

MUNICIPAL FINANCE OVERSIGHT BOARD

Meeting October 13, 2021

(conducted by conference call)

MINUTES

Board Members Present: State Auditor Suzanne Bump (Chair), Deborah Wagner (Department of Revenue), Margaret Hurley (Office of the Attorney General), Craig Stepno (Office of the State Treasurer)

Non-Board Members Present: Hilary Hershman (Office of the State Auditor), Ben Tafoya (Office of the State Auditor), Carina DeBarcelos (Office of the State Auditor), George Chichirau (Office of the State Auditor), Judy Bromley (Office of the State Auditor), Alicia Daniel (Office of the State Auditor), Noah Futterman (Office of the State Auditor), Samantha Ormsby (Office of the State Auditor), Bill Arrigal (Department of Revenue), Sean R. Cronin (Senior Deputy Commissioner of Local Services, Department of Revenue), Lisa Driscoll (Hilltop Securities), Monica Mulcahy (Hilltop Securities), Peter Frazier (Hilltop Securities), David Eisenthal (UniBank Fiscal Advisory Services), Gregg J. Corbo (Town Counsel, Town of Hardwick/KP Law), Richard Manley (Bond Counsel, Town of Hardwick/Locke Lord), Justin Skelly (DCP Engineering), Dave Prickett (DCP Engineering), Melvin Kleckner (Town Administrator, Town of Brookline), Melissa Goff (Deputy Town Administrator, Town of Brookline), Michael DiPietro (Comptroller, Town of Brookline), Kyle Banoey (Civil Defense Director, Town of Brookline), Justin Casanova-Davis (Acting Finance Director, Town of Brookline), Nicole Parker (Town Administrator, Town of Hardwick), David Miller, State Senator Anne Gobi

The meeting was called to order at 11:02 a.m.

Auditor Bump made introductory remarks and noted that, in accordance with Chapter 20 of the Acts of 2021, passed June 16, 2021, and the Massachusetts Attorney General's Office June 16, 2021 guidance, this meeting was being held by conference call. The public meeting notice for this meeting provided a public call-in number to facilitate public access during a relaxation of open meeting law requirements. Auditor Bump also announced that the meeting was being recorded and that Hilary Hershman was acting as Executive Assistant.

Board Member roll call: All members indicated orally that they were present.

Minutes from August 11, 2021

Ms. Wagner made a motion to accept the minutes from the last meeting, which was seconded by Mr. Stepno. On the question of approval of the minutes from the meeting on August 11, 2021, the members voted as follows to approve the draft minutes without any changes:

Auditor Bump: YES

Ms. Wagner: YES

Ms. Hurley: YES

Mr. Stepno: YES

Town of Brookline

Mr. Kleckner introduced himself and the team from the Town of Brookline. He explained that the Town had an extensive settlement with a firefighter in preparation for legal judgment in federal court in a civil rights and racial discrimination lawsuit. The events that gave rise to the lawsuit had occurred before Mr. Kleckner's 11-year tenure, so it was a longstanding, contentious dispute. The borrowing was approved at their most recent Town Meeting, and it was a much more extensive settlement than anybody anticipated. The Town wants to amortize the \$11 million settlement to make sure they can accommodate the payment against other budgetary restrictions over time.

Auditor Bump asked if there was any additional context worth mentioning. Mr. Frazier added that the Town is up against its levy limit – if the Town were to dedicate reserves to the settlement, it would perhaps put its AAA credit rating at risk. Scheduling their debt with about \$1.3 million a year payments instead of paying \$11 million out of pocket would be much more manageable to the Town, so they can continue to deliver services to taxpayers in the community.

Auditor Bump asked the Board for questions. Mr. Stepno asked about the Town's financial condition and what impact this borrowing will have. Mr. Kleckner replied that the Town has a balanced budget for FY 2022. Although the Town has some reserves, they would like to amortize the settlement obligation over a number of years. The Town is prepared to set a tax rate once they understand how they can handle this obligation.

Auditor Bump noted that the debt service for the settlement would be paid over the course of ten years, which amounts to a considerable amount of interest that will be paid. She asked how the Town determined an appropriate bond cycle for the settlement. Ms. Goff replied that the Town looked at various financial scenarios and determined that a 10-year period was reasonable. They are aware of the implications of their capital budget and wanted to minimize the effects on capital and operating expenses.

Auditor Bump suggested that the Town consider shortening the term of the bond. She asked why the Town opted not to go for a shorter term for the settlement. Mr. Kleckner replied that the Town had wanted to use some of the reserves in place to reduce the debt obligation of the settlement and that the Select Board has some discretion to use some of the reserves. The Town had also discussed a shorter term. He noted that there were not specific elaborations as to how the Town determined 10 years as an appropriate bond term, but the Town identified that a \$1 million yearly obligation would help the Town minimize disruptions to its capital plan. He added that, if the Board determines the Town should go for a shorter bond term, they are flexible.

Auditor Bump asked Ms. Wagner and Mr. Cronin about the 10-year period being used to finance the settlement and if that is an appropriate timeline to pay that much interest based on the Town's size and ability to pay. Mr. Cronin abstained from comment due to his prior connection with the Town and the fact that he had some involvement in this issue early on.

Ms. Wagner stated that, if the Town Meeting and appropriate officials agreed that this was the best path to finance this settlement, she would be in agreement with financing the bonds for a 10-year period.

Ms. Wagner made a motion to approve the application of the Town of Brookline. Mr. Stepno seconded the motion. A call of the roll was made as follows:

Auditor Bump: YES

Ms. Wagner: YES

Ms. Hurley: YES

Mr. Stepno: YES

Auditor Bump thanked Mr. Kleckner for his time of public service, and Mr. Kleckner thanked Auditor Bump for her support of cities and towns.

Town of Hardwick

Ms. Parker introduced herself and the team from Hardwick to the Board and thanked Senator Gobi for taking the time to attend the meeting. Ms. Parker also apologized in advance for her lack of context on Hardwick's application as she is a new Town Administrator who had started two months ago.

Ms. Parker started the overview of the application by indicating that the Town has failing sewer infrastructure, specifically two wastewater treatment plants (Gilbertville and Wheelwright). The Town received a consent order from the EPA. Her predecessor had applied for USDA funding (a grant and a loan) and secured a \$5 million state bond (which hasn't been released) to cover necessary repairs in response to the order. The USDA had a letter of conditions the Town needed to follow, but rescinded its funding to the Town in July 2021, indicating that the Town did not follow through to the USDA's expectations. The Town is trying to have that decision reversed. It appealed the USDA's denial through administrative review in September, but the USDA did not reinstate funding. As a result, the Town's second option to appeal the decision is through mediation.

Ms. Parker further elaborated that the Town previously had an agreement with a private school (Eagle Hill School), where the school would build a sewer line extension that would connect to their wastewater treatment system. As a result, the Town waived the school's sewer user fees for a number of years, and anything over \$2 million, the Town would allow them to have sewer user fees. In the past year, the Town needed to establish a new agreement to receive the USDA money, which would require the school to pay sewer user fees because the Town needed the revenue. The new agreement, signed on July 30, 2021, has the school paying fees to the Town's wastewater system in exchange for a \$1.8 million lump sum payment from the Town to the school. The Town has not yet paid the \$1.8 million commitment to the School, and payment is due on October 28, 2021. Ms. Parker added that there are also Bond Anticipation Notes that the Town borrowed in 2020 that need to be renewed this year. The Town is requesting that the Board approve some interim funding in the meantime before they receive final financing, hopefully, from the USDA.

Auditor Bump thanked Ms. Parker for her overview, and turned to Mr. Eisenthal, Hardwick's financial advisor, who provided additional context for the sewer project. Mr. Eisenthal stated that Hardwick has submitted a request to the MFOB for approval for borrowing for sewer purposes outside the debt limit, under M.G.L. Chapter 44, Section 8(14), which allows cities and towns to borrow for sewer purposes

outside the debt limit. The Town had authorized \$27.9 million for major upgrades to its sewer system, including related costs such as the Eagle Hill School settlement, in June 2020. The authorization was in response to an EPA consent decree to remedy effluent going into the Ware River. The USDA had approved funding for the project, which allowed borrowing under M.G.L. Chapter 44, Section 8(19). The project was supposed to be primarily funded with USDA grants, with remaining funding to be covered with a \$5.7 million loan paid by the Town and a \$5 million bond earmark from the state's 2018 environmental bond bill. The USDA cancelled funding in July 2021 and affirmed its cancellation in September 2021. The Town is now undertaking steps in the appeals process; the next step is mediation with an outside party. If the mediation does not work for both parties, the matter goes before an administrative law judge. Mr. Eisenthal believes that this process may take many months to resolve, and he is uncertain about the outcome.

