ADVISORY AND FINANCE COMMITTEE
MEETING MINUTES
September 30, 2015

A meeting of the Advisory & Finance Committee was held on Wednesday, September 30, 2015. The meeting was called to order by Chairman John Moody at 6:30PM and was conducted in the Mayflower II Meeting Room at the Plymouth Town Hall, 11 Lincoln Street, Plymouth, Massachusetts.

PRESENT **Fourteen members of the committee were present:**
Belinda Brewster, Kevin Canty, Betty Cavacco, Richard Gladdys, Harry Helm, Shelagh Joyce, Ethan Kusmin, Mike Lincoln, Patricia McPherson, Christopher Merrill, John Moody, Patrick O'Brien, Harry Salerno, and Marc Sirrico

ABSENT **One member of the committee was absent**
Marcus McGraw

AGENDA ITEMS

Introduce New Member – Mike Lincoln
New Advisory & Finance Committee Member, Mike Lincoln, was introduced. Mike recently served as the Chair of the Charter Review Committee. He has spent his entire career in the insurance industry. He is happy to be appointed to the Advisory & Finance Committee.

Town Meeting Article:

Article 24: Charter Review – Elect ZBA: Review New Warrant Language
Advisory & Finance Committee Chair, John Moody, explained that the Article 24 warrant language had changed considerably from when the Advisory & Finance Committee first heard the article. What was one paragraph about changing the Zoning Board from appointed to elected, is now an entire page including composition and terms of office, powers and duties, and implementation details. The Committee needs to review the substantial changes and vote again based on the new language.

Mike Lincoln, Chair of the Charter Review Committee, said that while the Charter Review Committee made the recommendation, two members, Tim Grandy and Doug O'Roak, then had to work on the warrant language to fine tune how the change was going to be implemented. Town Counsel then reviewed their warrant language and added how what to do if there is a vacancy on the board. The additional language was needed and took some time to finalize.

Public Comment

Bill Abbott, Town Meeting Member and member of the 1999 Charter Commission, as a lawyer he has never come across an elected Zoning Board before. ZBAs are unique and adjudicatory. They decide cases and therefore must be immune from raising money and free of outside influences. In Massachusetts, judges are not elected, they are appointed, same with federal judges. ZBA members are essentially local judges. They are appointed based on their qualifications and judicial temperament.

Steve Leydon, Town Meeting Member, supports the Article 24 and having the ZBA members elected. Some towns do elect their ZBA. Our citizens should have recourse. ZBA members should be held accountable through the election process. He does not question the ZBA's integrity and is not concerned about conflict of interest or undue influence. ZBA members should be elected.
David Peck, ZBA member, pointed out that the ZBA is governed by Mass General Laws Chapter 40A. The intent is that ZBAs are appointed as the law always mentions appointed not elected, in one small

sentence it mentions "unless allowed by charter", but the entire law is written around appointed ZBAs. He strongly feels that ZBAs should be appointed. Their decisions are legally valid, not decided by popular mandate, they act on bylaws and are constrained by the law. The Board of Selectmen maintains balance of skills on the ZBA, some architects, attorneys, Town Meeting members, etc. There is no guarantee that electing the ZBA would match that balance. The Planning Board is elected so the ZBA does not need to be. Appointed members are more easily replaced than elected members would be. The current 3 year terms are better than the 5 year terms recommended in this article. There are many negatives regarding electing ZBA members, cost of election may discourage interested candidates, candidate may be funded by interest groups, may not get the balance that appointed ZBA has, members may take on their own interests, members may conflict with the elected Planning Board and elected Board of Selectmen. Keep the Charter as is and keep the ZBA appointed.

Russ Appleyard, Town Meeting Member, likes the idea of electing ZBA members. Plymouth voters are smart. Elected members will be outside influence. We do not have issues with elected bodies here in Plymouth. Appointed members could have issue of cronyism and reflect the views of those that influenced their appointment. What it all comes down to is the Zoning Board of Appeals plays a critical role, especially as Plymouth grows. ZBA is too important a role to not let voters have a choice.

Ed Conroy, ZBA member and Town Meeting Member, says that over 95% of zoning boards in the state are appointed. Sometimes Planning Boards and Zoning Boards are combined and that is when they are elected. Campaigns are expensive. Selectmen pay $8,000-$10,000 to run an election. If ZBA members are elected then they will be fund raising, and when a donor appears before the board there might be influence. There have been comments and texts about ZBA being minions to the Selectmen, since starting on ZBA in 2009 not one selectman has ever contacted him regarding a ZBA issue. The ZBA makes decisions for the betterment of the Town.

Patrick O'Brien made a Motion to Rescind the previous recommendation to approve Article 24. Kevin Canty, second.

There was some discussion to clarify this is being done because of the change in the wording and that the Committee needs to make a recommendation based on the new warrant language because the content has changed dramatically. A majority vote is needed to rescind. The warrant belongs to the Selectman and they have a right to change the language and they have up until 7 days before Town Meeting to do so. There are fundamental changes as well like the number of alternates and how the terms overlap so we have to in good faith, rescind and revote.

