

Warrant Article Questionnaire Non-Standard Town Agency Articles

Section III – Questions with Response Boxes – To Be Completed By Petition Sponsor

Article # 26	Date Form Completed: 9/9/2019
Article Title: 22 Pleasant Street	
Sponsor Name: Park and Recreation Commission & Seth Levine et al.	Email: nrpdjason@gmail.com

Question	Question
1	Provide the article motion exactly as it will appear in the Finance Committee Recommendation Book and presented to Town Meeting for action.
Response	Please see attached motion.
2	At a summary level and very clearly, what is the proposed purpose and objective of this Warrant Article and the accompanying Motion?
Response	<p>Access to the Hunnewell Park fields was been revoked by the owner of 22 Pleasant St. on November 28, 2018 effective as of the earlier of 12/01/19 or sale of the property. The Board of Selectmen and Town Administration received this letter, return receipt registered mail, in early December 2018. The letter is attached.</p> <p>The purpose is to acquire a Comprehensive surface and air rights of 22 Pleasant Street to accomplish four key objectives in one acquisition: 1) to gain unfettered access rights to Hunnewell Park fields, 2) to gain ability to park on 22 Pleasant Street in addition to or instead of on Hunnewell Park gravel lot, 3) to complete an assemblage of recreation, open space land and 4) to avoid any Town involvement with the underground contamination that was the stated reason for the Board of Selectmen not following through on the fee simple purchase of 22 Pleasant Street.</p> <p>The concept of a Comprehensive surface and air right easement is a straightforward concept used routinely in the commercial real estate world. In fact, a form of such easement was used by the Town to acquire Pegan Hill in 2016.</p> <p>22 Pleasant St is essential to the access to and any meaningful use of Hunnewell Park fields.</p>
3	Has this article or one of a very similar scope and substance been on a previous Warrant Article and what has been the actions taken by Finance Committee, other Boards or Committees and Town Meeting?

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Response	<p>Three previous articles for the fee acquisition of 22 Pleasant Street were approved by Town Meeting by overwhelming 2/3's plus votes. The minutes for these articles and actions of Town Meeting are attached. These minutes include the Finance Committee recommendations.</p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <tr> <th style="width: 25%;">Warrant Period</th><th style="width: 25%;">Other Committees</th><th style="width: 25%;">FinCom Action</th><th style="width: 25%;">Town Meeting</th></tr> <tr> <td>FTM 2016</td><td></td><td></td><td></td></tr> <tr> <td>SATM 2016</td><td></td><td></td><td></td></tr> <tr> <td>FTM 2015</td><td></td><td></td><td></td></tr> <tr> <td>SATM 2015</td><td></td><td></td><td></td></tr> <tr> <td>Prior</td><td></td><td></td><td></td></tr> </table> <p style="margin-top: 20px;">Comments:</p>	Warrant Period	Other Committees	FinCom Action	Town Meeting	FTM 2016				SATM 2016				FTM 2015				SATM 2015				Prior			
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4	Why is it required for the Town of Natick and for the Town Agency sponsor(s)?																								
Response	<p>Access to the Hunnewell Park fields was been revoked by the owner of 22 Pleasant St. on November 28, 2018 effective as of the earlier of 12/01/19 or sale of the property. The Board of Selectmen and Town Administration received this letter, return receipt registered mail, in early December 2018. The letter is attached.</p> <p>The acquisition of surface and air rights easement is the only cost effective way to <u>assure</u> access to Hunnewell Park. Although a gift of access is theoretically possible, reliance on a possible gift is a bad strategy. There can be no assurance that a gift of access would be given. There is also no assurance that a gift of access is possible either on a timely basis or ever.</p> <p>The issue of access was extensively analyzed by the 22 Pleasant Street Study Committee in 2014. The report which included the key findings on access is available. (The chair and vice chair have prepared a detailed and further explanation of various access ideas and related problems.) The key findings from the 2014 committee work – which were analyzed and written with the assistance of Town Counsel - are:</p> <ol style="list-style-type: none"> 1) The Town has no right of access through 22 Pleasant St. 2) The Town cannot obtain access by asserting adverse possession or prescriptive easement. 																								

