

**TOWN OF CONCORD  
SELECT BOARD  
AGENDA  
AUGUST 27, 2020  
9:00AM  
VIDEO CONFERENCE CALL**

Join Zoom Meeting

<https://us02web.zoom.us/j/81071667157?pwd=Y0FLWDlqd0tFUXhYcFB4YjBSaFJwQT09>

Meeting ID: 810 7166 7157

Passcode: 851487

One tap mobile

+16465588656,,81071667157# US (New York)

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1.	Call to Order
2.	Town's Right of First Refusal for property located at Fitchburg Turnpike (Lot 1 and Lot 2) owned by Nashawtuc Country Club
3.	Review SB Written Positions on Warrant Articles
4.	Miscellaneous Correspondence
5.	Public Comments
6.	Adjourn



**TOWN OF CONCORD**  
**DIVISION OF NATURAL RESOURCES**  
141 KEYES ROAD, CONCORD, MASSACHUSETTS 01742  
TEL. (978) 318-3285 FAX (978) 318-3291

Delia R. J. Kaye  
Natural Resources Director

August 25, 2020

Michael Lawson, Chair  
Concord Select Board  
22 Monument Square  
Concord, MA 01742

RE: MGL Chapter 61B Right of First Refusal – 1844 Sudbury Road (Parcels 1 and 2, off Fitchburg Turnpike; portion of Assessor's parcel 3431)

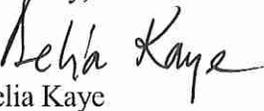
Dear Mr. Lawson:

At the August 12, 2020 Natural Resources Commission (NRC) meeting, the NRC reviewed the Notice of Intent under M.G.L. Chapter 61B for the sale and conversion to residential use of 3.61 acres of land owned by the Nashawtuc Country Club. By unanimous vote, the NRC recommended that the Select Board not exercise its right of first refusal to purchase the property.

The site is not adjacent to any Town or other protected conservation land, is not identified in the 2015 Open Space and Recreation Plan (OSRP) as a Property of Conservation Interest, nor is it mapped as NHESP rare species habitat or BioMap 2 habitat. It is also outside the Nine-Acre Corner Agricultural Area identified in the 2015 OSRP. For these reasons, the NRC recommends that the Select Board not exercise its right of first refusal to purchase the property.

Please let me know if additional information would be helpful.

Sincerely,

  
Delia Kaye  
Natural Resources Director

cc: Stephen Crane, Town Manager

**Town of Concord  
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2020 Annual Town Meeting Warrant Article Written Positions**

**Article 13: General Bylaw Amendment -Vote to Adopt Municipal Housing Trust Bylaws**

**The Select Board unanimously voted affirmative action on Article 13: General Bylaw Amendment-Vote to Adopt Municipal Housing Trust Bylaws.** The Town Meeting’s vote to approve this article will establish the bylaws for the Concord Municipal Affordable Housing Trust which was approved by the 2019 Town Meeting as authorized by State statute to “promote the preservation and creation of affordable housing for the benefit of low and moderate income households, and funding of community housing”.

Subsequent to last year’s town meeting, the Select Board appointed a five-member Affordable Housing Trust Study Committee charged with the task of developing a proposed trust bylaw to be brought back to this year’s town meeting for ratification. MGL c.44, Section 55c, provides the basic guidance for the content of this bylaw and is generally followed by other towns that have a municipal affordable housing trust.

As written and presented in this article, this bylaw will authorize the Select Board to appoint five to seven members as Trustees of the Concord Municipal Affordable Housing Trust, with one member representing the Select Board, to carry out the duties of the Trust. The bylaw further stipulates that the Select Board will approve the Trust’s policy goals and guidelines, consistent with the Town’s adopted housing goals. Any actions of the Trust to borrow money; mortgage or pledge trust assets; or purchase, accept, sell, lease, exchange, transfer, abandon, convey interest in real, personal, or mixed property will also include the approval of the Select Board. These bylaws further identify the Town Treasurer as the custodian of town funds. All these provisions strengthen the cooperation between the many town entities and programs that work together to implement the Town’s housing affordable housing goals.

