

APPROPRIATION COMMITTEE TOWN OF LEXINGTON



REPORT TO THE JUNE 2014 SPECIAL TOWN MEETING

Released June 11, 2014

APPROPRIATION COMMITTEE MEMBERS

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Summary of Warrant Article Recommendations

Abbreviations: GF = General Fund; EF = Enterprise Fund; RF = Revolving Fund;

CPA = Community Preservation Act Fund; BAN = Bond Anticipation Note;

DSSF = Debt Service Stabilization Fund

An entry of IP for “Indefinitely Postpone” in the right-hand column merely signifies our expectation.

Article	Title	Funds Requested	Funding Source	Committee Recommendation
2	Amend Zoning Bylaw – 430 Concord Avenue	None	N/A	Pending
3	Land Acquisition – Off Concord Avenue	\$220,000	CPA	Approve (7-0)
4	Authorize Easement on Land at 430 Concord Avenue	None	N/A	Approve (7-0)
5	School Master Plan	\$250,000	GF	Approve (9-0)
6	Amend General Bylaws – Contracts and Deeds	None	N/A	Approve (9-0)
8	Establish and Appropriate To and From Specified Stabilization Funds	None	N/A	IP
9	Amend FY2014 Operating and Enterprise Budgets	None	N/A	IP
10	Amend Article 5 of the November 4, 2013 Special Town Meeting – Renovation to Community Center	\$6,220,000 +\$500,000 \$6,720,000	Prior Appropriation CPA	Approve (7-0)
11	Amend Article 2 of the March 24, 2014 Special Town Meeting – Cary Memorial Building Upgrades	None	N/A	IP
12	Appropriate For Authorized Capital Improvements	None	N/A	IP

Preface

This report is published and distributed to the members of Town Meeting as a printed document and as an electronic document via the Town website. During this special town meeting the Committee will also provide updated recommendations on appropriations, proposed amendments, and other financial matters in response to information received after the time of publication.

The discussion for each article presents the prevailing view of the Committee, as well as any other considerations or cautions that we feel Town Meeting should be informed of. If one or more Committee members are strongly opposed to the majority position, we summarize the opposing perspective. Each article discussion concludes with the most recent vote of the Committee prior to publication. The vote is summarized by the number of members in favor, followed by the number of members opposed, and lastly (when applicable) the number of members abstaining, e.g. “(6-2-1)” indicates six members in favor, two opposed, and one abstaining. There are occasions when a Committee member misses the opportunity to vote on an article. In such instances, the total number of votes and abstentions published will be less than nine. For convenience, Committee votes are also summarized on the preceding page(s).

Acknowledgements

The content of this report, except where otherwise noted, was researched, written and edited by members of the Committee with support from Town staff. Our Committee has the pleasure and the privilege of working with Town Manager, Carl Valente; Assistant Town Manager for Finance, Rob Addelson; our Budget Officer, Theo Kalivas; the Capital Expenditures Committee; the Community Preservation Committee; the School Committee; the Superintendent of Schools, Dr. Paul Ash; the Assistant Superintendent for Finance and Operations, Mary Ellen Dunn; and the Board of Selectmen. We thank the municipal and school staff, Town officials, boards and volunteers who have contributed time and expertise to help us prepare this report.

Warrant Article Analysis and Recommendations

Article 2: Amend Zoning Bylaw – 430 Concord Avenue	Funds Requested	Funding Source	Committee Recommendation
	None	N/A	Pending

As of publication, the Committee has reviewed the financial aspects of the request, but has not taken a position on this Article pending action by the Planning Board and the Board of Selectmen. We will report our position at the Special Town Meeting.

This article requests rezoning of the 5.4-acre parcel at 430 Concord Avenue from RO Residential to CD Planned Commercial District and approval of a Preliminary Site Development and Use Plan (PSDUP).

The current owner is in negotiations to sell the property to Artis Senior Living, LLC, based in McLean, Virginia (henceforth “Artis”)¹. Artis has submitted a PSDUP to the Planning Board that specifies a 30,000 sq. ft. assisted living facility with a capacity of 72 clients. The facility would be designed to serve patients with Alzheimer’s disease or related dementia and memory loss disorders. The text and drawings of the PSDUP may be found at <http://www.lexingtonma.gov/430ConcordAve.cfm>.

