



**Rutland Area Food Co-op Board Meeting
February 22, 2018**

Present:

Board: Chris Littler, Hannah Abrams, Steve Peters, Mckenna Hayes, Matt Poli, Dave Tibbs, Kate Thomas,

Missing: Irene Gold, Molly Nitka, Tyler Richardson, Laura Daubenspeck,

Staff: Zach Stevens, Jamee Sherwin

Guests:

Meeting brought to order: 6:33 p.m.

Team Building

- Team Building Exercise (10 mins)
- CDS Board Questionnaire (saving for another meeting)

Minutes:

- Minutes from January meeting shall be brought up or review and a vote
- Minutes should be made available, if needed.

Hannah moves to accept the January minutes with minor corrections. Dave seconds.

Professional Proposal

- Review and vote on proposal from David Swanson to set up legal matters for our Member Loan Campaign. Proposal provided in Appendix.
- As a reminder, David assisted with Middlebury's Member Loan Campaign and is known in the industry as an expert.
- There was some concern voiced regarding a few typos on the proposal, as well as the high hourly rates. It was also noted that the Board should do its due diligence and ask about the firm's malpractice insurance.
- Looking to, ideally, start campaigning in the next couple of months. Would need to have our Member Loan Campaign documents complete prior to contacting members.
- Due to the hourly rate, the question regarding looking more locally was discussed. It was also noted that due to limited time availability, the Board is unable to do an exhaustive search locally. Middlebury Co-op highly recommended David Swanson and his firm as they have special expertise in this field.
- Kate offered to reach out to some of her contacts to see if there are more local, or more cost-effective firms able to provide the same service.
- In the event that no alternatives are found by Friday March 2nd, the Board preemptively votes on David Swanson's proposal.
 - Chris motions to vote, Kate seconds.
 - The motion is approved.

FINANCE COMMITTEE – Chris L.

- Change to December numbers. A late bill came in for about \$1,200 which lowered our profits to about \$15,400.
- Sales were down for \$2,400 for January, a drop of 1.3%
- Profits of \$10,843.76 for the month, up 789.76 or 7.9% from last year.
- There was a \$500 Bank Service Charge for increasing the line of credit.
- Repairs & maintenance were up due to repairs to the large cooler.
- Office expenses were up because checks were ordered.
- \$24 in interest for the month.
- Small tools were up because of the purchase of the space heaters.
- Year to Date sales are flat with last year (up 1%)
- Profits are up \$38,000 for a total of \$70,649
- We want to show a loss in February and March. We still have \$68,000 worth of losses that we can use as a carryover against paying taxes on a profit. We will need to pay taxes on any profits over that amount.
- The Project Funding account on our balance sheet has \$50,000 that SHOULD NOT be there. NFNE put this money into our account to reflect our increase LOC. They were supposed to take it right out but did not at the month's end. We will not be charged any interest on that money.

Looking to the future

- February sales are even with last year. This is a good thing. December sales were way down, and January took a slight dip, so staying even would be nice.
- There is a \$1,500 bill due for our ProForma and a \$1,600 bill for Jeff Glassberg. This is a good thing since Zach wants to show a loss.
- We got a refund from our insurance company. This is a bad thing because Zach wants to show a loss.
- There will be an increase in spending for our Assistant Manager/HABA search.
- Co-op got a propane reading from Mark Foley and we are only off by about \$100 from what we are paying, so we should be good.
- Expecting a large bill from Fabian for snow removal.
- We will need to pay airfare for Nicole Klimek to come out for her site visit.
- We need to pay an expected \$7,000 to \$10,000 for lawyer's fees for the upcoming capital campaign.
- The co-op will close early on 2/20 due to the sledding in downtown.
- Chris received the update on spending from Jeff.
- The budget for 2018-2019 is nearly complete. However, we now need to add the possibility for paying taxes on profits.

PATRONAGE COMMITTEE – Steve Peters

- Review comments/questions we've received about the PR so far
 - Will we keep the other discounts?
 - Yes. Senior and HABA. As well as member sales and regular monthly sales.
 - This seems to cater to people who spend more.
 - Patronage refund is dependent on how much a member spends, yes. However, this is not any different than the current two percent discount. If someone spends \$1, they get a 2 cent discount. \$100 = \$2 discount.
 - Why not just increase our prices by 2%?

- That wouldn't work the same way. Don't want to increase prices as that makes us less competitive and penalizes all shoppers.
 - Do you need to have a full (lifetime) membership to receive a refund?
 - Some co-ops have people contribute their refund towards the cost of their full membership before giving out a refund check.
 - When does the 2% discount go away if approved?
 - The next fiscal year, which begins April 2019.
- Review Zach's example
 - Zach previously shared an example that helped demonstrate how the discount would be calculated. This was helpful in understanding how it would function.
- Brainstorm of other ways for educating and informing members
 - Handouts in store
 - Social media posts
 - Poster
 - Maybe a pledge of support - come to the meeting and support PR. A sticker? Something you sign and is posted?
 - Steve will meet with the new marketing manager after he starts to create a plan
- Next Date for outreach: Wednesday 2/28 with Matt Poli.