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- 3) The Town cannot use any form of zoning or special permit or variance to trade for access rights. Such would be an illegal use of “police power” with serious US constitutional issues involving land takings without compensation.
- 4) The Town's only possible existing access connection is a 15 foot wide cart path that extends 382 feet from Pleasant St to the Hunnewell Park dirt and gravel lot.
- 5) This 15 foot wide corridor is actually 12.5 feet because the stone wall is on the 15 foot wide strip of Town land. Either way, it is too narrow for two vehicles to pass and is located too close (4 feet+/-) to the driveway of 22 Pleasant St to be a safe means of access and egress.
- 6) The Town's zoning bylaws and other regulations could actually be used against the Town if the Town were to try to create separate or joint access.

The Board of Selectmen were informed of these access problems in July 2014 by the study committee, were urged to seek an access solution and cautioned that it might not/would not be cheap because of the complexity of the 22 Pleasant St. property. The Board of Selectmen and Town Administration should have been aware as early as 2009 that access was an issue. Temporary access barriers were installed by the owner at that time.

Last November 2018, the owner of 22 Pleasant St revoked the Town's access privileges effective at the earlier of 12/01/19 or sale of the property. This letter and this fact were withheld by the Selectmen and Town Administration for over 8 months. The existence of this letter has only recently emerged. (Note: The letter itself is NOT executive session or confidential material.) Without access, the Town's ability to use Hunnewell Park and its ballfields is seriously impaired if not ruined. Because of the threat to the Town's ability to use Hunnewell Park, the Recreation and Parks Commission and the citizens sponsored this article.

The Town has four options to consider:

- 1) lose access or Field Two,
- 2) hope for a gift of access,
- 3) pay all the costs for and attempt to acquire access only or
- 4) acquire a Comprehensive Surface and Air Rights Easement for the whole property.

Option 1 is unacceptable. Option 2 is a problematic strategy. Option 3 will not be cheap and could cost \$1.5 to \$2.5 million because of the possible effects of taking access. In any eminent domain taking, damages are due not only for what is taken but also for the effects of the taking on any land not taken. (For convenience, these are referred to in this write-up as the direct damages and the consequential damages respectively.) Option 4 would secure access, avoid the cost of re constructing the driveway, provide rights parking areas of 22 Pleasant St that are already used extensively by the Town, complete an assemblage of park and recreation land and avoid underground contamination.

Option 1: Lose Access or Field Two

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Losing access is unacceptable. Although it is theoretically possible to create access in through Field Two and around to the gravel parking lot, this would result in the loss of Field Two. That is unacceptable.

Option 2: Hope for a Gift of Access of Rights

Any gift of access would need to be a true gift. It could not be coerced or compelled. A gift would require the consent of the owner of the property, any tenant for the property and any mortgage lender. The current owner has sent us an access revocation notice; not a gift. Any buyer could not give us access until they owned the property. If they used a mortgage lender, that lender would need to agree to release those rights from their collateral. If the property is rented, the tenant would need to agree. If a buyer or tenant needed a special permit before buying the property, attempts to conflate access and special permit could result in legal claims and damages against the town by the buyer and/or the seller (or the tenant and/or landlord) for interference in a transaction. If a transaction does not happen soon, we would be dealing with the existing owner – who sent us the revocation notice. New buyer might understandably want to understand what the level of access demand and effects on their property are before considering a gift.

A gift would also raise complicating issues of insurance and maintenance. A gift of access would cross part of 22 Pleasant St. In today's world of liability, very few if any businesses can get their insurance company to cover extensive use of their property by non company and non business related traffic. Employees, customers, deliveries and visitors would be likely covered. However, 1,100 to 1,00 Little Leaguers and their parents, siblings and grandparents most likely won't. A company giving a gift would need to consider whether they would be covered or self-insured. Maintenance expenses and responsibilities would be a similar issue.

The Town has been incredibly fortunate that Mr. James Knott, Sr. who owned the property personally allowed us access privileges for so long. It's not clear the Town ever even said "Thank you". It is not clear if Mr. Knott was personally covered under a large person umbrella insurance policy or was not concerned about such issues. Fifty six years ago when he purchased the property, personal injury and liability insurance concerns are not what they are today. A new owner could understandably have serious reservations and problems with any gift of access.

Reliance on a gift of access is essentially a pure hope on the generosity of a commercial party. This is not a strategy to secure access. It is simply a hope. Further it is a hope with serious impediments.

Options 3: Pay All the Costs For and Attempt to Acquire Access Only

This option is not part of this article. This option is not cheap, will not be timely, presents numerous potential litigation problems and could even be prevented by an owner of 22 Pleasant St. These factors are explained below and make this option problematic.

22 Pleasant St. access will not be cheap.

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	<p>The front part of 22 Pleasant Street consists of RG zoned land but has frontage on a private way from a 1911 recorded plan. This private way runs from Pleasant St. to the Charles River. Town Counsel advised that this private way could be used as legal frontage although the private way would need to be constructed to current and wider standards. Even with these standards, the RG portion of 22 Pleasant St. appears adequate for three residential lots. RG land allows for single family or two family duplexes on each lot. A Town driveway through this RG land could render these lots worthless requiring full compensation for that portion of the land. Take your estimate of a residential lot in South Natick and multiply by three. However, there are potential costs and value effects on the Ind -1 part of the property.</p> <p>As determined by the study committee and town counsel, the existing building could be converted as of right to an office building or even demolished and rebuilt in the same location as a fully modern office building. Both an office and an industrial use would require access and egress. Town interference with those access rights could lead to <u>further</u> damages in addition to damages for taking the RG lots. The fact is that all of the access and egress rights currently belong to the owner of 22 Pleasant St. None belong to the Town.</p> <p>The Town would need to consider effect of the Town's traffic in and out of 22 Pleasant Street. 22 Pleasant Street has approximately 120 to 125 feet of frontage on Pleasant Street. However, the actual driveway of 22 Pleasant St. is about 40 to 45 feet wide at the line of Pleasant St. The driveway cannot be widened and cannot be relocated because of the state bridge abutment. This means two way (in and out) Town access would have to use part of the existing driveway at least at the entrance /exit. This creates a potential traffic conflict with traffic for the existing building in the industrial I part of 22 Pleasant St. in addition to safety issues.</p> <p>Potential traffic conflicts between the youth baseball and softball programs and a commercial use of the Ind -1 part of 22 Pleasant St could conceivably deprive the Ind -1 part of the site of most if not all of its value depending on the type of commercial use. For example, an owner might claim to be unable to rent the building to tenants who need unimpeded access in and out of 22 Pleasant St at the beginning and end of each business day throughout the year; not just outside of baseball season. The Town's use of 22 Pleasant St would not support the town's position to the contrary. Baseball and softball parking of 20 or more vehicles regularly sprawls onto 22 Pleasant St and sometimes even takes all of the parking including the entire length of the existing driveway. Whether these vehicles continue to do that and have to be ticketed and towed, park instead on Pleasant St, create traffic problems in/out of 22 Pleasant St., or otherwise, serious adverse effects could result for the commercial use. The extent of any such damages would be the subject of expert (not legal) analysis and testimony. The cost of litigation , expert reports and additional damages should not be dismissed. If the Town were to lose, it would have to pay.</p> <p style="text-align: center;"><u><i>Cart Path Cannot be Combined with 22 Pleasant Street or Used in Isolation</i></u></p> <p>The Town has a 15 foot wide strip of land that runs 382 feet from Pleasant St. to the gravel /dirt parking lot which is also located on Town land. This 15 foot wide street is part of Hunnewell</p>
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	<p>Park. Although the town owns this 15 foot wide strip, surveys indicate that an historic stone wall is located along this strip of land and that the actual available width is 12.36 feet.</p> <p>This strip of land is not wide enough for two vehicles to pass. This strip of land is not a driveway, does not have a curb cut and is only 4-5 feet from the driveway of 22 Pleasant St. The Town's strip of land at the Pleasant St. line ends directly at a pedestrian walkway with handicapped access paving. It would require a curb cut and permitting as a driveway. (See further discussion below.) In the unlikely event that it was successfully permitted, it would require expensive police details at each end of the 382 foot length. The current cost of these details – just for the Little League season of April, May and June would be approximately \$120,000 per season. At a 4% discount rate and no inflation, that is a present value cost of \$3,000,000 just for police details. There would be additional costs for paving the new driveway.</p> <p>All of Hunnewell Park is Article 97 protected land. Article 97 prevents this 15 foot wide strip from being combined with land from 22 Pleasant St. for either a shared driveway or a new street. Any conversion of Article 97 land to a non park use requires a unanimous vote of the Selectmen, a 2/3's vote of Town Meeting for this purpose, preparation and filing of an Environmental Notification Form to the Secretary of Energy and Environmental Affairs, related MEPA approval including mitigation lands, a 2/3's roll call vote of the Massachusetts House of Representatives and a 2/3's roll call vote of the Massachusetts Senate. A shared driveway also presents permitting obstacles and risks as discussed below.</p> <p>If a new driveway were 30 feet or more in width and opened to the public, it would be a street under the Zoning ByLaw. As a street it would need to terminate into a cul de sac that is 120 feet in diameter. Such a cul de sac could not be located in Article 97 land, would need to be located entirely on 22 Pleasant St., and would add to the damages for RG lots and could add to the damages for traffic conflicts. Further costs and time delays would be needed for the construction of a new street.</p> <p style="text-align: center;"><u><i>Litigation Risks and Permitting Barriers and Requirements Exist w/ Option 3</i></u></p> <p>Any change in the existing driveway would require a special permit and site plan review. Driveways which are located too close to one another cannot be permitted. If permitted, they can be appealed. In fact any special permit and site plan can be appealed. Such appeals, if sustained by a court, could prevent an access only solution.</p> <p>Shared driveways are also prohibited in the current zoning bylaw. A zoning bylaw change would be needed. Any zoning bylaw change would apply throughout town and might be a problematic idea. Significant litigation costs, delays and uncertainties could occur.</p> <p style="text-align: center;"><u><i>Significant Implementation Problems and Delays Exist w/Option 3</i></u></p> <p>To implement an access only solution will likely require the use of eminent domain. We should remember that the owner has revoked access privileges. The above problems would or could occur <u>after</u> an eminent domain taking. Before an eminent domain taking, detailed plans would</p>
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	<p>need to be prepared locating the taking . Appraisal would need to be obtained before the taking. Reportedly, no such plan has been prepared and no appraisal commissioned. Both would need to be completed before Fall Town Meeting dissolves.</p> <p>Once a taking and amount of money were approved by Town Meeting, order of taking would need to be drafted, voted and then recorded at the Registry of Deeds by the Selectmen. Then the permitting process and potential litigation over damages could commence. The permitting could not be started without a zoning change which is not on the warrant. Once all of these were accomplished and assuming that no litigation was filed for an unsafe driveway, the Town could begin work on the new driveway sometime next June after Spring 2020 Town Meeting votes the money to build the driveway. The 2020 youth baseball and softball season would not occur. Access would not be available until after a driveway was completed. If a new driveway was successfully appealed, the current youth baseball and softball programs would cease to exist.</p> <p>For all of these and other reasons, the sponsors believe that attempts at access only solutions are highly problematic and potentially as costly or more costly than outright acquisition of 22 Pleasant St especially when costs are measured not only in terms of Town funds but also in terms of the costs and consequences to programs. For these reasons, the sponsors wrote the article to prevent misguided efforts to use this article for access only.</p> <p><u>Option 4: Acquire a Comprehensive Surface and Air Rights Easement for the Whole Property</u></p> <p>This option definitively secures access and does so on a timely basis without any permitting or construction costs, litigation and time delays. This option is the only option that secures and assures access. The only litigation risk is for extra damages. Although possible, this is unlikely. The existing Town Meeting appropriation for \$3.2 million is also the listing price on LoopNet. One broker lists it for 3.4 million. However, an owner would be hard pressed to demonstrate further damages if the Town met a published list price.</p> <p>The Comprehensive Surface and Air Rights Easement would take all of the beneficial uses of 22 Pleasant St but would avoid the underground contamination. Such an easement is a traditional solution when there is something underground that the buyer (us) doesn't want or something valuable underground that the Seller does not want to give up.</p> <p>The acquisition costs under this article are fairly fixed and do not have permitting, litigation or additional damages risks. The existing driveway would be used but only by the Town. This driveway is covered under zoning. Properly negotiated or even coordinated with an eminent domain taking, the current owner would be able to remove the under ground contamination which necessitates knocking the existing building down. The current owner could remove the contamination and get their family/company out of likely future environmental liability. An activity and use limitation i.e. for parking over any area of current or former contamination – similar to the Rail Trail and Mechanic Street, could ensure this. Properly negotiated, this Option</p>
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	<p>4 could result in the cleanup of underground contamination next to the Charles River. This is something no other option provides.</p> <p>This Comprehensive Surface and Air Rights Easement approach also provides other benefits.</p> <p>People would be able to park on the paved area of 22 Pleasant St. The overcrowded parking conditions would be relieved. Over time new fields (baseball, softball or other) could be designed either on the current gravel lot or on the RG part of 22 Pleasant St. Parking could be provided in the area of the current building. The assemblage of 22 Pleasant St with the Hunnewell Park land creates any number of possibilities that could never otherwise even be considered. The sponsors note that the boundary line between Hunnewell Park and 22 Pleasant St is approximately 1,000 feet long and runs from Pleasant St to the Charles River.</p> <p>In addition, 22 Pleasant St sits in the center of extensive town park lands on the other side of Pleasant Street that consist of almost 16 acres. These parklands are partly wet a seasonal basis and other parts always dry. These lands are not well used because they lack parking which 22 Pleasant St could provide. Further the Town owns park and conservation land on the other side of the Charles. Prior to the great depression, canoeing and boating were available on both sides of Pleasant St. The possibility exists to revive these uses and include kayaking.</p> <p>One Selectmen has remarked that we should never buy land without knowing the definitive plan. That is not the way the real estate world works. Any assemblage inherently has value and allows that planning to then take place. This assemblage also definitively secures access and adds parking.</p> <p>The game of Monopoly was patterned after the way the real estate world works. In Monopoly getting all the colors is the real world equivalent of completing the assemblage. Even children understand the benefit of owning Boardwalk and Park Place and then figuring out if your building houses or hotels. Once you own all the colors the value goes up and then you get flexibility to do things that otherwise are not possible. The game is a simplified version of reality but the principle holds. And in a certain sense our Hunnewell Park is the Boardwalk to 22 Pleasant Street's Park Place.</p>
5	Does this article require funding, how much, from what source of funds and under whose authority will the appropriation be managed and spent?
Response	This article seeks to amend the previous borrowing authorization and appropriation for the fee simple purchase of 22 Pleasant Street by adding the surface and air rights as a use if the funds. The previous appropriation and borrowing authorization of \$3.2 million would be unchanged.