If Town Meeting approves this article, the use of the property would be governed, as with any CD rezoning, by a Definitive Site Development and Use Plan (DSDUP) approved by the Zoning Board of Appeals (ZBA). A DSDUP legally constrains all construction and commercial activity on the property to a specified size and type of business.

Benefits

Beginning some years ago, the Conservation Commission found that there were violations of wetland protection regulations on the 430 Concord Avenue property and issued orders to the current owner in that regard. The property was also the subject of legal action by the Massachusetts Department of Environmental Protection (DEP) due to alleged illegal filling of wetlands. The current owner claims that the sewer pipe installed by the Town is causally related to periodic flooding and the wet condition of the property. In any event, these serious issues with the use of the land remain unresolved.

The PSDUP contains a provision that would require Artis to perform restoration of wetlands in accordance with prior official demands. Artis has estimated its costs for the restoration work at approximately \$500,000. Properly done, this restoration would presumably resolve any remaining disputes about wetlands on the 5.4 acre parcel.

Artis was founded in 2012 by an entrepreneurial group with extensive experience in real estate development and senior health care. The combination of experience and funding increases their chances of creating a successful business.

A successful facility, operating as predicted by Artis, would likely have a low impact on Town services. It is possible there would be demand for emergency medical services, but Artis states that they will employ on-site medical personnel to handle most of the time-sensitive medical situations.

The property is proximate to the Cotting School, so traffic impact is an important consideration. The business will likely generate a low level of traffic, since the residents at the facility will not be driving and the staff would be comprised of roughly 38 employees, spread across three 8-hour shifts. The site plan

¹ The Artis corporate web presence is <http://www.artissl.com/>.

includes a small paved parking lot for employees and visitors, and assumes no need for deliveries by semi-trailers.

Artis has offered to give priority access to Lexington residents who wish to bring their parents to live at this facility, and to pro-actively search for Lexington residents to employ on their staff.

Annual property tax revenue from the property is currently less than \$10,000/year, in part because it is subject to a lower tax rate based on the agricultural exemption under Mass. G.L. Title IX, Ch. 61A. Annual property tax revenue from the proposed Artis facility is difficult to predict accurately, but it would likely be more than \$100,000/year, providing a modest benefit to the Town.

Once the property is no longer qualified under the agricultural exemption, the Town will receive a one-time payment of roll-back taxes amounting to the difference between the lower agricultural exemption rate and the standard tax rate for the previous four years (Mass. G.L. Title IX, Ch. 61A, § 13).

Risks

According to their website, Artis is currently pursuing similar development opportunities in at least 17 locations nationwide. As with any company undergoing rapid development and expansion, there is a chance they will fail to manage their growth successfully. This could force them to delay, sell, or even abandon a partially constructed facility in Lexington.

The planned facility would be a large, one-story building housing a population of clients who need 24-hour care, 365 days a year. As with any commercial or large residential facility, there is a potential for noise from air conditioners, electrical generators, and other machinery needed to maintain a safe and comfortable environment.

There is a potential for light pollution. The parking lot will be illuminated at night, but most other lights will be off between 11:00pm and 6:00am. Lighting must comply with regulations that limit the spread of light beyond the property boundaries.

There will be vehicle traffic for employees and visitors to the facility, although it is likely to be rather limited. There is the potential for a scheduling conflict between the facility's shift changes and the periods when school vans are in transit at the Coting School across the street. Artis is aware of this scheduling issue and will adjust the timing of shift changes to limit the overlap if necessary.

There is always the possibility that Artis would choose to sell the property and business. A transfer of ownership is not, in itself, a negative event; any owner would still be constrained by the DSDUP and would also be liable for property taxes, unless the new owner was a non-profit organization officially deemed, in terms of specific criteria, to be a charity. It appears that the nature of the business would make it unlikely that any owner would be able to operate the facility as a charity.