To Do:

- Look up more examples from other co-ops. - Steve
- Create a FAQ sheet for website/our resource. - Steve
- Have other board members sign up for outreach dates at the board meeting. - All

Next Meeting: Monday, March 5th, 6pm

STORE EXPANSION UPDATE – Zach and Hannah

- Had a conference call with Nicole Klimek, the design/equipment specialist. She will be on-site Monday April 9th.
- Have received the CAD file, however cannot open it. Mckenna and Matt have offered to open it on their computers and forward a PDF.
- Have had two more calls with CDS. It's looking like a \$750,000 investment could be manageable for us.
- There is a follow-up meeting being arraigned with Mark Foley in the next couple of weeks.
- We have started working on budgeting and planning events to gain member feedback on the expansion/renovations. Have noted that some events be hosted off-campus, such as the library, or in Wallingford so to reach as many members as possible.
 - These events would be member focused.
 - Leveraging the Facebook page and survey monkey as well as providing in-person opportunities to provide feedback.
- Hannah and Zach were given a tour of the Middlebury expanded space. Their big take-away from the experience was the importance of encouraging members to continue to shop during the expansion.

NOMINATION COMMITTEE – Hannah

- Up for re-election (entire executive team)
 - Matt P

- Chris L
- Laura D.
- Kate T.
- Steve P.
- Hannah A.
- One position on Board is still open.
- Some names have been brainstormed, however there have been no effort made to reach-out to anyone.
- Please send suggestions to Hannah as well as why you feel they would be an asset, what their skills are, and brief them on the responsibilities of participating in the board.

ANNUAL MEETING – Steve Peters

- Looking at Wednesday, June 6th, outside again. 5:30pm to 8:00 pm
- All board members are expected to be there and expected to assist in some fashion.
- Items on the agenda to be addressed in future meetings:
 - Budget
 - Securing space
 - Finding musical entertainment
 - Item which will be given away
 - Whether to do baskets again, or one large prize
 - Looking at different food options
- Next meeting is March 7th at 4:30 pm.

STRATEGIC PLANNING – Hannah and Zach



3rd Quarter, 2017 Update
Company Wide Rocks & Accountability

Q3 Financial Goals

Gross Sales: \$582,000 **\$550,000**
 Net income: \$10,000 (or greater)
 GMP: 33-36%

Q2 KPIs (Key Performance Indicator)

1. Sales Growth (The target is 3% or greater)
2. Basket Total: \$35 (or greater)
3. Membership Growth: 100 new members

	WHAT	WHO	WHEN	STATUS	DATE COMPLETE
1.	NCG Application	Zach	12/15/2017		
2.	Handbook Delivery & Implementation 2018	Zach	12/1/2017		
3.	Capital Campaign	TBD	12/1/2017		

4.	Patronage	Board & Patronage Committee	11/15/2017		
5.	Warehouse is 100% clear of debris & ready for expansion	Zach & Board	12/1/2017		
##	Extras: 1. Board and Management attend at least 1 networking event on behalf of the Co-op	Board & Management	12/31/2017		



**4th Quarter, Fiscal year 2017-2018
Company Wide Rocks & Accountability**

Q3 Financial Goals

Gross Sales: \$582,000
Net income: \$10,000 (or greater)
GMP: 33-36%

Q2 KPIs (Key Performance Indicator)

4. Sales Growth (The target is 3% or greater)
5. Basket Total: \$35 (or greater)
6. Membership Growth: 100 new members

	WHAT	WHO	WHEN	STATUS	DATE COMPLETE
1.	NCG Application	Zach	3/15/2018		
2.	Handbook Delivery & Implementation 2018	Zach and Board	04/01/2018		
3.	Proforma with Bill Gessner	Zach and Board	03/10/2018		
4.	Patronage	Board & Patronage Committee	03/31/2018		
5.	Warehouse is 100% clear of debris & ready for expansion	Annual Meeting Committee			
##	Extras: 2. Board and Management attend at least 1 networking event on behalf of the Co-op	Zach			

OTHER REPORTS

1. Clerk Job Description (appendix) /Who will fill the position

- Kate and Molly have offered to split the position, Molly taking on 1-4, Kate being responsible for the remainder.
 - Kate noted that the recordkeeping of policy revisions is missing from the list of responsibilities.
 - Chris noted that one individual person would be the official clerk, who then delegates additional responsibilities to the other person.
 - Steve notes that the duties are also missing the fact that the Clerk would be part of the executive committee.
 - Steve has offered to take on the full role and will delegate as needed.
2. Membership Records update
- Laura and Chris were unable to find the actual member policy; however, they have found several mentions of a membership policy.
 - Hannah has a copy of a policy that Kate is going to modify for our membership, then forward to Chris to review for specific scenarios like joining and separating family memberships.
 - Zach believes that it is in our best interest to move the membership dues from this fiscal year 2017-2018 to the balance sheet as equity instead of income this is also the policy that is suggested we use going forward. If the Board agrees, Zach will reach out to the C.P.A. and ask for their advice and any possible tax concerns or amendments to past taxes that may need to be made. This change will also strengthen the finance proforma and will keep from paying taxes on membership fees in the future.
 - Chris, Matt, and Laura will work on collecting membership data.

PG Reports

Reminder: The Sunday before the Board Meeting, please email PG Reports to the whole Board and Zach as well as place it in the Drop Box.

B1 – Financial Condition & Activities – Zach

This report has been generated using reports from the last two years to show trends. The actual report status is based solely on the current complete data of the three previous quarters ending 12/31/17 and additional data ending 1/31/2018. Unless otherwise stated with an exception, all data in this report is accurate as of 1/31/2018.

I certify that the information contained in this report and its attachments are true.

Signed, Zach Stevens, General Manager

B1- With respect to the actual, ongoing financial conditions and activities of the RAFC, the GM shall not cause or allow the development of fiscal jeopardy or material deviation of actual expenditures from Board priorities established in Ends policies.

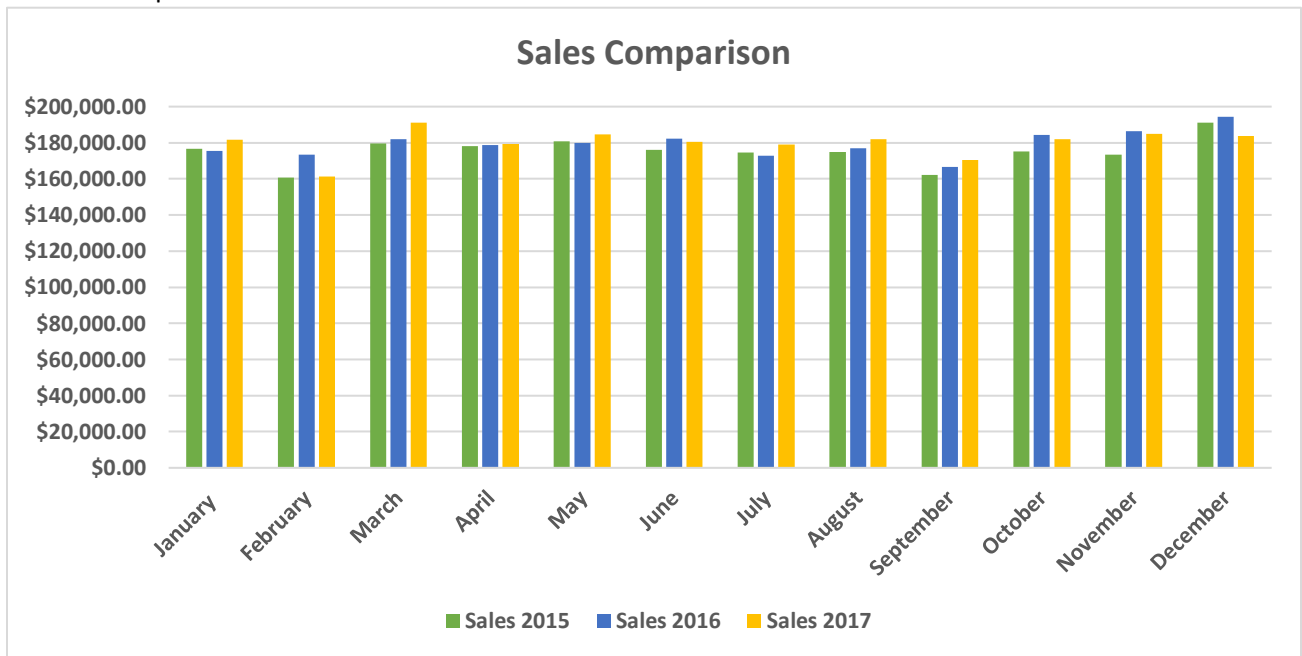
Interpretation: The policy states the criteria that we base our financial practice and assessment on which is outlined below. We use the following to measure our financial performance and look at trends to make informed decisions. If we fall out of compliance in any areas, it is the GM's responsibility to report on what may be a factor and our working plan towards compliance.

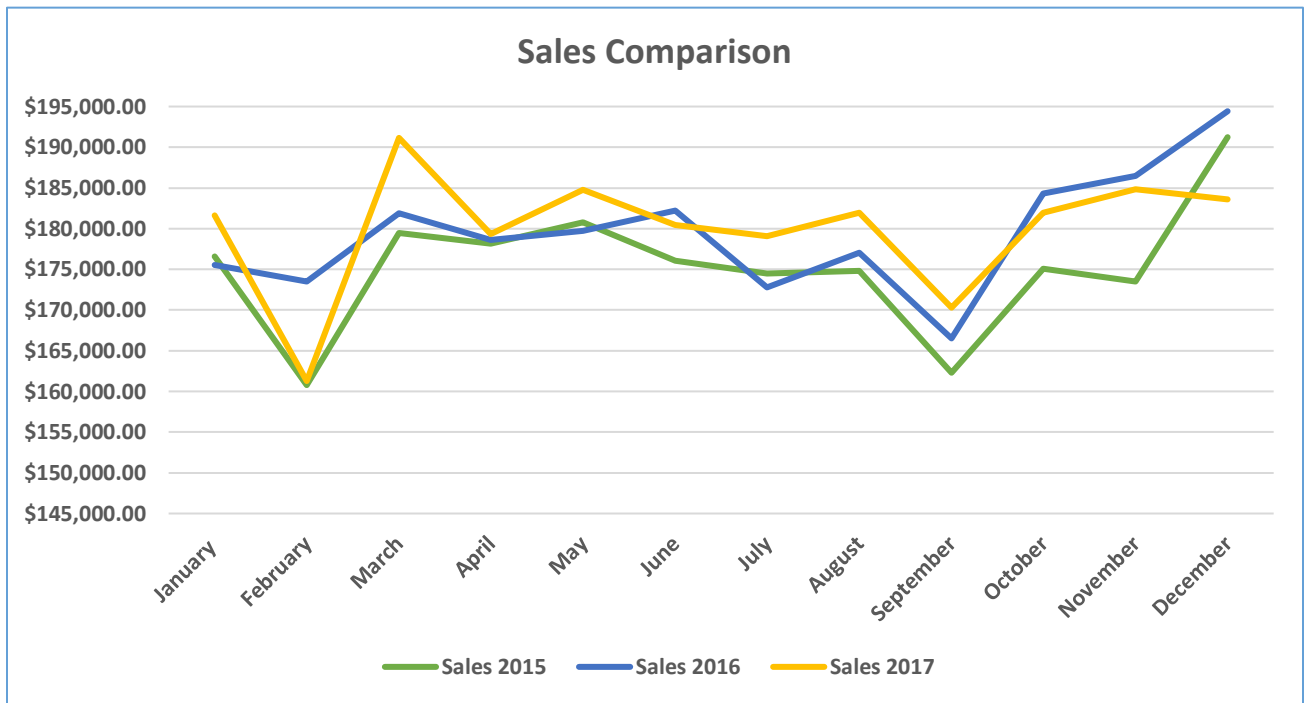
Data: The data collected is presented under each sub-policy below.

