

Karis L. North
knorth@mhtl.com

September 12, 2022

VIA EMAIL ONLY

Linda Wollschlager, Chair Finance Committee
Natick Town Hall
13 E. Central Street
Natick, MA 01789

RE: Natick 2022 Fall Annual Town Meeting – Warrant Article 29

Dear Ms. Wollschlager:

Upon your request, I have reviewed Article 29 and its Motion for the 2022 Fall Annual Town Meeting, concerning the Charles River Dam (“Dam”). You asked about the impact of the Motion, whether Town Meeting can authorize the Department of Public Works to expend funds on the Dam, and the authority of the Select Board in determining the future of the Dam.

In answering these questions, I have relied upon the Natick Home Rule Charter (“Charter”), the Massachusetts General Laws (“General Laws”), pertinent land records, and other legal sources.

The Dam was conveyed to the Town of Natick, via quitclaim deed, on April 17, 1934. The Dam is also registered to the Town by the Commonwealth. No other town agency has been granted authority over the Dam, although its repair and maintenance are handled by the Department of Public Works and, as discussed below, is under the purview of the Select Board to determine its status.

Under the Charter, the Select Board is the chief executive officer of the Town, and holds all of the executive powers it is possible for a Select Board to have and to exercise. The Select Board is also a policy-making board.

Under the General Laws, chapter 40, section 3, all town property (real or personal) which has not been placed into the care of any particular town board, officer, or department, by law or vote, is under the control of the Select Board. Day to day control over such properties is under the authority of the Town Administrator.

The Charles River Advisory Committee was established in March 2021, in order to engage in consultation and deliberation to help inform decisions the Select Board would ultimately be required to make, to address the current deficiencies of the Dam. This process is consistent with the authority granted the Select Board under the General Laws, and the authority granted the Town Administrator under the Charter.



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I have reviewed the petitioner's Motion, and find that although Town Meeting is within its powers to appropriate monies for a specific purpose, the Motion is likely to be ineffective, unless the Select Board chooses to act on it, because the question of what to do with the Dam implicates policy questions which are within the purview of the Select Board, and concerns the use of town property, which is under the control of the Select Board.

The authority of Town Meeting to appropriate funds to take a specific action concerning land does not constitute a "command" which the Select Board is bound to follow, but is simply an "authorization" which allows the Select Board to act in a certain way. Twomey v. Middleborough, 468 Mass. 260, 269–70 (2014).

Generally speaking, '[a] municipality can exercise no direction or control over one whose duties have been defined by the Legislature.' Breault v. Auburn, 303 Mass. 424, 428, 22 N.E.2d 46 (1939), quoting Daddario v. Pittsfield, 301 Mass. 552, 558, 17 N.E.2d 894 (1938). More specifically, a town meeting cannot exercise authority over a board of selectmen when the board is acting in furtherance of a statutory duty. See Anderson v. Selectmen of Wrentham, 406 Mass. 508, 512, 548 N.E.2d 1230 (1990) (board of selectmen not bound by town meeting vote to set rate of contribution for group insurance provided to town's employees under G.L. c. 32B, § 7A); Russell v. Canton, 361 Mass. 727, 730–731, 282 N.E.2d 420 (1972) (where Legislature delegated to board of selectmen right to take land by eminent domain, town meeting could authorize but not command such taking).

Id. Thus, Town Meeting may direct the Select Board to repair the Dam, with funds as provided by Town Meeting, but the ultimate decision as to the future of the Dam lies with the Select Board. A successful Town Meeting vote on Article 29¹ authorizes, but does not compel repair. Town Meeting also lacks the authority to direct the Department of Public Works to repair the Dam, absent direction to do so from the Select Board.

¹ The Motion for Article 29 states: Move that the Town vote to appropriate the sum of \$925,054 to be expended under the direction of the Department of Public Works for the purpose of rehabilitating the Natick Charles River Dam to comply with current Massachusetts standards for dams and that to meet this appropriation the Treasurer with the approval of the Select Board is authorized to borrow \$925,054 under Massachusetts General Laws Chapter 44, Section 7, as amended, or any other enabling authority and to issue bonds or notes of the Town therefore aggregating not more than \$925,054 in principal amount and that the Town Administrator with the approval of the Select Board is authorized to take any action necessary to carry out this program, and further, that any premium received by the Town upon sale of any bonds or notes approved by this vote, less any such premium applied to the payment of the costs of issuance of such bonds or notes, may be applied to the payment of costs approved by this vote in accordance with Chapter 44, Section 20 of the General Laws, thereby reducing the amount authorized to be borrowed to pay such costs by a like amount.

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I hope this opinion is useful. Please contact me with any questions or concerns.

Sincerely,

/s/ KLN
Karis L. North

cc: Jamie Errickson, Town Administrator