

## **BOARD OF SELECTMEN / FINANCE COMMITTEE MEETING**

**Monday July 15, 2019 – 6:00 PM – Richmond Town Hall, 1529 State Road**

**PRESENT:** Mr. Roger Manzolini, Chair of the Board of Selectmen; Mr. Neal Pilson, Selectmen; Mr. Alan Hanson, Selectmen; Mr. Robert Markel, Interim Town Administrator; Mr. Robert Gniadek, Chair of the Finance Cte.; Ms. Pat Callahan, Finance Cte.; Mr. John Mason, Finance Cte.; Mr. Steve Patterson, Finance Cte.; Ms. Angela Garrity, Richmond Accountant; Mr. Paul Lisi, Richmond Treasurer/Collector

**ABSENT:** Mr. Bob Youdelman, Finance Cte.;

**GUEST:** Ms. Beth Goodman, Town Attorney; Mr. Christian Hanson, Balderdash Cellars

Mr. Manzolini opened the meeting at 6:00 PM and began the discussion with the Finance Committee.

Mr. Gniadek noted that he did not recall ever having been asked to approve year-end transfers so he presumed that what was needed was to review the transfers that have been proposed by Town Accountant and the Treasurer and have any discussion necessary before asking for a motion to approve.

There was a handout distributed to the Finance Committee that outlined all the year-end balances and transfers. Mr. Gniadek requested that Ms. Garrity arrange to meet with the new Town Administrator when she takes office and invite the Finance Committee to that meeting so that several questions could be answered. She will do that.

Mr. Gniadek explored several questions he had arising from the information provided including the school's transfers, which are done by the school. He mentioned a few things in deficit, including the Senior Work-Off, which Mr. Paul Lisi manages. It was decided to await Mr. Lisi's arrival to obtain an explanation. In the Ambulance column Intercept Charges in the amount of \$1,700 were shown to be in deficit. Those are charges from County Ambulance, which are not controllable by the Town. Mr. Lisi arrived at that time to explain that the Ambulance Expenses column had \$8,224.30 available which will net the \$1,700 deficit.

Mr. Lisi explained that the Senior Work-Off deficit is just a clerical abatement against property taxes. Transfer for the entire grouping of \$38,789.00 is slated to come from insurance and bonding, which Mr. Gniadek thought was not the correct account number. Mr. Lisi determined that the group number was in error and corrected it.

Mr. Gniadek asked why Road Maintenance Vacation and Sick Pay and Town Garage are shown as coming out of Road Construction – why not Road Maintenance? Mr. Lisi said there was no particular reason and it all nets out either way. Mr. Lisi will change the report to show those charges coming out of Road Maintenance.

There was a \$3,500 item for Segal's OPEP audit bill – which is a necessary study to be done every year. Next year, which will be a more in-depth study, will be budgeted for \$9,500. There was a discussion of the costs and procedures involved.

Encumbrances: Software purchase and technology hardware – Software purchase is for the Sewer Betterment System, which is still having kinks worked out. The technology hardware is a different piece of software necessary for that project.

The Tree Warden has \$7,500 left over – can that amount be encumbered? Not unless there were expenses accumulated as of June 30, 2019. The \$14,000 indicated is accumulated expenses for an existing project, which means the funds can be encumbered.

The lawn mower – At a town meeting this item was approved out of free cash and purchase was begun in FY'19 and will be finished in FY'20, so those funds need to be encumbered and carried forward. Ms. Pat Callahan asked that Mr. Lisi assure her that the monies that had been put aside for the building project two years ago would still be available for use this coming year. She was assured that it was so. Mr. Lisi explained that in future things would have to be done differently. The Town cannot continue to roll over encumbered funds for years. If there are not projects begun with documentation that can be provided to the auditors for those funds, they will have to be closed out to the General Fund.

Funds were committed for the building of a boat shed for the Fire Department's Rescue Boat. Nothing was encumbered in FY'19 as no work was started. That money will be available in FY'20.

The new total is \$367,247.50. A motion was made by a member of the Finance Committee that the transfers from the accounts listed as orally modified by Mr. Roger Manzolini be approved. The motion was seconded and adopted by unanimous consent.

Mr. Manzolini moved that the Board of Selectmen approve the transfers as amended and approved by the Finance Committee. Mr. Hanson seconded the motion, which was passed by unanimous vote: Mr. Pilson, Aye, Mr. Manzolini, Aye, Mr. Hanson, Aye.