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6	<p>Does this article act in any way in concert with, in support of, or to extend any prior action of Natick Town Meeting, Massachusetts General Laws or CMR's or other such legislation or actions?</p> <p>Does this article seek to amend, rescind or otherwise change any prior action of Natick Town Meeting?</p>
Response	<p>This article is in concert with three previously voted article of Town Meeting i.e. Article 35 of Spring 2015, Article 29 of Spring 2016, and Article 27 of Fall 2017.</p> <p>Yes, this motion seeks to amend the previous purchase authorizations to allow acquisition of surface and air rights instead of the fee ownership to the center of the earth. The motion also seeks to apply the condition of a purchase and Sale agreement only to a fee simple purchase. The relaxation of this provision would permit eminent domain which would otherwise be precluded. Because the motion seeks a surface and air rights easement and allows subsurface easements if the underground contamination is avoided and because the reported contamination is underground, the motion also seeks to relax the requirement that the property be free and clear of contamination. Such restriction would not be relevant to surface and air rights. However, the motion permits an activity and use limitation over any area of underground contamination which is not remediated.</p> <p>The article permits and the motion includes amendments to the previously voted town meeting actions. These amendments are contained in the motion.</p>
7	<p>How does the proposed motion (and implementation) fit with the relevant Town Bylaws, financial and capital plan, comprehensive Master Plan, and community values as well as relevant state laws and regulations?</p>
Response	<p>The proposed motion and its implementation are not affected by the Towns ByLaws. The Town does not have a financial plan so called. The item is not on the capital plan but then again neither is the loss and replacement of Hunnewell Park. The motion is highly consistent with the Open Space Plan and Master Plan.</p>
8	<p>Who are the critical participants in executing the effort envisioned by the article motion?</p>

