

**Needham Finance Committee  
Minutes of Meeting of April 27, 2011**

The meeting of the Finance Committee was called to order by the Chair, Richard Zimbone, at approximately 7:00 pm in the Charles River Conference Room at the Public Services Administration Building (Temporary Town Hall.)

Present from the Finance Committee:

Richard Zimbone, Chair; Matthew Borrelli, Vice Chair

Members: John Connelly (arrived at 7:10 pm), Richard Creem, Richard Lunetta, Richard Reilly, Steven Rosenstock, Lisa Zappala

Also Present:

Kate Fitzpatrick, Town Manager

David Davison, Assistant Town Manager/Director of Finance

Janice Berns, Health Department Director

Lee Newman, Planning Director

Ron Ruth, Planning Board, Chair

Lou Wolfson, Proponent of Article 10

Gil Cox, in support of Article 10

Kathy Lewis, in support of Article 10

Judi Barrett

David Tobin, Town Counsel

**Citizen Requests**

No citizens requested to speak.

**Approval of Minutes**

MOVED: By Mr. Reilly that the minutes of April 6, 2011, be approved. Mr. Borrelli seconded the motion. There was no further discussion. The motion was approved by a vote of 8-0.

**Annual Town Meeting Warrant Article 20: Amend General By-Law/Board of Health Regulations**

Ms. Berns reported that this article represents “housekeeping” for the Board of Health. There are now a number of different fee schedules in the By-Laws with different fines, and some of the numbers are out of date. This will set one fee schedule for all Board of Health for non-criminal offenses.

Mr. Reilly stated that at the recent League of Women Voters/Town Meeting member event, he received a question about measures that might be available in addition to fines. There was concern that the fee stayed the same for \$300 for four or more offenses and would not be an effective deterrent. Ms. Berns stated that the fee schedule sets the maximum fines, but that there

are other sanctions available, such as referring the matter to the DEP which can also impose fines and take other measures. Mr. Borrelli asked how much is collected in fines. Ms. Berns stated that no fines have been imposed since 2007. The Board of Health makes rounds three times per year, and people tend to cooperate with the Board of Health to resolve problems.

MOVED: By Mr. Rosenstock that the Finance Committee recommend adoption of Annual Town Meeting Warrant Article 20: Amend By-Law/Board of Health Regulations. Mr. Reilly seconded the motion. There was no further discussion. The motion was approved by a unanimous vote of 7-0. (Mr. Connelly had not yet arrived.)

### **Articles Withdrawn**

Mr. Davison reported that Annual Town Meeting Warrant Articles 15, 17, 18, 19, all of which involve collective bargaining agreements which have not yet reached, and Articles 47, 48 and 49, which appropriated to stabilization reserves, would be withdrawn.

### **Annual Town Meeting Warrant Article 10: Amend Zoning By-Law/Needham Center Overlay District**

Mr. Wolfson distributed a handout describing his view that the results shown in the 2009 economic analysis, made when the current Overlay District was created, will not be negatively affected by his current proposal. He stated that he will be amending his petition in accordance with a recommendation by the Planning Board. The changes in the article would apply only to the Needham Center Overlay District and not the Business District and the Lower Chestnut Street District because these areas can accommodate larger buildings and not affect the heart of Town. Mr. Wolfson stated that if his article passes, there will be no loss of tax revenue because the 2009 economic study assumed only 30% of the possible build-out of the area, which can still reasonably be reached.

Mr. Zimbone asked Ms. Newman and Mr. Ruth if they had reviewed the 2009 report in light of the current warrant article. Mr. Ruth stated that they looked at the report with a different approach. The analysis assumed that 30% of the possible square footage would be built out in 10-20 years. The citizen's petition as amended applies only to a Center Overlay area, which is only a part of the area studied. Of the total 207,000 additional square footage of space that the study assumed would be added under the new by-laws, only 64,000 square feet would be affected by the citizen's petition. Mr. Ruth felt that the assumed 64,000 square feet of build-out is still attainable, especially since the project before the Planning Board will already add 27,000 square feet. In response to a question from Mr. Zimbone Mr. Ruth stated if the project in question was not modified from the original plan and if it was approved by the Planning Board, there would have been an additional 10,800 square feet of space.