During the last two years, the Select Board, has worked to implement key recommendations from the reports of the Affordable Housing Funding Committee and the Affordable Housing Trust Study Committee which have been presented in previous town forums. This has translated into both this Affordable Housing Trust Bylaw (Article 13) and the article to Appropriate Funds for Affordable Housing Development (Article 14) for positive action to be taken by the town. Both articles strengthen the necessary available mechanisms to assist the town in addressing its affordable housing goals.

**The Select Board recommends your support of Article 13: General Bylaw Amendment – Vote to Adopt Municipal Affordable Housing Trust Bylaws – as printed in the warrant.**

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**Article 14: Appropriate Funds for Affordable Housing Development**

**The Select Board voted unanimously to support Article 14 to Appropriate Funds for Affordable Housing Development** which will provide the town with accessible funds during the year to act on affordable housing opportunities as they might arise.

Building on the recommendations of the Town's long-range plan *Envision Concord 2030* and the recommendations of the former Affordable Housing Funding Committee, the 2019 Town Meeting passed four articles related to establishing funding sources to support the Town's affordable housing goals. Two of those articles involved home rule petitions which require State Legislature approval, and they are still in play during this Covid-19 extended legislative session. The Select Board continues to advocate for and monitor their status, and as anticipated, knew that it might take a couple of years before local funding sources for affordable housing could be realized from these actions.

Additionally, the 2019 Town Meeting approved the establishment of an Affordable Housing Trust, the final bylaws for which have been brought before this town meeting for final approval.

Simultaneously, the 2019 Town Meeting also approved an appropriation of \$500,000 for affordable housing. The availability of these funds during the year was essential for immediate Town action which resulted in leveraging multiple sources of town and non-town funds for 930 Main Street which is being completed as a Habitat for Humanity Project that will provide two additional units of affordable housing toward the town's SHI (State Housing Inventory). Initial development costs for the planned Commonwealth Avenue affordable housing unit also came from this fund allowing the Concord Housing Authority to proceed to work on an additional unit of affordable housing on the approximate ¼ acre of Gerow land that the 2019 Town Meeting approved and set aside for this purpose.

As we await the outcome of the State Legislatures' approval on our two home rule petitions before them, it was anticipated that the Select Board would also request an appropriation for affordable housing at this year's town meeting. The ability to access funds between town meeting sessions and leverage them to the town's advantage have already resulted in four planned additional units that will count toward the town's SHI. Collectively, all of the efforts that the Select Board and Town have taken are illustrative of the multiple strategies and actions that are necessary to support the town's affordable housing goals.

**The Select Board recommends your support of Article 14 – Appropriated Funds for Affordable Housing Development – as printed in the warrant.**

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**Article 16: Approval of Tax Incentive Financing Agreement**

The Select Board voted 3 to 2 to recommend affirmative action on Article 16 – Approval of a Tax Incentive Financing (TIF) Agreement as printed in the Warrant. This agreement between the Town and the developer that would reduce the valuation of the property in order to reduce tax payment for the first 15 year of operations.

This is the final Town Meeting action necessary to finish our work in is helping to create an 83-unit affordable housing assisted living facility in Concord. Located behind MCI on land given to the Concord Housing Development Corporation and restricted to be used only for affordable housing and open space, the project is being developed and will be managed by the Grantham Group. The project, formerly known as Junction Village, upon completion will be known as Christopher Heights – Concord.

In 2016 after the land was first given to the CHDC, a town study committee (Junction Village Funding Advisory Committee) was organized to help the town understand how this project might be funded. Support would be necessary for both the physical development of the project and for its operations. Because all units are affordable, operational support would be necessary to help off-set interest on the loan the developer would incur and in recognition that rents, and thereby revenues, are regulated; and, support would need to come from multiple sources.

The proposal to the Town from the Junction Village Funding Advisory Committee recommended that the Town allocate \$1,000,000 from Free Cash and \$1,000,000 in CPC allocations to support the development of the project. That's what the Town did through articles at our Annual Town Meetings in 2017, 2018 and 2019. Additionally, funds were sought and would be forthcoming from the Concord Housing Foundation and the HOME Consortium. All of these contributions were to support the capital development costs of the project. Finally, the developer would apply to the State for Tax Credits which could then be sold to tax credit investors to supply additional funds to support the development of the project. The State awarded the project \$7,500,000 in tax credits -- \$2,500,000 more than is usually in recognition of the construction cost increases. This was an important statement by the State of both the value of the project, the local contribution from the Town, and a recognition of the cost pressures associated with the development of affordable housing in Massachusetts.

