

**2019 Fall Annual Town Meeting
Marshall Lebowitz Town Meeting Room
Wilson Middle School
November 5, 2019, Sixth Session**

The Sixth Session of the 2019 Fall Annual Town Meeting was called to order at 7:40 PM by Town Moderator, Frank W. Foss, who declared a quorum present. The Moderator welcomed residents, taxpayers, town officials, Town Meeting Members and interested parties to the Sixth Session of 2019 Fall Annual Town Meeting. The Moderator asked that all recently elected or appointed members of Town Meeting stand to take the oath of office; there were none. The Moderator asked the audience to stand for the Pledge of Allegiance and a moment of silence in recognition of all the men and women serving on our behalf throughout the world.

The Moderator introduced the officials present for the meeting: Diane Packer, Town Clerk; Patrick Hayes, Finance Committee Chair; Bruce Evans, Finance Committee Secretary; Karis North, Town Counsel, