

Shanna Nealy

From: Patrick Costello <pcostello@lccplaw.com>
Sent: Tuesday, March 24, 2015 1:39 PM
To: Jill Goldsmith
Cc: Shanna Nealy
Subject: Subject: RE: Review of Citizens' Petition Articles on May 2015 ATM Warrant (FINAL COMMENTS)

Jill:

Per your request, I offer the following comments relative to the non-zoning bylaw amendment citizen petition articles to be included in the ATM Warrant. As you know, citizen petition articles which are submitted in compliance with the provisions of G.L. c. 39, §10 (in writing by 10 or more registered voters) must be inserted in the Annual Town Meeting Warrant verbatim, unless the language therein is modified with the assent of the petitioners.

Article 43 (Sidewalk/ Parking Area Bond): This Article is an appropriation article seeking authorization to borrow the sum of \$450,000 for the design and construction/ reconstruction of Stage Harbor Road and a sidewalk/parking area on Bridge Street. The article and motion provided by the petitioner are appropriate as to form and the statutory borrowing authority cited therein is proper; thus, a vote in favor of the appropriation would authorize appropriation of the requested funds. While the appropriation authorization would be legally effected by such an affirmative vote, the decision to proceed with the proposed construction project and to enter into agreements in furtherance thereof would be an executive/ administrative determination within the discretion of the Selectmen and Procurement Officer of the Town.

Article 44 (Amendment of Section 10-1(B) of the General Bylaws): This proposed Bylaw amendment seeks to further qualify the eligibility of non-resident property-owning taxpayers for appointment to certain Town boards and committees by giving residents who are registered voters first priority therefor. The adoption of such "residency requirements" for appointees to Town boards and committees are permissible pursuant to the Town's home rule authority, to the extent they do not conflict with provisions of the Charter or State law. As such, I deem this proposed Bylaw amendment to be within the jurisdiction of the Town Meeting. If approved by a majority vote of Town Meeting and thereafter by the AGO, this Bylaw amendment would become effective and binding in nature.

Article 45 (Supplemental Pay for Retired Firefighters): This Article seeks supplemental payment for two retired firefighters from a \$275,000 appropriation approved by the Town Meeting in September 2014. With respect to collective bargaining matters, Town Meeting's role is strictly as an appropriating authority; it cannot address or dictate matters relating to negotiation of contract terms or resolution of disputes addressed by collective bargaining arbitration or litigation decisions. Accordingly, in my opinion, the subject petition article cannot legally direct Town officers to "pay" the requested sums to the subject former employees, and is, thus, non-binding in nature. Since the article appears to have been properly petitioned, it should appear on the Warrant; however, any vote thereunder would merely provide "the sense of the Town Meeting" on the issue and need not be followed by Town officers or boards with legal authority to act on collective bargaining matters.

Article 46 (Appropriation for Library Employee Cost of Living Adjustment): I understand that Library employees are appointed by the Library Trustees and that, for personnel classification/ salary purposes, they are not deemed to be "Town employees". Accordingly, the subject petition article is a request for a supplemental appropriation by the Trustees for salary/ employee remuneration purposes, akin to a request for supplementation to their annual budget appropriation, within the scope of the Trustees' purview of Library operations. Accordingly, I see no problem as to form. Any supplemental appropriation by the Town Meeting for this purpose would be valid for the stated purpose.

Article 48 (New Bylaw Chapter 240 – Streets and Sidewalks): In order to pass legal muster, a local bylaw cannot be inconsistent with provisions of the Massachusetts Constitution or provisions of General or Special Law. I believe the subject Article contains provisions that would be deemed inconsistent with provisions of Massachusetts General Law and, thus, would not likely be approved by the Office of the Attorney General. First, the provision set forth in subparagraph (E) establishes the effective date of the Bylaw as “the date it is approved by the voters”, and provides that it shall be interpreted to apply retroactively to any proposals for roadway alterations in the design stage at the time the Bylaw is approved. In my opinion, this section violates the express language of G.L. c. 40, §32 which provides that before a general bylaw “takes effect” it must be approved by the Attorney General or ninety days shall have elapsed since submission of the bylaw to the AGO for its review.

Further, Subparagraph (A) essentially purports to designate to the Town Meeting the legal authority to approve (by a 2/3 vote) any change in design, layout or configuration of any designated scenic road in the Town or any portion of Main Street. Said provision appears to conflict with the provisions of G.L. c. 82, §21, which provide that “ the selectmen...of a town...may lay out, relocate or alter town ways, for the use of the town.... or private ways for the use of one or more of the inhabitants thereof; or they may order specific repairs to be made upon such ways;”. Also, Subparagraph (B) seeks to preclude the taking of land by eminent domain except upon consent of the property owner, unless approved by a 2/3 vote of Town Meeting. Again, I believe that the requirement that the town only take property with the “consent of the owner” and the “shift” of eminent domain taking authority to Town Meeting in the event of lack of such consent are contrary to and inconsistent with the provisions of the eminent domain statute, G.L. c. 79. Section 2 of Chapter 79 specifically designates the board of selectmen as the taking authority in towns, and §§1-10 thereof establish a comprehensive procedural scheme for effecting eminent domain takings which does not require consent of property owners, likely due to the public need or exigencies upon which eminent domain takings are frequently premised. Based on these conflicts with provisions of General Law, I question the legal validity of the proposed Bylaw.