With these circumstances, Mr. Eisenthal stated that the Town's remaining option is to issue bonds under M.G.L. Chapter 44, Section 8(14). He stated there are two conditions under which Hardwick can issue bonds under that statute. One condition is that they have a sewer enterprise fund where sewer user fees are enough to cover operations and debt service, but Hardwick is not in that situation. The second condition is that the MFOB approves borrowing (although Hardwick's requested amount of \$27.9 million is well in excess of their 5% debt limit). Because of this, Hardwick cannot borrow for this purpose unless the MFOB gives approval. With the USDA funding commitment, the Town could authorize debt for this purpose under a *different clause* of Section 8 (Clause 19 instead of Clause 14).

Further, Mr. Eisenthal noted that the Town issued \$2 million in Bond Anticipation Notes last December that are set to mature in December 2021, while the Town has yet to pay \$1.8 million to Eagle Hill School by October 28, 2021 as a result of their July 2021 settlement. The sewer system consists of approximately 660 equivalent dwelling units, 80 of which come from the Eagle Hill School. Under the previous agreement, the school funded the sewer main up to Route 32A in exchange for a waiver of sewer user fees up until 2036. The current agreement reverses that arrangement, now making the school a current paying sewer user in exchange for that \$1.8 million payment. Now that the agreement has been executed, the Town will need to issue BANs in short order so the Town can have funds to pay the school.

Auditor Bump asked a few questions about the EPA consent decree – whether there was a deadline by which the project needed to be completed, if there are any penalties that the Town could incur, and what went wrong with the USDA's application approval process that caused them to pull back. Ms. Parker replied that she recently received email correspondence from the EPA regarding an administrative order to upgrade the water treatment plants.

Mr. Corbo, the Town Counsel, added context about the Town's previous agreement with the Eagle Hill School. The basis of the agreement was that the school agreed that it would build an extension of the Town's sewer line to its property and make it available to other nearby properties (including those owned and controlled by the Town). In exchange for the school's work, the Town agreed to waive the school's sewer user fees. When the USDA examined the Town's accounting with respect to its sewer system, it was determined that the agreement with the Eagle Hill School was creating an inequity in the sewer user fee system. It was perceived that the school was getting a discount or waiver in user fees unlike other users in the system, and it was a significant revenue stream that was not coming into the system, making it financially difficult for the Town to continue operating the system effectively. As part of the USDA requirements, the USDA specifically required the Town have a buyout with the school. The relations

between the Town and Eagle Hill School have not always been positive, and school officials were initially not accepting of the Town's offer to buy out their agreement. Because of this, there were a series of negotiations between the Town and the school over a prolonged period of time, but the USDA perceived the prolonged negotiations as the Town not being sufficiently invested in pursuing the project. Ultimately, Eagle Hill School came to agree to the contract, and now the Town is contractually obligated to the school because of the new agreement. Even without the USDA awards, Mr. Corbo explained that it is in the Town's best interest to buy the school out of their previous agreement so that the Town can renew its sewer revenue stream for the system's operations. In pursuing the appeals process with the USDA, the Town is hopeful that it can demonstrate that any failures to comply with the USDA's letter of conditions were due to circumstances beyond its control and that all reasonable efforts were exhausted to get Eagle Hill School to sign the agreement as quickly as they could.

Auditor Bump asked if the Eagle Hill School settlement was the only obstacle to secure USDA funding, or if there are their other defects identified by the USDA that need to be addressed. Mr. Corbo replied that during the administrative review, the USDA pointed out other alleged deficiencies, which the Town believed were a result of the agency's inadequate recordkeeping, but most of those issues were resolved. The major issue the USDA has with the Town is that the agency believes that the town's failure to reach an agreement with the Eagle Hill School is demonstrative of the Town's inability to manage the sewer project. The USDA also perceived that the Town might not be a suitable partner to complete the project and follow through with the requirements of operating the system. The Town strongly disagrees with the USDA's position, and Mr. Corbo is hopeful that the Town can demonstrate to a neutral mediator that they are dedicated to the project and that they hired professional staff that will help bring the project to conclusion.

Auditor Bump asked if the EPA is aware of the USDA's decision to revoke funding, which undermines the ability of the Town to resolve the issues outlined in their consent decree. Ms. Parker replied that the EPA's most recent correspondence with the Town demonstrated awareness of the USDA funds being in jeopardy, but reminded the Town that they remain in significant noncompliance with the Clean Water Act. The EPA is considering enforcement options, which could include pursuing a significant penalty against the Town for violations, as well as a potential referral to the US Department of Justice to seek imposition of judicial injunctive relief. Ms. Parker claims that the EPA is not being understanding of their situation, and the EPA's awareness of the jeopardized USDA funds is giving them incentive to place more pressure on the Town. She indicated that the EPA is seeking "some imposition" on the town if that particular sewer line is not fixed, which puts the town in a hard place. The Town of Hardwick is not a wealthy community and does not have many residents and commercial businesses. They have effluent going into the river, serious E. coli and fecal coliform, like raw sewage, from two treatment plants.

Auditor Bump asked if any staff members from the engineering firms wanted to talk about the project and inquired how long the project has been ongoing. Mr. Skelly from DCP Engineering replied that it is unfortunate that a small community like Hardwick has to rely on two separate wastewater treatment plants. The larger plant (Gilbertville) is very old. It was constructed in the 1970s or 1980s and has not been upgraded since, with its biggest issues being failing infrastructure and aging. The second facility (Wheelwright) is much smaller and serves a smaller part of the Town. It was recently upgraded in 2015/2016, but lack of construction oversight led to the facility having an inadequate sewer process as well as greater issues of contaminants going to the Ware River than the larger plant. That facility will need to be fixed in the short term. The Eagle Hill School sewer line is the lowest priority among the Town's

concerns, but was a condition of USDA funding. The Gilbertville plant needs \$15 million in funding for upgrades, while the Wheelwright plant needs almost \$6.5 million, which is problematic as the Town's sewer enterprise fund is not enough to fix the plants. They made the equation work with the USDA funding, so they are hopeful of getting USDA back to the table. Mr. Skelly added that DPC has worked on the sewer project for over two years, including a desktop evaluation, a preliminary engineering study, and plans that are ready for contractors to bid on. The project was originally going out to bid in fall 2021, with construction slated to end by the spring of 2023 to comply with the EPA order, meaning the firm has a 16-18 month period to get the project done.

Auditor Bump opened the discussion up for questions from members of the Board. Ms. Wagner asked if the existing EPA consent order will affect the USDA's timeline to hear appeals and if the Town's case can be expedited as a result. Ms. Parker replied that the USDA laid out the timeline to the Town, and, although the EPA has imposed a consent order on the Town, there are no options to expedite the USDA process. When the Town asked for mediation a week prior to the MFOB meeting, the USDA responded that they will get back to the Town by the end of week, but she hasn't heard back yet.

Ms. Hurley inquired how the settlement payment to the Eagle Hill School is an allowable purpose under M.G.L. Chapter 44, Section 8(14), as the school's sewer line was already constructed. Mr. Manley, the Town's bond counsel, replied that the overall \$27.9 million sewer project involves repairing the two treatment facilities as well as unwinding the earlier Eagle Hill School arrangement, which the USDA required the Town to resolve, in order to approve funding for the project. The settlement is not a final judgment, but rather a piece of the project and an unwinding of an earlier agreement between the Town and the school. This action was needed so there can be financial integrity to the sewer enterprise fund, which is a component that USDA requires for project participation. The settlement was also needed to bring financial viability to the Town's sewer enterprise system.

Ms. Hurley replied that she is sympathetic to the Town's position, but is still trying to see how the payment connects to the construction of sewers, sewerage systems, and sewerage treatment and disposal facilities. Mr. Manley replied that the Eagle Hill School settlement would be an incidental expense that is necessary for the project to be funded. Mr. Corbo added that the Town is paying for the construction of the Eagle Hill line in installments by giving credits to Eagle Hill until the construction costs are fully paid off, which would be in around 2035, per an earlier speaker. In addition to this being a required expense for the new sewer project, the Town is accelerating payments to Eagle Hill by paying in a lump sum. That way, Eagle Hill will immediately become a sewer ratepayer and their payment will directly go to the Town's enterprise fund for operations and maintenance. Although it is somewhat indirect, it is the Town's position that the monies will go towards paying off the construction of the completed Eagle Hill line, as well as a requirement for the new sewer project. Ms. Hurley asked again to confirm if the Eagle Hill sewer line is constructed. Mr. Corbo replied that the line is constructed, but the Town is still paying for it.

Mr. Stepno asked if the letter dated September 30, 2021 was the most recent correspondence from the USDA. Ms. Parker replied yes, aside from an email indicating that the agency will contact the Town back regarding mediation.

Auditor Bump asked for the Town's rosiest expectation for completion of the upcoming mediation. Ms. Parker replied that the Town hopes that a mediation should be complete within 45 days and also mentioned that they will present that the Town has fully met all conditions for the project.

Auditor Bump elaborated that there are two needs that the Town is presenting. One need is more immediate than the other -- the payment of the Eagle Hill School agreement and financing the BANs that will mature in December -- and a lower priority being funding the total \$27.9 million cost of the project. Mr. Eisenthal explained that the Town supplied two motions to the Board for consideration because of this -- the first is a \$4 million authorization that will reauthorize the BANs and a \$1.8 million note to issue for the Eagle Hill settlement. The second motion was for the Board to approve the entire project borrowing (\$27.9 million).

Auditor Bump asked Ms. Wagner about her insight about the motions and her perspective under her role at the Department of Revenue. Ms. Wagner replied that she would like the Town to move forward with the \$4 million authorization and that the Board and Town can wait on the 45-day waiting period for the mediation to occur, with the understanding that the Town could come to the Board at a later date for further refinancing if the USDA does not reinstate the grant and the loan.

Ms. Wagner made a motion to approve the issuing of bonds to the Town of Hardwick for the purpose of construction of sewers, sewerage systems and sewerage treatment and disposal facilities, in the amount of \$4 million. Mr. Stepno seconded the motion. A call of the roll was made as follows:

Auditor Bump: YES

Ms. Wagner: YES

Ms. Hurley: YES

Mr. Stepno: YES

Auditor Bump stated that she appreciated the motion and the willingness of the community to have the Board address the short-term immediate needs of the project. She stated she could not in good conscience vote for an authorization to issue bonds for the entire cost of the project, absent USDA approval, but asked what would be the next steps if the Town did not prevail in securing the funds from the USDA after mediation. Ms. Parker replied that the Town would have an administrative appeal from a judge employed by the USDA. Mr. Corbo stated that the Town would have to get EPA to agree to a reduced scope of work. Mr. Eisenthal said that the Town provided pro formas to show financial impacts from both scenarios -- where the Town had to finance the entire project, even with the \$5 million earmark, and where the project was funded with USDA assistance. It is his hope that, if the USDA does not restore funding, the Town can appeal to various parties to put together a plan for the Town to finance some, but not all, of the costs of the project. He is not exactly sure what that could be, but believes that the Commonwealth and federal government have an interest in this matter as the effluent flows across various communities and even state lines.

Auditor Bump thanked the Town and is hopeful the Town will return with more positive news (such as reinstatement of USDA funding) and a request that resolves remaining issues.

Sen. Gobi thanks the Board for looking at this issue and for being very thoughtful with their questions. She recognizes this is a major issue for the Town, and, if federal officials do not come through, the Town will return to determine another course of action.

Long-Range Municipal Fiscal Stability

Ms. Wagner indicated that the Department of Revenue is working on free cash certifications and tax rate setting for FY 2022. They have certified 21 of 22 tax rates from municipalities so far, and received 151 balance sheets with 102 free cash certifications approved. DOR is seeing a 17% increase over FY 2021 in free cash certifications among the communities that were approved so far. What the Division is seeing is a combination of conservative budgeting for local receipts such as motor vehicle excise taxes, as well as conservative spending. They are surprised to see a large increase of free cash because of the pandemic. DLS recently held its quarterly community review meeting, where staff members met to review data and see if there are any trends of concern (such as outstanding receivables, trends in reserves, decreasing assessed values, communities approaching levy ceiling). Additionally, they continue to provide guidance to communities in regards to CARES Act and ARPA funds.

Auditor Bump asked if DOR is still giving reimbursements for COVID-related expenditures. Ms. Wagner replied that the CARES Act funding reconciliation period is fast approaching – last payments were distributed in September. All cities and towns received the first half of their ARPA payments, specifically their municipal and county shares. They will receive the second half of their payments a year from their initial disbursement.

Auditor Bump was surprised that Ms. Wagner painted a good picture of municipal finances and asked if DOR has noticed any glaring exceptions. Ms. Wagner replied that there were some municipalities that had negative free cash balances, but those were mainly due to unique situations. She also said that communities were very conservative in setting their FY21 tax rates.

Topics for Next Meeting

Ms. Hershman stated that there are no requests for upcoming Board action that are known at this time. The next meeting will be November 10, so we haven't reached the deadline for communities informing the Board of upcoming requests. Dr. Tafoya said the deadline is October 20.

Ms. Wagner made a motion to adjourn, which was seconded by Mr. Stepno. A call of the roll was made with the votes as follows:

Auditor Bump: YES

Ms. Wagner: YES

Ms. Hurley: YES

Mr. Stepno: YES

The meeting was ended at 12:09 p.m.