Encumbrances modified with the addition of the consulting account in the amount of \$68,658.62 created a new total of encumbrances of \$367,247.50. A motion was made and seconded by a member of the Finance Committee to approve the encumbrances. The motion was adopted by unanimous consent.

Mr. Manzolini moved that the Board of Selectmen approve the total of encumbrances as approved by the Finance Committee. Mr. Pilson seconded the motion, which was passed by unanimous vote: Mr. Pilson, Aye, Mr. Manzolini, Aye, Mr. Hanson, Aye.

Mr. Pilson offered a note of thanks to the Finance Committee and the town Staff who prepared the documents.

A motion to adjourn the joint meeting with the Finance Committee was made and seconded. The motion was carried by unanimous consent.

Mr. Manzolini recognized Ms. Danielle Fillio who joined the meeting and received a warm round of applause as the newly hired Town Administrator. Ms. Fillio will begin her work as Town Administrator for Richmond on August 5<sup>th</sup>. Mr. Manzolini advised Ms. Fillio that there would be a welcome party for her on August 5<sup>th</sup> at 12:00 Noon.

**Re-open Hearing on Balderdash Site Plan:** Mr. Manzolini noted that the Site Plan, which was brought to the Zoning Board of Appeals for approval, was referred to the Board of Selectmen as the approving body. At the Wednesday, July 10<sup>th</sup> meeting of the Selectboard, the Site Plan Hearing was continued until today.

There was a discussion of what exactly had been decided and what needed to be done going forward. Ms. Goodman said that it was her understanding that, during the Board of Selectmen's review of the new Special Permit for Farm Function, (which is a zoning permit), the Board was concerned about the location of parking, which was not within the setback. The conclusion of Mr. Bill Martin of the Zoning Board after reviewing the bylaw was that there is a separate provision that regulates parking and it does not have a setback. His interpretation, therefore, was that parking does not require a setback and that the approving authority for the Site Plan is the Board of Selectmen.

The issue of the existence of the south parking lot (adjacent to the abutter property) was raised. A discussion ensued during which Ms. Goodman advised the Board that what they needed to accomplish at this meeting was to either approve or not approve the Application for Special Permit. She further advised that the Board has the option to grant the Permit at this meeting and then review that Permit in September. In lieu of granting a Farm Function Permit, which could be multi-year and multi-event; it had been decided at a previous meeting to approve the initial applications for individual Special Event Permits for the planned summer events of 2019.

Mr. Pilson said that his personal preference would be to have a set of experiences of how the events approved under the Special Event Permits worked out in practice. It had been his expectation that any further discussion would be held until after the end of the summer events on July 6<sup>th</sup>. The complexity of the Farm Function Permit process is one for which the Board needs to be better prepared. Mr. Pilson suggested continuing to approve individual Special Event Permits until the end of the summer season and, in September, discuss a multi-year, multi-event Farm Function Permit. Mr. Manzolini agreed but wished to continue review of the Site Plan.

Ms. Goodman raised the question of the requirement in the bylaw of a Site Plan to accompany the Special Permit application and questioned how the Board could approve the Site Plan and not the entire Special Permit. She suggested that the Board continue the whole matter until September and because the Special Event Permit is so vague, it could be noted that for those

individual Event Permits, the Board is relying on this Site Plan (without having specifically approved the Site Plan). Then, if the matter is being held off until September and it is determined that modifications to the Site Plan must be made, that can happen as the Site plan was not previously approved. Ms. Goodman also said that the Board could hear the discussion tonight, closing the Public Hearing, issuing a Special Permit with conditions and setting up a review in September. Then the Special Permit can be modified at that time.

Mr. Pilson asked Mr. C. Hanson if the Town Counsel's suggestion was acceptable. Mr. C. Hanson said he felt that among the offered suggestions, the one he felt most workable was that something be approved at this meeting and then reviewed in September. He would like to have assurances added that events booked in advance for next summer (such as a wedding) be grandfathered in regardless of subsequent approvals or lack of approvals. Modifications to the conditions could be required after approval.

Mr. Pilson asked the gentleman representing the abutter if their principal interest was in the south parking lot, which does not appear in the Site Plan and which the Board would most likely not approve for parking except for the owner's personal cars. He was assured that this was the case.