These articles, presented at our ATMs, were reviewed and supported by the Select Board, the Finance Committee and the Community Preservation Committee. The developer provided numerous documents including financial statements and development plans in support of these actions. Additionally, in the financial statements and at the presentation at Town Meeting, it was indicated that the developer would be able to pay, annually, a total of \$75,000 in taxes and a ground lease rent (the ground lease rent to be paid to the CHDC). The Junction Village Funding Advisory Committee also recommended other sources financial assistance to help offset operational costs. One of those recommendations was the

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use of a TIF to reduce the valuation of the property to lower operational costs of tax payment.

There have been a number of claims made in opposition to this proposed TIF.

1. In an MOA between the Town and the developer, the developer stated that they would not ask for any additional financial support. Opponents believe the TIF is an additional ask. **It isn't.** It is the same ground lease rent and tax payment always proposed by the developer. The TIF simply provides the mechanism for this action, and, as stated above, it was an action recommended by the Junction Village Funding Advisory Committee in 2016. Further, the TIF generates tax revenue to the Town above what is received on the land presently -- zero.
2. That the length of the TIF can be reduced, thereby creating more tax revenue for the Town. **It can't.** The Tax Credit Investor must be involved with the project for 15 years – 10 years of disbursements of the tax credit and a required additional five years of involvement --the length of the TIF. A TIF less than 15 years would be very difficult for the tax credit syndicator to sell the credits.
3. Reducing the valuation through a TIF means the Town is 'leaving money of the table.' **It isn't.** The implication is that there is some other project – only affordable housing or open space -- that would yield more tax revenue for the town. There was a process for soliciting proposals for the land. Projects with more units and projects aimed at family developments were rejected as creating too much traffic and for other reasons.

The Town has done a lot over the last few years to help us meet our affordable housing goals – the creation of an Affordable Housing Trust Committee (Article 13 on this year's Warrant), a property tax transfer bill, a building permit surcharge bill, allocation of \$500,000 at last year's Town Meeting and an additional \$500,000 allocation on this year's Warrant (Article 14). We need to enact this TIF to finalize Town Meeting action on this important affordable housing project. The Select Board urges Affirmative Action on Article 16.

**Minority Statement**

On April 11, 2017 a Memorandum of Agreement was signed between Grantham Group, a for-profit developer, and the Town of Concord. Paragraph 11 states: ***“The Developer agrees not to request any financial support from the Town other than the Town Funds for the construction and development of the Project and acknowledges that the Town is under no obligation to provide any additional financial support;...”*** At that time the Town had committed \$2,000,000 to the project - \$1,000,000 from Free Cash and \$1,000,000 from CPC funds.

The Town has never entered into a TIF agreement with any entity. On February 24, 2020 the article was presented at the Select Board Public Hearing. The information on the dollar amount associated with the TIF was, for the first time, posted for public review earlier the

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same day. Item 4 under Section A: The Town's Obligations states "*...the total amount of the Exemption authorized by this agreement commencing on the date hereof, shall not exceed \$3,000,000.*" (This dollar amount was subsequently reduced to \$2,650,000.) The Developer and other proponents assert that this money is not being paid by the town as no taxes are currently assessed for the parcel. However, the Developer agreed that this is a form of financial support.

To this minority of Select Board members, along with many citizens and committee/board members, the additional \$2,650,000 request **does** effectively increase the Town's obligation from the 2017 commitment of \$2,000,000 to \$4,650,000.

Many of the numbers have changed, understandably, in the Developer's proforma financial statements between 2016 and 2020. Most notably is the commitment from the state, received in June, 2020, for 150% of the anticipated tax credits. The developer expected \$5,000,000 and was awarded \$7,500,000.

One number that has never changed is the Developer's budget for property tax (\$40,000) and land lease payment (\$35,000). The developer must certainly have known of the high property values in Concord yet, until last August, he never checked with the Assessor to see if his \$40,000 estimate was in the ballpark.

There are still many steps to go in this process. Unknowns include sale proceeds of tax credits, terms of mortgage to be acquired, and actual construction cost of project because they remain as estimates.