Mr. Ruth also explained that Judi Barrett, who did the economic analysis in 2009, told Ms. Newman recently that the calculation included retail rental space being build that would be valued at \$20 - \$30 per square foot, which was influenced by the increased density potential with the build-out of four stories in the area. Ms. Barrett did not re-study the area, and could not say how she might change those numbers under the lower building height restrictions. In response to

a question from Mr. Zimbone, Mr. Ruth stated that the 4<sup>th</sup> floors were expected to be residential or office space, but not retail. Mr. Ruth agreed with Mr. Zimbone that if one removed 10,000 square feet of space from a building that the Town would potentially lose tax revenue on that additional space. Mr. Wolfson stated that he feels that there would not be any loss of revenue because the Chestnut Street area will have more build-out than the study assumes.

Mr. Rosenstock stated that the Overlay District was created to entice developers to come, with the right to build three stories and the potential to build four stories. He feels if this change is allowed, it will be changing the rules for developers, which would be viewed as unfriendly for business. Mr. Reilly asked Mr. Ruth about the rationale behind the four-story zoning now in the by-law. Mr. Ruth agreed with Mr. Rosenstock's comment that it was intended to provide an incentive for developers to revitalize the Town Center. Mr. Reilly asked why the Planning Board has a different opinion about allowing four stories on Chestnut Street versus in the Town Center. Mr. Ruth stated that Chestnut Street has different ownership patterns, bigger lots and a wider street. Taller buildings would have less impact there. Mr. Ruth added that the 2009 plan had a minimum lot size requirement of 15,000 square feet before it was changed to 10,000 square feet. On greater reflection, some Planning Board members concluded that taller buildings on smaller lots would not be good.

Mr. Wolfson stated that he feels difficult parking is what deters development in Needham. He stated that the purpose of the study was to create incentives to build structural parking. Mr. Creem stated that the redevelopment plan was an attempt to jump-start development, and that is not happening. Mr. Wolfson said that the plan was not intending to encourage higher buildings, but about redeveloping retail space on the 1<sup>st</sup> floor. Ms. Zappala stated that when the district was studied in 2009 it was determined that developers needed the ability to build up, though it was not indicated how far, in order to make redevelopment affordable. Right now owners are not selling and not making improvements, but just continuing to rent the retail space. She stated that the issue is whether the potential fourth floor is needed to justify redevelopment. Ms. Newman stated that the study was based on four stories, and it does not show what would be expected to happen with a three story limit.

Mr. Reilly questioned why parking issues might deter development for four stories but not for three stories. Mr. Ruth stated that in the abstract, one assumes larger structures mean more parking demand. However, he noted that all of the ground floors are built out. Mr. Ruth stated that parking is needed mostly for retail and restaurant space. There is no surface parking for these buildings, only street or subsurface. The parking issues need to be addressed.

Mr. Rosenstock asked what grounds the Planning Board relied on for not supporting the maximum height in the project currently under consideration. Mr. Ruth stated that while the Planning Board has not voted, three members did express views. Two members did not support the full 3+1 height because of parking issues, aesthetics and shadowing issues. Another member supported 3+1 stories on one building but not the other. However, the proponents very recently filed notice that they intend to restrict the buildings to 3 stories each.

Ms. Zappala asked why the Planning Board wants to limit the ability to allow the full height since there is a process in place that allows the 3+1 height only through special permitting. She

felt that it is possible that a project could come along where the full height makes sense. Mr. Ruth stated that the two-person minority on the Board agrees that special permitting process protects against inappropriate building heights. He stated that the majority's primary reason for supporting the new restriction is that there is very little public support of four stories. He stated that the Board shares Mr. Rosenstock's concern about shifting policies.

Mr. Zimbone asked whether there has been any discussion between the proponent and the Planning Board about referring the matter back to the Planning Board for further study since the Planning Board is split and the Board of Selectmen did not reach a vote. He stated that the Town spent two years creating a plan, and now is considering changing it only two years later. Mr. Ruth stated that the Planning Board has not voted on this issue, but he is confident that if the issue is referred back, the Board would review it in good faith and analyze the issues in depth.

Mr. Wolfson stated that a referral back does not make sense. The public has requested the change, and the Planning Board supports it. If the issue is referred back the Board might also find that Chestnut Street needs to be limited. While he is not comfortable that it will pass at Town Meeting, he feels the issue has been examined and it is best for the Town.