Mr. Manzolini pointed out that Balderdash has already hosted some large events and they have gone well and have engendered no complaints. He felt that the discussion was becoming too restrictive and over-protective. Mr. Pilson agreed with Mr. Manzolini that there have been no issues or complaints as a result of the events that have occurred. However, the scope of the Farm Function Permit is very broad and has a long life and this Town has had no previous experience with granting such broad approval. He was, however, prepared to approve a Farm Function Permit with the understanding that the Board would review it in September; that the applicant would be permitted to book events beyond the date of September, 2019 so long as they are consistent with the types of events booked to date and complied with the conditions of the individual Special Permits. When the review occurs, Mr. Pilson would like to have in hand a body of information, including the list of possible additional conditions from Counsel.

Ms. Goodman asked for a consensus from the Board about the previously agreed upon conditions: Category A - Monday-Sunday private events of less than 100 people, which may include amplified music, the volume of which would be reduced after 10:00 PM with no music after 11:00 PM and Category B – Approximately 12 events a year, outside of normal business hours with about 100 – 135 people – Monday – Sunday 6:00 – 11:00 PM (most likely on the weekends). For the few large events each year that do not fall under Category A or B, Balderdash would come back to the Board for a Special Event Permit. The Board was comfortable with that.

Mr. Pilson said that the Board was prepared to give preliminary approval for the Farm Function application for the property at 79 State Road, subject to conditions that will be drafted and to

the site plan as presented and no parking in the South parking lot at 81 State Road, with the exception of personal vehicles and incorporating the information provided by the applicant.

Ms. Goodman summed up the conditions of the permit as follows: The Special Permit including specified Category A and Category B events, the attached Site Plan and all other agreed upon conditions noted above, will be issued under the Farm Function Bylaw with a three-year duration starting at the date of adoption and subject to review at any time and with a scheduled annual review at the end of September of each year. Mr. C. Hanson asked that a clause be included in the permit to indicate that events already scheduled will be allowed to continue regardless of the findings of the Board at review.

Ms. Goodman advised Mr. C. Hanson that he has the protection of a legal argument that the company has a permit with conditions and modification of the permit is affecting his property interests if that circumstance arose. Mr. C. Hanson objected for the record. At a reminder from the audience, Ms. Goodman included the following additional condition – that sound at the South property line will not exceed 60 decibels.

The site plan was reviewed, and some adjustments were made dealing with access and exit to the parking lot and provision for emergency evacuation. Mr. C. Hanson was asked to submit a corrected site plan showing the changes made, which he will do.

Mr. Pilson moved that, based upon Town Counsel's summary and comments noted above, with an updated site plan reflecting the comments from this meeting, the Board gives conditional approval for the Farm Function Special Permit for Balderdash Cellars, subject to final review at the next Board of Selectmen meeting to confirm that the conditions as written and the updated site plan are correct. Mr. Manzolini seconded the motion, which was adopted by unanimous vote: Mr. Manzolini, Aye; Mr. Hanson, Aye; Mr. Pilson, Aye.

Final approval of the Farm Function Permit will be on the agenda for the next meeting of the Board on July 24<sup>th</sup>. After that approval, there will be a 20-day appeal period, then a Clerk's Statement will be issued that the 20-day appeal period has expired, which is recorded by the applicant at the Registry of Deeds.

Mr. Pilson than asked Mr. C. Hanson under what authority does Balderdash go forward with events between now and the end of the final approval and appeal period. Mr. C. Hanson responded that he will be requesting additional one-day special permits for those planned events. In fact, Mr. C. Hanson submitted for the Board's approval a request for a one-day Special Permit for a local group on July 21<sup>sat</sup> at the Balderdash Cellars property at 79 and 81 State Road. The event will run from 6:00 to 8:00 PM, there will be amplified music, the event will take place inside and on the patio, parking will be in the North parking lot and will consist of under 100 people. Mr. Pilson moved to approve the Special Event Permit as submitted. Mr. Manzolini seconded the motion, which was adopted by unanimous consent.

Mr. Pilson moved that the Public Hearing on the application for Balderdash Cellars for a Farm Function Permit be closed. The motion was seconded by Mr. Alan Hanson and passed by unanimous consent.

**Town Administrator Report:** Hilltop Orchards Noise Complaints. Mr. Manzolini reported that he has received complaints from people in the neighborhood that the music coming from Hilltop is louder than it has ever been in the past and is causing an annoyance. Mr. Manzolini spoke to a musician in the absence of the manager, who told him that he has been playing music at that location for eight years and there has been no change in the amplification. Mr. Manzolini noted that for seven years there have been no complaints and in just the last year there have been at least four different people complaining more than once.

Mr. Mark Fowler of 482 Canyon Road addressed the Board to report on previous attempts at submitting complains about the noise level from Hilltop Orchards to the Town of Richmond that never reached the Board of Selectmen. It is not, in fact, a recent issue. Mr. Manzolini has asked Mr. Bob Markel, the Interim Town Manager, to review the winery pouring permit that was issued to Hilltop to determine exactly what is allowed and whether they are in violation of the permit conditions. Mr. Pilson noted that a "Cease and Desist Order" has been filed by the Building Inspector. The issue will be coming before the Zoning Board of Appeals to determine if what they are doing requires a Special Permit or if what they are doing is being done as of "right."

Clarification of the various issues was offered by a member of the audience: 1. Is Hilltop violating the pouring permit? 2. Is Hilltop allowed to have people on their patio by "right?" 3. Is Hilltop allowed to play music? Mr. Pilson said that so far as he knows, Hilltop has not applied for any type of Farm Function Permit or any, one-day Special Event Permit. Therefore, the question is "On what authority is he conducting his business, which includes loud music, people on the patio, etc.?" There have also been complaints of parking overflow which results in cars being parked illegally on private property and on Rte. 295.

Mr. Manzolini spoke to the relationship of the Town and the State Police who agreed to be the enforcing body in the absence of a town police force. An abutter of Hilltop Orchards reported that several times he tried to have the State police come out and address the issue of the noise from Hilltop Orchards and was given excuses why they could not come. An officer of the State Police discussed the issue with this neighbor and advised him that they would need direction from the Board of Selectmen in order to be able to shut down the event. He also noted that the Town has no forms for citations that can be issued.

Mr. Pilson said that a bylaw needs to be adopted at the next Town Meeting, allowing for civil fines and other non-criminal dispositions that the Town does not currently have. Mr. Manzolini wanted the neighbors to know that the Board is working on a solution.

Ms. Goodman produced a copy of the Balderdash Farm Brewery License as a sample, which basically allows selling of the wine or other product that is grown and/or manufactured on site

either in the interior and/or on adjacent vineyard property. Hilltop is an apple orchard located in an agricultural and residential zone.

Ms. Goodman summarized that the issues are whether the business has a pre-existing non-conforming use which it has done regularly for many years before the zoning came into effect and which was legal at the time. Since the Building Inspector has issued a Cease and Desist Order, in his opinion, what they are doing is not allowed under the existing, non-conforming use or they have not satisfactorily shown him that it is. They must either stop that use or appeal that decision to the Zoning Board of Appeals. Hilltop will come before the ZBA on July 31<sup>st</sup>.

**The Constable Issue:** Mr. Markel reported that in a conversation he has had with the Fire Chief and the Police Chief he has been advised that there have been three incidents of regulations not being followed since the meeting in which the regulations were outlined and agreement was obtained from the Constables that the regulations would be followed. The Police Chief recommends that the radio and the pager be returned to the Town and that the Constable's phone number be deleted. The Fire Chief has already deleted the phone number of the constable and has requested return of the radio and the pager to no avail. The Chief suggests that either the Administrator or Town Counsel should write a letter, demanding the surrender of the pager and the radio, both of which are town property. Mr. Manzolini suggested that Mr. Markel write that letter, which he will do.

**Contract for Richmond Town Administrator:** The contract was built on the model of the contract between Richmond and Mr. Mark Pruhenski, the previous Town Administrator, with the only difference being in the salary amount. Ms. Fillio asked that the starting date noted in the contract be changed from August 1<sup>st</sup> to August 5<sup>th</sup>. The Board was agreeable to that change. Ms. Fillio asked for a copy of the Personnel Policy referred to in the contract, which she will be given access to, most likely with a request to update and maintain them. The issue of vacation days and working hours, was discussed and clarified to her satisfaction.

Mr. Pilson moved that the employment agreement between the Town of Richmond and Ms. Danielle Fillio be adopted and the Chair of the Selectboard be authorized to sign the Agreement on behalf of the town. Mr. Manzolini seconded the motion, which was adopted by unanimous vote. Ms. Fillio and the Board signed the agreement.

Mr. Pilson requested that the Interim Town Administrator's agreement be extended so that he will be here through the transition period for Ms. Fillio. The Board was in agreement, as was Mr. Markel.

**Inter-Municipal Agreement – Shared Excavator with W. Stockbridge:** Mr. Markel reported that he had spoken with the West Stockbridge Town Administrator and the contract is done.

**Contract with the City of Pittsfield for Veterans' Services:** Mr. Markel spoke with Mr. Matt Kerwood in Pittsfield and was advised that the Law Department has still not acted.

**Weed Management Contract with SOLitude Lake Management:** The contract has been signed and returned and the Town is awaiting a date for the work to be done.

**Thank You Letter to Marie Ryan, Former Town Clerk:** Mr. Markel said he has drafted a letter of congratulations for Ms. Marie Ryan on her appointment to the post of Town Administrator in West Stockbridge and thanking her for her work as Town Clerk for Richmond.

**Inter-Municipal Agreement with West Stockbridge for Support of Enabling Legislation for Shared Services:** Mr. Pilson sent Ms. Goodman a copy of a similar agreement between the Towns of Lee and Lenox as a model but asked that she write it as an exploration of a possible agreement and not as a firm contract. Ms. Goodman will draft the agreement and forward it to Mr. Pilson and Mr. Markel.

**Alternate Delegate to the Berkshire Regional Planning Commission:** Mr. Manzolini moved that Mr. Richard Bell be appointed as the Delegate and Mr. Fred Schubert as the Alternate to the Berkshire Regional Planning Commission for FY'2020. The motion was seconded by Mr. Pilson and adopted by unanimous consent.

**Town Clerk Appointment:** Mr. Manzolini proposed that the Town pay Ms. Angela Garrity \$15,000 a year to function as the Town Clerk and use the remaining \$5,000 for an Assistant Town Clerk. Mr. Pilson determined that the proposal was properly funded and was agreeable to all parties.

Mr. Manzolini moved that Ms. Angela Garrity be appointed Town Clerk at a yearly salary of \$15,000 and that a \$29.00 per hour compensation be approved for Ms. Marie Ryan to function as the Assistant Town Clerk, on an as-needed basis not to exceed the budgeted amount. Mr. Pilson seconded the motion, which was passed by unanimous vote.

Mr. Pilson moved that Ms. Marie Ryan be appointed as the Assistant Town Clerk at the salary approved above. Mr. Manzolini seconded the motion, which was carried by unanimous consent.

**Mail/Sign Warrants:** Warrants were duly signed.

**Town Administrator Report:** Mr. Markel reported that he has finally been approved as the Town's CORI Administrator, which has eliminated the block to having some people checked so that they can begin work.

Mr. Markel noted that he has spoken with Mr. Steve Erenburg about joining the Long-Range Sustainability Working Group. There was a discussion of the actual Chair of the Committee who Mr. Markel will contact to set a date for the next meeting.

Mr. Markel provided some additional documents.

Mr. Manzolini moved that the Board approve the extension of the guardrail on Swamp Road to block cars from being parked along Scace Brook, which will be paid for by a neighboring property owner. Mr. Pilson seconded the motion, which was adopted by unanimous vote.

Mr. Pilson asked for clarification of the agreement with Mr. Markel to remain on board. Mr. Manzolini moved that the Town continue Mr. Markel's employment until August 15<sup>th</sup> or earlier. The motion was seconded and adopted by unanimous vote.

**Selectmen's Matters:** Mr. Hanson reported that he has spoken to Mr. Paul Greene, the Zoning Officer, about Hilltop Orchards. He indicated that he has posted a Cease and Desist Order and was waiting for direction from the ZBA.

Mr. Hanson also addressed the issue of the State Police's concept of their coverage of Richmond. A discussion ensued in which it was decided that at the next Special Town Meeting a series of non-criminal fines need to be established to provide some enforcement capability of the Town's noise bylaw. In order to achieve that, a warrant for the next Town Meeting must be drafted, accepting State enabling legislation and specifying the departments that will be authorized to use the non-criminal citations.

**Next BOS Meeting:** July 24, 2019 at 6:00 PM.

**Minutes for June 26, 2019:** Mr. Alan Hanson moved to approve the Minutes of the June 26, 2019 meeting of the Board of Selectmen. Mr. Manzolini seconded the motion, which was adopted by unanimous vote.

There being no further business before the Board, Mr. Manzolini moved to adjourn the meeting, which was seconded by Mr. Pilson and approved by unanimous vote.

The meeting was adjourned at 8:50 PM

Signed:

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Mr. Roger Manzolini  
Chair, Board of Selectmen

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Mr. Robert Gniadek  
Chair, Finance Committee