



Natick Finance Committee

Pursuant to c. 40, § 3 of the Town of Natick By-Laws, I attest that the attached copy is the approved copy of the minutes for the following meeting:

Town of Natick Finance Committee

Meeting Date: September 11, 2018

The minutes were approved through the following action:

Motion:	Approval, as amended
Made by:	Ms. Wollschlager
Seconded by:	Mr. McCauley
Vote:	8 – 0 – 1
Date:	October 4, 2018

Respectfully submitted,

Bruce Evans

Secretary

Natick Finance Committee

NATICK FINANCE COMMITTEE MEETING MINUTES

**September 11, 2018
Natick Town Hall
School Committee Meeting Room, Third Floor**

This meeting has been properly posted as required by law.

MEMBERS PRESENT:

Dirk Coburn	David Gallo	Cathi Collins
Lynn Tinney	Bruce Evans	Patrick Hayes
Mike Linehan	Robert McCauley	Philip Rooney
Jim Scurlock	Linda Wollschlager	

MEMBERS ABSENT:

Dave Coffey	Kristine Van Amsterdam	Dan Sullivan
Jeff DeLuca		

Meeting Agenda

1. Public Concerns/ Comments
 - a. [Resident and Taxpayer Concerns and Comments](#)
2. Old Business
 - a. [Finance Committee & Sub-Committee Scheduling](#)
 - b. [Review and Discuss Procedures for FTM and STM #2 Concurrent Public Hearings](#)
3. 2018 Fall Town Meeting Warrant Articles - Public Hearing
 - a. [Article 18 - Appropriate Funds for the Design and Development of Route 27 North Main Street - POSTPONED to Sept 13](#)
 - b. [Article 26 - Supplement Prior Town Meeting Vote Authorizing Acquisition and Preservation of the Sawin House and Adjacent Property at 79 South Street, Assessors Map 77 Lot 7 - POSTPONED to Sept 20](#)
 - c. [Article 29 - Amend Article 2 of the Town of Natick Home Rule Charter - POSTONED to Sept 20](#)
 - d. [Article 31 - Actions Pertaining to Acquisition and Preservation of the Town's easements on Mechanic Street - POSTPONED to Sept 20](#)
 - e. [Article 33 - Establish Study Committee: 1.5% Test of Land Use](#)
 - f. [Article 38 - Amend Natick Town Charter; Natick Town By-Laws; Natick Zoning By-Laws; Constitution of zoning board of appeals, division and distribution of powers regarding MGL c. 40B §s 20-23](#)
 - g. [Article 39 - Amend Natick Town Charter: Natick By-laws, Natick Zoning By-laws: Appointment and constitution of zoning board of appeals, division and distribution of powers, and assignment of counsel.](#)
4. Adjourn

Mr. Hayes announced revisions on tonight's agenda:

[Article 18 - Appropriate Funds for the Design and Development of Route 27 North Main Street - POSTPONED to Sept 13](#)

[Article 26 - Supplement Prior Town Meeting Vote Authorizing Acquisition and Preservation of the Sawin House and Adjacent Property at 79 South Street, Assessors Map 77 Lot 7 - POSTPONED to Sept 20](#)

[Article 29 - Amend Article 2 of the Town of Natick Home Rule Charter - POSTPONED to Sept 20](#) (may be heard Thursday, September 13, 2018)

[Article 31 - Actions Pertaining to Acquisition and Preservation of the Town's easements on Mechanic Street - POSTPONED to Sept 20](#)

Mr. Hayes stated the Finance Committee will not be hearing the marijuana Articles tonight due to the zoning by-law change proposed by the Planning Board to Town Meeting. This Finance Committee will hear that Article as well as three other companion Articles on Thursday, September 13, 2018, the earliest between 8:00-8:30 p.m. The Planning Board, sponsor of Article 22 on the Fall 2018 Town Meeting and sponsor of the same Article on the Special Town Meeting #2, will hold a public hearing exclusively on that Article on Wednesday, September 12, 2018 at Natick Town Hall, second floor, Dlott Meeting Room at 7:30 p.m. Members of the public are invited to attend and express their opinions.

Ms. Collins moved to open the public hearing on the 2018 Fall Town Meeting Warrant Articles, seconded by Ms. Wollschlager, Voted 11-0-0.

Ms. Collins announced the town is holding a non-official public meeting for discussions on a potential five lot assisted living facility on Wednesday, September 12, 2018 at 7:00 p.m. in the Community Senior Center, second floor. Please RSVP to jimwilliamson@barberry.com.

Article 33 - Establish Study Committee: 1.5% Test of Land Use

Julian Munnich, Town member Precinct 5, Planning Board member, speaking as a private citizen

Proposed Motion – Article 33

Article 33

Establish Study Committee: 1.5% Test of Land Use (Julian Munnich et al.)

Motion:

“To establish a study committee of Town Meeting, appointed by the Moderator, to address, research, study, analyze and recommend regarding the issue and question of where the Town stands relative to and whether the Town has met and/or can meet its obligation under the so-called “1.5% test” of land use as defined and more specifically described in MGL c.40B § 20-23, 760 CMR 56 and/or related guidelines issued by DHCD or any office of the Commonwealth or established in any legal proceeding; and, without limitation:

To establish the number of committee members as five (5);

To establish the charge of said committee including, but not limited to:

- Identify any and all components of the calculation and all individual parcels or acreage owned by the United States; the Commonwealth; or any political subdivision thereof; the Department of Conservation and Recreation or any state public authority; or where all residential, commercial, and industrial development has been prohibited by deed, decree, zoning or

restrictive order of the Department of Environmental Protection pursuant to M.G.L. c. 131, § 40A; or is dedicated to conservation or open space whether under control or ownership by trusts, corporations, partnerships, private parties, or otherwise; or is contained in the Subsidized Housing Inventory; and the size of all bodies of water located within Natick;

- Gather any other information necessary to analyze, evaluate, and calculate the Town's position relative to the 1.5% test;
- Identify and recommend any zoning changes or other actions that might strengthen or improve the Town's position relative to meeting or exceeding this test;
- Report its findings and recommendations to 2019 Fall Annual Town Meeting or such other date as Town Meeting shall establish provided, however, that this shall not preclude any preliminary or earlier report(s) to Town boards, committees, commissions, or to Town Meeting;

To authorize said committee to develop a database of properties to be included in and/or excluded from either the numerator or the denominator of the calculation;

To provide that said committee shall have access to Town Counsel and to Town staff, including but not limited to the Community and Economic Development, DPW (GIS), and Finance (Assessors) divisions and may utilize the services of outside consultants;

To provide that, in order to engage any such outside consultant, a reserve fund transfer not to exceed \$4,000 may be authorized by the Finance Committee;

To set the term of said study committee to expire upon the dissolution of 2019 Fall Annual Town Meeting, unless otherwise extended by Town Meeting;

Said committee, being a multiple member body under the Town Charter, is authorized to sponsor warrant Articles for any Annual or Special Town Meeting Warrant."

Mr. Munnich stated Article 33 is a study committee proposal sponsored by private citizens that's designed to define Natick's land area. Mr. Munnich was unable to find agreement in town or state records as to what the gross area of the town is. Numbers bounce between 15.99 to 16.03 square miles. This is important for a town as built-out as Natick since we're in policy discussions such as whether to expand our industrial base. However, without knowing exactly how much land the town is; those are nebulous discussions. The most pressing issue is that is an important component of finding out if Natick has satisfied one of the listed criteria for "safe harbor", in c. 40B, the state statute that requires municipalities to create affordable housing per a scheme established by the state, a program that defines it by percentiles of regional income and other tests. By the other major tests of safe harbor, Natick is barely above the minimum percentage of the housing stock that is affordable (10.4%). In recent years, Town Meeting supported Articles that required multi-family or multi-unit housing be created, such as assisted living, 62+ housing and other housing inclusive of c.c. 40R, the Modera/Paperboard project. All those projects require more than 10% affordable housing so Town Meeting has taken on responsibility of keeping the town over 10%. There are many developments that could occur such as subdivisions and duplexes being built on land zoned for two-family where previously it was single-family. There is a possibility the town may dip below 10% in the 2020 census. The town will probably be exactly on or within one or two units of that 10% percent threshold. The importance of

establishing whether we have an alternative safe harbor, is if we remain in safe harbor the town can address the needs of affordable housing in precisely the way that has been discussed over recent years and not by state formula or state scheme which creates housing below the 80th percentile that offsets what is referred to as “market rate housing” which the state mechanism does not allow communities to do. Through Natick’s recent work, not just broad spectrum affordable housing, but targeted for an aging population and into the realms of other types of housing it has shown that it wants to address the true needs of the town. Workforce housing would be where our teachers, firefighters or policeman live. The test of area is the 1.5% test of land. The land area of current affordable housing is the numerator of the equation; the denominator is the land available to be developed. If affordable housing takes up 1.5% of the denominator of available land you have met that test. Natick is a good community for many reasons, since we have created 10% affordable housing but also a host of other things. We are a host community for a very large state park and a large federal research and development facility (Natick Labs). We host other state and municipal lands, state-wide assets, and Mass Audubon assets such as land the town recently acquired at Pegan Hill with the Trustees of Reservations and New England Forestry. There are many claims on the area of town other than affordable housing and even in that environment Natick is succeeding in creating the 10%. It would be a shame, however for us not to understand whether we have a safe harbor in the 1.5% test so we can concentrate our efforts, not on disputing bad c. 40B projects, but concentrating on good projects that address community needs. This project would serve the purposes of the type of affordable housing we seek to create in town. It would also be a powerful instrument in land conservation. A large number of the acres in town are privately-owned and are under conservation restrictions. Many large property owners, much to their credit and for the social good, put large areas of land into permanent conservation easements. It would be good to capture that in this study because that also subtracts from the denominator. I have a quote from Town Counsel’s letter I received under Article 33, In the 2nd paragraph of that letter it states, “Whether Natick meets the 1.5% general land area minimum [referred to as the 1.5% test of land use in the Article in motion] is a question of law and fact and in order to answer the legal question the underlying facts should be gathered and analyzed” which is truly the essence. There is information out there we should have that would benefit the town and the fine line for acquiring that information is current and very germane to what the town is currently doing.