In the unlikely case that a charitable organization becomes the owner, the Town might still attempt to negotiate a "payment in lieu of taxes" (PILOT) to recover some portion of the lost property tax revenue. Even without the proposed rezoning, the location at 430 Concord Avenue could eventually be used for a church or a school, either of which would automatically be tax-exempt.

Summary

The Committee recognizes that major rezoning requests often involve a mix of financial, aesthetic, and practical considerations. Our charge is to render a recommendation based primarily on the financial and economic impacts to the Town, but we are sensitive to the limits of this perspective. Town Meeting Members should interpret our recommendations on rezoning requests as one component of a wider discussion.

This rezoning request is near the lower financial threshold of what the Committee would normally choose to deliberate upon, but the history and complexity of the deal comprised in this article and related articles elevated the significance of the request.

The Committee believes that the rezoning would very likely have a positive financial impact, and that the risks do not outweigh the significant benefits to the Town. The Committee has chosen to take no position until after the formal positions of the Planning Board and the Board of Selectmen are known.

The Committee has not taken a position on this request as of publication.

Article 3: Land Acquisition – Off Concord Avenue	Funds Requested	Funding Source	Committee Recommendation
	\$220,000	CPA	Approve (7-0)

The purpose of this article is to enable the Town to obtain clear title to a 12-acre parcel of land located immediately behind the 5.4 acre parcel on Concord Avenue proposed to be rezoned under Article 2. The 12-acre parcel consists mostly of wetlands and has no frontage. As a consequence, it does not have the market value of a developable parcel.

It is anticipated that the Board of Selectmen will go forward with this article only if the rezoning requested under Article 2 passes.

This parcel was acquired by the Town in the 1930's by a process that is presently unclear, and it was transferred to the Conservation Commission to be held as conservation land by the Town in the 1970's. Although the Town claims to own this parcel of land, the current owner of the land located at 430 Concord Avenue has asserted a competing claim of ownership. Town Counsel has advised us that the most feasible, and possibly the only, way to establish a clear title in this case is for the Town to take the property by eminent domain. This could be conducted in a friendly proceeding if the Town and the owner of the land are agreeable on the amount of compensation.

Approving this article would provide the necessary authorization for the taking, as well as the funds for both the compensation to the owner and the associated legal costs. Once acquired, the land would be placed under the control of the Conservation Commission.

The Town has obtained two independent appraisals of the property at \$78,000 and \$180,000. The request would cover up to \$180,000 in compensation, plus up to \$40,000 in legal expenses. The appropriation would not cover any legal expenses in the event that the adequacy of the compensation to be provided for the taking is contested.

The funds would come from the Community Preservation Fund's Open Space account which has a current balance of about \$504,000. This request was approved by the Community Preservation Committee on June 10, 2014.

The actual compensation is still a matter of negotiation and could be lower than the requested appropriation. As of publication, the Town was still waiting to receive the results of its own title search, which might improve the bargaining position of the Town, or even render the whole discussion moot.

The Committee recommends approval of this request (7-0).

Article 4: Authorize Easement on Land at 430 Concord Avenue	Funds Requested	Funding Source	Committee Recommendation
	None	N/A	Approve (7-0)

The Town has an existing easement expressly for maintaining the sewer line running on the west border of the property at 430 Concord Avenue. Approval of this article would expand the allowed uses of the existing easement to guarantee full access for the Town to the back parcel that is the subject of Article 3.

The granting of easements may involve paying compensation to the owner of the land, but in this case the easement will have zero cost to the Town.

This article will be indefinitely postponed if Article 3 does not go forward.

The Committee recommends approval of this request (7-0).

Article 5: School Master Plan	Funds Requested	Funding Source	Committee Recommendation
	\$250,000	GF	Approve (9-0)

Student enrollment in the Lexington Public Schools (LPS) system has steadily increased for the past five years, and the School Department's preliminary analysis² states that most school buildings are at nearly full capacity. There is a reasonable likelihood of further growth in enrollments over the next few years. Depending on the size and distribution with respect to school buildings, future enrollment growth could severely strain the system capacity and lead to an unacceptable level of overcrowding.