Let me know if you have any questions in this regard.

Pat

Patrick J. Costello
Louison, Costello, Condon & Pfaff, LLP
101 Summer Street
Boston, MA 02110
617-439-0305
(fax) 617-439-0325

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Shanna Nealy

From: Jill Goldsmith
Sent: Monday, April 13, 2015 8:49 AM
To: Flo
Cc: Dykens, Jeff; Jeff Dykens-Home; Sean Summer (srsummer@comcast.net); Seth Taylor; Shanna Nealy; Timothy Roper (timroperco@aol.com)
Subject: RE: Article 48

Here it is:

From: Patrick Costello [<mailto:pcostello@lccplaw.com>]
Sent: Wednesday, March 25, 2015 7:31 AM
To: Jill Goldsmith
Cc: Shanna Nealy
Subject: Re: Subject: RE: Review of Citizens' Petition Articles on May 2015 ATM Warrant (FINAL COMMENTS)

The Town cannot, as a matter of law, acquire state highways, such as Main Street, by eminent domain because such land is already dedicated to public use by the Commonwealth. Such roads are under the jurisdiction of MDOT and are subject to its control. This proposed article also purports to restrict the taking of "town land" which is a futile concept because such land is already in Town ownership. There would be no need to "take" such land. My general comment about taking authority being vested in the Board of Selectmen rather than Town Meeting would override application of these first two paragraphs in any event.

Patrick J. Costello, Esq.
Louison, Costello, Condon & Pfaff, LLP
101 Summer St.
Boston, MA 02110
617-439-0305

Jill R. Goldsmith, Chatham Town Manager
549 Main Street, Chatham MA 02633
508.945.5105 ph | 508.945.3550 fx | 774.212.6066 cell | www.chatham-ma.gov

Kindly remember that the Secretary of State has deemed most email a public record.

-----Original Message-----

From: Flo [<mailto:florencecape@comcast.net>]
Sent: Monday, April 13, 2015 7:46 AM
To: Jill Goldsmith
Subject: Article 48

Jill

I know we will be considering release of Atty. Costello's opinions on the Citizens Petitions tomorrow. I want to address His comments on Article 48 - streets and sidewalks. There was one thing that he did not address in that opinion and I asked him about it when I met with him when he was here. And that was that Rte.28 is a state highway and thus the town does not have jurisdiction over that road. The article refers to Main St. only and Mr. Costello did not realize that Main St. is synonymous with Rte. 28.
His original opinion made no mention of the state's jurisdiction so I wondered if he had ever added to that original opinion.

Thanks
Florence

Sent from my iPad

Shanna Nealy

From: Kathleen Connolly <KConnolly@lccplaw.com>
Sent: Monday, March 16, 2015 6:20 PM
To: Shanna Nealy; Patrick Costello; Florence Seldin; Jeffrey Dykens; Jeffrey Dykens (2); Jill Goldsmith; Sean Summers; Seth Taylor; Tim Roper
Cc: Deanna Ruffer
Subject: RE: Citizen Petition

All,

I have reviewed the citizens petition zoning amendment article and approve it as to form subject to the following comments.

1. The warrant article references deletions of subsections a, b, and e of Section IV, Paragraph D, Flexible Development Districts....” The correct reference is Section IV, Paragraph D.3.
2. The last sentence of the article before the explanation reads “And to redesignate the remaining subsections accordingly.” I understand that to mean of the remaining subsections c, d and f, reletter them as a, b, and c. It would be clearer if this was explained. Because you cannot change the citizens’ petition, this can be explained by the petitioners at Town Meeting or by someone else.
3. I understand from my conversation with Deanne Ruffer about the Planning Board’s intentions to make revisions to this Protective Zoning Bylaw section that the citizens’ petition may only address a portion of what the Planning Board intends and may not be based on accurate facts. If that is the case and it could be problematic or inefficient for the citizens petition to be voted on at this Town Meeting and more changes may later need to be made, that could also be explained. That is a decision I leave to town officials. Legally, the proposed amendments are acceptable.

Kate

Kathleen Connolly, Esq.,
Principal
Louison, Costello, Condon & Pfaff LLP
101 Summer Street
FL 4
Boston, MA 02110
617-439-0305
617-307-5051 (direct)
kconnolly@lccplaw.com



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From: Shanna Nealy [<mailto:snealy@chatham-ma.gov>]

Sent: Friday, March 13, 2015 11:25 AM

To: Patrick Costello; Kathleen Connolly; Florence Seldin; Jeffrey Dykens; Jeffrey Dykens (2); Jill Goldsmith; Sean Summers; Seth Taylor; Tim Roper

Cc: druffer@chatham-ma.gov

Subject: Citizen Petition

Please see the attached Citizen Petition.

Thank you,

Shanna Nealy

Executive Secretary, Town Manager/Board of Selectmen

Town of Chatham

549 Main Street

Chatham, MA 02633

508.945.5105 PH/508.945.3550 FX