MOVED: By Mr. Rosenstock that the Finance Committee not recommend adoption of Annual Town Meeting Warrant Article 10 - Amend Zoning By-Law - Needham Center Overlay District. Mr. Lunetta seconded the motion.

Discussion: Mr. Reilly stated that he supported the motion. He noted that the fact that the Planning Board sought to retain the capacity to allow four stories in the Districts outside of the Center shows that it has value. Getting rid of the possibility of having a fourth story requires the Committee to predict the future and to find that no higher project could be favorable.

Mr. Rosenstock stated that the current system works. The Planning Board has the ability to consider a plan and ask for changes. There is no need to give up the option for a fourth floor in a situation where it might make sense. He noted that in light of the fact that the Planning Board is seeking to increase its flexibility in several other zoning articles, it does not make sense to limit its flexibility here. Mr. Lunetta stated that he is not convinced that a fourth floor is detrimental. He agreed that it makes no sense to limit the ability of the Planning Board to do its job.

Mr. Borrelli stated that he wants to encourage development. He noted that the Planning Board supports this article which deserves some weight. He feels that there is little or no negative impact of the article on the Town. He feels that there is a parking problem in Town which could be worsened with higher buildings.

Mr. Creem stated that zoning changes usual require exigent circumstances showing a need for a change. There are none here. The project underlying this article shows that the current zoning process works. The developer is making changes to the plan because people did not support it. Mr. Creem stated that the Town Center needs to be redeveloped, which means that the Town needs maximum flexibility for property owners and potential developers. He reviewed a DVD that was sent to all Town Meeting Members in 2009. It was clear and informative describing the changes being made, and he is convinced that Town Meeting Members understood the issues.

Mr. Connelly stated that he supports the motion. The Town made a carefully considered and thoughtful decision after much study. It was supported by Town Meeting. In order to reconsider a decision, he feels there must be some change compelling it. He finds that there is no such special circumstance here. Reconsidering this decision is not a good way to progress.

Ms. Zappala stated that the special permit process is in place to address all of the proponents' concerns. She is not convinced that restricting the potential for building four stories is necessary. She felt that this petition was filed simply to stop one project.

Mr. Rosenstock commented on Mr. Borrelli's concerns about parking. He stated that alleviating parking problems should be done as part of the capital plan. Amending zoning by-laws is not the way to deal with the issue. Mr. Borrelli stated that the parking issue is interrelated with the height issue. If larger buildings are allowed, the parking problem will be worsened, and without sufficient parking there will soon be vacancies.

Mr. Zimbone stated that he would support the motion. There is much vacant space in Town because of the loss of some businesses. Owners are raising rents just to pay bills. The Town needs redevelopment. The 2009 zoning by-law changes were intended to encourage development. The current special permit process for four story proposals works. The Town should not use zoning to try to solve a parking problem. He sees a negative financial impact to this article as well, since the Town would lose potential revenue with a smaller building.

VOTE:           The Finance Committee voted to support Mr. Rosenstock's motion by a vote of 7-1, with Mr. Borrelli dissenting.

### **Request for Reserve Fund Transfer – Legal Expenses**

Mr. Davison stated that there have been two legal matters with exceptional workloads that have caused legal expenses to increase this year. One case relates to the Rosemary Pool and the other case involved issues that arose when wrapping up the high school construction project. The request for a reserve fund transfer includes \$40,000 for expenses for experts and litigation relating to the opening of the Rosemary Pool and \$80,000 to cover legal expenses for the rest of the fiscal year. Mr. Zimbone asked how Mr. Tobin expected the Rosemary Pool case to proceed. Mr. Tobin stated that a state law extended existing permits which allowed the Town to do the work necessary for opening this year under the old permit, so the matter has been delayed. The Town has now hired a consultant for approximately \$40,000 to assess the effects of the Pool work and to build a case to take to the DEP. Mr. Tobin anticipates that the Town will be going back and forth with the DEP for a few years. The legal costs have been about \$20,000 so far, and he expects about \$20,000 per year will be needed for this issue.