Questions from the Committee:

Mr. Coburn asked Mr Munnich summarizes exclusion categories from the denominator.

Mr. Munnich responded exclusions are federally owned land, state owned land, county, municipal owned land, and water (rivers and lakes). We have a notable river, and a large number of lakes and ponds. Not excluded are true wetlands such as the Sunkaway since the state presumes that land is available land to be used to create affordable housing. There is also the presumptive exclusion because the way they talk about the land which is included is land already zoned for residential, commercial and industrial uses. For example, land which can be developed must be made available for affordable housing. In assessing one’s land, putting it into the proper rubrics, many communities in Massachusetts already zone land as conservation land. That, in and of itself would also be an exclusion. It is important to note that there is a major expansion to town-owned land one we forget about because we think of the assessor’s list and lots listed. Never showing up on those lists is land area of roads including Route 9, a state-owned road. One bit of roadway which we were able to catch is the Mass Pike because that is still on assessed lots that the state doesn’t pay taxes on, unlike roads which are shown as rights of way. What one may think to be an automatic exclusion is not automatic. The statute is vague on that point

and the regulations that came out this January do not clarify that. That may be one of the aspects where the town makes a decision to clarify that as conservation land.

Mr. Coburn asked Mr. Munnich to describe how the numbers of affordable multi-unit housing buildings in town that occupy land in condominium or common areas are treated in the numerator?

Mr. Munnich explained that, ten years ago, Natick looked at this formula and approached the state to inquire about this and get guidance on these regulations statute and was told there is nothing in regulations that provides guidance. The Department of Housing and Community Development advised we go to the Housing Appeal Board since it is a c. 4B issue and present questions to them. After several weeks, the town convened and met with the Housing Appeal Board and then we read in the Boston Globe that certain towns, including Natick were trying to get out of their c. 40B obligations by using this statute. Recently, , they came out with regulations in January 2018 that this study committee should be going through. Some items are clear such as you have a c.c. 40B project and the acres that go with it. Less clear is a question we put to them over a decade ago, one of the housing units we are aware of is a single unit house and it goes on to acres into wetlands. It is not clear how to interpret this, by defaulting to what the zoning minimum lot size would be for that district. We received no answer to this question. Under the new regulations, they responded vaguely so it is still not clear

Mr. Coburn asked whether this study is more than just fact-finding, but instead is a study committee that corresponds with other bodies to help the town establish boundaries or facts of law that are not clear?

Mr. Munnich answered it would lead to that. The Natick Open Space Committee is grappling with issues such as what constitutes public open space and how the acres in private holdings are counted. The Open Space Committee will benefit from knowing what open space is in town, even if that space is inaccessible but is space preserved from development. In addition, bodies in town looking at economic development, thinking they have a number of acres of industrial-zoned land but no one knows how much is in wetlands and would never get developed for industrial or tax base use. Many corners and functions of the town would benefit from this fundamental bit of knowledge. **Mr. Linehan** said the open space plan was released in January 2012 and expires in seven years. Is this something that could be done in conjunction with the study committees' proposal?

Mr. Munnich It would be good input. Part of the data set aligns directly with modules that can plug in.. There are separate aspects of this which include what lots are affordable housing and what the criteria is for how that acreage is counted which would not be part of open space plans.

Mr. Linehan asked if developments that are not accessible open space because the town to want to take those areas and classify them as conservation-restricted?

Mr. Munnich These open spaces have conservation restrictions already. Much of this data is available in the Assessor's office. Property owners such as MathWorks, Apple Hill, and a section to the south being developed by the residential neighborhood below that are not paying full commercial rate taxes. They go to the Assessor's office and show them that the land cannot be developed at that rate so they might as well zone it as conservation area so it will show up on multiple maps of town making it clear that the land cannot be developed. Within the past 1.5 - 2years, regional agencies issued a report on Natick talking about the density of development in different communities. Natick was listed as one of those communities with areas to be developed because the density of housing to the square area was not that high because it did not account for rivers, lakes, parks, etc.

Mr. Linehan asked if we get to 1.5% does that preclude the entire c. 40B,, so we can delay c. 40B development just as we get to the 10%.

Mr. Munnich It is different in the way it is applied. The 10% is sort of a bracketed number. Every ten years, there is a census where they take the numbers (different numerator/denominator) of affordable and overall housing in general. Once you get certified at a number over 10%, that's good for the next

ten years. If you are below it, but at some point during that ten year period, you go over it that will run you through to the next census. Safe harbor is a snapshot, if a proposal comes in and you are at 9.95%, the town must accept my c. 40B project. The town can do a snapshot affirmative argument saying at this point in time we are over the 1.5% threshold which can only be said within the 15 day response period. If you have done your homework well ahead of time and have it in hand, this makes it simpler. It is a relatively fixed dataset so if an affordable unit drops off or if the state sells land, you are immediately notified of these changes and could capitalize on them. Once you create the initial study and determine you are in a good place it is just a matter of keeping it updated within 15 days.

Mr. Linehan asked if railroad tracks considered state-owned land that can be developed.

Mr. Munnich Previously, the presumption would have been under the old CSX railroad tracks that were laid out as a right-of-way, would not have been considered state-owned land. However the Saxonville branch was always on lots zoned industrial so it would not have been land that could be developed. The right-of-way would have been exclusionary, both a right-of-way and a state entity the argument would be it is government-owned infrastructure.

Mr. Scurlock said that Mr. Munnich stated two numbers in his presentation about the size of the town, is there land in dispute or has it not been counted properly?

Mr. Munnich Everyone has a different methodology and when a major border of town has a river and other such items. At any given point in time, it was decided the numbers were close enough. I cannot tell you why there are so many different measures.

Mr. Scurlock asked whether the \$4,000 request would fix the problem.

Mr. Munnich said not exactly. The specific wording in that part of the motion is to provide that in order to engage. It is one of those 'if' statements. If the study committee finds it needs an outside consultant, it would require more money. However, I believe all the information is publicly accessible. If there were to be a request or funding, I suspect that it would probably be originating more from town administration. It is a lot to ask of our GIS department in computer/paper time or perhaps they need to purchase a module for their computer program to compute river area. If the town has a financial impediment, then this study committee would have to make the case to Town Meeting to hear it. The request gives the option if needed but could increase if an additional expense is discovered. This is something that should show up on the Spring 2019 Town Meeting warrant Article.

Mr. Scurlock In your opinion, with this request of \$4,000, will the town find out how it is?

Mr. Munnich Yes - we should know and I believe it would be with \$0 dollars at this point.

Mr. Scurlock To be clear, this study will not do the proper land categorization throughout the town?

Mr. Munnich This is not a proposal to re-zone land from residential to commercial to industrial. However, if the facts show that there is acreage underwater or, as is the case with the Sunkaway, a historic wetland that goes back millennia, they may be in a position to recommend that it be zoned as conservation land. It would not change the nature of the land.

Ms. Wollschlager asked whether the Planning Board going to review this Article.

Mr. Munnich No, it is a citizen petition for a study committee. Any information that comes out of this would be available for that, although it is not a zoning Article. If this were not covering an issue within the exclusive purview of c. 40B belongs elsewhere, open space, and we have other committees.

Ms. Wollschlager said there does not seem to be a clear definition of what constitutes the numerator and denominator and asked whether the intention, once this analysis is done, to get approval on this number to find out we are calculating things correctly.

Mr. Munnich said the worst case scenario is to run the numbers and get a high level of confidence in the data collected and use the town's best judgment in assessing how we meet the criteria by the Department of Housing and Community Development (DHCD). At that point, you wait for a proposal to

create an affirmative defense. The alternative is political impetus in Massachusetts for the town to do this even when DHCD an obligation to certify the numbers. In the interest of everyone, especially the state there is a methodology is in place otherwise they would have created regulations which are meaningless.