The minority Select Board members believe that while so many questions remain and so many numbers are not fixed that the Town should not, at this time, be held to a fixed obligation to provide an additional \$2,650,000 in tax relief for this project.

**Article 30: By Petition - Healthy School Buses for Students**

Jane Hotchkiss, 1479 Main Street, Member of the Select Board, writing on behalf of the Select Board in support of Citizen Petition, Article 30: Healthy School Buses for Students. To appreciate Article 30 fully, a voter could place it into context as the continuation of a patient process toward an end goal for a fully electrified Concord School bus fleet, part of our town wide long-term greenhouse gas reduction plan.

Concord is at the second milestone in this roadmap, the first realized when after a year of study and analysis Concord was awarded one of the four electric bus pilots in the state. This award was an end result of joint town and schools Alternative Transportation Committee's (ATC) work, and we welcomed it to a new transportation depot sited intentionally adjacent to our then new solar site, a harbinger of our longer-term commitment to a carbon free municipal grid.

Our community's commitment to sustainability and a zero carbon footprint can be seen over the past decade in the work of committees, from the Comprehensive Sustainable Energy Committee to the aforementioned joint school and town ATC, the Energy Futures Task Force, to Climate Action Advisory Committee; and our promotion of solar roof and

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building efficiency/heat pump campaigns; the hiring of a Sustainability Director, articles 51 and 23, our solar sites at the landfill and Knox trail; our recent MVP grant supported *Climate Action and Resiliency Plan* report; and our multiple electric car events and municipal charging stations.

Our initial electric bus pilot in 2016, allowed the students in Concord and Carlisle to benefit from an emissions free, quiet new electric bus technology, while the town and schools adapted, and the technology evolved. Now four years later, we have a new opportunity to match state funds as part of the 2020 VW settlement program and begin the slow expansion of our fleet of buses to clean electric motor technology. A Matching commitment of \$200,000 from Concord this year will add another one or two electric buses to our fleet.

The Select Board supports this petition:

- it supports the town's goals for sustainability and greenhouse gas reduction, goals which the town affirmed with passage of Article 51, at 2018 Town Meeting and echoed throughout *Envision Concord*, our 2018 Comprehensive Long Range Plan;
- it builds on the Town and State partnerships toward fleet electrification;
- and, it supports our commitment to public health articulated in our Board of Health's mission statement: to assess and address the needs of the Concord community, in order to protect and improve the health and quality of life of its residents and work force. It does so by increasing the benefits of emission and noise free rides to a greater number of Concord Students, especially important in a time of pandemic and climate change.

#### Select Board positions on Articles 32, 34 and 37 for 2020 Annual Town Meeting

Over the past year the Planning Board has focused much of it's effort into incorporating the principles of the long range plan, *Envision Concord*, into zoning bylaw.

#### Article 32: Zoning Bylaw Amendment - Additional Dwelling Unit

This bylaw replaces the current accessory dwelling unit bylaw with terms that simplify the process and allow "by right" the addition of a small (750 sq. ft.) dwelling unit on an existing lot. It addresses the long range plan's goal of developing a more diverse housing stock, particularly allowing for smaller residential units as demographics change. During the many meetings and hearings throughout the year there was nearly universal citizen support for this bylaw change. The Select Board recommends Affirmative Action on Article 32.

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**Article 34: Zoning Bylaw Amendment – Planned Residential Development  
and Table I Use Regulations**

This bylaw is amended to incorporate Envision Concord principles including sustainability, diversity of housing stock, increase in required open space and will require a site plan review by the Planning Board. The recommendation that the granting authority be changed from the Zoning Board of Appeals to the Planning Board has been removed from the Article. The Planning Board believes that more discussion needs to take place on this point before it can be considered for incorporation into Article 34. The Select Board recommends Affirmative Action on Article 34 as amended.

**Article 37: Zoning Map Amendment – Thoreau Depot Business & Residence  
C Zoning District Boundary**

This bylaw amendment proposes shifting the Thoreau Depot Business District boundary to the east onto the property at 148-150 Thoreau Street and moving the Thoreau Business District boundary line at 143 Sudbury Road (Mobil Station) east to the property line. The owner of the property at 159 Sudbury Road and 148-150 Thoreau Street has been granted an easement by the MBTA to reconfigure the entrance and exit to 159 Sudbury Road (Starbucks). The Police and Fire Departments agree that safety at this intersection will be improved by this change in traffic pattern. This Article changes the boundaries but does not allow for any changes to the property. These would need to go before the appropriate Town boards, e.g. Planning Board and Zoning Board of Appeals. The Select Board recommends Affirmative Action on Article 37.

**Article 41: By Petition: On-Site Community Notice of PRD Application**

Jane Hotchkiss, 1479 Main Street, Member of the Select Board, writing on behalf of the Select Board in support of Citizen Petition, Article 41, an Article which proposes to amend the community notification process surrounding a Planned Residential Development (PRD), in a manner and physical layout that will increase public notice of an impending Special Permit Application, hence at the start of the public process.

This article acknowledges the larger community impact of a dense development, by outlining a description of the detail of the sign to be posted and its visibility of to the neighborhood which is planned for development.

As a neighbor of the debated PRD at 1440 Main Street, our household has been acutely aware of multiple discussions involving this development. Given the already dense nature of the neighborhood of West Concord and the impact of many single-family home, teardowns and redevelopments, as well as several other PRDs, there is concern about public input into process adding the context of village scale and character; the same sentiment which was initially discussed in the West Concord Master Plan and has resulted in community support for several successful PRDs.

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As a household of Select Board and School Committee we are also acutely aware of the impact of residential development on our tax base, the diversity of our housing stock and student population.

The Select Board supports this petition:

- it supports our goals for transparency and public input, goals which the town has affirmed throughout Envision Concord the 2018 Comprehensive Long Range Plan;
- it highlights the importance of appropriate signage in a town who's sign By-laws are prescriptive;
- and it reminds us all of the importance and impact of neighborhood growth.

**Article 42: By Petition: Amend Sign ByLaw to allow On-Site Posting of Notice of PRD Application**

Jane Hotchkiss, 1479 Main Street, Member of the Select Board, writing on behalf of the Select Board in support of Citizen Petition 42, An Article which amends the Town's Sign By-Law Section 5, to allow the physical on-site and off-site postings of Planned Residential Development (PRD) Special Permit Applications. This compliments the previous Citizen Petition, Article 41, and also acts as a stand-alone amendment to our sign By-Law's locational directions.

As in our discussion on Article 41, this petition attends to placement of notice of development on the site and within public right of ways nearest the site, thereby increasing public awareness of the permitting process at its beginning.

The Select Board supports this petition:

- it supports our goals for transparency and public input, goals which the town has affirmed throughout Envision Concord the 2018 Comprehensive Long Range Plan;
- it highlights the importance of appropriate signage in a town who's sign By-laws are prescriptive;
- and it reminds us all of the importance and impact of neighborhood growth.

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**Article 44: Community Preservation Committee Appropriation  
Recommendations**

**The Select Board voted unanimously to recommend affirmative action on Article 44 – Community Preservation Committee Appropriation Recommendations** which represent significant due diligence work and committee review of the applications they received from both Town projects and non-profit organizations requesting this year’s cycle of Community Preservation Funds.

The Community Preservation Committee received 13 applications, 10 of which were recommended for funding to be approved at this year’s Town Meeting, for a total amount of \$1,960,000 to be appropriated from the Concord Community Preservation Fund. Committee funding recommendations are made for the categories of community housing, historic preservation, open space, recreation and administration. Each application was thoroughly reviewed and analyzed at committee deliberations after site visits and interviews with application sponsors. Applications were available online for public viewing, and there was opportunity for public comment throughout the year at the committee’s regularly scheduled public meetings and public hearing presentation.

Applications received this year included submissions from two different local faith groups requesting funds for historic preservation which is one of the qualifying categories for the Community Preservation Committee’s (CPC) funding recommendations as defined by its bylaws and the State’s Community Preservation Act (CPA). Cognizant of the Anti-Aid Amendment of the Massachusetts Constitution which prohibits the use of public funds for ostensibly religious purposes, the Committee requested a legal opinion from Town Counsel regarding these applications’ eligibility to be considered for CPA funding.

Specific to the CPC’s recommendation to partially fund roof replacement as part of the Holy Family Parish Rectory Renovation request for historic preservation funding, Town Counsel concluded that based on the legal definition of the Anti-Aid Amendment and existing case law related to public funding for other court-reviewed projects on this issue, that 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. . . “. Specific to the CPC’s recommendation for the Holy Family Parish application, town counsel further commented that “The grant funding does not appear to supplant other church funds used for religious purposes, but instead serves a public purpose both by enhancing funding needed for accurate historic preservation in accordance with Historic District requirements and by opening up more public meeting space. Thus, we think that funding of this project could survive a *Caplan* challenge under the Massachusetts Anti-Aid Amendment.”

Similarly, Town Counsel concluded that the CPC’s recommendation to fund First Parish’s request for CPA historic preservation funding to restore the church clock tower/belfry and the Town-owned clock and bell housed within the tower is eligible for CPA funds and

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stated: “Accordingly, we believe this project is eligible for CPA funding without running afoul of the Anti-Aid Amendment”.

Given the thorough due diligence in reviewing all of the CPC recommended projects, **the Select Board recommends your approval of Article 44 – Community Preservation Committee Appropriations.**

**Article 45: By Petition: Electronic Recording of Select Board Executive Sessions**

The Select Board urges a vote of No Action on this article. As a practical matter, if this article is approved, it will be difficult and costly to implement, while likely providing little value to citizens.

The Town would first need to determine a technologically reliable method to review, or delegate to Town staff to review, those recordings to redact information that should not be publicly disclosed. For example, information regarding an employee’s character or reputation, or a grant recipient’s need with respect to a Silent Fund application, and all attorney-client privileged discussions, should not be released to the public even when the remainder of those minutes are published. That information would also need to be redacted from any recordings. As a practical matter, redacting protected information from audio and visual recordings will be much more time consuming – and more susceptible to error – than redacting such information from written minutes. The Town should carefully consider whether it wants to accept this administrative cost and heightened risk of improper disclosure.

It is also important to note that minutes of Executive Sessions are released only after the matter at hand is resolved. At that point, it is unclear what value would be added by producing the recording in addition to the official minutes of the meeting.

Finally, we note that the Select Board is now keeping current with all Open session and Executive Session minutes; there is no backlog at this time, and we intend to stay current going forward.

**Article 46: By Petition: Public Posting of Open Meeting Law Complaints**

The Select Board urges a vote of No Action on this article.

The Town’s current general practice regarding Open Meeting Law complaints is that once the Attorney General has responded to a complaint, the Town posts both the complaint and the Attorney General’s decision together on the web site. The Select Board believes this policy is working well and sees no reason to change it.

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If the Town instead posted all Open Meeting Law complaints, including complaints that have not yet been decided by the Attorney General, those postings could lead to the misleading impression that a Town Board has violated the Open Meeting Law during the often months-long period when a decision is still pending with the Attorney General's Office.

#### **Article 47: By Petition: Investigation and Amendment to the Town Counsel ByLaw**

The Select Board urges a vote of No Action on this article. This article proposes a committee to ensure compliance with the Town Charter and the Town Counsel Bylaw. If the proposed committee were formed, it would find that no violation of the Charter or the Bylaw.

The Town Counsel Bylaw, adopted in 1992, states that "The Town Manager, subject to the approval of the [Select Board], shall annually in May, and whenever a vacancy shall exist, appoint some competent lawyer who shall be admitted to the Massachusetts Bar to act as the Town Counsel." The Town has been following this bylaw by appointing a law firm, rather than "some competent lawyer". From 2006-2017, William Lahey of Anderson & Krieger served as Town Counsel, and beginning in 2018, Mina Makarious of Anderson Krieger has served as Town Counsel.

By appointing Town Counsel within a firm, the Town benefits from having the skill and expertise of a team of lawyers at its disposal. In addition, the Town has been able to reduce its legal expenses as Town Counsel has delegated work to colleagues that either charge a lower rate than Town Counsel (e.g., mid-level associates on routine zoning litigation) or are more familiar with a particular body of law (e.g., senior counsel with decades of construction litigation experience).

However, the Select Board agrees with the petitioner that an update to the Town Counsel bylaw may be warranted to recognize the reality that in 2020 most towns of Concord's size employ firms, not individuals, to serve as Town Counsel. We will consider proposing an amendment to this bylaw to provide clarity to the Board, the public, and Town Counsel regarding this issue.