



Town of Concord
Finance Committee
22 Monument Square
Concord, Massachusetts 01742-0535

AGENDA

Concord Finance Committee

February 25, 2021

**Immediately following Guidelines Meeting
via Zoom Webinar and broadcast on MMN**

Zoom Access Info:

Join from a PC, Mac, iPad, iPhone or Android device:

Please click this URL to join.

<https://us02web.zoom.us/j/89369002068?pwd=Tzd6R3pqamVrdXlkTnVaY0g4YnBUUT09>

Passcode: 612407

1. Minutes: as available
2. Vote on FY22 Guideline
3. Review Draft Warrant Article regarding Guideline
4. Chair's Report
5. Correspondence:
 - a. Estabrook (English-Hartz, 1/31/21; Pierce, 2/2/21; Buechner-Vischer, 2/4/21; Kohler, 2/4/21; Old 2/9/21)
 - b. Starmet (James, 2/4/21)
 - c. White Pond (Parker, 2/18/21)
6. Observer Reports
7. CFO Report
8. Citizen Comments

Reminders:

- **Next Regular Meetings:** March 18, 2021; March 25, 2021
- **2021 ATM Preview Meeting:** Saturday, February 27, 2021
- ***When Finance Committee members anticipate being absent from a meeting, it would be appreciated if they would notify Chair Mary Hartman by email at: maryhartman7@gmail.com***

Supporting materials for agenda items are available online at www.concordma.gov/fcmtgdocs . Materials are generally uploaded on the Tuesday prior to the Regular Meeting.

If any member has materials they would like to present for discussion, please inform the chair in advance of the meeting.

ARTICLE 00: Finance Committee Budget Guideline

To determine whether the Town will vote to replace the policy established in Article 4 of the 1976 Annual Town Meeting relative to establishing and publishing budget guidelines.

Article 4 of the 1976 Town Meeting:

The Finance Committee shall annually establish a guideline for budget increases to be considered in fiscal year planning by the Board of Selectmen, the Concore Public School Committee and the Concord-Carlisle Regional School Committee and will publish said guideline in the local press prior to November 30 of the previous fiscal year.

ARTICLE 00: Finance Committee Budget Guideline

Proposed:

The Finance Committee shall annually establish guidelines for budget increases to be considered in fiscal year planning by the Select Board, the Concord Public School Committee and the Concord-Carlisle Regional School Committee and will publish said guidelines on the town website no later than five (5) weeks before the scheduled close of the warrant.

Substantive changes include:

- **Date for publishing** is now relative to the scheduled closure of the warrant instead of a fixed date on the calendar.
- **“Guidelines” is now plural** since, in practice, separate guidelines are given to each entity based on their budget drivers.
- The guidelines will be **posted on the town website** instead of the local paper. Recent town survey results indicate this is the means by which most people get information.
- **“Selectmen”** is replaced with **“Select Board”**.

Kerry Lafleur

From: Denise English-Haartz <dhaartz@gmail.com>
Sent: Sunday, January 31, 2021 5:41 PM
To: finance mail
Subject: Legal Fees Estabrook Lawsuit

finance@concordma.gov

Dear Finance Committee,

I have followed many of your meetings which have included discussion and debate regarding the controversial litigation against Estabrook landowners; I am well aware that it is not within your purview, as a Finance Committee, to question the value or merits of this lawsuit, but I ask how, and at what point, we, as taxpaying citizens, are empowered to hold the Town law firm responsible for failing to provide an accurate budget for the unprecedented legal action of which they advised and promoted. This law firm has a professional obligation, like any contractor the Town hires with taxpayer funds, to operate within a specified budget. I have seen written statements by the Town lawyers claiming that numerous expenses were "unforeseen." I have to echo what a member of your committee once alluded to: no practiced and competent legal firm filing a multi-claim lawsuit against multiple citizens and Harvard University (for general public rights to be established on privately-owned land) should be surprised by any expense arising from the filing of such a broad-reaching, seemingly open-ended lawsuit. This lawsuit is entering its fourth year, and appeals and countersuits could mean that it will go on for another four years! Meanwhile, various town needs are sidelined or inadequately funded — such as the repair of our roads or the maintenance of, and safe access to, our own town recreational lands.

