



Members

Robert Vanderslice, Co-Chair
John Fulghum, Co-Chair
Barbara Beatty
DeWitt Brown
Jeff Lewis
Dana Sheehan
Julie Tarmy
Judy Zahora

TOWN OF NAHANT Advisory and Finance Committee

Tuesday April 13, 2021 Meeting Minutes

Members Present: Vanderslice, Lewis, Fulghum, Tarmy, Sheehan, Zahora, Brown, Beatty

Members Absent: None

Others Present: M. Capano, A. Murphy, e. Berman, Mc Divoll, A. Wachtel, E. Potts, K. Carangelo, A. Bromer, D. Monteith, M. Patek, A. Cort, 617-784-8646, 781-599-4006, A. Nieto, N. Cantelmo, J. Blake, Iphone, S. Sloan, L. Spencer, J. Antrim, 732-310-6518, S. Soleyani, P. spirn, G. Canty, M. Long, M. Rauworth, C. Cahill, N. O'Brien, J. Musman, C. Bauta, Cora Long, J. Walsh.

Meeting called to order at 7:05 p.m

Tony Barletta became the father of a baby girl, Mia Juliette!!

Motion to accept minutes of April 6th made by Zahora, seconded by Beatty. Unanimous ayes.

Motion to accept minutes of April 8th as amended to include email pdf made by Tarmy, seconded by Lewis. Unanimous ayes. JF will send PDF of email trail between himself and three individuals at NEU to be added for the record. JT will submit all to Town Clerk.

Topics for NEU

JF reached out to G. Trussell, who referred him to 2 other people, Michael Ferrari and Michael Blumberg. NEU on notice that FinCom may be sending them questions with the goal to inform us as we make our recommendation without jeopardizing any ongoing or potential legal action between the Town and NEU while respecting the open meeting law. Priority is to get the Warrant to the printer by Friday April 16th. We also cannot appear to be acting on the Town's behalf.

Cover letter for Warrant still needs to be written. We want to be sure that no unilateral responses are in the Warrant, as happened last year. With Friday deadline facing us, JF will send out draft of warrant with recommendations to date for the committee to read and return any comments/edits to John.

RV: Regarding questions to NEU. Suggest, at a minimum, any questions Jeff Blake should review first. Jeff Blake: Have given this a lot of thought. In lieu of the Article 97 lawsuit currently before Superior court, as a litigator and as a Town Counsel, does not think this is a good idea to discuss what is part of current litigation. He understands the need for additional information, but strongly recommends that FinCom does not reach out to NEU. Information should go from Counsel to Counsel. Article 97 lawsuit is likely to go to trial.

JT: Support Jeff's recommendation. Would not want to jeopardize anything that has already been accomplished.



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BB: Agree.

JZ: Agree. Concern I have now is that we reached out to NEU, they said they would speak with us, and now we might back out.

DB: Asking questions might get us negotiating.

Jeff B: We have exhausted this route. Read recent response from NEU. It does not show negotiation.

DS: FinCom is a separate body. Nothing to be afraid of.

Jeff B: The mere framing of some questions could be detrimental to the Town's position, either now or later on. I would suggest no communication.

DS: FinCom is a separate branch of the government.

Jeff B: You still fall under the Board of Selectmen.

DS: Retreating to our respective Attorney's corners is not going to bring this process forward.

JZ: It does not do us any good to have Counsel but not take their advice.

BB & JT: Agree

DB: Quoted NEU Letter of 4/5/2021 to Mark Cullinan: First with respect to the University's willingness to engage in mediation as stated in my February 17th letter, the University is still fully willing to do so. By Ralph Martin.

Jeff B: There is a difference between an open meeting negotiation with FinCom the, with all due respect, has no authority to settle the case, and a court where mediation is the very first thing that we do, the very first thing that happens when you come into the room, the mediator comes in and says, in eloquent terms, 'what is said here, stays here'. Nothing can be used in court. We don't have that same ability if you are going to carry on some type of mediation discussion in an open forum.

DB: Is the place of the FinCom to negotiate?

RV: It is NOT the place of the FinCom to negotiate.

DB: Absolutely.

DS: Nobody's talking about negotiating. We're talking about questions.

BB: But it's going to become part of the negotiating. If we have this discussion with questions, it is going to become a part of that conversation.

JF: Can the committee make a recommendation while there are negotiations going on?

Jeff B: Yes, because your job is to determine if a financial article should go forward not to determine which side has the better case. It should go before the Town for that. Duty is to make the recommendation. As your Counsel, I don't think you should be face-to-face with NEU.

DS: We don't necessarily need to have an open meeting with NEU. I am not afraid of asking the questions related to our decision making. I don't think it going to derail the current lawsuit.

BB: I would argue that it would be worse. That this discussion would become part of the lawsuit.

DS: I don't see what the fear is.

JT: It's not a fear.

BB: It's what's appropriate with lawsuits.



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DB: We are looking for information for supporting or not supporting recommendation.

RV: The folks on NEU will be having a similar conversation. We will get answers that have been filtered through their attorneys.

Continued discussion about whether or not to submit questions.

JF: There are at least 4 members who are in favor of submitting questions, and 4 members who would not. If we don't have a majority opinion to push the content forward, then we are stuck where we are. If we were to validate that we are split evenly, if we continue on the process of going through the questions members have and discuss them in this open forum and then send them to you. If you approve the questions, can we then send them on to NEU?

Jeff B: Worried, as a lawyer I am trained to think about everything bad that could happen. I worry that the mere discussion and framing of questions in an open session may or may not have an effect or give rise to concern. That being said, if you have specific questions with respect to the Articles before you, I would absolutely provide me with at least a draft of what you want to ask, but again I would ask you to not go forward, but I would review them and give feedback. Better course of action, just don't ask them. Discussed litigation process.

DS: No time.

RV: To get a sense of timing – assume we went forward – take question to Jeff Blake who would review and respond – then get questions to NEU, who would need time to respond. Then we consider, vote, write recommendation for committee to review. There is no time.

DS: Understand. A lot of questions are about PILOT.

Jeff B: Read something from NEU where they actually outlined what they would address that.

JT: Can we take that consensus vote:

RV: Sure. Polled committee members: **Sheehan, yes.** Should not be silenced. **RV:** Would love to have an honest conversation, but the risk too much, **no.** **Tarmy: No,** would not trust any answers they give us now. **Fulghum:** I am the instigator of this, think of myself as an Idealist. Given that we have layers in legal element as to how our actions can complicate legal. **Yes, in favor, but resigned to fact it won't happen.** **Lewis:** very frustrated – agree with Jeff Blake face –to-face not advisable, but I am **in favor of moving written questions forward. Yes.** **Brown:** Information is good – timing is very, very, problematic. **Yes.** **Zahora:** Confused. **Not in favor or moving forward against advice of counsel. No.** **Beatty: No.** Follow advice of Town Counsel.

RV: Split 50/50. Does not go forward.

JF: Can we at least send to Jeff Blake? Does just posing the questions somehow expose us?

Jeff B: If you want to forward the questions to me, we could look at them not as a committee, if germane and relevant to litigation, we can ask them under oath.

RV: If we forward to you to ask, would you be allowed to reveal answers.

Jeff B: Yes, they would be part of a public record.

JZ: Could anyone here send questions to you as individuals?



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Jeff B: DO NOT DO THAT TO ME!! (with a bit of levity) Trying to give FinCom some avenues for raising these questions. Just a caution: Email among board members can run afoul. Not suggesting you are doing anything wrong, just want everyone to be perfectly aware. Do not forward as a committee.

Barletta: For those who have some up with questions for NEU, have you read existing information. Jeff might be able to steer you in the direction for that information. Fully support FinCom in getting info to provide supporting statements. Have to get book out on time.

JF: A lot of questions are worth asking again. Maybe answer has changed. Have resigned myself that getting these answers is not going to happen in time.

BB: We should not discuss these questions in public.

Jeff B: I agree.

RV: Action plan: Will send email to committee members with Jeff Blake's email and, as private citizens, you can forward your questions.

DB: My intention is to send my 8 questions to John to forward to attorney. I will not be sending directly to Attorney.

JF: My intent is not to reformulate the questions to discuss as a committee and forward.

