

ANNUAL HINGHAM TOWN MEETING

HELD AT:

Hingham High School
17 Union Street
Hingham, Massachusetts

DAY 1

Monday, April 25, 2016

To begin: 7:00 p.m.

ARTICLE 19

MAUREEN D. PIRES
VERBATIM COURT REPORTING SERVICES
521 ASHLEY BOULEVARD
NEW BEDFORD, MASSACHUSETTS 02745
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1 and personal property taxes for any fiscal year in
2 which they are serving in a foreign country or act
3 on anything relating thereto.

4 You will note that the Town approved
5 this exemption under Article Seventeen of the 2012
6 meeting, but that authorization has expired. The
7 purpose of the recommended motion under Article
8 Eighteen is to extend the authorization for an
9 additional two years.

10 The recommended motion of the Advisory
11 Committee which comes unanimously from that
12 Committee, as well as from the Selectmen is that
13 the recommended motion be adopted.

14 Is there discussion?

15 (No response)

16 MODERATOR: If not, we come to vote on
17 the recommended motion of the Advisory Committee
18 under Article Eighteen.

19 All those in favor, please say aye.

20 (Verbal response)

21 MODERATOR: All those opposed, no.

22 (No response)

23 MODERATOR: It's a unanimous vote.

24 Article Nineteen. Article Nineteen

1 asks, will the Town raise and appropriate, borrow
2 or transfer from available funds, a sum of money
3 to be used by the Board of Selectmen for
4 professional services, fees and costs to acquire –
5 to continue its investigation into the feasibility
6 of the acquisition of the corporate property and
7 all rights and privileges, including the assets of
8 the Town's water company now known as Aquarion
9 Water Company of Massachusetts and/or affiliated
10 related companies, including Aquarion Water
11 Capital of Massachusetts, pursuant to Statute
12 1879, Chapter 139, or through any other method of
13 acquisition, including negotiation or litigation,
14 including the currently pending Suffolk Superior
15 Court case or any appeal thereof.

16 The Board of Selectmen may determine it
17 to be necessary or advisable in order to determine
18 whether the acquisition is feasible and advisable
19 for further Town Meeting consideration or act on
20 anything relative thereto.

21 This requires a majority vote for its
22 adoption. Your Advisory Committee recommendation
23 is set forth in your Warrant booklet.

24 Is there discussion?

1 Mrs. Power?

2 MRS. POWER: Good evening. Mary Power,
3 1 King Philip Path, speaking for the Board of
4 Selectmen.

5 Article Nineteen requests \$300,000 to
6 conclude the litigation that will determine a
7 purchase price for the water company. This
8 request is triggered by the need to address any
9 appeal of the November court ruling and the
10 judgment we are currently awaiting. Aquarion has
11 already stated their intent to appeal the court's
12 ruling.

13 While you're not being asked tonight
14 whether to purchase the water company, it bears
15 mentioning why we, as a town, undertook this
16 effort in the first place. While the water
17 company has always been a privately owned water
18 company it always gave -- for a long time.

19 Things started to change in 2002 when
20 Mass. American Water Company sold to Kelda, a
21 British company, who made us part of their
22 Aquarion subsidiary. After five years, in 2007,
23 Kelda sold Aquarion to Macquarie Utilities, Inc.,
24 an entity affiliated with an Australian bank.

1 In 2012, our water rates were the fifth
2 highest in the state. Filings indicated
3 Aquarion's attempt to request rate increases every
4 three years.

5 We were also concerned about our water
6 infrastructure, based on resident complaints and
7 unaccounted for water -- which is water that is
8 withdrawn from the aquifer, treated, and lost
9 before it gets to our homes -- was sixteen
10 percent. That's six points higher than the DEP
11 standard.

12 At that time, Hingham was in a small
13 minority of Massachusetts communities with a
14 privately owned water company. Inspectors,
15 combined with our experience with Highham Light,
16 made us question whether to consider purchasing
17 the water company, which is our right under a 1879
18 statute.

19 The 2012 Annual Town Meeting authorized
20 a feasibility study. A Study Committee that
21 included four former Advisory Committee Chairs was
22 established. Their work included gathering fifty-
23 seven documents and over three thousand pages of
24 information that is available on the Committee's

1 web page.

2 The Committee and its hired experts
3 valued the water system between fifty and sixty
4 million dollars. They identified significant cost
5 elimination opportunities. Initial governance and
6 engineering work was completed.

7 Since the Town and Aquarion could not
8 agree on a purchase price, as defined by the
9 statute, Hingham filed a Complaint in July of
10 2013. To limit unnecessary expenditures of time
11 and money, the Selectmen decided to pause with
12 governance and engineering work until the Town
13 knew that it had a viable purchase price.

14 The trial took place nineteen months
15 after the Complaint was filed, which the
16 litigators tell us is quick for a case of this
17 complexity. Closing arguments took place in May
18 of 2015.

19 This past November, the Court issued a
20 thirty-two page memorandum containing rulings on
21 four specific questions. We think the Court ruled
22 in Hingham's favor on all four questions.

23 The Court also required the parties to
24 calculate the final price differently than

1 originally proposed by either side. Hingham's
2 purchase price submission, which is based on the
3 Court's ruling, remains in the fifty to sixty
4 million dollar range.

5 Aquarion submitted two prices, one
6 hundred forty-four million, and ninety-six million
7 dollars. Aquarion's submission also stated an
8 attempt to appeal the Court's ruling. An appeal
9 is a review of the existing trial record. It's
10 not another trial, so it will not be as costly as
11 the trial.

12 So, why approve Article Nineteen
13 tonight? Well, the reason is, the facts. The
14 facts continue to compel us to finish what we
15 started. The Water Company Acquisition Study, the
16 Board of Selectmen, and the Advisory Committee
17 have each spent a great deal of time following
18 this process and analyzing each development. They
19 all agree we should continue.

20 In fact, there hasn't been a single no
21 vote from any Advisory Committee member or Board
22 of Selectmen in four years, and both boards have
23 turned over many of its members.

24 Over the past four years, the Town has

1 spent close to \$1.2 million, primarily for
2 litigation. During that time, Aquarion has
3 reduced our rates twice, resulting in over 3.5
4 million in ratepayer savings. I don't think
5 that's a coincidence.

6 The unaccounted-for water story is not
7 as strong. It's grown from sixteen to twenty-
8 three percent in four years which, in 2014,
9 represented over two-hundred and seventy-two
10 million gallons of water. The slide puts those
11 numbers into perspective. Remember them when you
12 see a notice about water restrictions.

13 At the conclusion of this litigation, if
14 the purchase price is viable for the Town, we will
15 resume engineering and governance work, using town
16 volunteers and paid experts as needed. We don't
17 expect it to take as long or cost as much as the
18 litigation.

19 In summary, since the Water Company was
20 established in 1879, Hingham has discussed the
21 possibility of Town ownership at least seven times
22 that we've been able to identify, and in each
23 case, a legally binding purchase price wasn't
24 secured, so each subsequent analysis had to start

1 from scratch.

2 Article Nineteen allows Hingham to
3 obtain a legally binding purchase price that we as
4 a town can carry into the future. The Board of
5 Selectmen ask for your support of Article
6 Nineteen. Thank you.

7 MODERATOR: Mr. Taylor, for the Advisory
8 Committee.

9 MR. TAYLOR: Good evening. Jim Taylor,
10 3 Grist Mill Lane, speaking on behalf of the
11 Advisory Committee.

12 As Selectman Power indicated, Article
13 Nineteen is not a referendum for the purchase of
14 the water company. It's an article to appropriate
15 up to \$300,000 to complete the legal phase of the
16 Water Company Acquisition Study.

17 The Advisory Committee voted unanimously
18 in support of this article. It's interesting to
19 note that the Advisory Committee has currently
20 voted on water company funding requests six times
21 over the last four years. As you heard, in each
22 case, after discussion and deliberation, the
23 Committee voted to support each expenditure
24 request each time the Committee analyzed the

1 rationale behind those requests. And I thought it
2 would be helpful to share the Committee's current
3 analysis with you tonight.

4 The first item we've taken into
5 consideration is the financial implication of the
6 potential acquisition. We looked at the potential
7 costs, as well as the financing aspect of a
8 purchase.

9 The Water Company Acquisition Study
10 Committee built a very detailed spreadsheet,
11 looking at all of Aquarion's current expenses and
12 identifying those that would be eliminated under
13 Town ownership -- considered that under Town
14 ownership expenses like the profit that Aquarion
15 earns, rent that it pays itself for the water
16 treatment plant, corporate office overhead, and
17 legal expenses incurred in other communities would
18 be eliminated.

19 In total, those eliminated costs enable
20 an annual savings of \$2.6 to \$3.2 million dollars
21 per year, amounting to really significant savings
22 over twenty years, at which point, the Town would
23 fully own the Water Company, only compounding the
24 savings beyond that time.

1 The model includes a significant
2 increase in capital expenses to fund
3 infrastructure improvements. It pays back the
4 Town for all of its expenses incurred in this
5 study process, including all legal expenses, as
6 well as making an annual payment to the Town in
7 lieu of taxes.

8 Of course, this is predicated on the
9 Court's ruling in favor of the Town's price
10 calculation, which can only be finalized with the
11 continued funding of its legal case.

12 Another area considered by the Advisory
13 Committee is the state of repair of the current
14 system. In 2011, Aquarion funded a significant
15 study to identify and prioritize the current
16 status of the water storage and distribution
17 system, and it prioritizes necessary improvements.
18 The study identified over seventeen million
19 dollars in needed upgrades. Compare that with
20 Aquarion's capital investment of around a million
21 dollars at the time of the study, and you see the
22 issue the Town is faced with. Delayed upgrades
23 and repairs result in greater long-term costs to
24 ratepayers, not to mention to capital needs.

1 But here is the really important thing
2 to remember. It doesn't matter who owns the Water
3 Company. Aquarion ultimately doesn't pay for
4 these repairs, and neither would the Town. It's
5 the ratepayer who pays for all the work. It's you
6 and I.

7 The current condition of the pipes is
8 effectively irrelevant, as you and I will have to
9 pay for infrastructure upgrade and repairs
10 regardless of who owns the Water Company.

11 The Advisory Committee is convinced that
12 Town ownership would take a much more proactive
13 approach to fixing the infrastructure. In fact,
14 the financial model I've previously referred to
15 equals five million dollars in year one
16 infrastructure improvements, with an annual
17 ongoing investment of two million dollars.

18 This proactive approach is more cost
19 effective and much more advisable than to wait for
20 it to break and then repair it, which is what
21 seems to be followed by Aquarion.

22 Lastly, a very important issue that the
23 Advisory Committee considered and discussed is a
24 continuity of ownership. Aquarion ownership is

1 complicated and confusing. Aquarion's corporate
2 offices are based in Connecticut, and it appears
3 it is ultimately owned by a private equity fund
4 managed by Macquarie, an investment bank based in
5 Australia.

6 And a few years ago, forty-five percent
7 of this fund was actually sold to a Canadian
8 Pension Fund.

9 That's right. The company that delivers
10 our most important scarce resource is owned by a
11 fund that was established for one reason only, to
12 deliver profits to its shareholders.

13 The Advisory Committee is extremely
14 concerned that at some point in the near future,
15 Aquarion will be sold once again, and sold to
16 another entity, even more motivated by profits.

17 Selectman Power tried showing Aquarion's
18 requests for over forty-five percent in rate
19 increases in the five years following its
20 acquisition by Macquarie is telling. Town
21 ownership eliminates this concern. We would
22 rather have our elected officials respond to water
23 related issues than having to worry about who the
24 decision makers are when real local problems

1 occur.

2 All these issues, though, are
3 meaningless without a court ruling on the price of
4 the Water Company. If the court determined price
5 makes sense, within the financial model I
6 mentioned earlier, then the study work will
7 continue and ownership and governance issues will
8 become the Town's focus prior to any future Town
9 Meeting vote.

10 If the price does not make sense, then
11 we walk away. We don't spend the \$300,000, and we
12 have a price that future generations could use as
13 a starting point.

14 We can't secure a legally binding price,
15 though, without finishing what we started. Don't
16 let \$1.2 million dollars be wasted. Let's build
17 on the progress achieved and the over three
18 million dollars of savings realized to date.

19 Please join me and the other members of
20 the Advisory Committee in voting in favor of this
21 article. Thank you.

22 MR. STATHOPOULOS: Peter Stathopoulos,
23 17 Volusia Road.

24 What disturbs me about the sole

1 acquisition study is that virtually every single
2 meeting of the Committee has been in executive
3 session, and they mention proprietary information,
4 litigation, et cetera. The minutes should be
5 released now. We've gone to court. I don't see
6 why we have to go to an executive session every
7 single meeting.

8 Second is that you talked about the
9 elected officials ruling the company -- I could
10 just say Flint, Michigan. So, it's just -- I mean
11 there's sixty-eight million dollar savings over
12 twenty years. What is it currently at, you know,
13 whatever we're borrowing at.

14 Second is that Aquarion -- responded to
15 the question that we forced them to reduce rates.
16 We did not force them. And I understand that
17 nobody has answered this is -- if it is run by the
18 Town, the rates do not have to go in front of the
19 State Department of Utilities for approval. We
20 can do it on our on.

21 Second is, one of the things that
22 disturbs me, in plenty of areas of the Town,
23 there's a lack of operational audits. We don't
24 have independent audits done in so many areas of

1 the Town, and this is one area I would like to see
2 it.

3 We talk about the fifth highest rates?
4 Well, that was probably six years ago the first
5 time I heard it. Is it still the fifth highest
6 rate? I don't know. The problem is that I see
7 these approvals; I see some figures thrown out,
8 but there is no detailed analysis; no support for
9 the figures. Were there RFQs or RFPs put out for
10 any consultants that we are using?

11 You know, do we have the best thing, or
12 are we just giving friends contracts, which -- you
13 know, it concerns me. And we don't have an
14 independent audit within this Town -- operations
15 audit. We have financial audits, which is fine
16 and it's necessary.

17 So, there's just -- one, I would like to
18 see all the minutes released that were in
19 executive session. Why should they be held
20 secret, even to now, because at the point of
21 litigation we're at, I don't think there's
22 anything lost if we release it.

23 And you know, that's it. I mean, I
24 would like to see it discounted. The sixty-eight

1 million dollars sounds big, but is that ten
2 dollars per household per year, or you know, I'm
3 being absurd, but there's no breakdown; there's no
4 discounted cash flow. And if it's fifty-eight
5 million, does that mean that eight million, we
6 walked away from it or what? You don't have a
7 break-even point showing when we walk away from
8 it.

9 So, that's -- I hesitate to approve the
10 money for something that the details do not yet
11 released. Thank you.

12 MODERATOR: Mrs. Power, would you like
13 to respond?

14 MRS. POWER: Thank you. I'll try
15 briefly to respond to as many of the questions as
16 we were able to record.

17 First of all, Hingham's water rates were
18 the fifth highest in the state in 2012, when the
19 study was commenced. Based on the last
20 information we have from Tighe and Bond, which is
21 two years ago, our water rates are the tenth
22 highest. There are three hundred and fifty-one
23 communities in the Commonwealth.

24 With respect to a discount rate, the

1 discount rate that was used in the model, or the
2 borrowing rate for the Town, was in the three and
3 a half percent range.

4 With respect to the costs themselves,
5 Aquarion annual costs are about twelve million
6 dollars a year. Our analysis indicates that 6.7
7 million of those costs can be eliminated. So,
8 that's a little bit over half of those costs can
9 be eliminated.

10 And it's important to note that the
11 proposition, at this point, is that that money can
12 get reinvested in terms of improving the
13 infrastructure. And the proposition would be that
14 those savings would allow for fewer and less
15 frequent rate increases than, I believe, the
16 forty-five percent that Mr. Taylor addressed.

17 With respect to executive session and
18 the release of minutes, the open meeting law is
19 very clear in this area. The open meeting law
20 states that executive session minutes are not to
21 be released until a matter is concluded. And we
22 are still in pending litigation, and that matter
23 is not concluded. So, it would not be in the
24 Town's best interest to release those minutes.

1 But on the issue of transparency, I
2 think it's also important to point out that in the
3 last four years, there have been twenty-four
4 public meetings where business has been conducted,
5 where updates have happened; that's a combination
6 of Town forums, meetings of the Committee.

7 Just, in fact, since February, the Board
8 of Selectmen have had three televised meetings on
9 Article Nineteen. The Advisory Committee has held
10 two public hearings on Article Nineteen. I think
11 we've had a total of about eight questions.

12 And lastly, with respect to the
13 Department of Public Utilities, they aren't the
14 rate setting agency for public utilities. I went
15 to a DPU hearing once, and I think others in the
16 room have been to those. And my impression is --
17 my experience was, from attending that rate
18 setting hearing, that the tendency is to favor the
19 business and the business's rate increase.

20 If you look back in Hingham's history,
21 the Department of Public Utilities typically
22 awards about seventy percent of a proposed rate
23 increase.

24 MODERATOR: Your time has expired.

1 MRS. POWERS: Thank you.

2 MODERATOR: Is there a further debate or
3 discussion?

4 Yes? You can come right here, if you
5 wish and speak directly into the mike, please.

6 MS. CUTLER: Ilona Cutler, 86 Central
7 Street.

8 I am concerned about this article also.
9 When the public was invited by Aquarion to go down
10 to the water treatment plant, I went down because
11 I'm very interested in water. I feel that one of
12 the most precious commodities a town can have. We
13 don't know how valuable our water is. Take a look
14 at Flint, Michigan.

15 Well, Aquarion seemed very reasonable to
16 me. I did try to get some facts from them, and
17 they did say the Town does own the water. They do
18 not have to go in front of the DPU, as that
19 gentleman had said. So, the Town has a lot of
20 infrastructure costs, and if they have to do it at
21 the prevailing rates, that's going to be very,
22 very costly to the Town and the water rates can
23 skyrocket.

24 I would like to see this -- I'd like to

1 ask if we have any idea how long the litigation is
2 going to go on, because according to this article
3 in the Patriot Ledger -- there's an article about
4 the Hingham Aquarion dispute over the purchase
5 could last years.

6 So, we're asked tonight to approve three
7 hundred thousand dollars for legal costs. I
8 understand that the Town put a lot of work and
9 effort into the study, and the lawyers got quite a
10 bit of money out of this.

11 And it's sounds to me like they're going
12 to get quite a bit more money. So, we're going to
13 be asked for three hundred thousand tonight. How
14 much more are we going to be asked for in the
15 future when this is tied up in litigation and not
16 resolved? Thank you.

17 MODERATOR: Is there further discussion
18 on the recommended motion under Article Nineteen?
19 (No response)

20 MODERATOR: If not, we come to vote on
21 that. It requires for its adoption a simple
22 majority.

23 All those in favor of the recommended
24 motion of Advisory under Article Nineteen, please

1 say aye.

2 (Verbal response)

3 MODERATOR: All those opposed, no.

4 (Verbal response)

5 MODERATOR: It is a majority vote.

6 MR. SIEGFRIED: Mr. Moderator, I vote
7 for reconsideration.

8 MODERATOR: A motion has been made for
9 reconsideration.

10 UNIDENTIFIED VOICE: Seconded.

11 MODERATOR: And seconded. Is there a
12 debate on Mr. Siegfried's motion for
13 reconsideration?

14 (No response)

15 MODERATOR: If you would like to
16 reconsider the matter that we have just voted, you
17 will vote in favor of reconsideration.

18 If you do not want to reconsider the
19 matter that we have just voted, you will vote
20 against reconsideration.

21 All those in favor of reconsidering the
22 action just taken on Article Nineteen, please say
23 aye.

24 (No response)

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MODERATOR: All those opposed, no.

(Verbal response)

MODERATOR: It's a unanimous vote against reconsideration. The matter may not be reconsidered again.

We now come to Article Twenty. Article Twenty asks, will the Town raise and appropriate, borrow, or transfer from available funds, a sum of money to be expended under the direction of the Board of Selectmen, for the purpose of improving and resurfacing various roads within the Town.

You'll see the comment speaks to a request to authorize two million, two hundred forty-two thousand (\$2,242,000) in funding to accelerate the Town's road building plan.

This requires for its adoption a two-thirds vote because it involves borrowing.

The recommended motion of the Advisory Committee is set forth at page thirty-six. It says, as follows, Recommended that the Town appropriate two million, two hundred forty-two thousand (\$2,242,000) to be expended under the direction of the Board of Selectmen for the purpose of improving and resurfacing various roads