capital assets, as well as acquiring new assets. FC members were urged to attend the March 18 public hearing.

Follow Up on Open Action Items

ClearGov—Mr. Hickling agreed that a ClearGov coaching session for FC members was not needed, as the web site is easy to use.

It was agreed that the MSBC will be invited to a FC meeting (tentatively March 5) for the purpose of getting to know them and to offer assistance. It was noted that there is no preconceived notion of where they are going with the project. It is important to establish a positive relationship. Mr. Banfield noted that he and Ms. Hartman will incorporate an estimated cost of \$80-\$100 million into the FC Report. It was agreed that there will be no meeting on February 20, but the 5-year tax projection assumptions will be discussed at the March 5 meeting.

Chair's Report

Mr. Banfield reported that the School Committee (SC) is standing with its CPS budget number, which is \$97,000 above the FC guideline. He noted that the Governor's preliminary budget includes an increase of \$179,997 in Ch. 70 funds for Concord. Ms. Lafleur noted that the Governor's budget has not yet been considered by the state legislature. The estimates for Concord look good. She noted that Concord spends way above both the foundation budget and the \$3.8 million in Ch. 70 funds. If the estimates are accurate, then the additional funds would be put towards reducing the tax levy. Mr. Packard commented that the CPS budget has no tie to revenue—the FC is looking at the tax impact of the budgets, and increased state aid will enable us to lower the tax increase. Ms. Lafleur noted that state law requires us to publish in the Warrant the budget amount that is requested by the SC. Mr. Hickling commented that he feels that the SC has a lot of flexibility in its budget, given the zero based budgeting that was done, and their ability to transfer money internally without restriction—they are only limited to staying within the bottom line. Ms. Hartman agreed. Mr. Patel felt that the FC would need more information in order to reach that conclusion.

Observer Reports (part 2)

Minuteman Regional School Committee—Ms. Reynolds noted that the MRSC held its budget hearing this past Tuesday, and the numbers are slightly lower than previously discussed. The final number will be included in the FC Report.

Correspondence

Mr. Banfield reported that correspondence was received from Ellen Emerson (thanking the FC for not granting the Reserve Fund Transfer for legal services, noting that more than \$800,000 has already been spent).

Correspondence was received from Peggy Wargelin, expressing concern about the impact of the Board of Health's tobacco regulations on the Town's legal services budget. Mr. Banfield noted that most general legal matters are included within the Town's Legal Services budget.

An email was received from FC member Phil Swain, noting that he is unavailable to attend meetings for the next 3-4 weeks, due to teaching commitments. He inquired about the following: (1) Request for TIF agreement from Grantham—further information is needed; (2) Have we asked Town Counsel for an estimate of costs on the ongoing Estabrook litigation? and (3) Estabrook legal case—the Town Manager has made it clear

that the legal details of the case are not up for public discussion. Ms. Lafleur noted that the request has been made to Town Counsel about estimated costs of the Estabrook litigation going forward, and a response has been received. The Town Manager considers the response privileged information, and he will not release the document. Ms. Zall asked for a clarification about whether the amount of the estimated cost is privileged. Ms. Lafleur responded in the affirmative. Ms. Zall questioned what would happen if a request for additional legal funds is made, and the FC does not understand where the litigation is going. She asked how FC members should respond to questions from the public about this issue. Mr. Banfield responded that the Town Manager has made the case that the FC is to trust him and the SB. It is not the role of the FC to pry between Town Counsel and the Town Manager/SB. If requests are received, FC members are urged to direct them to the Town Manager, since the FC is not a party in the suit. Ms. Hotchkiss noted that if the cost of litigation is revealed, then the Town's legal strategy would also be revealed. She noted that the Town only controls half of the litigation—the defendants also play a part.

Adjournment

The meeting adjourned at 9:34 pm.

Respectfully submitted,

Anita S. Tekle
Recording Secretary

Documents Used or Referenced at Meeting:

- Final Order of Warrant Articles for 2020 Annual Town Meeting
- Fin Com Town Meeting Planner