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Response	(Type response here)
9	<p>What steps and communication has the sponsor attempted to assure that:</p> <ul style="list-style-type: none"> • Interested parties were notified in a timely way and had a chance to participate in the process • Appropriate Town Boards & Committees were consulted • Required public hearings were held
Response	<p>Multiple attempts were made to communicate with the Board of Selectmen who indicated a) they would be unable to meet with the citizen sponsors before the warrant closed, b) had no plans for any access or other article for 22 Pleasant St. c) wanted to wait until after the warrant closed, and d) could not have any communication outside of executive session.</p> <p>The citizen sponsors went to the effort of writing up detailed analysis to get the Selectmen to focus. Selectperson Adelman Foster actually read it.</p> <p>In Spring 2015, the Board of Selectmen actually sponsored an article (Article 34 of Spring 2015) for acquiring access by purchase or eminent domain. They requested and received Referral to the Sponsor. The sponsors of this Article 26 suggest that the Finance Committee compare the language of Article 25 on the current warrant to Article 34 on the Spring 2015 warrant and note the greater precision of the 2015 article. There have been 8 annual and several special Town Meetings since that request for referral for the Selectmen to have proposed a potential access idea.</p> <p>During the preceding 5 years no member of the Board of Selectmen or Town Administration had any interest in meeting with members of the study committee on the details and problems of access. Last September and October, after concerns about underground contamination were made public (after the then warrant had closed), member of the study committee informed the then Chairperson of the Board of Selectmen about the ability to avoid contamination concerns by using a surface and air rights easement concept. The idea was summarily rejected without consideration or opportunity to explain the concept.</p>
10	Since submitting the article have you identified issues that weren't initially considered in the development of the proposal?
Response	(Type response here)

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11	If this Warrant Article is not approved by Town Meeting what are the consequences to the Town and to the sponsor(s)? Please be specific on both financial and other consequences?
Response	<p>The Town will likely lose access to the Hunnewell Park fields either for the 2020 youth baseball season or permanently. The youth baseball and softball programs could be impaired or shut down. The Town would also forfeit a once in 100 year opportunity to complete a large recreation land assemblage in South Natick.</p> <p>Under an alternative article, the Town could also find itself paying equivalent money just for an access driveway, being embroiled in lengthy and losing litigation and finding the required permits for its access driveway overturned by the courts on safety, zoning and other grounds.</p> <p>The time frame for the implementation of this article is straightforward and direct. The Town could take the surface and air rights easement by eminent domain within 45 days of the dissolution of Fall 2019 Town Meeting. This time period would give the Boar of Selectmen time for a meeting to draft, approve and record the order of taking and pay the associated funds. The Town already has an appraisal for the full property.</p> <p>Under an alternative article, the Board of Selectmen would need to layout and define what would be taken, get an appraisal for that, and then draft and approve and record the order of taking and then begin a Special Permit process and Site Plan Review for a new or altered driveway which could be appealed by the property owner or any abutter.</p> <p>The order of taking for all of the surface and air rights under this article is rather easy to draft: it's everything. No special permit would be required because the pre-existing driveway would be used and would be only for one use.</p> <p>Drafting a partial taking for a driveway requires detailed survey and engineering plans to determine the location of the easement. Such an easement would be complicated by issues of responsibility for insurance and maintenance. The alternative also requires either alteration of the existing driveway to accommodate two uses or construction of a second driveway – at least in part. This construction would add to the time frames for the alternative.</p>