Conclusion: We are still out of compliance in sales growth. We have fallen out of compliance in record keeping. With the hiring and training of the new marketing manager we will start again promoting our demo's, sales, specials, giveaways, and overall happenings at the Co-op. We anticipate that this outreach will again help us increase our sales and membership. The board has established an unofficial membership committee who is helping work through and update our membership policies and records. Please see the data, strategic plans, and timelines for each section below as well as attached financial reports.

1.) Allow sales to decline or be stagnant.

Interpretation: Management strives for growth in sales in order to keep up with market inflation, operational increases and allow the business to expand its offerings. Sales growth should be above 3% to be in compliance.





Data: Sales for Qtr. 2 were **down \$-14,768.13**. The reduced sales in Q3 shrunk sales growth (Y.T.D. 4.1.17-12.31.17) to **\$4,152.82** or **.3%**. We also had a slight sales drop in January putting Y.T.D. sales at **\$1,752.31** or **.1%** (Y.T.D. 4.1.17-1.31.18).

Conclusion: It is this manager's conclusion that we are out of compliance.

Plan: Many of the dips in sales for Q3 were unavoidable. Our plan for increasing overall sales will start with the training of the new marketing manager. Once trained this person will help us re-engage with the members thus driving more sales.

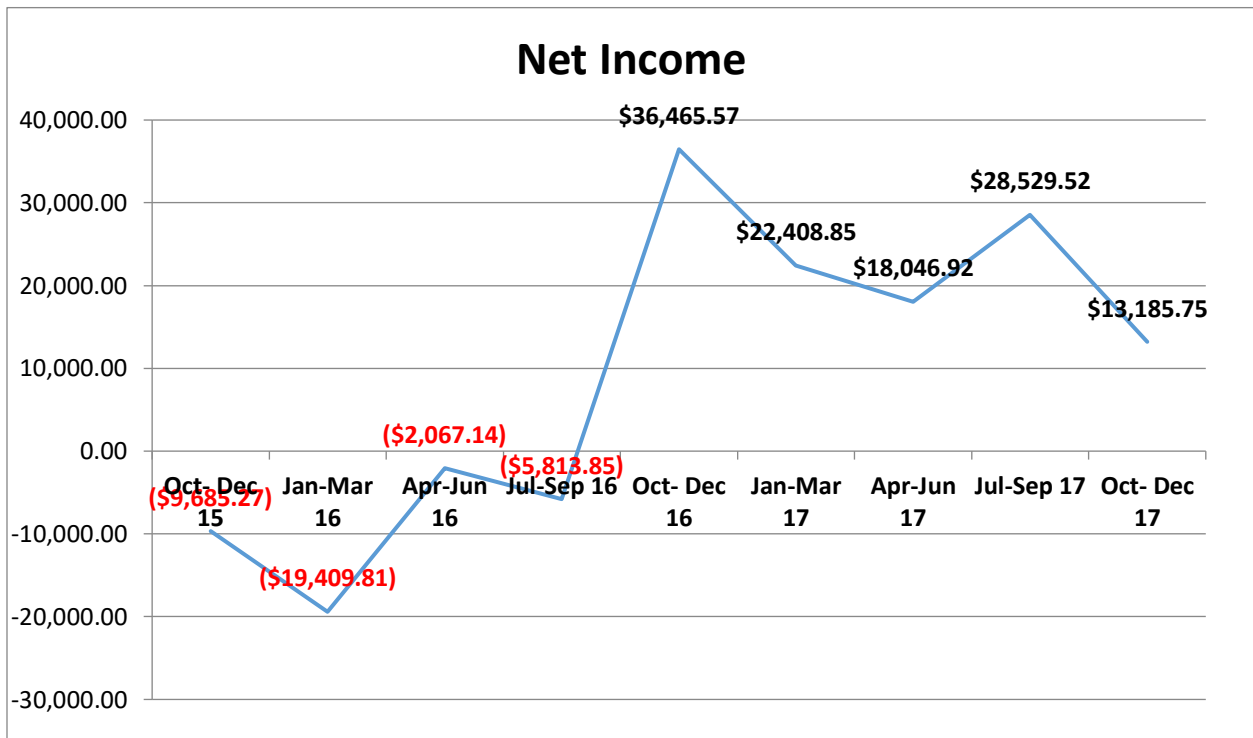
With the current delays in the renovation we are going to work on adding some additional shelving and displays to the front end to better add-on's sales and increase basket totals. The department managers are receiving monthly sales and spending updates which increase awareness of performance. Our goal continues to be to work toward the 3%, however, we will not be at the 3% for this fiscal year. With a fully trained management team in place by the Spring we plan to be at the 3% for Q1 2018.2019.