Ms. Wollschlager asked how much will involve effort on the part of someone who works for the town because I understand they were not willing to do this and questioned why this study committee was needed? Will it require a lot of resources or will the committee do most of it?

Mr. Munnich stated that there is the collection of the dataset. For example, how much work is done when you visit the library by the reference librarian whose responsibility is to make available the information you need, then you go to the study room and crack the data yourself. This information should be obtainable as a function of a reference librarian. If it is not available one could argue it should be which may be the argument there may be some incidental cost. I would not classify the demands on administration beyond that of reference librarians.

Ms. Tinney asked if this committee exist until completion of the study.

Mr. Munnich replied until the dissolution of 2019 Fall Annual Town Meetings. By 2019 Fall Town Meeting, they would Town Meeting unless the study is going so well they would only extend beyond this if Town Meeting determined it was worthwhile to continue.

Ms. Tinney questioned if this study would be fairly static with regular updates as things changed and shifted that there would be value in that. Whose responsibility would it be to track changes so the value of this study would exist beyond the short shelf life?

Mr. Munnich stated that the changes would be the stock of affordable housing which the town is generally going to track anyway. Between staff and programs, they have been doing a much better job of capturing that aspect of it. The classification is a little more difficult to do, however it is one of the smallest units that is group homes. There are a couple of agencies running transition houses and for developmental reasons those count towards the affordable housing stock. Due to the health confidentiality record laws they are not published on a list. At last count, I believe that was eleven houses. It is a finite set that at any given point of time you would have to take the snapshot moment but you are not collecting datasets of hundreds and then every certain number of months hundreds is still accurate. The rest of the dataset changes frequently.

Ms. Collins said you referenced that the town had tried this ten years ago and asked if Mr. Munnich was involved in those efforts.

Mr. Munnich I was involved and attended two of the preliminary meetings with DHCD. I was present at the meeting when Chief Counsel for DHCD said (paraphrasing) "You people put a lot of work into this with a lot of data on this sheet and should probably put your questions to the Housing Appeals Board for them to give guidance as how to interpret some of these numbers." I was not at the meeting when he subsequently was seated as a member of the Housing Appeals Board and proceeded to berate the town for asking the questions.

Ms. Collins stated that you are submitting this Article as a private citizen, not member of the Planning Board Was this piece mentioned in the existing conditions of the master plan?

Mr. Munnich No, a lot of the Open Space Numbers are rounded numbers and seem to be pulled from sets that the Open Space Committee or Conservation Commission have been running from those number sets.

Ms. Collins asked why it wasn't included in the existing conditions of the Master Plan?

Mr. Munnich it's a matter of scope, interest and timeline. When I posed the question, the responses were 'well that is difficult to do and your chances of succeeding for the primary goal are slim'. As a result, I I submitted this Warrant Article.. That was what that Excel sheet was. It was rough only

working from the datasets available from the Assessor's office and some other public sources. I did the exercise and I found we were within striking distance of the 1.5%.

Ms. Collins Are you aware of the email from Mr. Erickson, Director of Community Economic Development to the Chair of the Board of Selectmen, Ms. Amy Mistrot on July 9, 2018 on this issue?

Mr. Munnich I had heard that there was some response to questions.

Ms. Collins Members have a copy which I can forward to you. Essentially it breaks down to (Mr. Erickson's words) "I'm not aware of any community that successfully convinced the DHCD Mass Housing Appeals Court they have met this 1.5% threshold. In January 2018, DHCD came out with guidelines calculating the 1.5% among other things the town would need to hire a GIS specialist to assist with the submission requirements which could take six to twelve weeks to complete from past experience with other towns though our GIS is it could be shorter." This speaks to your statement earlier you do not get advisory things, so his second to last paragraph states "so at this time the way I interpret this even if we go through the process to analyze the town for the 1.5% and land assertion DHCD will not issue an advisory determination if we're already in safe harbor status." Essentially the town has to lose its safe harbor status i.e. dip under the 10% threshold have a project apply to the town for comprehensive permits. I suspect that we would also still need to make this argument on all future comprehensive permit applications until such time we meet the other safe harbor status requirements such as meeting the 10% threshold we currently meet." Are you aware the Director of Community Economic Development's statements in numerous meetings that he expects in 2020 after the census so probably be in 2021 we will fall below the 10%?

Mr. Munnich I've heard that but have not seen the dataset that it's based on. I have heard previously that they were straight--line projecting certain growth aspects but Town Meeting had voted so many ways of developing land that require affordable housing and do not know if those kinds of straight-line projections will still apply.

Ms. Collins said the guidelines for calculating general land area minimum were issued January 17, 2018 and revised April 20, 2018. The second section, the general sections for land area minimum state quite clearly in seven points, possibly eight if you count the last paragraph. What would be included and excluded and then detail is provided later. Is it fair to say property that belongs to residents that is deeded as Open Space for development but not zoned as Open Space could be determined by things like baseball fields, no, flower beds, yes, unkempt property like wooded areas maybe not. We should be able to have some idea if all of the property in a development that includes affordable housing as defined in our by-law is manicured and within the guidelines here. Is it your contention this is pretty straight-forward?

Mr. Munnich it would certainly bring us much closer to having a high level of certainty that what we are claiming.

Ms. Collins if we settle on 16 square acres for the town then my back of the envelope mail says 20% to 25% of the property in town without including water bodies is clearly owned by public bodies, public political sub-divisions is deeded as ConCom property. In your calculations was that about what you were coming out with?

Mr. Munnich My rough calculation was in excess of 20%.

Ms. Collins That would bring the denominator down to 12 square miles. The study committee, if constituted, could not identify but would only strengthen our position and that is group homes, is that correct because of confidentiality restrictions?

Mr. Munnich stated that when you make this safe harbor claim, you send them your official request, they send you GIS coordinates and then you have to send them your GIS list to make sure you aren't double counting. **Ms. Collins** in your experience on the Planning Board, is it conceivable we have group

homes in town that are not well known such as the property on Oak Street but rather and individual house here and there that would not appear on our GIS but would only increase the amount?

Mr. Munnich The town said there are eleven I know personally know of six.

Ms. Collins asked if that would just increase the numerator to get us even closer?

Mr. Munnich Yes, even if we missed that entirely the fact we missed those numbers it could only make our case better.

Ms. Collins Do you have the guidelines in front of you? I have a question about the submittal requirements as I read it

Mr. Munnich I do not have the complete set but in my submission I provided the link to it.

Ms. Collins In the sentence reads in the submittal acquittal requirements "The board must also provide accompanying tables on each GIS including directly associated areas (that was the term I could not remember before). This date along with maps and calculations must be provided to the applicant and DHCD within fifteen days of the board opening hearing regarding the comprehensive permit filed by an applicant". My question goes back to the email if that's their requirement and Community and Economic Development (CED) takes six to nine months do you see any way else besides doing this committee that we would ever be in a position to argue this or not beginning to happen now?

Mr. Munnich Without having this draft format already played up and the only things you needed to do was tune up things that have changed I would say it is functionally impossible to otherwise make a claim, just to arrange the administrative needs of what would have to happen in that period of time.

Ms. Collins I remember you were a member of the 22 Pleasant Street Committee and the Conservation Commission Study, both of which had access to staff and Town Counsel. In your experience on those two committees was the committee could not do anything until a host of things were addressed or did we hit a stumbling block that needed clarification for the most part?

Mr. Munnich said both those studies proceeded on a broad front. Occasionally, one of the channels of inquiry where you would come up against a question that would need to be resolved, but you still proceeded on other aspects and then backfilled those items as the information came in. There were a couple of straggling elements that became a part of the final report, but it's not as if the committee came to a standstill.

Ms. Collins did the Study Committee pose questions to the staff and Town Counsel and tell you what or where there efforts on those parts to fill in where they could define parcels and such.

Mr. Munnich with 22 Pleasant Street the town had some of the deed and property records in its own record set. Members of the study committee were pulling other records from Registry of Deeds and from land court decisions. We were working out of one reference library.

Ms. Collins Some land within the town is not under the control of the town or the federal government could choose to sell the Army labs but the town would not sell the Open Space. A large number would be under our control but because of public reasons

Mr. Munnich the tax has been holding because of a tax and tried to leverage that through the Natick affordable housing trust so it would it would drop from the denominator to the numerator.

Mr. Evans I'm trying to understand the remit of this committee, what is the deliverable to Town Meeting next fall?

Mr. Munnich it is to gather the information and report its findings. It would have all the power of the multi-member bodies. As they collect their dataset and let's say when working on the Open Space component and working close with the Open Space Committee, on the basis of the report they could recommend that the town rezones the Sunkaway as conservation land.

Mr. Evans asked about the composition of the committee, how many members, skill sets?

Mr. Munnich if there is anyone who wants to state the numbers and look at they are qualified. We would not be hiring technical skills such as surveyors.

