

## BOARD OF SELECTMEN MEETING

February 25, 2019

Chairman Kevin A. Caira called the meeting to order at 7:01 p.m. in Room 9 of the Town Hall. Present were Selectmen Gregory B. Bendel, Jonathan R. Eaton and Michael V. McCoy. Also present was Town Manager Jeffrey M. Hull.

Chairman Caira asked those present to rise and he led the pledge of allegiance.

### TREASURY WARRANTS

Chairman Caira asked for a motion to accept the Treasury Warrants. A motion was made by Selectman Eaton, seconded by Selectman Bendel and by the affirmative vote of all, it was

VOTED: That the Board of Selectmen accept Treasury Warrants 32, 32A, 33, 33A, 34 and 34A.

### **VALERIE GINGRICH, DIRECTOR OF PLANNING & CONSERVATION, AND PAUL ALUNNI, TOWN ENGINEER, RE: UNACCEPTED WAYS**

Chairman Caira acknowledged Jamie Magaldi, Operations Manager, Department of Public Works was also in attendance. Mr. Alunni advised that Mark Reich, Town Counsel, was also in attendance.

Mr. Alunni advised that they prepared a quick PowerPoint presentation. He advised that the definition of an unaccepted way is a roadway or street open for public use and passage but not owned or otherwise controlled by the Town. He explained that the Town does not own the land within the right of way of the private ways. The terms “unaccepted ways” and “private ways” will be used interchangeably. Mr. Alunni advised that the definition was from a report prepared by the Committee on Unaccepted Ways that was formed in 1994 and the report was issued in 1997. The findings and recommendations from the report are currently followed. There are approximately 200 unaccepted ways in Wilmington, constituting over 30 miles. Mr. Alunni showed a map of Wilmington that illustrated where the unaccepted ways were located and noted they are located throughout Wilmington. The condition of the roadways range from very good condition to poor condition. Improvements would range from do nothing to, in some cases, major reconstruction. The presentation illustrated three photos in various stages: Mink Run Road – Excellent Condition; Carmel Street – Poor Condition, pavement failing candidate for investigation for sub terrain material; and Rollins Road which is unimproved, no pavement.

Mr. Alunni provided a breakdown of Town services that are provided on public ways and unaccepted ways. The only difference is the major repair and reconstruction is not done on unaccepted ways and typically the first time a resident hears that they live on an unaccepted way is when they approach the Town to find out when the way will be improved.

Mr. Alunni stated that he is most frequently asked: what is the street acceptance process; why can't the Town repave the roadways, I pay the same amount of taxes; and take it, I don't want it. He provided responses to each of the questions. He stated that the development of surveys and engineering plans can be costly.

Mr. Alunni advised that public roadways are paved using state Chapter 90 Program funds. He noted that it is a state reimbursement program and the first page of the form requires the Town to acknowledge/certify that the way is a public way.

Mr. Alunni cautioned that not all roadways should be paved “as is”. He explained that an inch overlay may be okay for some roadways but for those where drainage is not addressed, the paving may only last one season.

He advised that another obstacle is that not every resident wants to have their roadway paved.

Mr. Alunni stated that he read in the Committee's report that the Town of Burlington tried to accept streets "as is" and was rejected by the Attorney General's office. He believes it is because the acceptance of streets is a statutory process and the process requires, at a minimum, that land boundaries be defined, a survey plan created and the Town makes sure who has the right to convey the title or deed to the Town.

Ms. Gingrich advised that the Town is currently following advice from the report completed in 1997 and roadway improvements have to be funded by the private property owners. She confirmed that the Town is unable to spend public funds on the private ways. Ms. Gingrich stated that the property owners have the option of working with neighbors to make improvements after having plans approved by the Planning Board or to participate in the Betterments Program. She explained that it is like a tax placed on the property owner. If improvements are necessary, residents have plans approved by the Planning Board showing improvements, costs would be generated, draw up the paperwork and once the roadway is accepted at Town Meeting the resident would pay for improvements over time. She stated that the deterrent is that it is costly and referenced Carmel Street.

Ms. Gingrich stated that if there is consideration for a change to the practice she and Mr. Alunni wanted to highlight issues that need to be considered. Ms. Gingrich stated that if improvements are not done privately, community support would have to be considered. Would there be support to accept a roadway that is not up to standard? She advised that she has received comments that "they" should go through the same process others did when upgrading their roadway. She stated that there are costs involved in upgrading a roadway, would the public approve spending public funds to improve the roadway and where would the funds come from. Ms. Gingrich stated that even if the roadway does not require improvements there are costs associated with accepting roadways and noted the requirement for a survey plan and legal documents.

Ms. Gingrich stated that there are a lot of unaccepted streets and it would have to be well thought out how they are prioritized. She stated that it all hinges on property owner cooperation. Every resident must sign off on the acceptance and grant rights to the Town.

Ms. Gingrich stated that another agenda item is the acceptance of streets and she noted that the Town is looking to initiate the acceptance of Mink Run Road and Pomfret Road. She advised that they were both built through a Town process, a plan was approved and they were built to those standards, the roads are in good condition with no improvements necessary. It is anticipated the Town will have the proper legal documents for conveying an easement to the Town within 120 days.

Chairman Caira asked if there were any questions or comments from members of the Board. Selectman Bendel stated that the issue of unaccepted ways is one of the top three concerns he hears from residents. He stated that it is a difficult questions to answer and thanked Mr. Alunni and Ms. Gingrich for helping him to understand. He stated he does not see the harm in developing a process, have the Town Manager allocate an amount of money, layout guidelines for residents to go through the process and set a deadline. Selectman Bendel opined that it should be determined on a case-by-case basis and acknowledged the issue of fairness that was brought up. Selectman Bendel provided examples of roadways that could benefit from a program and proposed the Board look at a process to see if residents want to pursue as an option and provide a deadline for them to apply. Once the deadline passes, the Town can review submissions and determine how to proceed. He would like to provide residents with another option other than the Betterment program.

Selectman McCoy expressed his appreciation to Ms. Gingrich and Mr. Alunni for their explanation. He recalled a conversation with Mr. Bryant, a resident of Dartmouth Avenue, and making a motion at a Board of Selectmen meeting to direct a letter to the Town's legislative delegation. He stated that it is a state issue. He stated he agreed with Selectman Bendel that a program should be developed where the Town contributes funds. The streets should be addressed in terms of priority. Selectman McCoy noted it would be the responsibility of the Town Manager to develop a budget and commented that the Town has free cash that could be used. Selectman McCoy stated that realtors ought to disclose to potential buyers when a home is on an unaccepted way.

Selectman Eaton commented his belief that Pomfret Road and Mink Run Road are not the only two roads in Wilmington that are classified as "do nothing" roadways. Mr. Alunni confirmed and advised that the Department of Public Works is assessing the condition of all streets in Town, including unaccepted ways. He advised that unaccepted ways will be a separate section of the report and expects that to be complete by the end of summer.

Selectman Eaton stated that he would like to see the Town accelerate the process for accepting those streets that do not require improvements.

Chairman Caira believes it would be helpful to know how many unaccepted ways are in each category. He agrees that the Town should take a more proactive approach and suggested addressing two or three streets per year. Chairman Caira asked to confirm that even streets identified as "do nothing" must need something, sidewalks as an example, in order to be accepted. Mr. Alunni confirmed and stated that there is some "upfront" costs to consider in preparing documents. Mink Run Road and Pomfret Road recently went through the Planning Board process which requires a Survey Layout Plan stamped by a certified Professional Land Surveyor. Mr. Alunni stated that often the surveyor has to retrace an entire boundary which takes a considerable amount of effort and resources.

Chairman Caira asked whether the Town continues to put patchwork on the unaccepted ways. Mr. Magaldi stated that the Town does and explained that the standard is to maintain the ways for emergency vehicles.

Selectman McCoy asked whether the Town grades unaccepted ways and Mr. Magaldi confirmed, noting that the Town reasonably maintains the roadway for emergency vehicle access. He advised that when resurfacing other roadways, the Department of Public Works will recycle the ground hot top and use it on the unaccepted ways. He stated that the material packs tight.

Selectman Bendel asked what the process would be to proceed. Town Manager Hull stated that the first step would be to confirm the criteria to be used for selecting the streets. One advantage to accepting the streets that do not require improvements is that there will be relatively low costs. He suggested interspersing those that do not require improvements with those that do so that the Town is not spending several hundred thousand dollars per year. Town Manager Hull suggested that the first step should be to develop a process where the Board identifies what criteria should be used when selecting streets. He advised that there needs to be a public process so that people understand what the process is and have an opportunity to pursue having their street addressed. In addition the Town will need to determine an amount of money to set aside each year. Town Manager Hull reminded the Board that the streets that are repaired are funded through the Chapter 90 program and are not funded by the tax levy. If funds are to be appropriated through the tax levy, the Town will have to determine what projects are displaced. Selectman Bendel opined that utilizing \$200,000 from free cash would be supported by Town Meeting.

Chairman Caira asked Mark Reich, Town Counsel, to comment. Mr. Reich stated that this issue is faced by many communities across the Commonwealth, especially communities that have a larger network of roads. He stated that some larger roads have, over time, developed into public ways for public use but have not been acquired as public ways through the ownership. Mr. Reich stated that Wilmington has roads that are public by right of a generally scripted easement where the use over time has generated public interest in the use of the roads but the ownership of the property and the control remains with the private entities. He stated that there are statutory impediments that state a Town can do emergency repairs or temporary repairs but a Town cannot expend public funds for a private purpose. He advised many communities do a hybrid recognizing emergency access is of paramount importance and during the winter communities plow for access of emergency vehicles. Mr. Reich advised that the Attorney General has taken the position that the expenditure of public funds on private ways is not permissible and there is a statutory provision that allows the Attorney General to seek penalties against a municipality that expended funds. He stated that he is not aware of the Attorney General taking such action and opined it would be a bold and unpopular move. Mr. Reich stated that the layout process belongs to the Board of Selectmen, noting that it is initiated by the Board of Selectmen. He advised that the Board would determine the policy on how to proceed. Ultimately it will go to Town Meeting to accept and authorize the Town to acquire rights and easements. He advised it is the Town, not the Board of Selectmen, that owns the property. Mr. Reich stated that eminent domain is often used in friendly takings and advised that the benefit is that it provides for a clean title to the property. He stated that residents are asked to sign off on a Waiver of Damages and Waiver of Appraisals because under Chapter 79 individuals whose property is being taken are entitled to an appraisal of damages and attainment of those damages. Waivers are sought in advance so that essentially the property is donated to the Town and by obtaining them prior to Town Meeting the Town can advise that it has the support of the residents. Mr. Reich stated that the biggest obstacle is the condition of the roads.

Selectman Bendel asked to confirm Mr. Reich's statement regarding municipalities expending funds on private way. He stated that he understands that if the Town accepts the way, then it may expend funds. Mr. Reich confirmed and noted that Chapter 40, Sections 6C and 6D provide a process where a Town could authorize paving and permanent improvements to a private way and advised it requires a ballot initiative. Mr. Reich advised that the Town could not use Chapter 90 funds because it would remain a private way.

Mr. Magaldi stated that the Town's allotment for Chapter 90 funds is based on a formula that has three factors; 60% is based on the miles of accepted roadway, 20% is based on population and the remaining 20% is based on employment within the Town. He advised that the second two factors are important. He cited the Town of Boxford is a smaller community, not as much commercial property and smaller population, and has approximately the same number of accepted road miles yet it receives approximately half the Chapter 90 funds that Wilmington receives. Mr. Magaldi stated that the Town of Wilmington received approximately \$800,000 in Chapter 90 funding last year and it has approximately 100 miles of roadway and therefor received approximately \$8,000 per mile. He advised that to mill and fill one mile of roadway costs approximately \$250,000.

Mr. Alunni stated that the Board would need to consider upfront costs noting the development of necessary survey plans and engineering plans. It is possible to spend funds upfront and not receive a favorable vote at Town Meeting.

Chairman Caira stated that he believes the Selectmen want to see a plan and perhaps want to see how streets are categorized first before devising a plan.

Bob Bryant asked to speak and was advised he could offer comments under public comments. He advised the Chairman that he would not be able to stay as he had an emergency job. Chairman Cairra allowed him to offer comment. Mr. Bryant stated he lives on Dartmouth “River” and opined that it should be the first street the Town looks at. He stated that he has videos of water flowing through his yard. Mr. Bryant stated that he knows where his lot lines are and knows the taxes he pays and alleges that he is not paying taxes on the property being used as a street. Mr. Bryant stated that he spoke to Town Manager Hull who told him his taxes are being used for other people’s property and he believes that is wrong. He stated that he was never told that his house is on an unaccepted street. Mr. Bryant stated that following his conversation with Town Manager Hull he phoned the State and it was confirmed that the Town cannot use public funds on a private road. He asked why the Town doesn’t take a third of his taxes and put it into a private fund for streets to be repaved and suggested beginning with the worse streets.

Mr. Reich advised that there are numerous circumstances where properties are developed and the developer may not have conveyed the road in the deed. He stated that the roadways either belong to developers who are long gone or are property of owners unknown. Mr. Reich stated that the concept is known as the Derelict Fee Statute which suggests if a property abuts a way and the owners are unknown, it is assumed that the owner owns to the midline of the roadway. It does not mean that the Town taxes on the roadway property. Ultimately the issue raised about how to fund addressing unaccepted ways the Town is dealing with now. The concept of taking tax money and funding the improvement of those roads is the process being talked about and is a matter for Town Meeting. If the ways are privately owned and the Town does not have an interest, the Town cannot make improvements that are being suggested.

Selectman Bendel asked if Mr. Reich is aware of another community that is attempting to accomplish what the Town of Wilmington is looking to accomplish. Mr. Reich stated that it is a statutory process and there is no way to get around it. He noted that some towns try to accelerate the number of streets they are addressing at a particular time but it depends on how a town has prioritized funding for streets. He stated that it varies from town to town and depending upon the number of accepted ways, the availability of funds, the appetite of residents for donating property and whether the towns are looking to residents to bring their roads up to code before the Town accepts them or whether they are looking to take on that and expend funds. He stated it is a serious policy consideration that the Board is not going to answer tonight as it will take time.

Chairman Cairra thanked Mr. Alunni and Ms. Gingrich for the presentation and opined that the Board of Selectmen supports looking into this further and receiving answers on how to move forward and address the unaccepted ways.

#### **DISCUSSION RELATIVE TO THE BOARD’S INTENTION TO LAYOUT THE WAYS DESCRIBED IN THE PROPOSED WARRANT ARTICLE, I.E. MINK RUN ROAD AND POMFRET ROAD**

Paul Alunni, Town Engineer, provided memoranda to the Board of Selectmen regarding Mink Run Road and Pomfret Road. He advised that the Engineering Division performed a final inspection of each roadway and the roadway has been completed in accordance with the approved Comprehensive Permit for Mink Run Road and an 81-G Roadway Improvement Plan approved for Pomfret Road by the Wilmington Planning Board. Included with each memorandum was a map and description of the roadway.

Mr. Alunni recommends that the Board of Selectmen initiate the Street Acceptance Process for both Mink Run Road and Pomfret Road and refer the matter to the Planning Board for their review.

Chairman Caira asked if there were any questions, comments or a motion. Selectman Bendel inquired about funds expended on these roads and was advised by Mr. Alunni that both were private undertakings. A motion was made by Selectman McCoy, seconded by Selectman Bendel and by the affirmative vote of all, it was

VOTED: That the Board of Selectmen accept the recommendation of the Town Engineer and Town Manager Hull to move forward with the intention to layout Pomfret Road as described.

A motion was made by Selectman Bendel, seconded by Selectman McCoy and by the affirmative vote of all, it was

VOTED: That the Board of Selectmen accept the recommendation of the Town Engineer and Town Manager Hull to move forward with the intention to layout Mink Run Road as described.

### **PRELIMINARY DISCUSSION OF ANNUAL TOWN MEETING NON-PETITIONED WARRANT ARTICLES**

Town Manager Hull reviewed the non-petitioned warrant articles. Article 1 is the article that relates to the Town Election. The Election of Town Officers will be held on Saturday, April 27, 2019 from 8:00 a.m. to 8:00 p.m.

Most notable articles include the upgrade of cameras in the Booking and Evidence Rooms at the Public Safety Building; replacement of dual fuel fired furnace at the Wilmington Memorial Library, conversion of fuel tanks at Department of Public Works from underground to above-ground, replacement laptops, computers, smartboards for School Department, an article establishing an Inclusionary By-law and articles to adjust benefits for exemptions. Town Manager Hull explained Article 35 which seeks to establish a separate revenue account to be known as the PEG Access and Cable related Special Revenue Fund. He advised that Town Meeting will also be requested to appropriate funds in the amount of \$625,000. He noted that this article is in response to a change in the statute.

### **REVIEW OF ANNUAL TOWN MEETING WARRANT ARTICLES SUBMITTED BY PETITION**

Town Manager Hull advised that the Board of Selectmen will be asked to sign the final version at their meeting of March 11. The public hearing with the Finance Committee will take place on Tuesday, March 19 in the Town Hall Auditorium.

Town Manager Hull reviewed the warrant articles that were submitted by petition. A total of four articles were submitted for inclusion on the Warrant and included one request to petition the legislature to allow an individual's test results be used for employment as a fire fighter, two requests to rezone property and one for the sale of Town-owned land.

Chairman Caira asked if there were any questions or comments from the Board and there were none.

### **DISCUSSION REGARDING TOWN MEETING REVIEW COMMITTEE**

Chairman Caira stated that establishing a Town Meeting Review Committee was discussed at the last meeting. He noted that the Board received a memorandum from Town Clerk Tina Touma-Conway and indicated he would like that forwarded to committee members once they are appointed. He stated that it was suggested by a member that each Selectman should make three

appointments. Chairman Caira stated that in conversation with Town Manager Hull, there are three individuals the manager believes should participate in the committee and they are the Town Clerk, Administrative Assistant and the Town Moderator.

Chairman Caira asked if there were any comments from the Board. Selectman McCoy suggested asking members of the By-Law Review Committee to serve on this committee and indicated that he would like to be on the Committee. Selectman McCoy suggested that each member of the Board of Selectmen appoint one member to the Town Meeting Review Committee.

Selectman Eaton asked how many members were on the By-Law Review Committee and was advised there were approximately seven members. Selectman Eaton stated that he was also interested in serving on the committee and suggested reaching out to members of the By-Law Review Committee to ascertain their willingness to serve. He opined that having gone through the process to review the By-laws, it is a natural progression to now focus on one particular part of the By-Laws.

Selectman Bendel stated that he spoke to the Elderly Services Director who will ask someone from the Senior Center to serve. He feels that their perspective is important when making this decision.

Discussion took place regarding the number of individuals who should serve on the Committee. Mr. Reich advised that as it is a Committee appointed by the Board of Selectmen, it will be subject to the Open Meeting Law and will require a quorum. The larger the number of members, the more difficult it is to obtain a quorum.

Selectman McCoy believes that the Town should reach out to members of the By-Law Committee and Selectman Eaton stated that he was in agreement. Selectman McCoy opined that discussion on this matter should only take a couple of weeks.

Chairman Caira directed Town Manager Hull to reach out to members of the By-Law Committee to ascertain their interest in serving on the Town Meeting Review Committee.

Selectmen Bendel and Eaton expressed their desire to have a Committee appointed prior to this year's Town Meeting. They believe it would be beneficial for members to receive feedback from this year's attendees.

## COMMUNICATIONS

Town Manager Hull reviewed a letter from Bruce Doig, MRPA Awards Committee Chairman, to Karen Campbell, Wilmington Recreation Department, who advised that the Yentile Farm Recreational Facility in Wilmington has been selected as the winner of the 2019 Massachusetts Recreation and Park Association's "Design of Facility Agency Award". The Massachusetts Recreation and Park Association's Executive Board established this award as a way to recognize departments that create and renovate facilities that greatly enhance their community.

Town Manager Hull reviewed a memorandum from Christine R. Touma-Conway, Town Clerk, regarding a proposal to change the dates of the Annual Town Election and Annual Town Meeting to a date in March. Ms. Touma-Conway stated that she undertook a quick survey and of the 115 responses received, seven hold their elections and five hold their town meetings in March. The rest fall in the April to June timeframe. One respondent that holds both events in March warned in their response "don't do it!"

Ms. Touma-Conway further reviewed responsibilities of the Town Clerk's office and how they would be impacted. She noted that if the Town Meeting were to be moved to March it would push back the timeline for budget preparation and would specifically create a conflict in the Town Clerk's office during years that there is a State Election in November. In addition to typical preparation for those elections, state law currently requires that for the two weeks prior communities hold Early Voting.

Town Manager Hull reviewed information from the Massachusetts Municipal Association regarding Legislative Breakfast Meetings scheduled for March 22, March 29 and April 5. The meeting closest to Wilmington is scheduled for March 22 in Andover.

Town Manager Hull reviewed his memorandum regarding the Town Meeting Review Committee. He requested that the Board of Selectmen appoint Town Clerk Christine Touma-Conway and Administrative Assistant Beverly Dalton.

Town Manager Hull reviewed his memorandum regarding the Economic Development Committee. He advised that the membership has been established and that in addition to Selectman Greg Bendel, Planning & Conservation Director Valerie Gingrich and himself, Wilmington residents Michael Champoux, Patrick Giroux, Lilia Maselli and Nancy Vallee have been appointed. Town Manager Hull advised that the first meeting of the committee will take place on Thursday, March 12, 2019 at 7:00 p.m. in Room 9 of the Town Hall.

Selectman McCoy asked who made the appointments and asked whether it was the Board of Selectmen who created the Economic Development Committee. Chairman Caira confirmed that the Committee was established by the Board of Selectmen. Chairman Caira stated it was his understanding that Town Manager Hull would be making the appointments. Selectman McCoy stated that he does not recall it being discussed that the Town Manager had the authority to make appointments and he hopes that members of the Board of Selectmen will have the opportunity to make appointments.

Selectman Eaton stated that it is his recollection that the Board of Selectmen asked the Town Manager to make the appointments. Selectman McCoy suggested that each member have an opportunity to make an appointment to the committee. Members of the Board were amenable to making an appointment.

Chairman Caira asked for a motion that each member of the Board of Selectmen make an appointment to the Economic Development Committee. Selectman McCoy stated that the Town Manager has made four appointments and wants to be fair to everybody. Chairman Caira reiterated that it was his understanding that the Town Manager would make the appointments. A motion was made by Selectman Eaton and seconded by Selectman McCoy that each member make an appointment. Selectman Bendel asked when the Board should be prepared to make the appointment and the Chairman indicated for the next meeting so that appointments could be made before the first meeting. Selectman McCoy asked to table further discussion as he does not recall the Board of Selectmen asking the Town Manager to make the appointments. Town Manager Hull stated that there ought to be action this evening. The next meeting of the Board of Selectmen is on March 11 and the Economic Development Committee Meeting is scheduled to take place on March 12. He advised that the individuals he appointed believe they are appointed and are anticipating attending the meeting. Town Manager Hull stated that the Board can direct him to rescind the appointments and postpone the meeting. Selectman Eaton offered an amendment to his original motion to include that the Board of Selectmen accept and ratify the appointments made by Town Manager Hull. The motion was seconded by Selectman Bendel and by the affirmative vote of three with Selectman McCoy opposed the original motion was amended.



Chairman Cairra asked if there was any additional discussion, there being none he called for a vote. By the affirmative vote of all, it was

VOTED: That the members of the Board of Selectmen appoint one individual to the Economic Development Committee and further to ratify the appointments made by Town Manager Hull.

Town Manager Hull reviewed his memorandum regarding the Board of Appeals consideration of Bettering, LLC application. The memo served to update the Selectmen that on Wednesday, February 27, 2019 at 7:00 p.m. the Board of Appeals will conduct their meeting to review the draft written decision that was made at the January 16, 2019 meeting. The decision is intended to reflect both the vote that was taken and the basis for the decision to deny the special permit. If the decision is finalized at that meeting it must then be filed with the Town Clerk. Additionally, Board of Appeals members will discuss the process to follow for consideration of a request from Bettering LLC for a reasonable accommodation with respect to their application to construct a substance abuse detoxification center.

Selectman McCoy asked Town Manager Hull to explain the sentence that states *If the decision is finalized at that meeting it must then be filed with the Town Clerk*. Town Manager Hull stated that the decision of the Board of Appeals on January 16 was to deny the Special Permit so the decision must be filed with the Town Clerk. Selectman McCoy asked whether the Board of Appeals would be taking a vote at that meeting relative to the decision or if it would automatically be filed. Town Manager Hull advised that the Board of Appeals will have to agree that the draft decision prepared by Town Counsel reflects what they intended on the 16<sup>th</sup> and they will have to take action to endorse that decision. Selectman McCoy asked what would happen if three members decide not to support that decision. Mr. Reich advised that this is not an opportunity for a change in the substance of the decision, it is the actual text of the decision that the ZBA has to come to an agreement on how the decision will be translated. They will be discussing the content of the report of the decision that will go to the Town Clerk. Selectman McCoy asked whether there will be a vote by the ZBA to accept and he was advised there would. He further asked what would happen if three members of the Board of Appeals decide not to support the decision. Mr. Reich stated that the draft decision would not be the one filed but it would not change the vote on the matter. Selectman McCoy stated that in his thirty years, he does not believe this has happened. He stated that when the ZBA takes a vote and it is a denial, it goes to the Town Clerk's office. He asked whether there is a similar incidence on file. Mr. Reich stated that it is not uncommon. Usually there is a vote of a substantive decision and then the basis for the decision is subject to further deliberation to make sure that the content of the decision reflects the basis for that decision. Mr. Reich stated that the intent is to have a defensible decision that is filed with the Town Clerk.

Town Manager Hull reviewed correspondence from Jenny Charbonairre, The Concerned Citizens of Wilmington, who wrote that one of the members did extensive research to find a legal precedent that would apply to the upcoming Zoning Board of Appeals hearing regarding the applicability of the Americans with Disabilities Act (ADA) to local zoning by-laws. A synopsis of the decision and a 10 page ruling from the Sixth Circuit Court was provided. The Concerned Citizens of Wilmington note that the ruling states that the ADA may not be invoked to supersede local zoning by-laws. The group believes that Wilmington provided reasonable accommodations to the substance dependent population by voting to pass Article Two (*SIC – ARTICLE ONE*). This change to the by-laws opened large tracts of industrial zoned areas to medical and rehabilitation facilities.

Town Manager Hull reviewed a letter from Catherine Maloney, Sr. Manager, Government Affairs, xfinity, regarding TV channel updates.

**BOARD TO CONSIDER REQUEST OF DANA BURNHAM, PRESIDENT, WILMINGTON FARMERS MARKET ASSOCIATION, TO CONDUCT THE FARMERS MARKET ON SUNDAYS, JUNE 16, 2019 THROUGH OCTOBER 23, 2019, 10:00 A.M. TO 1:00 P.M.**

Chairman Cairra asked if there were any questions, comments or a motion. A motion was made by Selectman Bendel, seconded by Selectman Eaton and by the affirmative vote of all, it was

VOTED: That the Board of Selectmen approve the request of the Wilmington Farmers Market Association to conduct the Farmers Market on Sundays, June 16, 2019 through October 23, 2019, 10:00 a.m. to 1:00 p.m.

**BOARD TO CONSIDER REQUEST FROM WILMINGTON BAND PARENTS AND FRIENDS TO SELL COFFEE, DONUTS, POPCORN, COLD DRINKS, POMPOMS AND BALLOONS DURING THE MEMORIAL DAY PARADE**

Chairman Cairra asked if there were any questions, comments or a motion. A motion was made by Selectman Eaton, seconded by Selectman Bendel and by the affirmative vote of all, it was

VOTED: That the Board of Selectmen approve the request of the Wilmington Band Parents and Friends to sell coffee, donuts, popcorn, cold drinks, pompoms and balloons during the Memorial Day parade.

