

JOINT FINANCE COMMITTEE, BOARD OF SELECTMEN AND CAPITAL IMPROVEMENTS
COMMITTEE MEETING MINUTES
UPSTAIRS MEETING ROOM
1 AVENUE A, TURNERS FALLS, MA
June 21, 2017

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Finance Committee Vice Chairman Michael Naughton opens the meeting.

- Meeting was opened at 6:00 PM in the Upstairs Meeting Room
- **Finance Committee members present:** Fred Bowman, Greg Garrison, John Hanold, Michael Naughton, and Richard Widmer. Chris Menegoni and Patricia Pruitt and were absent
- **Selectmen Present:** Richard Kuklewicz. Michael Nelson and Chris Boutwell were absent.
- **Capital Improvements Committee members present:** Fred Bowman, Greg Garrison and Steven Ellis
- **Others Present:** Town Administrator Steven Ellis, Town Accountant Carolyn Olsen, and Director of Assessing Karen Tonelli
- The Finance Committee Chair announced that the meeting is not being recorded by MCCI, and asked if anyone else was recording the meeting. The Town Accountant is recording the meeting to assist with minutes. No one else was recording the meeting.

Minutes -

Finance Committee Moved:

To approve the minutes of June 7, 2017.

Vote: 4 In Favor 0 Opposed 1 Abstained

Taxing to Levy Limit vs Excess Levy Capacity

- Ms. Tonelli distributed an article from the Department of Revenues' February 20, 2014 issue of City & Town titled "Will Fiscal Prudence Grow with Excess Levy Capacity."
The following are excerpts from the article:
 1. Excess levy capacity is a potential municipal reserve that arises out of the operation of Proposition 2 ½. It is the difference between the maximum property tax revenue a community is permitted to raise under Proposition 2 ½ rules (levy limit) and the tax revenue actually raised (levy). If a city or town creates excess levy capacity, it can in subsequent years build the reserve by again taxing less than the levy limit or tap into this taxing capacity to finance municipal spending without restriction.
 2. Building excess levy capacity would not just provide a city or town with a financial reserve, it would be a positive step toward controlling property taxes, at least until such time as the excess capacity was used. Together with debt exclusion roll-offs and Proposition 2 ½ overrides, creating excess capacity is the only way to hold taxes steady or put them in decline.
- The excess levy capacity is the difference between the amount taxed and the amount we are able to tax under Proposition 2 ½.
- Ms. Tonelli also provided information on Montague's tax levies from FY2010 to FY2017 which show excess levy capacities ranging from a low of \$542 in FY2015 to a high of \$14,654 in FY2016. The average of the years shown is \$4,947.
- As a practice, some towns tax to the limit while others leave excess capacity.
- The total valuation at 2.5% is the maximum that the town can tax. The levy limit is the prior year's limit plus new growth plus excluded debt. If the actual levy is less than the levy limit, the difference

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between the two is excess levy capacity. Montague has historically used the levy limit as the “available tax revenue” for the following year’s budget.

- While maintaining excess capacity is one way for a community to create a financial reserve, Montague has historically focused its reserves in its Stabilization Funds.
- In the course of the discussion different terminology interpretation was being used and people were getting confused. Mr. Naughton noted that there appear to be different views and asked Ms. Tonelli and Ms. Olsen to get together and prepare some examples that would show the impact of taxing to the levy limit and not taxing to the levy limit for both current and subsequent years.
- The question becomes where a town prefers to have flexibility in future spending ability through excess taxing capacity or reserve funds.

Potential End of Year Transfer for Board of Assessors

Ms. Tonelli advised that the hearing before the Appellate Tax Board for the case with First Light incurred significant costs to the town that she had hoped would be avoided. At this point Ms. Tonelli is waiting for the final bill for the hearing from our attorney, and is concerned that there may not be enough in her budget and the special article to cover all of the costs. If that occurs, Ms. Tonelli will be back before the group for a MGL Chapter 44 Section 33B transfer on July 12th.

Update on Appellate Tax Board (ATB) litigation

- FirstLight’s appeal of the Fiscal Year 2014 valuation was not settled prior to the court date, so it went to trial in June.
 - There are briefs due to the Commissioner by September 5th and a decision is not expected before December.
 - FirstLight’s position on their value is based on a type of valuation that the Appellate Tax Board has never accepted.
 - Once this case is settled, there are still pending appeals for FY2015 and FY2016 (for which the town used the same values as for FY2014), as well as for FY2017 (for which the town’s values increased significantly). Even if the ATB decision for FY2014 is not in favor of FirstLight, they have the opportunity to use a different technique for the appeals for the subsequent years.
- Because of the outstanding appeals for additional years, even if the town prevails with the Appellate Tax Board, the Assessors will not be releasing any overlay until all years are settled.
- The Special Article for these expenses has a balance of about \$32,000 and the Assessor’s legal line item has a balance of \$2,000. The expert witness has submitted a bill for \$20,000. Even though the witness did not take the stand, there were expenses for being available at the hearing, reviewing FirstLight’s appraisal, and working with the attorney. The town’s attorney will be submitting her bill through the end of June, and Ms. Tonelli expects this to be as high as \$40,000. Therefore Ms. Tonelli expects to be back before the Finance Committee and Selectmen on July 12th to request additional funds. Additional legal costs for the brief due in September will be addressed at that time.
- The previous Director of Assessing had an agreement with the Town of Gill to split the costs of the FirstLight’s appraisal. Since approximately 90% of FirstLight’s value is in Montague, it made sense to split the appraisal cost 90/10, with Gill reimbursing Montague 10% of the cost. Unfortunately this same split was agreed to for trial costs. Ms. Tonelli would have supported a 50-50 split of the ATB

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hearing costs since they would have had to go to trial anyway and our going to trial saved them the total cost of a trial.

- Mr. Ellis is concerned that the annual overlay amount is not proportionate to the increased gap between the town's assessment of First Light and their own valuation.

Updated FY2018 New Growth Figures

- The final FY2018 new growth amount that will be submitted to the Department of Revenue for approval will be over \$625,000. The amount used for the preparation of the FY2018 budget was \$503,015.
- This provides an opportunity for Montague to create excess levy capacity by only using \$503,015 in new growth to determine actual levy. The past practice would be to use the full \$625,000 of new growth to allow the maximum levy and reduce estimated receipts to provide revenues equal to appropriations.
- Some contributions to the final increase in new growth were the conversion of the Montague Center School to residences, an addition to Hillside plastics, and \$60,000 in new residential growth.

MGL Chapter 44 Section 33B Transfer Request

Under MGL Chapter 44, Section 33B the Selectmen, with the concurrence of the Finance Committee, may transfer within the last 2 months of any fiscal year, or during the first 15 days of the new fiscal year to apply to the previous fiscal year, any amount appropriated to any other appropriation.

Finance Committee Moved:

To approve, under the provisions of MGL Chapter 44 Section 33B, a transfer of \$2,000 from WPCF Health Insurance Benefits (661-5-910-5174) to WPCF Short Term Interest (661-5-752-5925) to fund a FY 2017 deficit in WPCF Short Term Interest.

Vote: 5 In Favor 0 Opposed 0 Abstained

The Selectmen will vote this item at their meeting on Monday, June 26, 2017.

Reserve Fund Transfer Request

The Town Administrator is requesting a Reserve Fund Transfer in the amount of \$28,000 to the Legal budget. The Board of Selectmen is aware of the need for the request. Mr. Ellis provided the following information:

- Several departments have legal expense line item budgets in addition to the Town's general legal budget.
- It was noted during the FY2018 budget process that the FY2017 legal budget was almost fully spent.
- General counsel is K-P Law, labor counsel is Sullivan, Hayes, and Quinn.
- Total legal expenses incurred over the course of town business during the fiscal year seem to have included a larger than usual number of real estate, open meeting law, grievance, and other labor related cases.

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- A correction in previously erroneous billing practices on the part of Sullivan, Hayes, and Quinn, which undercounted billable hours in excess of the 76.5 covered by our \$1,100 monthly retainer, has meant that the town is now being billed for actual time used above the hours covered by the retainer. The good news is that we were held harmless for the additional costs incurred but not billed in the two previous fiscal years.
- A budget summary was provided showing the costs per type of counsel to date and estimated costs for the rest of the year.
- Labor counsel is currently working through a complex labor issue, which is responsible for much of the estimated costs for May and June.
- Legal costs have fluctuated significantly in recent years in line with the fluctuating need for legal advice. The most typical of annual costs between FY2012 and FY2016 was \$70,000-\$80,000, with a spike of \$104,000 in FY2015.
- If the reserve fund transfer is approved, the total appropriation for FY2017 will be \$98,000, which happens to be the amount budgeted for FY2018.
- Mr. Ellis will try to minimize legal costs, but noted that not using counsel for some issues can be very expensive to the town. Mr. Ellis was working today with attorney on a 25 year lease with a very complex negotiation with a lot of sticking points.
- Not all legal issues are bad things. Some legal actions are the result of town decisions in the best interest of the town, others are thrust upon us by other parties without initiation of the town but to which we must respond.
- On the general counsel side, Executive Assistant Wendy Bogusz created a partial list of matters that were addressed by counsel this year. Some are the cost of due diligence in contracts, addressing building code issues in the case of neglectful landlords or unknown owners, which create positive outcomes for the town. The Railroad Salvage fire required legal action to provide public safety measures.
- The town is moving towards greater oversight and control over personnel matters previously delegated to each department to handle. Our goal is to work towards best practice models for policies and to improve communication, which should reduce personnel issues and the resulting legal expenses.
- Legal rates exceed \$200/hour.
- Mr. Widmer asked who directs issues to town counsel. Generally Mr. Ellis, frequently with consultation with the Chair of the Selectmen, directs issues to counsel.

Finance Committee Moved:

To transfer \$28,000 from the Reserve Fund to the Legal budget, specifically to line item 001-5-151-5302.

Vote: 5 In Favor 0 Opposed 0 Abstained

Topics not anticipated within in the 48 hour posting requirements

Mr. Hanold shared a letter he received from GMRSD Superintendent Michael Sullivan. Mr. Sullivan and the School Committee are interested in meeting with local civic leaders to discuss ideas and

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concerns of mutual interest. The district is undergoing the development of a new three-year strategic plan and would like to gain feedback and perspective from stakeholders to inform this process. They would also like to discuss the issue of fiscal sustainability and its components of economic development and population changes. The hope is to keep this discussion relaxed and flexible. Various dates were offered. Interested members of the Finance Committee will advise Mr. Naughton of their availability and Mr. Naughton will forward this information to the Selectmen, who will discuss the letter at their next meeting and prepare a joint response.

Next Meeting Dates:

July 12, 2017 Finance Committee Reorganization, End of Year transfers

Meeting adjourned at 7:47 PM

List of Documents and Exhibits:

- June 7, 2017 Minutes
- Legal Reserve Fund Transfer request
- WPCF Chapter 44 Section 33B transfer request

Minutes Approved July 12, 2017

John Hanold, Finance Committee Chair