The Motion to Rescind carries (12-0-1). Mike Lincoln, abstained.

Questions – David Peck and Ed Conroy both answered questions:

- You mentioned appointments are made based on qualifications and temperament. Is there a list of standard qualifications that the Selectmen refer to when making appointments? (B Brewster) No, there are no written standards but historically Selectmen have always provided a balance.
- What if only one person applies for a seat but they are not qualified? (B Brewster) I have never seen someone passed over but I have never seen someone unqualified get appointed either. Also, if there are 2 seats and 3 qualified individuals apply, one can be appointed as an alternate.
- The Board of Selectmen never sought people out to apply? (B Brewster) It is usually ZBA members that recruit others based on their experience.
- So you do not feel unqualified people have ever been appointed? (B Brewster) There is always room for improvement.

- Why didn't any ZBA members attend the Advisory & Finance Committee meeting the first time we discussed this article? (S Joyce) Ed Conroy said that he and other members did not know about it. David Peck said that he did know about it but had a scheduling conflict but appreciated the opportunity to come to another Advisory & Finance meeting to be heard.
- You say this Board is judiciary. What legal background do you all have? (S Joyce) The bylaws have the particulars as far as number of rooms, set backs, etc. We all pull from our various experiences whether it be legal, real estate, architect, etc.
- You feel that elected officials have the potential for undue influence? (S Joyce) There is that possibility and the ZBA is supposed to be protected from politics. Any elected official has the potential to be influenced. ZBAs take recommendations from elected Planning Boards and ZBAs appointments provide independence to make their decision.
- Do ZBA members recuse themselves from a case if it involves a client? (S Joyce) Yes, they absolutely do and that is why there are alternates on the Board.
- If ZBA members are elected would they also be able to serve as Town Meeting Members? (S Joyce) No they would not be allowed to serve on both if ZBA members are elected.
- Zoning bylaws are 285 pages. How would the understanding of those bylaws change if members are elected and not appointed? (H Helm) Usually there is only one section of a bylaw that has to be considered for each appeal. Members read and re-read that section and then use their skill sets to come to a decision. They also look at drawings, listen to abutters, and visit the site.
- Whether elected or appointed, they will still follow the constraints of the same bylaws right? (P McPherson) Yes, but interpretation is involved. It really is a matter of what is best for Plymouth. Appointing a balanced board is best.
- If elected, do you feel fewer people will be interested in joining the ZBA? (P McPherson) That is my worry. Appointed has a greater opportunity for wider participation. Finances may discourage many from running and limit applicants.

Harry Helm made a Motion to Recommend Article 24, as rewritten in the warrant, to Town Meeting. Chris Merrill, second.

Discussion:

- Was in favor of article previously, have heard discussion since, not supporting it now. They have the ability to appoint a balanced group which works well. The article proposes too radical a change given the facts and circumstances.
- Was in favor of article previously but questioned his decision, has concerns with overlap and how terms roll out, current ZBA members have such a depth of knowledge, worried newly elected members would be influenced by experienced members, precedent is huge for ZBAs and for that reason it is important to get decisions right, ballots do not guarantee a balanced board.

- Voted in favor first time, changing vote now, this change involves an experiment of 2 things, 1. Appointed to elected, which could be good on its own, and 2. Change to 5 year terms, what if someone that is not good is elected? They are elected to serve for a longer term than our Selectmen, the Governor and even the President. Original argument to go to elected was that the ZBa would be more responsive to voters but with 5 year terms they will actually be less responsive. Experimenting with 2 big changes at same time is not a good idea and is too big a risk to take for such an important board.
- Voted for it originally, not sure now, campaign laws do set limits at $1,000 donation maximum so a candidate can not receive $5,000 from one donor, I wanted elected because it gives the people of Plymouth a voice and people are desperate for a voice.
- I originally voted to recommend this article but am changing my vote, at the first meeting I thought postponing our decision was a good idea, this is an example of how this system works, I felt we did not have all of the information then, after hearing both sides over 3 evenings, I am going to vote to maintaining what we currently have.
- I voted against this article last time, changing the terms from 3 years to 5 years if big, MGL 40A Section 12 allows for the removal of appointed members, the new warrant language does not have removal language for elected members.
- I voted for this article last time and I am voting for it again, members can be influenced whether they are appointed or elected, it is an important role and should be elected, Planning Board members serve 5 year terms and that is not a problem for the Town.
- I originally voted to support this article because of the transparency it offered. Elections could force candidates to convince the public of their qualifications, not sure how I am going to vote.
- Experience shows that elected judges follow laws less than appointed judges do, 5 years is a long time because of that difference.
- Selectmen could also make a mistake with an appointment and 3 years could be a long time.
- 5 is longer than 3 though. Changing 2 variables in an important system at the same time is a bad idea, if it does not work it would be hard to measure which variable contributed what to it not working, and if you get a bad apple elected the Town is stuck with that longer.
- We are all human beings, everyone makes mistakes, it is important to recognize laws have potential to be interpreted differently by different minds.
- The problem would be worse with elected members though because they are not just interpreting the law, they may be deliberately interpreting to get the result they want, can easily see someone running for single issue they take personally, like stopping trucks from running up and down their road for example.
- The bylaws are full of words like “may”, interpretation is involved, Mass General Laws Chapter 40A Section 12 allows for removal of appointed members, I do not see removal language in this Article.
- Changing terms from 3 years to 5 years is a positive, it allows ZBA members to get up to speed and develop a proficiency, which leads to efficiency with their knowledge base.