Mr. Evans if the denominator is higher it makes it tougher for us to get the 10% so if we have more exclusions that's to the betterment of the town.

Mr. Munnich Yes

Mr. Scurlock Of the two roads that were excluded, does that include where the curb could be claimed by the town not just the paved area?

Mr. Munnich it would be the lay out of the road, the right-away which would be anything that isn't private ownership.

Questions from the Public:

Mr. Michael Hickey, Precinct 9, member of the Board of Selectmen, former Chair Member of the Zoning Board of Appeals, and sat on three c. 40B cases

Ms. Collins mentioned there was an email from our Community Economic Development Director and my concern is whether that email had been shared. I have sat on three c. 40B cases on the earlier side of 2006 through 2013 and am very interested in whatever tools or information the town might have had that might have been useful in the context of c. 40B. I recall that in 2008, the town was exploring the idea of the 1.5% of land area test. There was a portion of the email from our Community Economic Development Director that I would like to touch upon as I don't think it was called out. It states with reference to the guidelines. "Because both the total land area includable in the denominator and the sites of SHI eligible housing units includable in the numerator may change over time whether a municipality may invoke the general land area minimum Safe Harbor in response to a particular comprehensive permit application must be determined contemporaneously with the filing of the application accordingly consistent with DHCD regulations a municipality may not seek a DHCD determination as whether it was achieved the general land area minimum Safe Harbor outside the context of a particular comprehensive permit application. DHCD will not issue advisory determination". I agree with the sponsor with understanding and finding out what is behind and what is motivating this and agree one-hundred percent that knowledge is power and puts us in a position to make more informed decisions strategically or otherwise. My question in terms of man hours assuming there are so many different state agencies that may have variations of the town's land area denominator, would the results of whatever this process yields be accepted by DHCD prospectively, or any other controlling agency? Once we have the results, since the DHCD does not issue advisory determinations how is it tested and put on a shelf so we can pick it up quickly, date it down in a short turnaround time and be confident it is going to be meaningful presumably in the context of c. 40B? The c. 40B council has indicated there is very limited utility to this option. What do we do with that information, what is the deliverable and what does the DHCD do with it if anything? Does it stand for a helpful piece of information waiting in the wings for us when and if an application is filed and we are not in Safe Harbor?

Mr. Hayes: As I understand it, looking out in a year from now the Study Committee completed its work and they have a dataset that gives us an answer for where we are with the percent of total land use, the 1.5% target number. Although good information for us to have, we cannot take it to DHCD because they are not going to give us an advisory that says whether or not they like it or if it passes any test. We need the opportunity to present it as part of our case against a c. 40B housing application where we believe we are at risk of not being at the 10% Safe Harbor as one measure and we offer that as evidence that although we may not know we meet one standard, this shows we meet the other standard. At that point my interpretation is it becomes a set of facts that are entered into the case of deliberation by the appropriate body to consider or not consider and that's how we know whether it works or not.

Mr. Munnich: As far as the technical aspect of it, the DHCD did talk about a specific GIS standard so when the town presents its information to them they state there is a specific GIS standard so as long as the work meets that standard I believe it will remove the gray areas of the 15.99, etc. As far as what does the town do with that, for policy basis without it having been stamped and certified, if it turns out the study comes out that we are at 1 of 000001% I would feel good about it, if the study comes out with 20% over that at one point I would feel confident that when something comes over the transom making a c. 40B claim the town will be able to defend it. There is one trigger I don't think DHCD wants towns to do, we could have an internal body of the town of Natick Affordable Trust is working on conversions of tax land into an affordable housing they put in the claim under c. 40B and the state cannot deny us a point of determination at that time. There would be an open application at that point of time so we could force and trigger the study ourselves if we were so uncertain of our methodology.

Mr. Hickey: If we receive the results of the study or investigation and the denominator is worse than any of the record denominators out there do we need to advise anyone?

Mr. Hayes: Yes, if the GIS standard is a specific standard and there is very little wiggle room. The latitude and longitude points within the polygons that compromise the polygon which would be the town of Natick is a very definitive boundary set. For instance plus or minus three meters you don't have much wiggle room of a latitude or longitude point which is multiple points around the polygon that is the town of Natick. They may work against us in the beginning but that is the answer.

Mr. Hickey: The point I make is we may not like the results but have to live with them.

Frank Foss, Town Moderator, 18 Sunshine Avenue

I would like to preface my remarks by stating I am not making a pro or con determination or going to testify whether this is good or bad. I heard this evening a letter was discussed and quoted by one of the speakers and wanted to ask if the letter I have dated September 5th on the cover page and September 10th on the former page has been entered into the record or is part of the public record.

Mr. Hayes: My understanding is Ms. Collins received that email today.

Ms. Collins: No, the email was from Mr Errickson to Ms. Mistrot and Mar. Hickey was on July 19, 2015 and I received it later that day. I don't know anything about the September 5th email..

Mr. Foss I'm talking about the document which I believe the sponsor mentioned and read from which is a letter from Karris North, Town Counsel to Town administrator Melissa Malone dated September 5 on the cover sheet, and September 10 on the second or third page. I'm confused of the date of the document it just says September 5 letter. If it is not part of the record, I do know it was transferred to everyone here emailed by the Chair I would request it be entered in the record before I make any further comment.

Mr. Hayes: It will be entered in the record and also posted on NovusAgenda when the Chair has an opportunity to post it tonight or tomorrow. (insert that email here)

Mr. Evans: requested that the email from Mr. Errickson to Ms. Mistrot also be included in the record. Can we have

Mr. Foss If you read the document it seems like the Town Administrator asks Town Counsel for some opinions on Articles we are discussing tonight 33, 38, and 39. The document was communicated by you Mr. Chairman to your members. Do you know the questions asked by the Town Administrator to the Town Counsel to get these opinions?

Mr. Hayes: I do not know the questions the Town Administrator asked of the Town Counsel to get this opinion. **Mr. Foss** Nor do I, so it's clear amongst us all we don't know what the actual questions were.

Mr. Hayes: For full clarity, I submitted a set of questions to Town Counsel on these Articles particularly, but I am not sure if my questions were the questions the Town Administrator submitted. My

understanding was she had already submitted her questions and I was told by Town Counsel she was already working on it. When the letter was sent back to the Town Administrator I was copied as a courtesy because of the questions I submitted, however at the moment I have no intention to interpret this response and then cross reference to my questions.

Mr. Foss The information has been provided to the committee members in advance of the committee so I have to assume that this is going to be thought in their minds if they happen to read the communication that may sway them to make a decision on Article 33. I make that statement because there is a boundary between the Town Counsel and Town Moderator that I want to make certain is perfectly clear. I'm on the line if someone should ask if this is in the scope of Town Meeting. I want to make clear that Ms. North asks uses the words "within the scope of authority of Town Meeting not of within scope of the Article" and I hope you understand what the difference in those two things are because they are very different. However, one should not be confused with the other because she may be saying in point one that it's okay to do this committee but I could s a motion come before town meeting that is outside the scope of the Article. I don't want to you to think because this opinion signals approval – I haven't seen the final motion. I want to make sure the Finance Committee makes its decisions and advisory opinions to Town Meeting based on that thinking because you have heard only half the story on Article 33 and still will not get the whole story until we're at Town Meeting and I'm able to hear the motion and make a ruling on it. I'm very disappointed in this communication and no copying me on something going back and forth with decisions and opinions by other official so of the town about Town Meeting without including the person who must deal with this issue at Town Meeting,

Mr. Coburn moved to recommend Favorable Action on the subject matter of Article 33 revised motion presented today posted on NovusAgenda, September 11, 2018, seconded by Ms. Collins, Voted 10-0-1

Debate:

Mr. Coburn: The case has been amply made that this information has a lot of potential value. We don't know what we will find and may not like all the facts; however we cannot fix facts we don't like. Some of the facts that can be fixed with full due process have been alluded to by the sponsor and I'm very comfortable that some of our great members in our community have brought forward a valuable proposal.

Ms. Collins: I have supported this since it was first brought to my attention. If we don't know where we stand we can never use the information. For example, if we don't know we are at 1.4995% then it's unlikely we make a case we should buy some parcel of land and put it under town ownership that would push us over the top. I want to be clear this does not mean we stop trying to put in affordable housing throughout town. I was the citizen sponsor that required it in most every district in Fall Town Meeting, however it will mean if we have two ways of stopping "**friendly 40B**" This gathers information and makes suggestions for proposing Warrant Articles to Town Meeting possibly to rezone something so it goes from not being excluded in the denominator to being excluded in the denominator requiring we don't have to sit at the beck and call of 40B developers. The town can then make concerted efforts and consideration into developing that next stage typically called workforce housing so our employees and our sons and daughters can stay in this community, however if we are always being whipsawed by developers who are not doing this for the greater good generally, in my experience are providing the affordable housing because it's the only way they can do a big project to make money. Affordable housing is something that should be valued. This town is one of the few who has gone over their 10%. Will it be over the 10% after the 2020 census? I don't know but if we don't calculate this information and have at the ready, maps, digital partial boundaries, and information in electronic format so we can

submit it within fifteen days of a hearing being opened. It would take us fifteen days just to figure out who was going to accumulate the information in fifteen days. In my experience study committees in this community have done yeoman's , admitted when they could not because of lack of information or perhaps the town would take it on I do want to take issue with one interpretation I have is we calculate this and blow it it's not submitted to DHCD until there is an application for a 40B project, it's in the town's files and would know if one of the political sub divisions was going to sell off land in advance of that happening and we could make adjustments. I think we should still endeavor to be over the 10% but we will get to choose how we get to that 10%. I think more information always better and is disappointing to me it's not included in the existing conditions in the Master Plan and the answer seems to be that it's hard, we have to hire a consultant and no one has succeeded yet. I'm not afraid of being a trailblazer. This should be approved because it's an exercise in doing. If town staff does not believe it's worth doing or have no resources to do it and therefore concerned citizens can add their expertise and time to provide, even if it's only 95% of the data we need it's 95% more than we have today. I resoundingly hope this is approved by Town Meeting and this committee.

Mr. Evans: I'm very torn on this one. I recognize the need for the data and baseline information but to me this sounds very much like a Hail Mary type of play. The Community Economic Development Director said that he needs six to twelve months dedicated GIS support. I hope that this data is readily available because as a colleague stated earlier they have a lot on their plate and don't have the bandwidth to do that much more than we are already asking of them. Having said that, a study committee for \$4,000.00 sounds like a reasonable thing to do in order to get that baseline provided we do not have to divulge it if it's bad news. If it is bad news I want to keep it to ourselves and then figure out what to do to remedy that within our tent. I would like to clarify what a friendly 40B is and what that means from a Planning Board perspective. A friendly 40B vs. an unfriendly 40B, if you are below the 10% threshold you have no latitude as a Planning Board to oppose any conditions or modifications to their plans. When a friendly 40B comes along, because you are above the 10% threshold or even close you can impose a lot more conditions and remedial sources activities in terms of traffic, abatement, etc. that the Planning Board goes through. My colleague also talked about the affordable housing stock which is why we pushed for an inclusionary by law that will help us get above that threshold. I've heard testimony of someone who was on the Zoning Board of Appeals expressing reservations about it. For the amount of \$4000.00 I will vote for this but recognize this may be the tip of the iceberg in terms of cost and I'm concerned about that.

Ms. Collins: I would like to clarify I understand the Director of Economic Development's reservations. This is the same individual who said that one week of showing up here he knew the Downtown Mixed Use (DMU) had no provision for affordable housing yet never proposed a requirement for affordable housing.

Article 38 - Amend Natick Town Charter; Natick Town By-Laws; Natick Zoning By-Laws: Constitution of zoning board of appeals, division and distribution of powers regarding MGL c. 40B §§ 20-23

Mr. Munnich: Article 38 is quite straight forward in what it proposes. That is the function of being the Municipal Permitting body for 40B projects be the Planning Board instead of the Zoning Board of Appeals. There are multiple reasons for this:

- State statute provides the authority to Planning Board
- Over the years, Planning Board has developed into a body that has the set of competencies of doing site plan review and special permitting. For example, a 40B project is basically a site plan review on steroids and if it is an unfriendly 40B project where the Board cannot deny them, but the board has to reasonably regulate them. If it's a friendly 40B it is something you would treat

as a project that would be in the By-Laws along the lines of a special permit. The scale of these projects is quite large such as the large 40B projects on Chrysler Road or at Cloverleaf.

- Prior to being on the Planning Board, I served on the Zoning Board of Appeals. Over the years, I've had some conversations with members and with four former members of the ZBA who all confessed it was the 40B projects that did them in. The ZBA works on very important aspects of variances, important aspects of people seeking appeals from determination from the Building Commissioner, the Zoning Code Enforcement Officer and there is a whole class of permitting that goes under the name of § 6 but basically what can you do with a pre-existing nonconforming structure or property. Those elements are very detailed, they are granular, they jump right into people's backyards and neighborhoods and they are a time consuming discipline of their own.
- There has been a prevailing view that it has to be the ZBA that is what the state statute says. In the hearings there was a lament from the current Chair of the 40B project before him, paraphrasing, we didn't ask for this, we don't get to say whether or not we hear this but have to do this. It doesn't sound like a group that wants to jump into this and is happy to entertain this kind of a project.
- Members have copies of the questionnaire so will not go through all of this. My supposition that the reason this ended up with the ZBA is because c. 40B was passed in 1969 and was the Zoning Act of that time and all permitting happened through ZBAs. In 1975, the Modern Zoning Act came along that empowered Planning Boards to be the site plan review and special permitting agency of communities if they chose. In the four decades since, Natick has chosen that the Planning Board would do this. At one time, all of Route 9 was done by the ZBA, now all the Rte. 9 Golden Triangle and other districts is administered for site plan review and special permit purposes by the Planning Board. That is the trend in the town and well overdue in the scale, scope and size in the project that should be considered as part of the master plan of the town is the function of 40B. How is it that we can do this as a municipality? The 40B statute in § 21 says that the permitting body is the Zoning Board of Appeals but as constituted or as provided for in § 12 of c. 40A. § 12 lays it out for you that Zoning Board of Appeals will be constituted as follows unless otherwise provided for by the Town Charter. The Charter is the controlling element.. c. 43B, § 20 of the Town Charter speaks specifically to how the Charter can divide or combine functions of bodies that are created so if state statute says you can have this type of an office in town, it can be combined with another office in town provided your Charter says that. Alternatively, there can be an office or board of the town that has so much to do, the town can divide it into two bodies. By state statute, if the town chooses to by Charter to divide, segregate out that portion of ZBA-assigned functions from statute it can do so. Late this afternoon, I received a letter from Town Counsel that comes up with the previous default opinion that this is not permitted. However, there was enough doubt that the letter specified that this change may conflict with M.G.L. The three statutes cited by Town Counsel as evidence you can't do that are actually the three cases that say you can do it. **Bloom vs. City of Worcester** specifically states that local regulations with state statutes have given considerable latitude to municipalities but municipalities must comply with state law **Grace vs. The Town of Brookline** says municipalities are prohibited from enacting a By-law or ordinance that conflicts with the state statute. I agree, but that is not the proposal here. We are not using a mechanism of a By-law ordinance but a mechanism (Town Charter) that is specifically called out. That element supports the argument by Charter not By-law. **Green vs. Mayor of Fitchburg** states that, a change to survive on a local level, it has to survive a repugnancy test , so it's so abhorrent to the state statute that it is not permitted. That is not what we are discussing tonight - we are

talking about site plan review and permitting of a project as envisioned by the statute. Town Counsel goes on to say the appeals process from a, starts quoting from a c. 40B, as I mentioned earlier the very definition of who does this is § 21 which refers back to § 12 which then goes to § 20. The very citation here which is supposedly being held up is you can't do it is the very that puts you on the trail that sends you to the place that says you can. Town Counsel's letter goes into the direct conflict with the statutory language, but there is no conflict. In Town Counsel's letter, they point to the trail you follow and further on, Town Counsel purports to address the issue of does § 20 of 43B say what it says. Counsel makes the argument that the section for division talks about the merger of division of offices which is not the same as multi-member bodies, therefore two different things, you are not talking about the same thing. The problem with that is if you go to Section A of that, intertwined, is a whole section here that talks about offices, Board of Selectmen, offices, School Committee. School Committee and Board of Selectmen are multi member bodies. The two are conjoined in the same section of Mass General Laws so you can't go down to another § and say it means two different things when the preceding section A absolutely puts them together and quite frankly if the interpretation of the later sections which says you can't mix the two together there would be no need for Section A because the whole thing that they are saying is that you can't change the way to constitute a Board of Selectmen.

Those are the only two exclusions from this combine and segregate function that goes on further. If the interpretation that offices and multi member bodies were two separate things and you were not to mix them, there would be no need for Section A. I disagree with that conclusion. There was one other quotation in here going back to c.c. 40A, § 12 where Town Counsel writes "Board of Appeals.... in lieu of separate applications applicable local boards as a statement that it has to be the Zoning Board of Appeals." However that ellipse, those three dots exclude specifically the 'words unless otherwise provided by Charter.' I disagree with the letter and conclusions on this. I believe the mechanism being proposed here is absolutely solid. It is unfortunate that the questions that were sent on to Town Counsel through the Finance Committee Chair there was a second follow on question which am not sure was answered later on here. The question was if there is a change in the Charter which then renders obsolete a section in town By-Law whether or not that By-Law self amends and then afterwards it's just housekeeping you do later on to put in the wording that creates, invokes, empowers what the Charter has already done or if you have to at the same make a change. The proposed motion is worded in such a way it could all be captured at this one point in time. My preference is the town concentrates on the Charter and afterwards any housekeeping that has to occur precisely as that at a following Town Meeting.

Questions from the Committee:

Mr. Rooney asked if there had been any opportunity to discuss with Town Counsel any of the opinions or positions you have put forth tonight.

Mr. Munnich No, I have not had the opportunity.

Mr. Rooney You referenced a letter from Town Counsel stating many statutes and codes that are legal in nature. Based on that would say you have a difference of opinion?

Mr. Munnich Yes

Mr. Rooney Do you think it's fair to bring this to our attention when there has been a lot of reference to statute and legal information putting us in a position if you will to interpret before we vote on this or select one opinion over the other? Would you agree it puts us in an awkward position at best, and

leaves the potential to create further gum in the works as this moves forward because we have not resolved the issue of difference of opinion?

Mr. Munnich To jump all the way to the conclusion that the process is effectively the start of, there is a series of hearings, there would be a presentation before Town Meeting, Town Meeting votes. and the result would be sent to the Attorney General's office. Ultimately it's the Attorney General's office who decides whether the proposed charter change is legal or not. The way Massachusetts statutes go on matters of charters and bylaws, it would still need to go to the Attorney General's office if Town Counsel and I disagree or are in complete agreement - the AG may say you are both wrong or both right. I agree there may be some hazard if the town was rolling the dice on an issue that was irrevocable or created a bad position for the town. If we were voting on a form of bonding for a school or on a form and how we are going to constitute a pension plan and there was disagreement, if we get that wrong then we are in trouble and there is no backing up. If Town Meeting goes through with this change and passes this and the AG says there is another arcane element of M.G.L. that we both missed that invalidates this. We are in no worse position than a half hour ago. We just don't have this passed so as far as the consequences to it perhaps we learned something about the process but it doesn't send down an irredeemable path.

Mr. Rooney I'm not worried about the consequences right now. Would you say you are asking us to make a decision and recommendation, I assume favorable, to move forward with the information we have before us now? I consider you to be extremely knowledgeable in this area and we asked for a legal opinion from someone who is knowledgeable in this area and we have two different conclusions. Do you think a reasonable person would make a decision on favorable or unfavorable with the facts as we have them?

Mr. Munnich replied that Mr. Rooney was asking a difficult question. From a risk standpoint, I don't see the risk element but I will repeat what a previous speaker who referenced a previous Article in that I don't know what questions Town Counsel is responding to. I only know what is being proposed.

Mr. Rooney Should we find out before the Finance Committee does anything with this? I know your answer already so thank you.

Ms. Wollschlager Am I correct in assuming that currently there are no towns in Massachusetts that use their Planning Board to handle 40B issues? Is there a precedent elsewhere?

Mr. Munnich No, some communities have the ZBA being effectively an appointed subcommittee of the City Council. As far as being combined, I don't know of any towns that have done that.

Ms. Wollschlager Am I correct, this is something we would be a trailblazer in this and we would try to potentially change the interpretation that is commonly held to 40B and who's in charge?

Mr. Munnich We would be the first, I don't know if it's an interpretation but more of a presumption and I believe it would be the first that are coming to the end of what I consider to be an obvious trail that started in 1969 and has continued straight on since then.

Ms. Wollschlager Could you refresh my memory of how you are responding to Town Counsel's letter on page 2, last paragraph of her letter where it says '§ 21 is specifically provides an application to build low income, moderate housing should be submitted to the Board of Appeals in lieu of separate applications to the applicable local boards' and then later goes on to say that 'a local board is defined by including any number of bodies including the Planning Board'. With this interpretation, it seems she is saying that it's a Board of Appeals, that it cannot be a Planning Board. I know you had an argument to refute that, but I'd like more of an explanation.

Mr. Munnich It's precisely that § 21 which Town Counsel is quoting in the body of it, but the very beginning of § 21 reads 'may submit to the Board of Appeals, established under § 12 of c. 40A'. Everything that follows afterwards in 40B, § 22, 23, all those other citations come back to this one that points you at ZBA is creating a provision in § 12, c. 40A so you have to go to that §. What is the ZBA of which they speak? They are speaking of the 40A, § 12, ZBA. That's okay so what do they tell us in § 12?

They say you can establish it by Charter.

Ms. Wollschlager I'm struggling with the part where it says 'the applicable local board includes a Planning Board'. Then later on it says you can't double dip and have the Planning Board and the ZBA be the same.

Mr. Munnich That's into the conclusions but § 20 of 43B says the exact opposite; it speaks about combining boards that is exactly what that whole section is. Theoretically, the town could, through Charter, create two ZBAs, one that handles variances and one that handles Section 6 findings. Do it as a two-step process. You can split the ZBA into two ZBAs, one handling variances and the other handling Section 6 findings. That's absolutely clear, but also clear in § 20 is you can combine things so if you can separate a functionality from the ZBA into a ZBA 2.0 then you can also combine it and merge it with the Planning Board because the other sections say you can clearly combine offices.

Ms. Wollschlager Is your plan to have this debate on Town Meeting floor or are you going to attempt to get any further clarification from Town Counsel

Mr. Munnich I truly believe these things are best worked out ahead of time which was the hope previously. I knew this was an unusual item and that Town Counsel would benefit from, as any of us who has communicated with their own counsel for personal purposes or business needs, you want to talk to your counsel so they understand exactly what it is you are trying to do and you understand what type of law that they are trying to apply. That is the whole issue of what question was asked and that is the element most missing right now and I think that single element would be the greatest benefit for Town Counsel to understand what the premise is behind all this.

Ms. Wollschlager asked the Chair if she could pose a question to the Town Moderator and was granted permission.

Ms. Wollschlager asked Mr. Foss, based on his vast experience as Town Moderator if he recalled any instances where Town Meeting passed an Article where we had a ruling from Town Counsel that basically said the Article was not "legal"?

Mr. Foss said he could not recall an instance offhand.

Ms. Collins addressed Mr Hayes. Along that line of questioning, one or two Town Meetings ago, this very committee voted something that it had been advised was not in compliance with the Zoning Bylaws, did it not?

Mr. Hayes asked if we did that.

Ms. Collins Some members did, locating a medical marijuana dispensary on Rte. 9 just west of the Wellesley border.

Mr. Hayes Yes - this committee took up that Article and this committee had motions made for recommendations to Town Meeting and this committee voted those recommendations because we had heard that or something like that a few times. I do not remember the outcome of the one you are thinking of because the motion changed a little bit but we did take recommendations on motions and voted.

Mr. Foss: there was a time two or three years that we had a motion for eminent domain and we modified the motion, removing the words eminent domain and left the borrowing portion in the motion. Town Counsel advised us not to do that and was certainly appropriate for Town Meeting to do that even though it may have been wrong and Bond Counsel then did come back to us and told us we have to vote that with the eminent domain in it. To your question, yes we have been advised at the meeting not necessarily like this, that was what I was thinking of we had a paper advisory and we were advised Town Meeting voted contrary to Town Meeting's advisory and still had to go back and revote it at the next Town Meeting.

Ms. Collins To summarize what you are saying that if c.40A, § 12, permits combinations and division as described by Charter, and c. 40B refers to c. 40A, then, in your opinion it would be allowed for. c.40B as well?

Mr. Munnich Yes, it directly refers to that section. If it was silent on it then could say well this is the one exception you have to do it the way it says on that one, but it specifically points you to § 12. More to the point if § 12 was silent as to the Charter that would also be. We have two sections here that are not silent so you follow the trail and there is your answer.

Ms. Collins Mr. Chair, request to you, c.c. 40A, §14 is entitled Boards of Appeals; powers. It says 'a Board of Appeals should have the following powers to hear and decide appeals in accordance with § 8 (which is neighboring towns, neighbors that are aggrieved) to hear and to see applications for special permits which upon which the board is empowered to act under set ordinance By-Laws (I'll come back to that in a minute) to hear and decide petitions for variances as set forth in § 10. To hear and decide appeals from decisions of Zoning Administrator if in accordance with § 13 and this section'. (this is where the Zoning Administrator said I couldn't build something and I want to appeal). If under this we cleaned up the Zoning By-Laws after making the Charter change to no longer empower our Board of Appeals to act under said ordinance or By-Laws. Town Counsel didn't mention that, and again I don't know what the questions were, but that § I did not see referenced anywhere in her letter. If this is part of c. 40A and c. 40A also allows us to make changes to the Charter that we could theoretically come back and change, but it doesn't say "to hear and to see applications for special permits which upon the board is empowered to act under M.G.L. It is under said ordinances or By-Laws which are town specific. If these are the only powers of the ZBA how can Town Counsel argue that the ZBA have to be the ones involved with 40B?

Mr. Hayes I appreciate you asking me the question but I am ill equipped both in terms of education and certification to answer that question. Town Counsel is not here.

Ms. Collins I understand that, however if I formulate that as a question and send it to you would you consider passing it on for an opinion that could be considered for our recommendation book?

Mr. Hayes I will pass on a request to Town Counsel to offer an opinion from any member of the Finance Committee on any legitimate questions on the scope of our business and I would consider that question to be in the scope of our business.

Ms. Collins Have you received answers to the questions specifically to the questions you forwarded to Town Counsel?

Mr. Hayes I have not received specific answers from Town Counsel to specific questions sent to Town Counsel. I am going to paraphrase this, the questions I asked of Town Counsel:

1. Whether a change to the Charter could be made as change to the Charter and then at a later date if it had favorable outcome say at Town Meeting and by the Attorney General's office whether then could you go back and make changes to By-Laws and such?
2. Whether a contemplated change to the Charter also needed to have contemplated changes to change the By-Law as contained in that as one thing changes would exclusively be made at the same Town Meeting and they would flow through automatically?
3. Whether an Article such as this which contemplates a change to the Charter is also required to have a petition for a Charter change whether the Article or warrant itself is sufficient to allow a change to the Charter?

Mr. Hayes stated that as he reads it, Town Counsel's letter, she addresses the third question but to be honest with you to a point that was made earlier I do not know what the question was that the Town Administrator asked that elicited that last large paragraph and so as much as I would like to make it my

own I'm not sure that is appropriate at the moment. Those are three questions asked of Town Counsel and I have not received a direct answer back to my three questions.

Mr. McCauley Mr. Munnich: Earlier, you indicated that some of the former members of the ZBA you served with did not seem that thrilled with part of their responsibility. Do you have any feedback that constitutes the ZBA now, how they would feel about this taken off their plate and put on to the Planning Board?

Mr. Munnich With the exception of what was said during one of their open sessions with the current hearing, no and that is actually on purpose because it's not up to me to solicit them on something this broad policy wise for a c. 40B project when they have a current open hearing in front of them would probably be prejudicial to their process and don't want someone coming along to say they didn't even want to be doing this in the first place saying they are prejudice, so I didn't get a fair hearing in the first place. That's actually a conscience decision for us not to involve them.

Mr. McCauley asked for confirmation that is is a citizen petition not a Planning Board initiative

Mr. Munnich Absolutely not – it's a citizen petition. It would be somewhat prejudicial in a process where you are saying have the Planning Board submit this article. In theory, the Planning Board could be the one to do this. I think this is one of the elements where it is very appropriate that it be a Citizen Petition and not something that comes out of the parties that have perhaps conflicting interest or concurrent interest.

Mr. Coburn Mr. Munnich, you said there is some evidence that the situation of this function with the ZBA does or has in the past weighed heavily on the ZBA and perhaps influenced not to be a body marked by as much longevity and stability as it might otherwise have. Do we have any reason to believe or not to believe the same affect would or wouldn't visit itself on members of the Planning Board if we were to transfer the function?

Mr. Munnich I would argue that perhaps either because of the way it's constituted by election as opposed to appointment or perhaps it is a peculiarity of the current membership and quite frankly the previous membership of the Planning Board has historically shown a higher tolerance level for large projects such as the mall which went on for thirteen months, and even other large projects that went very quickly such as Apple Hill phase II from filing of application to actual shovels in the ground was under eight months, but a huge project with all sorts of traffic, engineers, consultants, the engineering reports on aquifers. The Planning Board has not shied away from large projects and has solicited large projects when developers come along and looked at parcels of land with low development options, the Planning Board actually said 'no, go bigger, better'. Those have all occurred and I think those projects have all benefited from it. I've been on the Planning Board for twenty-two years but even the least senior member on the board I don't know how many years but think there isn't a single member that has been on less than six years at this time and we have had many big projects in the meanwhile.

Mr. Coburn asked Chairman Hayes whether he would entertain amending the questions you forwarded to Town Counsel to ask specifically for a response to the argument presented here tonight of the chain from the basic assignment of responsibilities through §12 and §20 as presented tonight by the sponsor? It seems to me with ellipsis and attention that may have been directed by whatever questions were responded to by in that letter we may have heard an argument here presented tonight that was outside the attention span in part or in whole of what was being responded to in that letter and I would like to see attention focused on the argument presented tonight from Town Counsel.

Mr. Hayes I will accept from you any question that you want to put together for me that speaks to the argument you heard or a § or chapter of Massachusetts Law or Town By-Laws and forward it on to Town Counsel and ask for a written response.

Mr. Coburn I feel in profound limbo among various interpretations and propositions put forth regarding matters I would like to see more clarity on. I would like to entertain the thought we might come back and take action on this when we have more information.

Mr. Hayes It's a fair question, so you are asking whether this could be postponed?

Mr. Coburn Exactly

Mr. Hayes Just as a hypothetical we pose two or three or five more questions to Town Counsel with some level of specificity and we get written responses and opinions back with some level of specificity and after reading those we then have another continuation on another date the sponsor and the Town Counsel are still at odds with each other, how would you like to proceed then?

Mr. Coburn It depends on the specifics of how they are at odds with each other. If it is substantially unchanged from where it is now, on the event Ms. Collins mentioned about where we did proceed at odds with advice given to this body I recall the Chair encouraged the body to make its own determination and let the other chips fall where they may. I may be inclined to do that, I don't know.

Mr. Hayes I appreciate the recollection, however I am going to pause on the process questions because I'm going to see if anyone from the public would like to speak on the subject matter then we can come back to process and that time we will be ready to take motions from members.

Comments from the Public:

Mr. Foss I'm glad there was a question asked earlier about whether we had advice from Town Counsel, we followed it and what occurred. I want to remind the committee and Town Meeting members that Section 25 of Town Meeting Time really does address some of the things you are talking about right now. There are three levels of doubt or legality of motions that will come on Town Meeting floor:

1. You have been advised by Town Counsel that it is outside of the scope of the authority of Town Meeting and you cannot do that,
2. There are those things that exceed their authority, i.e. trying to fire a firefighter or police chief. Town Meeting may vote affirmatively but because they don't have the authority and it becomes an advisory.
3. If the process is flawed, the Moderator can rule the motion is out of order and the Article cannot be heard.

There is no flaw in this Article that causes me to rule this out until it gets to Town Meeting Town Meeting Time urges the Moderator to make certain Town Meeting members know of a Town Counsel's opinion and they be given the opportunity to impart that to Town Meeting. Once that knowledge is there, you let the chips fall where they may. If Town Meeting makes a decision (like the purchase of equipment where they removed the eminent domain language) and it goes by an authority that can approve it like the Bond Counsel or the AG and they kick it back. Town Meeting has the authority to make a mistake and do something that turns out to be illegal, and it turns into an advisory opinion at that point. There is value to advisory opinions and although I haven't heard it here, one might hear it when you get to the public body speaking on some of these things. There are a lot of people that are disenfranchised that feel very strongly about how the town is going in building its property out and developing. This plays to that to some degree with the affordable housing I've already had a couple of people reach out to me 'can I speak on that matter under this Article'. It depends if it is the purpose and meaning of the Article to make that change so the offices are a different board, that's why I pointed them to talk to the sponsor to see if that is the true meaning of the purpose and why he is doing it. You can go through this whole thing and can advise whatever you want and Town Meeting can still put a positive motion on the floor even if they know a positive motion on the floor will never fly through the

AG's office or that is disparaged or divergent opinions that will basically be vetted after the decision has been made in the appeals process. Just because you get an early opinion in the game and it's divergent from a sponsor who is a proponent of the activity that reads things differently and they can't come together and it goes to Town Meeting they can still act on this.

Mr. Michael Hickey, Precinct 9; member, Board of Selectmen: As a former member of the ZBA, this is something the Zoning Board takes very seriously. They may not enjoy the late nights, but they take the role very seriously. As far as longevity goes, I served with Rob Havener who served twenty-nine years on the ZBA, Rob Troccoli served about twenty years, and Scott Landgren is currently on the ZBA, and has been on the ZBA for fifteen years. I think the sponsor's absolutely correct; there may be a few members of the Zoning Board who may be leave a case of beer or chocolate on his doorstep for this change. In my own research, there is not a single municipality that I found where the Planning Board has been the comprehensive granting authority under c. 40B. In secondary publications, the experts refer to the Board of Appeals or Planning Board as the permit granting authority. I only saw a comprehensive permit authority and only saw letter from Town Counsel tonight and I can't see she quoted a Supreme Judicial Court (SJC) case about who had standing on 40B. The SJC noted the Planning Board had repeatedly appealed a 40B permit granted by the Board of Appeals in Hingham. I'll ready a quick excerpt from the SJC on this case "the statutory scheme for standing directs us to General Laws c. 40B does not grant standing to municipal boards Second General Law 40B, § 21, vests a Board of Appeals alone with the power to determine whether to issue a comprehensive permit and provides for Housing Appeals Committee review of the board's decision on the behest of the applicant in only two scenarios". In an Article that the Massachusetts Bar Association wrote about this case a couple of years later; an excerpt "more fundamentally, the developer and the ZBA argued the legislature to deliberately regulated Planning Board and all town officials including the ZBA to an advisory role in comprehensive permit process precisely to deprive them of the ability to often exercise in pre-Chapter 40B days to drag out approval processes for Affordable Housing until the development becomes uneconomic or the developer gives up. The Town Body statutorily deprived of all decision making authority at a local level should not be allowed to sidestep the limited advisory role designed for it by the legislature and attempt to use the courts to impose the will of the board on the developer. Hingham campus and the ZBA argued the court should deny 40B standing to town officials in order to finally deny the tactics of municipal delay and obstruction that Chapter 40B was designed to eliminate". The next paragraph describes how the SJC agreed with the developer and the Hingham Zoning Board of Appeals. I put that case out there and hope Town Counsel will consider this, as well as the sponsor of this Article.