Thus it is prudent to assess the capacity of the school system and school buildings as they stand today, and to study options for handling larger enrollments. Options for increasing the capacity of the school system that may be worth considering include:

- internal reconfiguration of existing school buildings
- construction of permanent additions to school buildings
- additions of modular classrooms to existing school buildings
- use of the old Harrington School as a school or school annex
- construction of a new larger school building at the Hastings School location, and
- construction of a new school building at a new location.

Professional consultation with an architectural firm experienced in school capacity planning will be essential for assessing the LPS system and evaluating the above options and any other options that may be identified. The master planning effort proposed under this article is an effective way to address these issues. In collaboration with the School Department and Public Facilities Department, the Town has issued the *Request for Qualifications for Designer Services for Lexington Public Schools Master Planning*, which contains the following summary:

The Town is seeking a qualified architectural firm with PreK-12 Master Planning experience to identify the existing educational capacity and space utilization of ten LPS facilities and to develop strategies and plans to respond to short term and long term enrollment changes. The work will be completed in multiple phases.

In Phase 1, the consultants will report on their analysis of the current capacity of the system and options for accommodating projected enrollments. The report will be due on September 1, 2014.

In Phase 2, the consultants will develop an estimate of the amount of FY2015 funding to request at a potential November 2014 special town meeting, or the 2015 annual town meeting, in order to meet short-term capacity needs based on enrollment forecasts from the Enrollment Working Group and consideration of spaces needed to meet modern educational standards.

² See, for example, an interim report in *Report of the Working Group on Enrollment Study* that may be found at the Lexington Public Schools web site: <http://lps.lexingtonma.org/>.

In Phase 3, the consultants will estimate the amount of funding that may be required over the next ten years to meet long-term capacity needs, based on enrollment forecasts from the Enrollment Working Group and consideration of spaces needed to meet modern educational standards.

The initial term of the master planning effort would be three years, from June 2014 to June 2017. Phase 1 is advertised as a negotiated fee, not to exceed \$75,000. Phase 2, if required, is anticipated to require a fee of approximately \$25,000 and Phase 3 is anticipated to require a fee of approximately \$100,000. For purposes of comparison, we note that in 2009 the Town appropriated \$155,000 for a School Facility Master Planning document that was limited to the High School and four elementary schools. The evaluation proposed under this article will look at all nine schools and the Administration Building.

The Committee recommends approval of this request (9-0).

Article 6: Amend General Bylaws – Contracts and Deeds	Funds Requested	Funding Source	Committee Recommendation
	None	N/A	Approve (9-0)

Power purchase agreements for solar facilities typically provide for the sale of electricity for terms of 20 years (or more) as of the date of commercial operation. The 20 year purchase period does not include the time required for the permitting and construction of a solar facility, typically less than one year. Under the current general bylaw, contracts for electricity purchases that can be directly approved by the Board of Selectmen are limited to a total duration of 20 years or less. This is incompatible with most power purchase agreements because no additional time for permitting and construction can be included.

Raising the maximum allowed duration to 22 years would allow the Town Manager to take into account the possibility of up to two year delays in permitting and interconnection approvals and construction prior to commercial operation.

Because state law limits PILOT Agreements to 20 years, the term of PILOT agreements is unchanged by this amendment. Under the proposed amended bylaw, PILOT Agreements would become effective contemporaneously with the time when the solar system commences production, the Town begins to purchase electricity from a completed and operational solar facility, and the developer begins to receive revenue with which to make PILOT payments.

The Committee recommends approval of this request (9-0).

Article 8: Establish and Appropriate To and From Specified Stabilization Funds	Funds Requested	Funding Source	Committee Recommendation
	None	N/A	IP

As of publication there were no recommendations for appropriations into or out of any specified stabilization funds.

The Committee supports indefinite postponement.