In the fall of 2017, the town sued the landowners. No budget for this action was proposed. A year later, for the Special Town Meeting, the Town lawyers provided a requested budget for Mr. Whelan's PowerPoint. It stated that \$250,000.00 had been spent on the lawsuit thus far and that the lawyers needed another \$250,000.00 (a total of \$500,000.00) to see the case all the way through to a completed trial. On that information, the meeting voted for the extra \$100,000.00 requested to augment the legal budget. Every year since, from what I can determine, the Town law firm has exceeded the legal budget with their billing by close to 100%, and Town officials have come to the Finance Committee requesting the use of the Town Reserve Fund. This is a fund to be allocated for emergency situations — of which, in the time of Covid-19, we can expect more to arise. My understanding is that you authorized the Town Reserve Fund for two years, but last year you voted against the use of the Town Reserve Fund — citing that your committee warned, in the previous year, that if Estabrook legal expense overruns continue, do not request the Reserve Fund, for the third time, to make up for costs that failed to be adequately budgeted. As a result of the Finance Committee holding their ground, the Town Manager transferred the money from the extra funds in the library budget.

I just read on the Select Board website that the Town lawyers are now saying they need an extra \$100,000.00 to \$200,000.00 above and beyond the substantial legal budget increase that was voted last year for FY21. What was most shocking was that Town officials will be coming before you, again, asking for the use of the Town Reserve Fund — now for the fourth time. How can you possibly validate their request when NONE of these expenses are either unplanned or unforeseen?

I remember the days when Town Counsel was supposed to keep our town out of expensive and unnecessary litigation. For those taxpaying citizens who are watching this situation with any objectivity, you can't come to any other conclusion than that our legal counsel feels they have been granted a blank check for this case. As a taxpaying citizen, I wish to know how this has come to be the situation, and who, specifically, has made the promise that funds will keep flowing unconditionally.

I, as do many other concerned citizens, support your position: The Reserve Fund should not be used as a go-to blank check for a legal firm's failure to produce an accurate, honest budget — and stick to it.

Thank you for your thoughtful and competent service to our town.

Sincerely,
Denise Haartz
Williams Road

Kerry Lafleur

From: Browne Pierce <piercebrowne@comcast.net>
Sent: Tuesday, February 2, 2021 5:48 PM
To: finance mail
Cc: Linda Escobedo

To: Mary Hartman, Chairman: It saddens me to think that this is now the fourth year in a row that the Town has come to your Committee, seeking money once again from the Reserve Fund to litigate its case against the Estabrook landowners. The FinCom has been both patient and stalwart in the past by listening to and ultimately denying these extraordinary requests, only to have the Town end run your Committee and snatch unexpended funds earmarked for the Concord Public Library. The lesson becomes clear, " spend it or lose it ". I hope you will once again stand strong when the Town Manager comes calling next Thursday with the annual, ever familiar request. It appears that the power of the purse is now the only way to stem this raging tragedy from continuing. It has caused immeasurable hurt to the defendants, the expenditure of hundreds of thousands of dollars on both sides and caused a level of divisiveness unseen within the town during my time here which goes back to 1935. I urge you to deny further funding when the request is presented. Respectfully, Pierce B. Browne, 154 Ball's Hill Road, Concord

Kerry Lafleur

From: Dinah Buechner-Vischer <dinah.bv@comcast.net>
Sent: Thursday, February 4, 2021 2:09 PM
To: Kerry Lafleur; finance mail
Subject: Please distribute to Finance Committee for tonight's meeting
Attachments: Letter to FinCom Feb 42021.pdf

Dear Finance Director Kerry Lafleur,

Please be so kind as to pass on this letter from Concerned Citizens to the Finance Committee for tonight's meeting.