Mr Hayes asked Mr. Hickey if he would send the Article to him and so he could forward it to the members.

Mr. Munnich I am a great believer in dialogue and the initial outreach. I don't know what the current status of having Town Counsel hours or the rest but if this is one of those things we know next Thursday, September 27, 2018 Town Counsel or that can be arranged I think this could quickly lay out the issues. I'm the lead sponsor; however the others signing on this were quite reasonable looking to come to a real solution and for the town.

Mr Hayes asked Mr. Munnich if he wanted more time adjust or perfect your motion, and have collaborative discussion with Town Counsel or others, the Chair would be willing to give you that time.

Mr. Munnich I am more than comfortable to continue this to a future date and to have that be productive. It seems like the past practice of access to town counsel through office hours or some other arrangement for a warrant Article sponsors to communicate directly with town counsel. In our current bylaws, the chair of the finance committee has the authority to meet to get advice from town counsel. I

would be happy to participate in a discussion of this warrant Article and listen to the answers to the questions posed by the finance committee.

Mr. Hayes said he would work to arrange a meeting with Town Counsel, the Chair, and members who want to participate and continued the hearing on Article 38 until September 27.

Article 39 - Amend Natick Town Charter: Natick By-laws, Natick Zoning By-laws: Appointment and constitution of zoning board of appeals, division and distribution of powers, and assignment of counsel.

Proposed Motion:

“Moved:

The subject matter of Article 39 be referred to the Board of Selectmen for their review of the following matters:

- Whether the Zoning Board of Appeals should be elected or appointed.
- If by appointment; whether by the Board of Selectmen, or by other appointing authority.
- Whether the number of Members and Associate Members should remain the same, or if some other number should serve.
- To review the current ZBA practice of not considering aspects of the Zoning Bylaw, and statute, beyond specific relief required that has been identified by the building commissioner.
- To review, and consider changes to, Town Bylaws Article 22, “TOWN COUNSEL”
- For the Board of Selectmen to draft a set policy, and or criteria, for intervening in the statutory functions of town bodies and their requisite access to Town Counsel.”

Mr. Hayes asked **Mr. Munnich** to confirm that he was looking for the finance committee to recommend favorable action on his referral motion. Mr. Munnich confirmed that was the case.

Mr. Munnich said the purpose of Article 39 was to have the town examine and possibly change the composition of the ZBA. The current way that the ZBA is set up in Natick has five members and three associate members. Previously, there were three members and one associate member. The ZBA sometimes has issues with obtaining quorums. So that may be easier to reach with a smaller quantum of members or the way it is set up with associate members. At present, the ZBA is appointed by the Board of Selectmen and should that process be continued or changed to be an elected board. There were multiple motions coming out of this discussion with the stakeholders and the proponents of this Article, and the consensus was that it would benefit from extensive review by the Board of Selectmen and the ZBA. Over time, in my opinion, there has been some drift in the way the ZBA addresses some issues that come before it the ZBA would only address issues raised by the Building Commissioner and not necessarily applying the Natick zoning bylaws. The second aspect of this Article touches on the issue of access to Town counsel.. Both the ZBA and the Planning Board occasionally need to speak with town counsel for statutory reasons to appeal decisions or defend decisions. Past practice was that the town would assign town counsel to do that work. In some cases, the Planning Board might appeal the ZBA decision. The 22 Pleasant St. property is constrained the way it is because the Planning Board appealed a ZBA decision to let that building expand to a size much greater than it should have, and that ended up in court-ordered restrictions. Lately, however, it seems to the new practice is that the Planning Board might get access to town counsel for advice. However there been a couple instances where the Planning Board goes to town counsel for advice and then the next thing you hear are decisions coming from the town administrator’s office. Since the Planning Board was seeking town counsel for advice, the response shouldn’t be filtered through the town administrator. Also, if that element then goes on to be

part of a lawsuit, where the Planning Board brings suit against parties to defend the interest of the town, it should not be subject to arbitrary veto by the Board of Selectmen because they might disagree with the Planning Board. The Planning Board has statutory right to file lawsuits on behalf of the town for reasons of the Planning Board. That's not to say that the Board of Selectmen shouldn't be involved in the discussion, but there are no guidelines or criteria to follow. Recently, the Planning Board was appealing a decision by the Framingham ZBA that would've used up the last bit of developable land in Route 9 in the Golden Triangle to install a parking lot for residential housing on the Framingham side. The Planning Board voted to appeal that decision, but the prior Board of Selectmen opted not to appeal the decision because it "didn't want to offend our neighbors", and denied access to town counsel. Something has gone wrong with the process and needs to be clarified. There have been changes in the town administrator and the composition of the Board of Selectmen, so this is a good opportunity to examine this issue. Referral of this Article to the sponsor and Board of Selectmen will help clarify who has access to town counsel and the nature of that access.

Questions from the Committee:

Ms. Collins asked for confirmation that Mr. Munnich is looking for referral to the Board of Selectmen to answer these specific items listed in the referral motion. Mr. Munnich confirmed this is the case.

Ms. Collins asked whether the Moderator would opine on whether such a motion is permitted, i.e., for Town Meeting to provide guidance on the parameters of the discussion

Mr. Foss said that as long as the guidelines are within the scope of the article, it is permissible.

Questions from the Public:

Mr. Hickey said that at their last meeting, the Board of Selectmen discussed bringing warrant article proponents in to discuss the requirements of their Articles. In this case, the proponent of this was generous with this time and speaking with me on this Article. I believe that this motion fosters the opportunity to continue these discussions.

*Mr. Coburn moved Favorable Action on the subject matter of Article 39 as presented, seconded by Mr. Evans, **Voted 11 – 0 – 0***

Debate:

Mr. Coburn said this sounds like a moment to have this healthy review and to have this debate on Town Meeting floor to see whether Town Meeting supports this kind of review. Town Meeting can express its views on the parameters included in this referral motion. There is no legal restriction for Town Meeting to restrict what the sponsors can discuss associated with this issue.

Ms. Collins stated that this is an ambitious Article and I support referral because the conversation needs to happen at multiple levels. In some cases, in my experience, some members of the ZBA aren't aware of some of their responsibilities. Referral of this motion by Town Meeting gets the conversation started and these things need to be revisited sometimes.

Mr. Munnich: The zoning act at that time, permitting happening through ZBJs. In 1975 the Modern Act came and allowed Planning Boards are the site plan review agencies of communities so chosen.

Ms. Collins as the appointment of authority the Board of Selectmen should have an opinion on that so Town Meeting gets what it wants. Setting parameters is a good idea. I support the referral requested by the sponsor. It is important because ZBA has more power than the Planning Board. If we more members perhaps we should revisit the number.

*Mr. Evans moved to close the Fall Town Annual Warrant meeting, seconded by Mr. Linehan, **Voted 11-0-0.***

Finance Committee & Sub-Committee Scheduling

Mr. Hayes: I encourage members to look at the agenda posted for Thursday September 13, 2018. It is a full agenda. We have the four marijuana Articles, a number of financial items, Articles OPEB, unpaid bills and proceeds. Article 29 - Changing the Number of Signatures Needed for Citizen Petition for Special Town Meeting. Motions have arrived in my email this evening which I will load to NovusAgenda and forward the links. I don't expect to get through all of them but I committed to the town administration we would take them on. Most important are the marijuana Articles because that is being put before Town Meeting in early October.

Mr. Linehan: reminded members of the Open Meeting Law training session at the Morse Institute Library on Wednesday September 12.

Mr. Hayes: Open meeting law tomorrow at 5:30 p.m. You should have RSVP'd to the AG's office.

Mr. Evans: I will be sending out the minutes for members to review by Thursday, September 13, 2018 as one of the challenges we have is getting those approved and turned around quickly given the heavy fall schedule, with Special Town Meeting #2 and 2018 Fall Town Meeting.

Mr. Hayes: I need members to pay special attention and respond quickly to the September 6, 2018 minutes that Mr. Evans will distribute. We need to turn those around very quickly and want to make sure they are accurate and represent what was said in this room in terms of questions and debate.

Ms. Collins: requested that Mr. Evans send minutes to both of her accounts.

Mr. Gallo moved to adjourn, seconded by Ms. Collins, **Voted 11- 0- 0**