Article 9: Amend FY2014 Operating and Enterprise Budgets	Funds Requested	Funding Source	Committee Recommendation
	None	N/A	IP

As of the time of publication, it appears that no action will be necessary under this article. The Town Manager, Assistant Town Manager for Finance, and staff have recommended that the snow and ice removal deficit be addressed in the fall using available revenues. Other minor issues can be resolved via Reserve Fund and “3% rule” transfers, which do not require Town Meeting approval.

The Committee supports indefinite postponement.

Article 10: Amend Article 5 of November 4, 2013 Special Town Meeting – Renovation to Community Center	Funds Requested	Funding Source	Committee Recommendation
	\$6,220,000 +\$500,000 \$6,720,000	Prior Appropriation CPA	Approve (7-0)

History

Under Article 5 of the November 2013 Special Town Meeting, the Town appropriated \$3.2 million for limited renovations to the building at 39 Marrett Road in order to establish a new Community Center. The size of this initial request was based on the assumption that subsequent renovation phases with more extensive work would be funded later.

At the request of the Board of Selectmen, the project was expanded to include many elements that had previously been deferred, given the revised assumption that further renovation projects would not be considered in the foreseeable future. Under Article 3 of the March 2014 Special Town Meeting, the Town increased the original appropriation to \$6.22 million. That amount was based on the “60% design”.

New Estimate

The Ad hoc Community Center Advisory Committee (AhCCAC) has now received a new cost estimate based on the “90% design”. The new estimate, inclusive of all hard and soft costs and contingencies, is approximately \$7.2 million, representing a net increase of \$705,650 in the base hard (actual construction) costs. The bulk of the increase falls into four major categories:

Category	Description	Amount
Overall Community Center aesthetic	Finishes, millwork, wood doors, and acoustic ceilings based on AhCCAC specifications	\$400,000
Exterior façade repairs	Replace rotted wood at windows and fascia, repoint masonry, new joint sealant	\$154,000
Fire protection	New sprinkler piping and heads due to new HVAC ductwork	\$123,000
New entry at lower level	Improved entrance near lower level exercise room	\$75,000
Total		\$752,000

Value Engineering

In response to this larger estimate, the AhCCAC began a “value engineering” process to consider ways of reducing the total cost. Value engineering typically includes substituting less expensive components and materials, using simpler designs (possibly at the expense of aesthetics), deferring upgrades on replaceable items such as light bulbs, and eliminating non-critical items from the project.

To respect the historic nature of the mansion section, changes in materials were limited to the newer portions of the building where it would be less noticeable.

Some tasks were also removed from the bid and will be performed directly by the Town, thus reducing the contingency costs.

The AhCCAC also considered the use of “add alternates” as a strategy in the event that all bids exceed the available appropriation. Add alternates divide out some of the work into a list of secondary projects (“alternates”) that will only be funded if the bids are within budget. The alternates include only projects that can be completed at a future date with minimal disruption to the Community Center, but they are all considered important and would eventually require additional funding. At present, the two add alternates are the new handicap-accessible ramp on the south side of the historic mansion, and the building envelope repairs.

As a result of the value engineering process, the total estimated cost was reduced to \$6.72 million, for a net increase of \$500,000. The Committee is satisfied that the increased request is justifiable and that the project can proceed after this appropriation. The CPC voted to approve the additional funds on June 10, 2014.

The Committee recommends approval of this request (7-0).

Article 11: Amend Article 2 of the March 24, 2014 Special Town Meeting – Cary Memorial Building Upgrades	Funds Requested	Funding Source	Committee Recommendation
	None	N/A	IP

This article was placed on the Warrant to ensure an opportunity to appropriate supplemental funds for the renovation of Cary Memorial Building, if such funds were needed. Following the publication of the Warrant, the actual bids on the Cary Memorial Building project were received and it appears that no additional appropriation will be needed.

The Committee supports indefinite postponement.

Article 12: Appropriate For Authorized Capital Improvements	Funds Requested	Funding Source	Committee Recommendation
	None	N/A	IP

This article was placed on the Warrant to ensure an opportunity to appropriate supplemental funds for various capital projects that were approved by prior town meetings. As of publication, no such appropriations have been proposed, and no action is required under this article.

The Committee supports indefinite postponement.