**BOARD TO CONSIDER REQUEST FROM WILMINGTON BAND PARENTS AND FRIENDS TO SELL REFRESHMENTS (POPCORN, COTTON CANDY, HOT PRETZELS, SODA, WATER) DURING THE RECREATION COMMISSION'S SUMMER CONCERT SERIES**

Chairman Cairra asked if there were any questions, comments or a motion. A motion was made by Selectman Bendel, seconded by Selectman Eaton and by the affirmative vote of all, it was

VOTED: That the Board of Selectmen approve the request of the Wilmington Band Parents and Friends to sell refreshments (popcorn, cotton candy, hot pretzels, soda, water) during the Recreation Commission's summer concert series.

**BOARD TO CONSIDER REQUEST OF WILMINGTON SONS OF ITALY AND WILMINGTON BAND PARENTS TO USE THE SWAIN SCHOOL PARKING LOT ON SATURDAY, SEPTEMBER 7, 2019 FROM 7:00 A.M. TO 5:30 P.M. FOR THE PURPOSE OF CONDUCTING A YARD SALE TO RAISE FUNDS (RAINDATE: SATURDAY, SEPTEMBER 21)**

Chairman Cairra asked if there were any questions, comments or a motion. A motion was made by Selectman McCoy, seconded by Selectman Eaton and by the affirmative vote of all, it was

VOTED: That the Board of Selectmen approve the request of Wilmington Sons of Italy and Wilmington Band Parents to use the Swain School parking lot on Saturday, September 7, 2019 from 7:00 a.m. to 5:30 p.m. for the purpose of conducting a yard sale to raise funds (Raindate: Saturday, September 21)

**BOARD TO CONSIDER REQUEST FROM NANCY ROBERTS, PRESIDENT, TOUCHDOWN CLUB OF WILMINGTON TO USE THE PARKING LOT AT THE FOURTH OF JULY BUILDING FOR THE ANNUAL WHS FOOTBALL CAR WASH ON SUNDAY, AUGUST 11, 2019, 9:00 A.M. TO 12:00 P.M. (RAINDATE: SUNDAY, AUGUST 18, 2019)**

Chairman Cairra asked if there were any questions, comments or a motion. A motion was made by Selectman Bendel, seconded by Selectman McCoy and by the affirmative vote of all, it was

VOTED: That the Board of Selectmen approve the request of Nancy Roberts, President, Touchdown Club of Wilmington to use the parking lot at the Fourth of July Building for the Annual WHS Football Car Wash on Sunday, August 11, 2019, 9:00 a.m. to 12:00 p.m. (Raindate: Sunday, August 18, 2019)

**BOARD TO CONSIDER DESIGNEE TO SERVE ON THE FINANCE DIRECTOR/TOWN ACCOUNTANT SCREENING COMMITTEE**

Selectman Eaton expressed his willingness to represent the Board of Selectmen. Chairman Cairra asked if there were any questions, comments or a motion. A motion was made by Selectman McCoy, seconded by Selectman Bendel and by the affirmative vote of all, it was

VOTED: That the Board of Selectmen appoint Jonathan Eaton as their designee to serve on the Finance Director/Town Accountant Screening Committee.

**PUBLIC COMMENTS**

Chairman Cairra advised that public comments is not a question and answer session. Chairman Cairra asked individuals to provide their name and address when making a comment.

Suzanne Sullivan, Lawrence Street, stated that she has continually asked the Board of Selectmen whether they will make sure they protect and defend the by-laws of the Town. Ms. Sullivan read from the Rules and Regulations of the Board of Appeals 3.5.3 Repetitive Petition. She opined that the discussion tonight about the accommodation is illegal as there is no basis for them (Bettering, LLC) to be coming to the Board of Appeals. She stated that the Town is setting up a process that is counter to the Town's by-laws and state statute.

Ms. Sullivan alleges there is no process allowed under the by-laws for that petition (reasonable accommodation) or any way for them (Bettering, LLC) to come in for an accommodation to the Board of Appeals. She stated that she has continually asked for someone to cite the law, chapter and verse, which will allow them to come forward with the petition after receiving a denial. Ms. Sullivan alleges the Town is developing a fake process for the applicant.

Ms. Sullivan asked what the criteria was for the appointments for Route 38 Redevelopment (SIC). Town Manager Hull stated that he sought individuals with diversity of background, individuals that had some basis looking at economic development. Ms. Sullivan stated that it is curious how they came forward to him. She stated she was present at the last meeting and it was her understanding that there would be a process for appointing people. She opined that the Town Manager does not want anyone to participate with the exception of who he has handpicked.

Ms. Sullivan stated that relative to the Town Meeting Committee, she sees Town employees and does not see residents. She noted that she does not know who is on the By-law Committee but the Board of Selectmen have only referenced Town employees. Chairman Cairra asked whether Selectman McCoy could answer as he is on the By-law Committee. Town Manager Hull reviewed members of the By-Law Review Committee.

Ms. Sullivan insinuated that appointments were handpicked and that the Town Manager was good friends with the members. Chairman Caira advised Ms. Sullivan that her comments were offensive. Town Manager Hull stated that he does not have a personal relationship of any of the candidates and for the third time he explained how the appointments were made.

Selectman Eaton read from a memorandum from Town Manager dated January 4, 2019 relative to the establishment of the Economic Development Committee. At that time, Selectman Bendel expressed his interest in serving on the committee. Chairman Caira stated the process outlined in the memorandum was followed and the Board of Selectmen voted this evening to expand that and include four additional appointees.

Ms. Sullivan stated that she submitted her request to be on the Town Meeting Committee. She stated that she is the person who brought it forward to the Board several months ago. She opined that there needs to be more residents involved and advised that she is concerned with the Route 38 Committee.