Mr. Borrelli asked what would happen if the experts say that the Town's work will impact wildlife. Mr. Tobin said that there are various remedies such as building a wall so that the pool could be cleaned without draining the pond, or building a pool elsewhere. Mr. Connelly asked if the Town's opponent was the DEP or a resident. Mr. Tobin stated that there are two issues: one under the By-Laws and another under the state wetlands act. The Town had appealed a DEP

decision under the wetlands act, but dropped the matter when the permit was extended. The other matter is in the Superior Court and the opponent is a resident.

In response to a question from Mr. Connelly, Mr. Tobin confirmed that the high school litigation case is closed and the expenses will not be recurring.

MOVED: By Mr. Connelly that the Finance Committee approve the Request for a Reserve Fund Transfer in the amount of \$120,000 for legal expenses as set forth in the Request dated April 22, 2011. Mr. Borrelli seconded the motion. There was no further discussion. The motion was approved by a unanimous vote of 8-0.

### **Special Town Meeting Warrant Article 1: Amend Zoning By-Law / Personal Fitness Service in an Industrial District**

Mr. Ruth stated that a few years ago, the Zoning By-Laws were changed to allow personal fitness services in some areas, but the changes were not extended to the Industrial District. This change would allow these services in the Industrial District, since the space does not need to be reserved for other uses. The Planning Board is in favor of this change.

Ms. Zappala asked why there was a maximum of 2500 square feet. Ms. Newman stated that they do not want big fitness facilities with high parking needs. This would allow only smaller facilities.

MOVED: By Mr. Creem that the Finance Committee recommend adoption of the Special Town Meeting Warrant Article 1: Amend Zoning By-Law / Personal Fitness Service in an Industrial District. Mr. Borrelli seconded the motion.

Mr. Reilly stated that this would expand the potential market by allowing fitness services to move into space in this district. Mr. Rosenstock added that this would give more flexibility in marketing the space. There was no further discussion. The motion was approved by a vote of 8-0.

### **Special Town Meeting Warrant Article 2: Amend Zoning By-Law / Amendments to New England Business District, Highland Commercial – 128 Mixed Use – 128 Districts**

Mr. Ruth stated that the changes accomplished by this article were recommended by the Council of Economic Advisors (CEA) in order to revitalize the New England Business Center. The area was re-zoned in 2001 to encourage development, but that vision has not been fulfilled. A follow-up study was commissioned to recommend needed zoning changes. Mr. Ruth stated that zoning by-law will be amended later with dimensional changes. This article focuses on use changes. The 2001 zoning plan avoided medical uses because of potential traffic issues. While there are still traffic concerns, the Town wants to allow practices with two or fewer medical providers, or more with a special permit. The vision of what is appropriate for office parks has changed and now includes amenities. The article would allow amenities for the use of building occupants such as pharmacy, day care, or food. Ms. Newman stated that this follows up on a prior study. Mr. Borrelli stated for the record that he sits on the Council of Economic Advisors.

Ms. Zappala stated that the zoning changes will broaden uses, similar to Article 5 of the Annual Town Meeting Warrant. The Finance Committee took no position on that article. The Committee should try to be consistent, and the position on Article 5 should be reconsidered if the Committee now feels allowing broader uses means having a positive economic impact. Mr. Reilly stated that to assume that this article will have no economic impact is to assume that the changes are meaningless. Ms. Zappala stated that Article 5 simply makes technical changes, and the amendments in Article 2 of the Special Town Meeting implement the results of the study.

Mr. Rosenstock suggested that it would make sense to wait and make the use and dimensional changes together in the fall. Mr. Ruth stated that the use changes are expected to bring more latitude in zoning and to do it now will allow potential tenants to come in now. Ms. Zappala encouraged Mr. Ruth to explain the big picture to Town Meeting. Ms. Newman stated she will have the actual article language and a clear explanation. The Committee decided to wait until the information is available before voting.

### **Special Town Meeting Warrant Article 3: Amend General By-Law / Obstruction of Sidewalks**

Mr. Ruth stated that this article is complementary to Article 6 in the Annual Town Meeting Warrant. This one changes the zoning to allow outdoor seating for restaurants on private property.

MOVED: By Mr. Reilly that the Finance Committee take no position with respect to Special Town Meeting Warrant Article 3: Amend General By-Law / Obstruction of Sidewalks, because there is no observable financial impact. Ms. Zappala seconded the motion. The motion was approved by a vote of 8-0.

### **Special Town Meeting Warrant Article 5: Appropriate for General Fund Cash Capital**

Mr. Davison reported that the recommendation has not yet been presented to the Board of Selectmen indicating that the reserve fund level is not sufficient to fund all of the items in the article. He believes there will, however, be more than \$80,000 available, which is sufficient to recommend one of the two new mowers requested. Ms. Fitzpatrick stated that this would be for the mower that is specific for athletic fields. Mr. Zimbone asked if the snow and ice approval request is approved, what would be the expected level of the reserve fund at the end of the year. Mr. Davison stated that there will be approximately \$220,000 in the reserve fund. There is approximately \$120,000 of exposure for the fund for the rest of the year, most likely due to workers' compensation and unemployment which are out of the Town's control, as well as from overtime expenses, which the Town is trying to mitigate. Thus, there would be approximately \$100,000 left. This article will be amended to appropriate \$80,000. Mr. Creem asked whether the \$120,000 was a conservative estimate, so that amount is the outer limit of what might be expected. He stated that he was nervous about getting that close to zero. Mr. Davison stated that he could reassure the Committee that the \$80,000 would not be needed elsewhere.

Mr. Reilly asked about the timing of the purchase, and whether the mower would be available this summer. Ms. Fitzpatrick stated that the Town would procure it right away, and it should be available by the end of the growing season. Mr. Davison added that it would be unlikely that the mower would be purchased and running by the end of the summer, but that waiting until next May would put the Town in the same position next year.

Mr. Borrelli stated that the Board of Selectmen raised the issue of buying a used semi-trailer under Article 43, and asked where the possible savings could be used. Mr. Reilly stated that the DPW is looking into it. Ms. Fitzpatrick stated that the Article seeks a borrowing authorization rather than a cash payment.

MOVED: By Mr. Lunetta that the Finance Committee recommend adoption of Special Town Meeting Warrant Article 5: Appropriate for General Fund Cash Capital, as amended to \$80,000. Ms. Zappala seconded the motion. Mr. Creem noted that it was subject to the proponent going forward. Mr. Zimbone stated if they do not, the Committee will address the issue at that time. The motion was approved by a vote of 8-0.

### **Development of Chapter 40B Review Guidelines as discussed in Needham's Affordable Housing Plan**

Ms. Newman stated that the Town has allocated \$5,000 to develop guidelines for developers to know what the Town is looking for when reviewing Chapter 40B affordable housing development plans. She distributed a handout with detailed questions for discussion. Mr. Zimbone stated that the Committee would need time to review the questions, and suggested postponement of the issue until June.

### **Prior Executive Session Minutes**

Mr. Zimbone stated that there are several sets of executive session minutes which have been distributed to the Committee and which are ready to be released, since there is no longer a need for confidentiality. Mr. Creem added that as soon as any executive minutes are safe to be released, it should be done. Ms. Mizgerd stated that the Town Manager had no objections to the release of the minutes distributed to the Committee members.

MOVED: By Mr. Reilly that the minutes of the executive sessions from April 18, 2007, May 2, 2007, September 5, 2007, and April 14, 2010 (section relating to real property), as previously distributed, be released. There was no further discussion. The motion was approved by a vote of 8-0.

### **Annual Town Meeting Warrant Article 16 – Fund Collective Bargaining Agreement – Public Works / Massachusetts Laborers' District Council**

Ms. Fitzpatrick stated that the contract with Public Works employees has been settled. There are four wage items: (1) For fiscal year 2011, there is no cost of living adjustment (COLA); (2) for FY 2012, there is a 0% COLA, with a one-time payment of \$500 in FY 2012 to each

employee on the payroll as of the date of the agreement, April 15; (3) a 2% COLA in FY 2013 and (4) a 2.5% COLA in FY2014. The 2% in FY 2013 is consistent with the non-union increase, and she is confident the Town will be able to do the 2.5% in FY2014. That level plus step increases will be less than 4%.

Mr. Zimbone asked whether this would affect the budget for FY 2012. Ms. Fitzpatrick stated it would not, because there is a 0% COLA, and there is enough in the Classification and Compensation Plan to cover the \$500 payments. Ms. Fitzpatrick stated that the other collective bargaining agreement articles will be withdrawn, as there are no agreements.

MOVED: By Mr. Rosenstock that the Finance Committee recommend adoption of the Annual Town Meeting Warrant Article 16 – Fund Collective Bargaining Agreement – Public Works / Massachusetts Laborers’ District Council. Mr. Lunetta seconded the motion. The motion was approved by a vote of 8-0.

### **Request to Increase Snow and Ice Expense Authorization**

Mr. Davison stated that this would be the last request to increase the FY2011 snow and ice expense authorization. The total expenditure so far is \$1,150,000 and by year-end, total spending should not be higher than \$1.2 million, though several late bills are still expected. The authorization represents the maximum that the Town will be allowed to spend in this area. At the end of the fiscal year, the Town will need to transfer the actual funds needed from the reserve fund into the snow and ice budget.

Mr. Borrelli asked whether there might be a way to get costs down such as to avoid plowing at night when overtime rates apply. Mr. Davison stated that the Town takes all steps it can. The night work is necessary because that is when the roads are free of much other traffic. Mr. Borrelli asked if the costs were in line with other towns. Mr. Davison stated that there is competition for plowers, and that other towns pay the same rates. However, Needham relies less on contractors, and thus has better control.

Mr. Zimbone stated that constituents have raised questions regarding sidewalk plowing and that the routes plowed seem to correspond with the routes before there was redistricting, and not the routes typically used. They are concerned money is being wasted. Mr. Davison stated that the DPW plows the sidewalks where the schools designate. Because of decreased busing, sidewalk plowing has increased.

Mr. Connelly asked if the Town analyzes snow removal costs in general and in comparison to other towns. Mr. Davison stated that he does review it, though many factors affect costs, including road surfaces and differing weather patterns locally. He has reviewed other towns’ contract payments. Mr. Connelly stated that it is important to periodically review the costs, and not just accept them going forward.

MOVED: By Mr. Creem, under M.G.L. Chapter 44, Section 31D, that the Finance Committee approve the authorization to incur liability and expend a total amount

of \$1.2 million for snow and ice removal in fiscal year 2011. Ms. Zappala seconded the motion. The motion was approved by a vote of 8-0.

### **Finance Committee Updates**

Mr. Zimbone asked the Committee to convey any issues raised by Town Meeting Members at the League of Women Voters precinct meetings. Mr. Rosenstock stated that his group raised a question about prior funds not spent such as the \$50,000 that comes from an unspent parking meter appropriation in 2004. He stated that the Committee should know where the funds are coming from and why they were not used. Mr. Davison stated that the parking meter fund money is no longer needed because the parking enforcement agreement with the MBTA has ended.

Mr. Connelly stated that his group at the precinct meeting discussed the Overlay District article, but did not raise many questions. In another matter, Mr. Connelly reported that he has been told that the \$20,000 contingency in the Pollard construction project is tight, and they wanted the Finance Committee to know that in July, they may need money from the reserve fund.

Mr. Borrelli stated that in his precinct meeting, people asked whether the Senior Transportation van might be donated privately as has happened in the past. Mr. Fitzpatrick stated that the Town has applied for a grant to cover the entire van.

Ms. Zappala stated that her group raised two issues. First, they were confused about the school technology part of the cash capital article. Ms. Fitzpatrick stated that the money is already in the budget. Second, people were sensitive to people getting let go since there is discussion about a reduction in headcount. Ms. Fitzpatrick stated that the eliminated positions were vacant, and that there has been a shift to using overtime where needed rather than additional staff, which is less expensive. Mr. Rosenstock stated that there were some questions raised regarding the shifting of some employees in the drains program and the shifting of certain revenues from the Enterprise Funds going into the General Fund and the General Fund expenditures moving to the Enterprise Funds.

### **Adjourn**

MOVED: By Mr. Reilly that the meeting be adjourned, there being no further business. Ms. Zappala seconded the motion. The motion was approved by a vote of 8-0 at approximately 9:45 pm.

Documents: 2011 Annual Town Meeting Warrant; May 2011 Special Town Meeting Warrant; Chapter 40B Guidelines Discussion Questions

Respectfully submitted,

Louise Mizgerd  
Executive Secretary  
*Approved June 22, 2011*