Thank you for your time and attention.

Sincerely,

Dinah Buechner-Vischer
Concord, MA

February 4, 2021

To: *Town Manager Stephen Crane and the Select Board of Concord, Massachusetts*

From: *Concerned Citizens of Concord*

CC and Note to: *The Finance Committee* -- The undersigned support the 2020 decision of the Finance Committee to deny the use of the Town Reserve Fund to subsidize the Estabrook Lawsuit for the reason that the expenses of this lawsuit where not unforeseen, and for the reasons stated as follows.

As citizens whose tax dollars (1.3 million plus) have been, and will continue to be, spent suing long-standing fellow citizens – some of whom are among the most generous and giving to our town – we respectfully request honesty from our elected officials. The citizens of Concord deserve accurate, truthful information and solid facts from our Town government regarding the Estabrook Lawsuit. We hope you will agree, anything short of that is unproductive and unnecessarily divisive.

We feel that the Town Manager's "Litigation Update" and the "Memorandum" written by the Town law firm of Anderson & Kreiger LLP (posted in January 2021 on the Town website) skew the facts regarding the Estabrook Litigation. Public statements made by Town officials and their lawyers have far too often proved to be inaccurate and misleading. These inaccuracies have done grievous harm to the Estabrook property owners, to the well-being of our community, and to the integrity and workings of our Town government as a whole. Our Town government is obligated to be honest and truthful about the extraordinary cost of this litigation. Any expense and cost overruns incurred as a result of any part of this lawsuit, or from the fallout from such litigation, rests squarely on the party who filed it: The Concord Select Board and Anderson & Kreiger LLP. All practiced attorneys and Town officials should be well aware of that fact.

Apparently, the Town was provided with numerous offers of access through the private Estabrook residential properties prior to the lawsuit, but Town officials and their lawyers declined all offers. Instead, they chose to take the unprecedented route of suing our own citizens over private property -- property these families have paid taxes on for decades. The family of one lifelong resident of Concord, whom you have sued, has lived and paid taxes on their Estabrook land for generations and for over a century. Where, we ask, is the equity and logic in treating devoted, long-standing Concord citizens this way?

We respectfully ask that you direct your legal team to act with professionalism and exercise decency and fairness in their communications to the public. Most emphatically, we request that you direct your lawyers to cease publicly blaming the very families you have sued and hurt so deeply. Please stop blaming the victims. **When you sue people, they have the right to defend themselves, their families, and their homes. The facts are plain and simple: the responsibility for all legal budget overruns lies with your legal team of Anderson & Kreiger.**

You and your legal team write that you had "no choice" but to file an injunction because certain landowners "unilaterally closed access to Estabrook Trail." One would read such a blanket

statement to mean that these landowners closed access to the entire Estabrook Trail. How does such a misleading statement communicate what actually transpired? The truth is that during the spring Covid-19 surge -- when the Town itself considered closing Town trails for safety -- the property owners temporarily closed 300 yards (900 ft.) of private residential property. Over **1.5 miles (8,311 ft.) on their and Harvard's private "Estabrook Trail" (which they maintain at their expense and on which they allow public access) remained completely open, and thousands of people, dogs, and mountain bikes freely used it during that "closed" time period.** Anyone who wished to visit the private woods could see that abundant access for visitors was provided the entire time via three access points on Rasmussen land, one via Robb land, one via Punkatasset Town Land, one via Chamberlain Woods, two trails via Monument Farm Road, and four public entrances in Carlisle. Town officials seem to consistently ignore the fact that the Estabrook Woods was deliberately and painstakingly preserved by its landowners for nature and ecology research; it was never meant to be a public recreational park.