2.) Allow operations to generate an inadequate net income.

Interpretation: Management strives for a positive net number and uses operational strategies, planning and organization to meet this goal, Net income should be greater than 0 (Zero) to be in compliance.

Data:

Net income was **\$13,185.75** for Q3 of 2017.2018. Net Income Y.T.D. 4.1.17-12.31.17 is **\$59,806.19** compared to **\$22,378.81** last year.

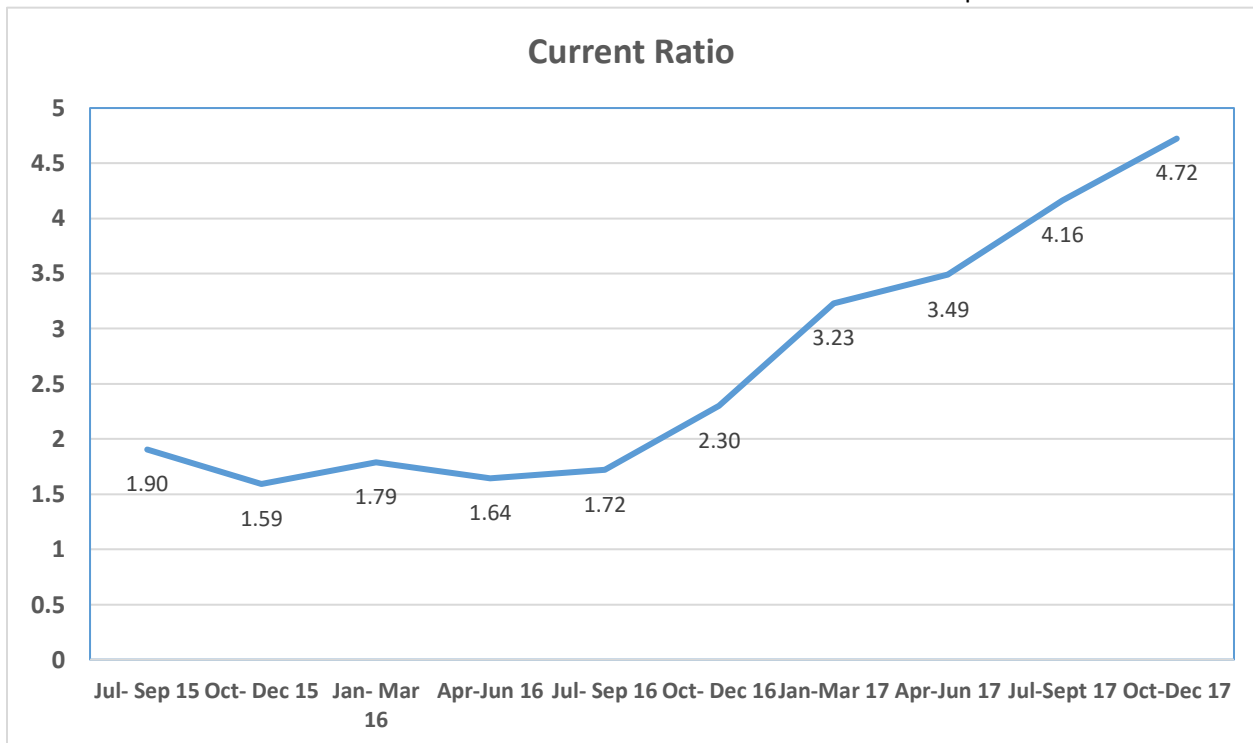


(Net Income) Conclusion: In compliance.

3.) Allow liquidity, or the ability to meet cash needs in a timely and efficient fashion to be insufficient.

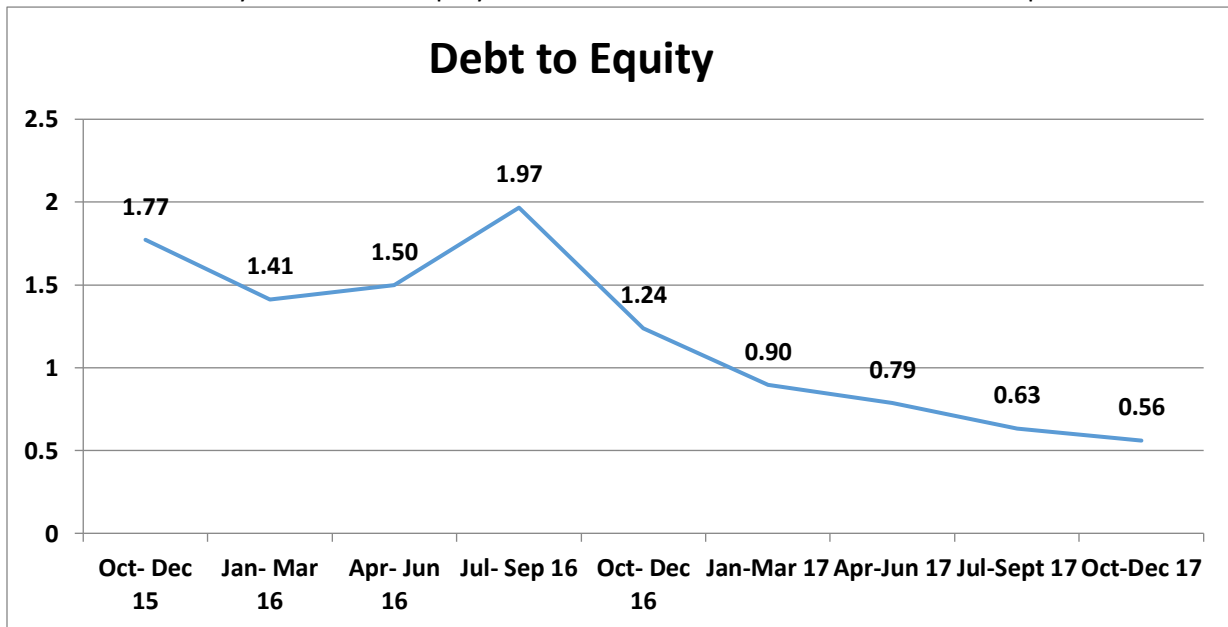
Interpretation: The current ratio, Current Assets divided by Current Liabilities, is a common measure of liquidity. The Current Ratio should be above 2 to be in compliance.

