



Town of Medway

FINANCE COMMITTEE

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June 8, 2016 – 7:00 PM
Sanford Hall, Town Hall
155 Village Street

Present: Frank Rossi, Chair; Chris Lagan, Vice Chair; Todd Alessandri, Clerk; Rohith Ashok; Meghan Hoffman; Jeff O’Neill; and Jim Sullivan.

Absent: Ellen Hillery and Michael Schrader.

Others Present: Michael Boynton, Town Administrator; Jeffrey Lynch, Fire Chief; John Givner, Veterans’ Services Officer; Barbara Saint Andre, Town Counsel.

Board of Selectmen: John Foresto, Chair; Dennis Crowley, Maryjane White.

Board of Health: Michael Heavey, Chair; John Mill, Clerk.

Chairman Rossi called the meeting to order at 7:00 PM.

At this time, the Board of Health and the Board of Selectmen convened their respective meetings.

Veterans’ Services ETR -- \$4,000:

The committee reviewed a Request for Transfer dated May 31, 2016.

Present: John Givner, Director/Veteran’s Service Officer

Mr. Givner reported that he is reducing the amount of the request to \$1,200. He believes some of the expenses can come out of the FY17 budget which has been increased from FY16. Overall, there continues to be an increase in the number and amount of medical claims and shared specific information on those.

Chairman Rossi asked if Mr. Givner believed the increased FY17 budget will be sufficient. He responded that it should work out well, but it is impossible to foresee the future and the potential for medical claims to be filed in Medway if veterans move here.

It was noted that there is \$43,600 in the Finance Committee Reserve Fund.

Mr. Sullivan asked if Mr. Givner could provide historical data for past years as it might be useful in predicting trends in rising claim amounts. Brief discussion followed. Mr. Givner stated he is always comparing other communities to Medway. He added that, with people coming in and out of the benefits situation, his present caseload is holding at 18-19 people.

Ms. Hoffman moved to approve the Request for Transfer from the Finance Committee Reserve Fund in the reduced amount of \$1,200, as requested; Mr. Ashok seconded. No discussion. VOTE: 7-0-0.

Final Preparations for June 9th STM –Warrant Articles

The committee reviewed the June 9 Special Town Meeting Warrant.

Present: Barbara Saint Andre, Town Counsel; Michael Heavey, Chair, Medway Board of Health; John Mill, Clerk, Medway Board of Health

Chairman Rossi summarized that there is no liability with the articles themselves as it is either a yes or no vote. There is also no liability with regard to Article 2. He theorized that the concern for liability rests in the action represented in Article 1, adding that, even with the existing fields, there is no liability. It's the far-reaching ramifications implied in the moratorium that are of concern

Ms. Saint Andre, Town Counsel, stated that the Town, like any other party is liable for negligence, and has to act in a reasonable fashion. If there is a reason for the Town to take certain actions, it should do so. She stated she is not a scientist so she has no comment on the safeness of the materials. Just because someone says there is a risk does not make it so. One should consult experts in the industry. The Town could be held liable if it allowed usage of fields that presented unreasonable risk.

Mr. Boynton stated that there is nothing in the warrant regarding existing fields. But the connection is that one side of the issue talks about the so-called scientific reports, while the other side says that the reports are wrong. The challenge that we have locally is whether to prohibit the construction and installation of new fields using a specific product. The logic behind it is that there is a health risk with that product. A federal mandate has not been proven. If the community adopts a ban of future development using that product, we must acknowledge that the product is in use today on the existing fields. It must be addressed from an insurance perspective in order to identify potential risk. Should we wait until the study comes out? If the fields are closed with the same logic behind the moratorium, how will it impact our recreational programs? With regard to the overall issue and the ultimate determination of whether this product is banned from Medway, should we receive guidance from the appropriate federal agency much like we do for drinking water and other health issues?

Mr. Ashok asked if the Town's insurance provider has been consulted. Mr. Boynton responded that it had not. Without a vote the Town would have to ask them to refer to the established standards and information already published.

Mr. O'Neill asked if a moratorium can put Medway at risk in any way, shape or form. Ms. Saint Andre responded that, from a legal perspective, the issue is whether there are issues with the existing fields and she is not qualified to answer that. As for a moratorium, the Town is not planning to build any new

fields so there really is no risk. Do the published reports present information that a reasonable person could conclude that there is an unreasonable risk in using these fields?

Mr. Lagan asked about other communities. What language did they use? Mr. O'Neill stated that the other towns used different language. In Concord, the high school fields were exempted from the moratorium, which may mean that new fields could be built at the high school. Mr. Lagan theorized that, if potential liability cannot be determined and there is no finding, then this action could create unknown problems.

Mr. Boynton reiterated that any action of Town Meeting is a vote of the Town, and 200 people have asked that the Town vote on it. If 15 people came forward to say that the bottle of water Chairman Rossi is drinking is hazardous and should be banned, we would not do anything about it. But if Town Meeting voted to do so, we would take a look at it and consult insurance counsel. For this particular issue, there is no formal position from the community as a whole, and we have conflicting statements from people nationally including doctors and the Synthetic Turf Council. Mr. Boynton stated that, if the true intent of Article 1 is to not use this material going forward, he suggested adding language to Article 2 specifying that no new fields will be designed, built, rebuilt, redesigned or any action to replace any surfaces.

Ms. Hoffman expressed concern that, if the Town takes a position against something that has already been used, how does that not create a liability. If we establish a moratorium, we would be saying that we will not build anything new, but yet we will allow people to continue to use the existing fields that have the material in question. Ms. Saint Andre responded that the vote itself does not create a liability, but a vote at the Town Meeting would provide guidance to the Town to further research it.

Mr. Ashok asked Ms. Saint Andre if she could comment on the letter from Attorney Rosenberg. Ms. Saint Andre suggested that the issue is whether or not there is a potential liability of use of this particular substance. He says there is, but does not identify what he is basing this opinion on, whether it is his own opinion, studies or what. In some ways, he agrees with what I've [Saint Andre] said, and that is to look at the studies and see what is out there for valid information. It's not only a question of liability, but of safety for those using the fields. Mr. Ashok pointed out that Attorney Rosenberg cites no precedents or legal references.

Mr. Ashok theorized that the amended version of Article 2 seems more encompassing, yet purposefully vague on identifying the materials. How would a reasonable person process this information? Ms. Saint Andre suggested that, while she is not an expert, the focus of Article 2 specifies that there are no plans to use these materials, and there are no plans to build additional fields. Article 2 accomplishes the goal if people are concerned about any real or perceived health risks and it offers comfort that the Town is not planning to use this material. Given that, there doesn't seem to be any reason for Article 1.

Chairman Rossi pointed out that Article 2 is a funding article. Ms. Saint Andre noted that it is binding on the Town Meeting vote. Mr. Ashok asked if one article is more binding than the other, i.e., citizen petition v. town article. It makes no difference. Mr. Boynton added that Article 1 is basically a referendum, while Article 2 is binding to the funds for the specific project. Ms. Saint Andre pointed out that Article 2 sets forth that the Town will not use this material in the future. Article 1, on the other hand, can be overturned at the next Town Meeting.

Mr. Sullivan asked if there is any precedent for referendum moratoriums like Article 1 to be used as fodder for future claims against the Town. Ms. Saint Andre responded that, if Article 1 were to pass, we would need to research that. Mr. Sullivan noted that Article 1 contains a time component, though it could be “undone” at the next Town Meeting. Mr. Boynton clarified that any money appropriated in Article 2 can be spent on designs that do not include this material.

Chairman Rossi remarked that the committee has been told that the manufacturer has a “hold harmless clause” on the material. Ms. Saint Andre responded that, in the event of a claim, the clause can be used as a defense. Mr. Boynton added that, if it comes to that, we will meet with other people who have used it, and research whether we know who issues regulations relative to public safety and health issues, and we would take direction from the appropriate authority. Were we “snookered” into believing false claims?

Mr. Sullivan pointed out that Article 1 does not exclude maintenance, but the wording is vague. How does it affect existing fields? What about maintenance of the fields? Discussion followed, noting that it would have to be made very clear, possibly via an amendment, if there were a positive motion on Town Meeting floor. Continuing, Mr. Sullivan asked if the word “maintenance” was sufficient and encompassing enough. If a field has a problem, does “maintenance” prohibit repair of the problem? The language of the article defines what we can do. Ms. Saint Andre noted that an amendment to a motion can be offered as long as the amendment does not alter the original motion outside the scope of the article.

Mr. O’Neill asked about the letter from Attorney Rosenberg. Does this put us on notice? The last line of his website profile is that he has worked with companies involved in litigation. Ms. Saint Andre responded that the issue is not the letter from the attorney, but the fact of whether there is factual information out there that there are health risks from the use of this material.

Mr. Boynton noted that we are not sitting here believing that there is a problem with the fields. We have a group of people who believe there could be concerns over the potential use of this particular substance. Like every other community with artificial turf fields, we await the outcome of the federal report/study.

Mr. John Mill, Clerk of the Medway Board of Health, stated that, from his perspective, this should be decided by the voters. I am not a scientific person and could not make sense of the study. Mr. Michael Heavey, Chair, Board of Health, stated that the study was not a good one as the literature only suggested possible links but without empirical data. Wide range studies needed to be done, as well as peer review. The Board of Health votes on things that represent a demonstrable hazard, not a low level of something that might be. When it was brought forward to the Board of Health, it was discussed and we voted to take no action. One of the reasons was the timeframe, being the day before the closure of the warrant, so we had no time to review. There was also no demonstrative proof of a hazard. If someone wishes to make it a policy, it should be a policy decision similar to one such a banning smoking or raising the allowable age, which was a more informed subject.

Mr. Heavey added that the Board of Health did find that the surface does get hotter than other surfaces, and uniforms need to be laundered regularly. We would advise that for prevention of staph infections and other bacterial issues. If people want to be reactive, that is for “the people” to decide.

Chairman Rossi noted that the Board of Selectmen has not taken a position on this yet. Selectman Crowley clarified that the Board will be voting on it tomorrow evening.

Mr. Boynton reported that he has had conversations with a number of petitioners talking about the challenges, and I understand the concerns presented. I would like to think that what we proposed in Article 2 satisfied the intent of Article 1. He was hopeful that we have worked well together with the petitioners and that we will continue to work well in the future. We are always sympathetic to safety and health issues. In the spirit of compromise and collaboration demonstrated on May 18, I think we can continue to work well together.

Mr. Sullivan noted that, if the Finance Committee votes not to move forward with a motion, a motion can be presented from the floor and that motion could also be amended. Mr. Boynton responded that the Finance Committee recommendation is to the Town Meeting. In the event of a motion to approve, the Finance Committee would most likely have a main motion, and that main motion would need to stay within the intent of the scope of the article. For example, you could include the issue of maintenance, or the issue of the pour-in-place. Conversely, if the Finance Committee opts to recommend the article not be approved, they would simply not offer a motion when the Moderator asks for one. The motion would then have to come from the floor. For Article 2, the process is much the same. If approval is recommended, you can include any or all of the proposed motions in front of you. He briefly explained the colored sections of the proposed motion. If the motion is not to approve, the motion would have to come from the floor. If it is a compromise, it is important to make sure that all facets are addressed up front so that the potential outcome is clear.

Mr. Alessandri asked about the wording in Article 1 and whether it included replacement of the track. The field is currently not rubberized, and if it needed to be replaced, what material could be used.

Mr. Boynton stated that the Community Preservation Committee is meeting tomorrow night as well. Chairman Rossi emphasized that the CPC's main objection at Annual Town Meeting was that they wanted more detail on the spending and the ability to control the spending. Selectman Crowley theorized that the CPC Chair has been given that information but it's not clear whether it has been distributed to the committee.

Mr. Alessandri expressed concern that the Finance Committee cannot prepare a recommendation if the CPC vote is unknown. Mr. Boynton responded that the Finance Committee should vote on what it believes, and while it would be nice to have the CPC's position, it is not necessary in order for the Finance Committee to make its decision. We will rely on the CPC on the Town Meeting floor. Selectman Crowley added that, if CPC votes down the funding, then Article 2 would be dismissed. Mr. Alessandri theorized that his vote on Article 2 could impact his position on Article 1. Mr. Boynton responded that if members are comfortable with Article 2 as written, the Finance Committee should send that message by presenting a positive motion. Brief discussion followed.

Continuing, Mr. Alessandri asked if the vote can be changed if the Finance Committee votes on Article 2 as it is written here. Mr. Boynton responded that any changes would have to be made from the Town Meeting floor and CPC cannot change it in their meeting.

Ms. Saint Andre pointed out that the Article 2 motion is before the Committee now. This is what should be voted on. She indicated that her recommendation is that the Finance Committee votes on that motion tonight. If changes come about, that vote will have to change, based on the changes.

Vote Recommendations for June 9 Special Town Meeting Warrant Articles:

Chairman Rossi moved to approve Article 2 with the main motion as presented this evening; Mr. O’Neill seconded. No discussion. VOTE: 7-0-0.

Mr. O’Neill moved that the Finance Committee disapprove [not support] Article 1 – citizens petition, as presented; Ms. Hoffman seconded. No discussion. VOTE: 7-0-0.

The Board of Selectmen and Board of Health adjourned their meetings at 8:17 PM.

Miscellaneous Business:

Chairman Rossi announced that three appointments are coming to an end: Todd Alessandri, Chris Lagan, and Jim Sullivan. They have not received letters from the Town Administrator about seeking reappointment or resigning. Ms. Galliardt will look into it and ask the Town Administrator’s office to post a Notice of Vacancies. Brief discussion followed.

Chairman Rossi reported that there will be an ETR from the Fire Department. It is for overtime funds to cover shifts while a firefighter is in the academy now and overtime is necessary to cover the shifts. The overtime budget has been increased in the coming FY17 budget, but this has been difficult with two major house fires recently. The department will have a better handle on it in the future. Chairman Rossi noted that Chief Lynch will need to submit a corrected ETR as some of the sections appear to be duplicated from previous documents. Mr. Boynton will contact the Chief.

It was suggested to get name plates for the members so that viewers will know who is speaking. This has not been a problem up to now as there are rarely spectators at meetings. After brief discussion, it was decided to wait to see if there is increased attendance at meetings.

At 8:30 PM Mr. Alessandri moved to adjourn; Ms. Hoffman seconded. No discussion. VOTE: 7-0-0.

Respectfully submitted,
Jeanette Galliardt
Night Board Secretary