

*Karis L. North*  
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March 21, 2023

**VIA EMAIL ONLY**

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

**RE: Natick 2023 Spring Annual Town Meeting – Warrant Articles 33, 34 and 35 – Charles River Dam**

Dear Ms. Wollschlager:

Upon your request, I have reviewed the Motions for Articles 33, 34 and 35 for the 2023 Spring Annual Town Meeting. I address each Article separately, below. In answering these questions, I have relied upon the Natick Home Rule Charter (“Charter”), the Natick Town Bylaws (“Bylaws”) the Massachusetts General Laws (“General Laws”), pertinent land records, and other legal sources.

**Article 33: Charles River Dam Advisory Committee Report**

Move to discuss the final report of the Charles River Dam Advisory Committee.

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.

While Town Meeting has the authority to hear reports from committees created by Town Meeting, where the committee was not created by Town Meeting, but by another body or individual (here, the Town Administrator), there is no authority for Town Meeting to require that committee to report to Town Meeting.

**Article 34: Charles River Dam:**

Move to see what action the Town will take to request the Select Board to initiate repairs of the Natick Charles River Dam to the extent of the funding appropriated in the 2018 SATM, Article 14 Motion B, and in the 2019 SATM, Article 15, Motion B for that purpose or otherwise act thereon.

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Consistent with my September 21, 2022 opinion to you and the Finance Committee concerning the Charles River Dam and Town Meeting funding, determinations about the dam and its status, including expenditure of funds to effectuate a specific purpose, is under the purview of the Select Board.

This Motion is simply the Article 29 from 2022 Fall Annual Town Meeting, restated, and my position remains the same. 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 (1939), quoting Daddario v. Pittsfield, 301 Mass. 552, 558 (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 (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 (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 statutory powers of the Select Board over real property, and also over policy decisions for the Town, as set forth in the Charter. A successful Town Meeting vote on this Article 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.

### **Article 35: Dam Preservation Committee**

To approve the warrant article as written, which establishes a Natick Dam Preservation Committee (DPC) consisting of seven members appointed by the Board of Selectmen who have expertise in the fields of engineering, environmental science, historic preservation, finance, and public policy. A majority of the members shall not be current town employees or officials, and no member of the DPC will have served on

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the previous committee that recommended dam removal. Two additional members will be chosen by Natick members of [savenatickdam.org](http://savenatickdam.org) who have worked with [savenatickdam.org](http://savenatickdam.org) to ensure their interests are also represented in this process.

The DPC will commission an independent engineering firm to evaluate the GZA and Stantec reports and the structural integrity of the dam, with a focus on value engineering the previous design and minimizing tree removal. The engineering firm will not have been involved in the previous design to provide a fresh look at the previous engineering work. The evaluation will identify necessary repairs and upgrades to meet safety and environmental standards, and explore alternative uses for the existing canal, including the possibility of a fish passage, as well as other ideas that make sense for the preservation and repair of the dam.

The DPC will present their findings and recommendations at a public hearing, and submit a report with recommendations to the Board of Selectmen and the Finance Committee within 12 months. The report will include a prioritization of the necessary repairs and upgrades and their estimated costs.

The committee will spent up to \$150,000 for the independent engineering evaluation and any associated costs related to the DPC's work, to be drawn from the previously approved funds for dam repair. This appropriation will not be used for the purpose of dam removal.

The Town Clerk is hereby directed to transmit a copy of this vote to the State Secretary's Office and to each member of the Natick delegation to the General Court.

We move that the Town vote to approve this Article as written.

Town Meeting may create a committee, and may, subject to a two-thirds (2/3) vote, designate a body or individual other than the Moderator as the Appointing Authority. Bylaws, article 3, section 10.

Consistent with my legal opinion provided on September 21, 2022, and my opinion above, regardless of the recommendation of the Committee, any decisions about the fate of the Charles River Dam are solely decisions of the Select Board. 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. Any direction by a committee to the Select Board concerning real property is, at best, advisory and does not compel the Select Board to take any particular action.

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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