Mike Lincoln made a point of clarification, the Charter does provide for recall of elected officials.

The Motion to Recommend Article 24 fails (4-8-1). Shelagh Joyce, Betty Cavacco, Patrick O’Brien, and Richard Gladdys, in favor. Mike Lincoln, abstained.

The Advisory & Finance Committee will recommend to Town Meeting that they not approve Article 24.
Caucus Discussion & Schedule:

- Chair John Moody is pleased that one of his initiatives has been rolled out, and that is

putting all of the Town Meeting information that the Advisory & Finance Committee hears online for Town Meeting Members and the general public to have access. He thanked Kere Gillette for her hard work in making that happen this year.

- Our role at caucuses is to attend and make sure Town Meeting Members understand our recommendations and our rationale behind those recommendations. You have the book and meeting minutes to refer to at the caucus meetings. Packets tonight include warrant language, recommendation and minutes outlining the discussion by Article.
- You will be asked why did X vote no on article Y? A Town Meeting Member may pose a question that we never discussed. Also in the packet, is a form called Caucus Meeting Information Response, where you can capture that information, do research and find answer, document it here and email to Kere Gillette and John Moody. They will send it out to all Advisory & Finance Members. The form is on our website so you will need to complete it and save it to your computer then attach to the email to send to Kere and John. If the answer may take time, send the form with the question that came up with no answer, just so we all know what issues are being raised at the caucuses.
- All the caucuses are different as far as structure and attendance and length. In some precincts only the Town Meeting Members will attend, some will have some residents as well. They review the articles, discuss issues, frame arguments, hash out where they stand, and where voters stand, on an issue. Some meetings last one hour some may last as long as three hours.
- The Committee of Precinct Chairs is having their Presentation Forum tomorrow night. They do it all in one night now and it is also televised. The concept is that Town Meeting Members will either attend or watch it on tv so they can see those presentations before their caucus. Harry Salerno and Marc Sirrico will be representing Advisory & Finance there. Harry Helm also volunteered to attend.
- We will create a supplement to address Article 24 and will email it to you so you will have it prior to attending the caucuses.
- Reminder, at caucuses you are to state the committee's opinions, not your own opinions. IF you are asked how you voted on something and why then you are free to respond, otherwise discuss the opinion of the committee.
- Also discussed was that a good rule of thumb is if it is well debated at our meetings, it will be well debated at the caucuses so you have a sense of which ones you will need to be prepared to discuss in detail.
- The precinct 8 caucus has not been scheduled yet. If you are only assigned to one caucus at this time, we may call on you to cover the precinct 8 caucus. We have requested that they provide us with sufficient notice.
- Feel free to attend as many caucuses as you would like. It is a good educational experience. You will see a variety of ways they are run, and a variety of views. Definitely still attend the ones you are assigned to though.
- Again, if a hot topic comes up or questions that we did not discuss, use the Caucus Meeting Information Response form so we can give all Advisory & Finance Committee members a heads up.

Old/New/Other Business

Harry Salerno requested that the Rules Committee take a look at Motion to Rescind at their next meeting, like the Motion to Reconsider they looked at last year.

Meeting Minutes

- August 19, 2015: **Patrick O'Brien made a Motion to Approve the 8/19/15 meeting minutes. Kevin Canty, second. The motion carries unanimously (10-0-3). Richard Gladdys, Ethan Kusmin, and Mike Lincoln, abstained.**

- September 16, 2015: **Chris Merrill made a Motion to Approve the 9/16/15 meeting minutes. Patrick O'Brien, second. The motion carries unanimously (11-0-2). Shelagh Joyce and Mike Lincoln, abstained.**

- September 17, 2015: **Patrick O'Brien made a Motion to Approve the 9/17/15 meeting minutes. Harry Salerno, second. The motion carries unanimously (9-0-4). Shelagh Joyce, Patty McPherson, Christopher Merrill, and Mike Lincoln, abstained.**

ADJOURNMENT **Harry Salerno made a Motion to Adjourn. Patrick O'Brien, second. The motion carries unanimously (13-0-0).**
The meeting adjourned at 8:18PM.

Respectfully submitted,
Kere Gillette