Motion made by Zahora, seconded by Beatty to not move forward with these questions as a committee. Sheehan, No; Vanderslice, Yes; Tarmy, Yes; Fulghum, No; Lewis, No; Brown, No; Zahora, Yes, Beatty, Yes. 4/4 tie. Motion fails.

Motion made by Sheehan, seconded by Lewis to proceed with these questions to NEU in written format. Sheehan, Yes; Vanderslice, No; Tarmy, No; Fulghum, Yes; Lewis, Yes; Brown, Yes; Zahora, No; Beatty, No. 4/4 tie. Motion fails.

We will not proceed as a committee on this. Individuals can send their questions to Jeff Blake.

Moving on to the two Eminent Domain Articles:

- 21V – CPC funding
- Article 22 – Authorizes the BOS to begin taking under conditions as listed - \$3million private donation and Article 80A

Outline:

- Current situation
- Funding – where & how much
- Budget – how allocated
- 80A process
- Stay clear of legal description of Eminent Domain – focus on managerial & financial



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JL: Article 21V – if voters say yes, what’s the best way of funding? Article 21V outlines it – does not break it down to town and state – If Article passes, is this the best way to fund it?

RV: spot on. 21V – \$1.5 million CPC not spent on anything by Eminent domain. Section ii -- specifies has to be receipt of \$3 million in donations first.

Recommendation will not be an expository piece for either side – just a factual statement for the town to consider. Good leverage of town’s tax dollars. There will be a simple table of where funding is coming from – CPC previous \$1.5 consisting of \$1 million CPC with state match of \$500K.

Discussion on how CPC funds will be impacted over the next 30 years. Lynne Spencer was asked to speak to this.

LS: This is something the committee has wrestled with. We already carry bond for Library – looking at bond for three historic buildings – Town Hall, Library, Ellingwood Chapel. Within last five years a significant amount of money was invested in recreation and open space. We will have less general funds to distribute. In FY23, impact would be significant, but we have significant amount in reserves that will help us next year. If you look at the report we provide, we have years with few applicants, others more.

DS: Can you provide us with a range of State Match amounts?

LS: Average is 65% - solid high was 100%, low was about 40%.

RV: \$3 million donation has to be here before borrowing AND before BOS can move forward.

Discussion on how funding works.

RV: On expense side, Article 22 appropriation of \$4.5 million to potentially spend on Eminent Domain taking. Restriction is that \$ 3 million has to be in place first. The \$4.5 million covers the cost of taking and legal expenses. A chart/spreadsheet showing budget for Eminent Domain will be included. Town’s two appraisals will be included. RKG report will be included in Warrant as well as a take on the flow chart started by Ken Carangelo.

Discussion on how East Point property was valued and all the possible costs associated with Eminent Domain.

DS: RKG report is somewhat misleading, report is not helpful, doesn’t have correlation to budget.

RV: Respectfully disagree. The numbers come from 2019 actuals – directly related to line items – includes prop 2/12 – doesn’t include ‘what ifs’.

DS: Don’t know if it will be helpful. Argues both sides.



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BB: Respectfully disagree. Feel it does provide sound info. How it will affect finances – should be included.

JZ: Agree, shows we did our due diligence.

JF: Including it ok with healthy list of qualifiers.

DB: Still include report.

JL: agreed to include report. Believe NEU will still go on even if we win Eminent Domain.

RV: Will include with caveats in last section. Point of RKG report is not that it will cost 'just this', but that it will cost a ton of money to the Town if NEU builds. Eminent Domain will be Town negotiating leverage.

DS: Expenses & PILOT not available if we go through with Eminent domain.

RV: There have been several attempts to negotiate. NEU offered \$6million over 40 years with conditions: don't oppose expansion and grant all required permits. This offer was not in writing.

Barletta: NEU released something that somewhat explained – spoke about it publicly in a meeting – a lot has occurred since then – old info but it does exist. Made about 3 years ago.

J. Antrim: Distinction between offer and brochure. Last offer was \$6 million over 40 years – subsequent possibility of changing 40 years was discussed but never went anywhere.

Motion made by Tarmy, seconded by Beatty to recommend CPC Article 21V. Zahora, yes; Vanderslice, yes; Tarmy, yes; Beatty, yes; Sheehan, no; Fulghum 'I don't want Eminent Domain but will vote yes to recommend to enable a negotiation more beneficial to the Town – NEU deserves the right to build on bunker or near; Brown, no; Lewis, yes. 6/2 – motion passes.

Motion made by Beatty, seconded by Tarmy to recommend Article 22. Sheehan request further discussion. After brief discussion the following vote was taken. Lewis, no; Sheehan, no; Vanderslice, yes; Tarmy, yes; Brown, no; Zahora, no; Beatty, yes; Fulghum, no. 3/5 – motion fails.

Motion made by Zahora, seconded by Lewis to make no recommendation on Article 22. Brief discussion on what this vote would mean. Fulghum, making an affirmative no recommendation vote, is not a complete shirking of our responsibility. Vanderslice, I think we owe it to the town to vote one way or the other. We are the advisory committee, let's advise. Lewis, yes; Sheehan, yes; Vanderslice, no; Tarmy, no; Brown, yes; Zahora, yes; Beatty, no; Fulghum, yes. 5/3 – motion passes.

JL: I can only express my opinion. Devil is in the details. We have covered a wide array of issues of conscience – fault lies in 1964 – the financial aspect of this is the right way – a lot of what JF said resonates – with a well-written explanation of due diligence – pros and cons. Let the Town make that decision.

RV: We can put 'not unanimous'

JF: We can put in a detail of the vote as well.

JZ: It would need to be done for all Articles.



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John F. will send current version of Warrant tomorrow. Thank you to Alison Nieto for her work on the warrant as well.

Public Forum:

Ran through chat questions and comments first.

Ken Carangelo sent along BOS meeting minutes of May of 2019 re NEU offer.

Paul Spirn tried to communicate but his audio was scrambled. Question in Chat: Do you really think you have engaged the advisory aspect of your charge?

RV: I stated that we should recommend or not recommend.

Talk of adjourning, when is next meeting. Will go over Warrant tomorrow. Bundling some CPC articles.

Bill Mahoney – This map comes up and the committee can't get a handle on the map that this changes . Please reconsider motion according to Roberts Rules and make a new one. Do it now.

DS: Motion to reconsider has to come from someone who voted for no recommendation.

Bill Mahoney: that's right.

JT: needs to be either, Lewis, Sheehan, Brown, Zahora or Fulghum.

RV: does anyone want to vote to reconsider?

JL: Not sure I understand the question?

JZ: We had a vote, and the majority of the Finance Committee agreed and made a recommendation on the financial aspect, so I am not really sure why we would revote this.

Anne Wachtel – rare to make no recommendation – note why we made no recommendation. If you don't point out the rarity of this out some people might think no recommendation means don't recommend.

JZ: Let's talk about this for a minute. Want to think about this. So the implication is that if we vote 'no recommendation' that it is not recommended? Did not realize a 'no recommendation' would be misunderstood.

JF: That's why we need to address this in our opening letter.

BB: Still could be confusing.

JL: On Town Meeting day, I will probably vote for Eminent Domain. I think the financing part is the right way of doing it. Doesn't want to sway anyone – vote your conscience.

Motion made by Zahora, seconded by Beatty to reconsider the previous vote. Lewis, abstain;

Sheehan, no; Vanderslice, yes; Tarmy, yes; Fulghum, no; Brown, no; Zahora, yes; Beatty, yes. 4/3/1 – motion passes.



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Motion made by Tarmy, seconded by Beatty to recommend Article 22. Vanderslice, yes; Sheehan, no; Tarmy, yes; Brown, no; Zahora, yes; Beatty, yes; Lewis, no; Fulghum, no. 4/4 – motion fails.

Motion made by Lewis, seconded by Brown for no recommendation on Article 22. Lewis, yes; Vanderslice, no; Sheehan, yes; Tarmy, no; Fulghum, yes; Brown, yes; Zahora, no; Beatty, no. 4/4 – motion fails.

Discussion on how to go forward with this tie again. RV will examine Robert's Rules. Explanation in the supporting statement is important.

Meeting tomorrow night.

Motion made by Zahora, seconded by Brown to adjourn. Unanimous ayes.

Meeting adjourned at 10:25 p.m.