Data: At the end of December 2017 our current ratio is 4.72. Conclusion: In compliance.



4.) Allow solvency, or the relationship of debt to member/owners' equity, to be insufficient.

Interpretation: The debt to Equity ratio, Total Liabilities divided by Total equity is commonly used measure of solvency. Our Debt to Equity ratio must be below 2.0 to demonstrate compliance.



Data: solvency = .56

Conclusion: In Compliance

5.) Incur debt other than trade payables or other reasonable and customary liabilities incurred in the ordinary course of doing business.

Interpretation: Management may not incur new indebtedness except as trade payables, ordinary credit lines, and leases for equipment necessary in ordinary course of business.

Data:

Co-op fund of New England \$150,000 Revolving Line of Credit, Annual Interest Rate = 6.00%, Terms=5 years. Granted July 19, 2013. Loan has been readjusted for another 5 years as of January 2018.

No drawdowns since January 2016. Credit line increase to \$150,000.00 January 2018.

Current total of loan without interest is \$51,260.82 as of 12/31/17.

Conclusion: In Compliance

6.) Acquire, encumber, or dispose of real estate

Interpretation: This policy limits the GM from purchasing or committing to purchase and real estate; only the Board has the authority to make any kind of real estate (land or buildings) deal.

Data: No commitments or purchases have been made.

Conclusion: In Compliance

7.) Allow tax payments or other government-ordered payments or filings to be overdue or inaccurately filed.

Interpretation: Management will ensure that our payments of filings are timely and current.

Data: All payments and filings are current, timely and up to date.

Conclusion: In Compliance

8.) Allow late payments of contracts, payroll, loans, or other financial obligations.

Interpretation: Management will ensure that all accounts and financial obligations are current and in good standing.

Data: All contracts and accounts are current and in good standing.

Conclusion: In Compliance

9.) Use restricted funds for any purpose other than that required by the restriction

Interpretation: Management will use funds appropriately and only from accounts that are intended for the expenditures. If an exception occurs and Board approval is necessary, Management will present the information so the Board is aware and agrees with the proposed methodology.

Data: All funds are used appropriately from the intended accounts. All payments have documentation attached and are entered in QuickBooks and filed accordingly.

Conclusion: In Compliance

10.) Allow financial record keeping systems to be inadequate or out of conformity with GAAP.

Interpretation: Management will keep accurate records, controls and financial practices in place that in the best interest of RAFC. Annual assessment of these practices will keep them current and appropriate.

Data: Records, controls, and financial practices are in place. A financial review is completed annually by McCormack, Guyette and Associates. The last review for year-end 3/31/17 is available at the Co-op or in Drop-box. As we have worked on the pro forma with CDS we have found that our categorizing of membership income is incorrect, and our member data and records need updating.

Conclusion: Out of Compliance

Plan/Timeline- The board has formed an unofficial membership committee that has begun searching through the Co-op records to find past membership policies. Once all information has been gathered we will then create or revise current policies and have them reviewed by the entire BOD. Once the new policies have been agreed upon and perimeters outlined we will then enter all our membership data into one system for accuracy and proper tracking. This process will most likely take 3 months to complete.

Chris moves to accept with acknowledgment of non-compliance. Hannah seconds.

B9 – Emergency GM Succession – Zach

To protect the Board and the Co-op from sudden loss of GM services, the GM shall not have less than one other manager sufficiently familiar with Board and GM issues and processes to enable him/her to take over the reasonable proficiency as an interim successor.

Data:

With Julie leaving 2/19/18 we have fallen out of compliance in this area. Steve S, Chris T, and Caitlin M, are department manager who can sign checks and issue payments to vendors. Caitlin Montgomery has served as co-GM in the past and could step into the GM role if necessary but has not received training on current payroll processes. Sharon can process weekly payroll however is unable to sign payroll checks. Chris Littler is on all co-op accounts and can sign payroll checks in the GMs absence.

Conclusion: Out of Compliance

Plan/Timeline: Once a new assistant manager has been hired I will begin the process of training them on banking, payroll, budgets, P&G policies, the board and GM relationship, and troubleshooting of in-store issues. (Approx. Date 3/15/18). It will take 4-6 weeks of training before we are comfortable enough to add them to the bank accounts. The new assistant store manager will be fully trained by May 1st, 2018 and will be able to serve as interim GM in my absence.

Signed, Zach Stevens, General Manager

Chris moves to accept with acknowledgment of non-compliance. Hannah seconds.

C1 – Governing Style – Irene is out sick for tonight. Will be tabling this discussion/report until next month.