Ms. Sullivan stated that several years ago her name was written in to be a member of the Redevelopment Committee (Authority). She asked whether a legal entity for the redevelopment of Route 38 still exists. Town Manager Hull advised that, to his knowledge, there is no active committee.

Frank West, Birchwood Road, stated his recollection that it was the Redevelopment Committee a lot of what they did was a stretch of Route 38 and they had not met in several years and it was the vote of the Board of Selectmen (*sic*) to dissolve. Town Manager Hull stated the Redevelopment Authority had funding and studies where completed on the Route 38 corridor. He stated that funding was expended and the committee was dissolved.

Mr. West stated that he brought up the idea of inclusionary zoning and the Board of Selectmen asked Ms. Gingrich to develop a proposal for inclusionary zoning. He stated that the current proposal is for a 15% affordable housing component and he would like that increased to 25% and asked the Board of Selectmen what their opinion is of an increase.

Mr. West stated that he is disappointed that former Selectmen Chairman Michael Champoux stated at the last meeting that the best he and the board could do was see if This Old House would do restoration work and sell the Roman House for a dollar. He stated that there should be an assessment to see if something could be done to brighten up the building. Mr. West asked that the Town Manager be directed to speak with George Hooper, Public Buildings Superintendent, to assess the building and determine what can be done. He noted that perhaps the building could be put on sewer and to have it painted.

Selectman Eaton stated that there are some ornate, impressive aspects of the Roman House and he hopes that the Town can do something to spruce it up without expending a lot of funds. He noted that the Roman House is not equipped to house the School Administration.

Selectman Eaton stated that he respects Mr. West's request to increase the percentage of affordable in the proposed inclusionary zoning. He stated that he respects the idea and noted it is worthy of consideration. Selectman Eaton stated that he does not support an increase, it is his belief the Town will be inviting opposition. Residents who attend Town Meeting to oppose the 25% will oppose the 15%. He also opined that the process that the Town took to get the inclusionary zoning was open. Ms. Gingrich conducted open forums to invite people in to get their ideas.

Selectman McCoy asked when the Roman House is scheduled to be painted again and was advised by the Town Manager that he was not sure.

Selectman McCoy commented regarding the Inclusionary Zoning and noted that if the amount is increased to 25% he believes developers will receive bonus units.

Selectman Bendel stated that he would not be in favor of expending funds for an assessment of the Roman House as the Town has the current Facility Master Plan.

Selectman Bendel stated that he is appreciative of the work completed by Ms. Gingrich and her staff and he would not be in favor of increasing the percentage.

Chairman Cairra stated that \$24,000 was expended for roof repair at the Roman House. He is not in favor of expending funds but is not opposed to painting the building.

Members recognized at some point the Roman House will be moved or torn down.

Selectman Bendel stated that he believes allocation of funds would be better used to spruce up the Wildwood School where there are students attending.

Chairman Cairra stated that relative to the Inclusionary Zoning By-Law, he would accept the recommendation of Ms. Gingrich and other professions who developed the by-law and not increase the percentage.

Mr. West stated that it is his opinion that if the Inclusionary Zoning By-Law goes to Town Meeting seeking 25% and Town Meeting votes at 15%, it is a compromise at 15%.

Mr. West stated that he is not suggesting to revamp the Roman House but he is suggesting that Mr. Hooper may have inexpensive ways to improve the exterior of the building.

Town Manager Hull stated that he will speak with Mr. Hooper and recognize the budget for improvements will not be significant.

Rob Fasulo, Marjorie Road, stated that he looked at the deed file with the Registry of Deeds and noticed that along with the sale of the rink, conveyed was a Phase 3 and asked whether the Town was notified what the Phase 3 portion is. He asked whether, during discussions, Phase 3 had a monetary value. Chairman Cairra stated not to his knowledge. Town Manager Hull explained the property and how the deed is set up. Phase 3 is an area behind C & J Lawnmower. He does not recall there being any focus on Phase 3 as the objective was to purchase the rink.

Mr. Fasulo stated that a couple of months ago, the Board of Selectmen was asked by a group of residents to have a discussion and asked that the Board of Selectmen take up a motion to reconsider not going into Executive Session regarding the Chairman of the Zoning Board of Appeals. He stated that there had been discussion regarding the Facebook post but he does not recall discussion of any other incidents. He stated that he went through WCTV tapes and on January 13, 2016 at the 26 minute mark, the chairman is on record using a questionable word which establishes a long-term pattern of usage. Mr. Fasulo asked the Board of Selectmen to reconsider their vote to have discussion among themselves. Mr. Fasulo opined that the ZBA Chairman can only vote one way without getting the Town in trouble and stated that the Board of Selectmen need to do their job and do what the public has asked them to do and represent them.

Selectman Eaton stated that before discussion continued, he would need to recuse himself. Selectman Eaton left the meeting at this time. Mr. Fasulo had completed his comments and there was no further discussion. Selectman Eaton returned to the meeting.

Janice Sawyer, Lawrence Street, asked to clarify whether there is a rule when the minutes get posted to the website. She was on the website today, hoping to read the minutes from the previous meeting and the last posted minutes is October 9, 2018. She stated that she was at Town Hall to request the memorandum from the Town Manager that is on the agenda relative to Bettering LLC. Ms. Sawyer stated that the Town Clerk did not have the memorandum. She left her email address with two people who said they would contact the Town Manager. She called back at 3:00 in the afternoon and was advised no one had it. Ms. Sawyer stated that while at Town Hall she was asked whether she had put in a public records request. She stated that she wanted it before the meeting and did not know it would be on until the agenda was posted, the public records request allows the Town ten days to respond to the request and she wanted it for the meeting. Ms. Sawyer stated that at the last meeting she was left with the impression that she would be able to obtain documents on the agenda provided to the Selectmen on the Monday.

Town Manager Hull stated that when a request for public records is received, the Town is required to provide the document within ten days. Relative to requests of her nature that when correspondence is generated to the Board of Selectmen they ought to have the opportunity to see it first before it is disseminated to other audiences. Town Manager Hull stated that he would agree that there is no reason she shouldn't have been able to receive the document today. Town Manager Hull stated the correspondence will be posted to the website following the meeting.

Relative to the minutes, Town Manager Hull stated that minutes should be posted but advised that in his office three members of his office left at the end of October beginning of November. The recording secretary is also responsible for doing payroll now because one of the individuals who left the Town's employ was the Payroll and Benefits Coordinator. It has been a challenge getting the minutes completed.

Chairman Cairra offered that if Ms. Sawyer reached out to one of the Selectmen they would assist in providing the material.

Chairman Cairra asked if there were any additional public comments and there were none.

#### NEW BUSINESS

Selectman McCoy stated that relative to Ms. Sullivan's comment earlier, he assured that he defends the Town's by-laws.

Selectman McCoy suggested that the Town extend an olive branch to the new owner of the hockey rink and invite him to attend a Board of Selectmen meeting.

Selectman McCoy advised Selectman Eaton that he may wish to leave the room as he intended to discuss Mr. Veerman. Selectman Eaton recused himself and left the room. Selectman McCoy opined that an Executive Session was warranted and made a motion to enter Executive Session at a meeting of the Chairman's choosing to discuss the issues as listed on the February 11, 2019 agenda. Chairman Cairra advised that he would schedule an Executive Session for a future meeting. Selectman Eaton returned to the meeting room.

Selectman Bendel stated that former Selectman Loud asked that he carry on the "shout out" to Wilmington's veterans. He recognized Ralph Belmore, US Army and lifelong Wilmington resident. Mr. Belmore served in the Korean Conflict.

Chairman Caira asked that Town Manager Hull reach out to representatives of Youth Hockey, Skating Club and WHS Hockey Team to make sure negotiations relative to ice time are proceeding well. He asked that the new rink owner, Mr. Gallant, be contacted and determine his business plans and how the Town of Wilmington and its youth will fit into those plans.

Chairman Caira stated that he does not view it as a detriment for Town employees to serve on committees due to the position that they hold. He believes that the appointments the Board of Selectmen and Town Manager make are very good noting that they are a diverse group of volunteers who are committed to working on behalf of the residents of this town.

Town Manager Hull read into the record an email received by Jonathan Silverstein and Mark Reich, Town Counsel, from Ms. Rebeiro relative to 362 Middlesex Avenue and procedures of the Board of Appeals as it relates to public comment. Town Manager Hull advised that Attorney Silverstein responded to the email and read that response into the record.

### IMPORTANT DATES

Town Manager Hull reviewed important dates including:

- February 26 – Finance Committee Meeting – Town Hall – Room 9 – 7:00 p.m.  
*POLICE DEPARTMENT, PUBLIC SAFETY DISPATCH, FIRE DEPARTMENT*
- February 28 – Finance Committee Meeting – High School – Room 1-062 – 7:00 p.m.  
*WILMINGTON PUBLIC SCHOOLS*
- March 5 – Finance Committee Meeting – Shawsheen Tech – 7:00 p.m.  
*SHAWSHEEN TECH*
- March 7 – Finance Committee Meeting – Memorial Library – 7:00 p.m.  
*ELDERLY SERVICES, LIBRARY*
- March 11 – Board of Selectmen – Town Hall – Room 9 – 7:00 p.m.
- March 12 – Economic Development Committee – Room 9 – 7:00 p.m.
- March 19 – Finance Committee/Planning Board Joint Public Hearing Relative to the Warrant for the Annual Town Meeting – Town Hall Auditorium – 7:00 p.m.
- March 25 – Board of Selectmen – Town Hall – Room 9 – 7:00 p.m.
- April 3 – Brush Drop-Off – Old Main Street – 8:00 a.m. to 2:00 p.m.
- April 6 – Brush Drop-Off – Old Main Street – 9:00 a.m. to 4:00 p.m.
- April 6 – Rabies Clinic – Public Buildings Department – Noon to 2:00 p.m.
- April 8 – Last Day to Register to Vote at the Annual Town Election and Town Meeting – Town Clerk's Office Open 8:30 a.m. – 8:00 p.m.
- April 8 – Board of Selectmen – Town Hall – Room 9 – 7:00 p.m.
- April 10 – Brush Drop-Off – Old Main Street – 8:00 a.m. to 2:00 p.m.
- April 13 – Brush Drop-Off – Old Main Street – 9:00 a.m. to 4:00 p.m.
- April 17 – Brush Drop-Off – Old Main Street – 8:00 a.m. to 2:00 p.m.
- April 20 – Brush Drop-Off – Old Main Street – 9:00 a.m. to 4:00 p.m.
- April 20 – Little League Opening Day Parade
- April 20 – Easter Egg Scramble – Town Common – 11:00 a.m.
- April 24 – Brush Drop-Off – Old Main Street – 8:00 a.m. to 2:00 p.m.

- April 27 – Brush Drop-Off – Old Main Street – 9:00 a.m. to 4:00 p.m.
- April 27 – Annual Town Election – Polls Open 8:00 a.m. to 8:00 p.m.
- May 4 – Annual Town Meeting – High School Auditorium – 10:30 a.m.
- May 5 – Plastic Bag Ban in Effect

A motion was made by Selectman Eaton, seconded by Selectman McCoy and by the affirmative vote of all, it was

VOTED: That the Board of Selectmen adjourn.

Meeting adjourned at 9:50 p.m.

Respectfully submitted,

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Recording Secretary