Regarding the temporary land closure: If taxpaying citizens are denied the right to protect their own property, themselves, and their families during the surge of a deadly virus -- from off-leash dogs attacking and biting them, from property theft and vandalism, from verbally abusive visitors, and from strangers approaching their homes and front doors without masks -- then we live in a town devoid of empathy and understanding -- a town where our own Town officials care more about waging war with their citizens rather than caring for them. Legal victory becomes the paramount Town goal -- a goal to be achieved at *any* cost -- extracting both an extraordinary human and financial toll.

Eventually, history will judge the actions of our Town officials and their lawyers. For now, we see private trails and land closing all around town and certainly within the private Estabrook Woods. Chains, signs, and fences are going up. Sadly, this dramatic sea change from the way things once were will be the lasting legacy of decisions made by our Town officials resulting in this multi-year, multi-million-dollar Estabrook Lawsuit.

Now that Concord has shown it is capable of treating families, who have shared so much with us for so many decades, with ill will and disrespect -- we can hardly expect any private landowner trusting any partnership with our town in the future. Perhaps, someday, you will reflect on this as a sad and regrettable consequence.

In closing, we respectfully ask you to revise and refine your, and your lawyers', current documents on your website by providing the public with more accurate, truthful, and informative statements such as the following:

- We, and we alone, as Town officials take full responsibility for all costs incurred resulting from the Estabrook Lawsuit we chose to file against fellow citizens and Harvard University in 2017.
- The landowners closed 300 yards of an access point through their residential trail land during the Covid-19 surge in the Spring of 2020. 1.5 miles of the trail on the defendants'

land was left open and accessed through more than 12 entrances. Nonetheless, given we had filed a lawsuit against these people, to secure permanent public access through their land, we felt it necessary to file an injunction against them for closing the 300 yards during our litigation. It cost the town \$80,000.00.

- Unfortunately, the cost of this litigation has resulted in substantial overruns of our legal budget for four years. We will need an extra \$100,000.00 to \$200,000.00 to make up for the overruns we expect to incur for FY21 -- despite the fact that we increased our legal budget for FY21 from \$250,000.00 to \$344,000.00 (an increase of 38%) in order to continue to finance the Estabrook Lawsuit.
- We do not know how many more years it may take to resolve the Estabrook Lawsuit we filed in 2017 – as appeals and other court actions could follow; therefore, we cannot predict, or budget, a total end cost at this point in time.

Thank you in advance for your much-needed corrections (we will be watching for the revisions) and for your future adherence to disseminating accurate and truthful statements to your taxpayers and citizens.

Sincerely,

Joan Campbell

Charles A. Ziering

Mark Thomas, Esq.

Fritz Folts

Polly Reeve

Ben James

David Meyers

Ellie Bemis

Rosemary Grande

Bruce Kohler

Christopher T. Renyi

Jonathan O'Keefe

Juliet Trofi

William Becklean

John Baker

Dinah Buechner-Vischer

Leland Cott

Patricia Geyer

Sarah O'Keefe

Gregor I. McGregor, Esq.

Ellen Emerson

Peter Shaw

Andrea Meyers

Cathy Folts

Marcia Thomas

Michael Frederick

Denise Haartz

Nina Nielsen

Kate James

Shelley Morss

Jennifer Schunemann

Kate Renyi

Judy Sum

Susan Frommer

Stona Fitch

Lansing Old

Sharon McGregor

Al Antonitis

Ann Fitch

Eric Haartz

Felice Cott

Kerry Lafleur

From: Bruce Kohler <eekandboo@yahoo.com>
Sent: Thursday, February 4, 2021 4:44 PM
To: finance mail
Cc: Linda Escobedo
Subject: Select Board Funding Request for Estabrook Litigation

To: Members of the Finance Committee

We understand that the Select Board through the Town Manager is requesting the Finance Committee to approve the transfer of funds from the Reserve Fund to cover litigation costs primarily or entirely related to the Estabrook Litigation.

The Reserve Funds are explicitly limited to 'extraordinary or unforeseen expenses.'. Any fees incurred by someone who initiates a lawsuit are ordinary and foreseeable, that is the nature of lawsuits.

The Town and its outside counsel have consistently underestimated the costs of the Estabrook litigation and failed to provide adequate budgeted funds to finance that litigation.

We strongly support the Finance Committee's prior refusals to divert Reserve Funds for the Estabrook Litigation and urge the Committee to remain firm with such refusal once again.

Respectfully submitted by
Ellen Emerson and Bruce Kohler
1061 Monument Street

Kerry Lafleur

From: Lansing Old <tenblackcormorants@yahoo.com>
Sent: Tuesday, February 9, 2021 12:56 PM
To: finance mail
Subject: Estabrook Lawsuit

Ms. Hartman, fellow members.

As a life long resident and taxpayer of Concord I ask you to continue denying expenditures suing the landowners in Estabrook Woods.

Enough is enough. Town Meeting must be a regulator of a government burdening its budget by an amount well over 1.3 million dollars with no end in sight.

Court documents show no evidence of public access ever existing along the Estabrook Trail. Our Town continues to intimidate citizens of Concord and Harvard College without merit.

Thank you,

Lansing Old Lowell Road

Sent from my iPhone

Kerry Lafleur

From: Nancy James <jamesnancy@comcast.net>
Sent: Thursday, February 4, 2021 10:04 AM
To: finance mail
Subject: letter opposing acquisition of 2229 Main Street by Nancy James
Attachments: NPJ letter re Starmet - 3.docx

To: Mary Hartman, Chair, Concord Finance Committee

Dear Mary,

I was very impressed with your input at yesterday morning's CBP meeting. Thank you for serving our town.

Over the decades I have suggested caution in approaching 2229 Main Street. I have prepared this letter to address my concerns about the acquisition of the property by the Town of Concord. I have sent a copy of my letter to Gary Kleiman, the Partnership, as well as to Steve Crane and the Select Board.

Thank you for your kind consideration of my concerns.

Nancy James
Licensed Insurance Adviser
Technology Risk Management Specialist
Concord, MA
978-502-7144

Reply to 2229 Main Street property purchase by Concord

I have read the NSRC draft of 7 Dec 2020 and want to raise several issues regarding the liability the Town of Concord will be assuming.

Executive Summary

- **Concord's own experience with unexpected expenses due to pollution risks suggests reconsideration of assuming ownership of the 2229 Main Street property.**
- **Yesterday's technological principles have always been measured and judged in today's 20/20 hindsight, suggesting nothing but uncertainty as to the risks associated with future health and safety issues of the 2229 Main Street property.**
- **The three named liable parties, US Army, Textron and Whittaker, have well established avenues of avoiding ongoing liability.**
- **Concord has much greater strength in contractual protections with a third-party property owner than in direct ownership of 2229 Main Street.**

Background of my position: I was serving on the Concord Town Finance Committee during the mid-1980's when the municipal insurance crisis arose, along with a wider general liability coverage shortage. In place of legislators' inaction, courts then were re-writing insurance policy terms to fund much needed toxic cleanup costs. With municipalities, courts were particularly sympathetic.

Knowing of the issue, I alerted both the Finance Committee and the Board of Selectmen (as known then) to a probable pricing crisis. Response to the inquires of the insurance house servicing Concord's municipal insurance program indicated no increase in rates was anticipated. Ultimately we ended up in Special Town Meeting to authorize another \$100,000 for the mid-year insurance policy renewals. [Remember, that was in 1980's dollars.]

Additionally, medicine and technology are consistently being judged with 20/20 hindsight. Yesterday's best practices have always paled beside today's knowledge. Juries are understandably sympathetic to injured parties, and as understandably weak at grasping the complex technology in question.

Response to the proposal regarding ongoing liability issues to the Town: The proposal identifies a number of entities responsible for the property pollution cleanup, designated since 2001 as a Superfund site. In my 35 years of professional risk management and liability experience, including numerous clients working with radioactive and hazardous material, there is nothing less certain than the funding for ongoing remediation. **Escrow accounts for possible future remediation in today's dollars for projected impact using today's science are notoriously underfunded.** Prognosticating in the field of public health is fraught with peril. As a contemporary example, the exploding field of nanotechnology produces particles on the molecular level that are known to attach to every organ of the human body. Today's medical experts do not yet know the ultimate impact on humanity. Five years ago I predicted that nanotechnology will be the next multi-billion dollar health crisis. That was before COVID-19.

The Town states that supervision for the ongoing integrity of the containment sections would be more easily undertaken if Concord were the property owner. There was no substantiation for that position. As we know, costs and liability can be contracted to a third party property owner with municipal oversight and statutory and regulatory support. In fact, transferring risk contractually is a routine commercial practice.

With municipal immunity, Concord is allowed limited liability exposure under statute, which suggests that **should future neglect of the property occur, affected citizens will have limited recourse.** Commercial entities enjoy no such legal protections. Ergo, a commercial landowner of the property would provide much greater protection to the public, as well as the town.

It is foreseeable that Concord's insurance costs will increase substantially. While I am not privy to the Town's current program, I would anticipate that some manner of site pollution coverage is currently in place. In my professional opinion, taking over 2229 Main Street will increase those rates substantially, as well as pose considerable engineering costs for annual renewal policy underwriting. Referencing my experience in the mid-1980's suggests too, **it is entirely foreseeable that pollution coverage and rating would be unavailable at some future time.**

It is necessary to also look at the responsible parties contracted for current and future costs; the US Army, Textron and Whittaker [p.16]. Future solvency of the two private parties depends upon good-faith corporate actions with no legal maneuvering to avoid liability, both rare in the corporate world. **Government entities are historically prone to legislate themselves harmless from liability. Under joint and several liability, Concord would inevitably be brought into suits against any of the parties.**

My conclusion is:

- Concord should not take ownership of the property.
- Residential use of the property never be considered viable under any ownership.

Nancy P. James
48 Walden Terrace
Concord, MA 01742

1/4/2021

Kerry Lafleur

From: JW Parker <whipp@ gmail.com>
Sent: Thursday, February 18, 2021 6:39 PM
To: finance mail
Subject: White Pond expenditures

Dear Finance Committee Members:

I am a member of the white pond advisory committee. I am also a Water Engineer and was shocked to find recently that the town is proposing 3 new storm drains and a trail at White pond for the outrageous price of \$1.1-\$1.3 Million.

A few months ago a town resident sent me an email concerning the storm drainage system at the bottom of the road access to white pond. This resident explained that he was very familiar with these storm drains and that there is no need to replace them as they have just recently been rebuilt and are working great.

I didn't think much about it until the storm on Christmas day that was so intense and caused so much local flooding, I thought I should go check those storm drains and see how well they were working in the middle of the storm. Despite one of the drains needing maintenance and being blocked by leaves, the other drain was taking all the water coming down the hill perfectly, no rain water was reaching the pond from the road.

In my opinion, to replace these 2 drains is a waste of time and money, not to mention the price is outrageously expensive. There could be a 3rd drain added to the system, that could help water running from the hillside toward the pond. However, the contractor the town is "using" to sell this project to the committee has over engineered this solution beyond belief in my opinion. It's outrageous. An hour with a backhoe could solve the problem entirely.

I joined the White pond committee because I want to work to improve the water quality at white pond. This project is a waste of money in my opinion, and in no way will it improve water quality issues at the pond. The money could be much better spent if improving water quality is the desired result.

Sincerely, Jeff Parker

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Jeff Parker