GM Report

- **Last Month**
 - Staff dinner was a great success again. The staff really enjoyed the \$50.00 gift cards. If you haven't been to Roots new breakfast location The Annex on Merchants row yet I would recommend trying to make the time.
- **This Month**
 - Marketing manager candidate Justin Jankus will be starting on Monday. Both Abi and Steve Peters have offered to come in next week to help with training.
 - Hannah and I toured to Middlebury expansion and met with Glenn on Tuesday. He helped answer questions and give some tips about how to engage with our members about the upcoming renovation/expansion. Glenn and his merchandising specialist are going to come down and tour our store in the next few weeks to give us some feedback.
 - Sales for February are dead even with last year.
- **Future**
 - We have received a lot of applications for the two open positions. I will begin interviews late next week.
 - The NFCA annual event is coming up March 17th in Greenfield Mass. I know it's St. Patrick's Day but if anyone from the BOD would like to attend and learn more about Co-ops please let me know. They have asked that I sit on a panel for the afternoon workshop and talk with other small Co-ops about some of the successful things we are doing here!
 - As we are again coming up on year-end we have started reaching out to vendors with outstanding checks and asking them to please locate them or let us know they are lost so we can re-print.
 - I am starting work on wage increases for the entire staff based on fiscal year performance.
 - I will be sitting down with each department manager next month and reviewing their annual budgets and asking for feedback and areas of concern, I am excited to have them join in the process.
 - Scott and I uncovered today that BOD members expirations don't auto pop-up at register because of the discount and category. We found that all, but Chris, Irene, and Kate are expired. Please renew at the register next time you are in.

Board Facilitator Monthly Update

- Board meeting attendance policy was provided by Hannah for the Board to review. Would like to have this as part of the packet that prospective Board members review and part of the Board member packet.
- Suggested edit: Board members re expected to attend the Annual Board Retreat and Annual Member Meeting. Board members are encouraged to make themselves available to additional educational events.
- Steve and Kate are going to work on a list or calendar of important dates to provide prospective Board members.
- Going to review at next meeting.

New Business

- Kate asked if there have been any discussions around re-branding? This is something that is on our radar.
- Kate will not be able to attend next month's meeting due to attending the VT Bar Association meeting.
- McKenna will be in Seattle during next month's meeting but is going to attempt to call in.

Review of Meeting & Agenda Setting

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Next Month

- Finance Committee: Thursday March 15th at 6 pm
 - Board Meeting: Thursday March 22th at 6:30 pm
 - Patronage Committee: Monday, March 5th at 6 pm
 - Annual Meeting Committee: Wednesday, March 7th at 4:30 pm
 - **NFCA Event: Saturday, March 17th**
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- B4 – Membership - Zach
 - C2 – Boards Job – Matt P.

Executive Session: No.

Meeting closed: Hannah motions to conclude meeting, Kate seconds. 8:46 pm.

Appendix

Principles of Policy Governance

1. Ownership: The board connects its authority and accountability to those who morally if not legally own the organization—if such a class exists beyond the board itself—seeing its task as servant-leader to and for that group. “Owners,” as used in the Policy Governance model, are not all stakeholders, but only those who stand in a position corresponding to shareholders in an equity corporation. Therefore, staff and clients are not owners unless they independently qualify as such.

2. Governance Position: With the ownership above it and operational matters below it, a governing board forms a distinct link in the chain of command or moral authority. Its role is commander, not advisor. It exists to exercise that authority and properly empower others rather than to be management’s consultant, ornament, or adversary. The board—not the staff—bears full and direct responsibility for the process and products of governance, just as it bears accountability for any authority and performance expectations delegated to others.

3. Board Holism: The board makes authoritative decisions directed toward management and toward itself, its individual members, and committees only as a total group. That is, the board’s authority is a group authority rather than a summation of individual authorities.

4. Ends Policies: The board defines in writing the (a) the results, changes, or benefits that should come about for (b) specified recipients, beneficiaries, or other targeted groups, and (c) at what cost or relative priority for the various benefits or various beneficiaries. These are not all the possible benefits that may occur, but are those that form the purpose of the organization, the achievement of which constitutes organizational success. Policy documents containing solely these decisions are categorized as *Ends* in the terminology of the Policy Governance model but can be called by whatever name a board chooses, as long as the concept is strictly preserved.

5. Board Means Policies: The board defines in writing those behaviors, values-added, practices, disciplines, and conduct of the board itself and of the board’s delegation and accountability relationship with its own subcomponents and with the executive part of the organization. Because these are non-ends decisions, they are called *board means* to distinguish them from ends and staff means. All board behaviors, decisions and documents must be consistent with these pronouncements. In the terminology of the Policy Governance model, documents containing solely these decisions are categorized as *Governance Process* and *Board-Management Delegation* but can be called by whatever name a board chooses, as long as the concept is strictly preserved.

6. Executive Limitations Policies: The board makes decisions with respect to its staff’s means decisions and actions only in a proscriptive way in order simultaneously (a) to avoid prescribing means and (b) to put off limits those means that would be unacceptable *even if they work*. Policy documents containing solely these decisions are categorized as *Executive Limitations* in the Policy Governance terminology, but can be called by whatever name a board chooses, as long as the concept is strictly preserved.

7. Policy “Sizes”: The board’s decisions in Ends, Governance Process, Board-Management Delegation, and Executive Limitations are made beginning at the broadest, most inclusive level and, if necessary, continuing into more detailed levels that narrow the interpretative range of higher levels, proceeding one articulated level at a time. These documents are exhaustive, replacing or obviating board expressions of mission, vision, philosophy, values, strategy, and budget. They are called *policies* in the terminology of the Policy Governance model but can be called by whatever name a board chooses, as long as the concept is strictly preserved.

8. Delegation to Management: If the board chooses to delegate to management through a chief executive officer, it honors the exclusive authority and accountability of that role as the sole connector between governance and management. In any event, the board never delegates the same authority or responsibility to more than one point.

9. Any Reasonable Interpretation: In delegating decisions beyond the ones recorded in board policies, the board grants the delegatee the right to use any reasonable interpretation of those policies. In the case of Ends and Executive Limitations when a CEO exists, that delegatee is the CEO. In the case of Governance Process and Board-Management Delegation, that delegatee is the CGO (chief governance officer) except when the board has explicitly designated another board member or board committee.

10. Monitoring: The board monitors organizational performance solely through fair but systematic assessment of whether a reasonable interpretation of its Ends policies is being achieved within the boundaries set by a reasonable interpretation of its Executive Limitations policies. If there is a CEO, this constitutes the CEO's evaluation.

All other practices, documents, and disciplines must be consistent with the above principles. For example, if an outside authority demands board actions inconsistent with Policy Governance, the board should use a 'required approvals agenda' or other device to be lawful without compromising governance.

Policy Governance is a precision system that promises excellence in governance only if used with precision. These governance principles form a seamless paradigm or model. As with a clock, removing one wheel may not spoil its looks but will seriously damage its ability to tell time. So in Policy Governance, all the above pieces must be in place for Policy Governance to be effective. When all brought into play, they allow for a governing board to realize owner accountability. When they are not used completely, true owner accountability is not available.

Policy Governance boards live these principles in everything they are, do and say.

MEMORANDUM

TO: Rutland Area Food Co-op Board of Directors

CC: Morgan Helme

FROM: David P. Swanson *DPS*

DATE: February 15, 2018

I would propose the following terms of an engagement and work plan:

First,

- We will assist Rutland Food Co-op in offering subordinated member loans to current members. I understand you are planning both (a) an initial seed money offering from a limited number of members (maybe as few as five at \$5,000 each), and (b) a member-wide offering of approximately \$500,000 to fund upgrades and an expansion at your store.
- Our work on this offering would include (1) advice about conducting the proposed securities offering, including which state and federal securities exemptions to utilize for the offering to members (more on this below), (2) including the required state of VT filings described below, (3) assistance in preparation of an Offering Document to be given to the members, (4) preparation of a form of subscription agreement and subordinated note forms, (5) drafting cooperative board resolutions to approve and initiate the offering, (6) discussion of these draft documents and the offering process with you and the other members of your team, and (7) any related efforts to prepare for and conduct the proposed offering of the member loans (including if desired advice regarding the pros and cons of preferred shares v. member loans). It would also include drafting a note or other appropriate document for the seed money offering.
- Morgan Helme and I will lead our team. Morgan has much experience with natural foods co-ops including leading the 2016-2017 Middlebury member loan campaign. We may also include an associate attorney (Dan Lenhardt or Keith Ahlgren) who participate actively in our cooperative practice group. All potential team members are in our Minneapolis office. My hourly billing rate is normally \$655, but I will use a \$595 rate for this work. I will be responsible for our work but most of the work will be done by Morgan and/or another coop group attorney, and a legal assistant (either Deb Vigdal or Ginny Wigchers) who specialize in state securities exemption filings. The hourly rate for both Morgan is \$305, for both Dan and Keith is \$280, \$350 for Deb and \$265 for Ginny.
- I estimate the costs for the activities identified above to fall in the range of \$7,000 to \$10,000. We do not anticipate needing more than \$10,000 to accomplish the work outlined above unless something unexpected occurs or there are protracted discussions

and negotiations or the like. If we were to undertake additional work (such as work on contracts and other arrangements, or if there are significant legal issues uncovered in the proposed offering structure which call for additional analysis), we would anticipate working with you to establish mutually agreeable budgets or other arrangements before undertaking the work.

- The \$7,000 to \$10,000 estimate assumes we would have the primary role in drafting the member offering materials. If you would prefer to draft this document and have us review and comment on it, that could reduce the legal cost. I will send you in a separate email, several samples of offering documents as examples.
- If we have the chance to do additional work for Rutland Co-op, we would anticipate working out terms or estimates at the time it commences.

Second, I believe the best way to conduct the member offering from a securities exemption standpoint is to limit the offering to members who are VT residents. This approach uses a Federal (SEC) "intra-state" offering exemption and a small business offering exemption for VT residents. No federal filing is required but a VT notice filing is required. And if you use advertising, the advertising materials need to be reviewed by the VT securities commissioner needs to be approved by the Dept. of Financial Regulation. We have experience with this process as a result of the Middlebury member loan campaign.

We can also explore other exemptions, particularly if it is important to offer the member loans to NY or other state residents. This involves a Rule 504 SEC filing (a notice only) and it limits the total offering to \$1 million. However, including NY residents in the offering presents problems because, unfortunately, NY law has a rule that prohibits officers and directors from participating in an offering unless they have a broker – dealer license. This law has an exemption for housing coops, but not consumer coops.

For the seed money offering, I see no real securities law issues or requirements as long as it is limited to a small number of people who have information about your co-op.

Please let me know if all of this is acceptable, and we will send you an official engagement letter on the foregoing basis.

Clerk Job Description: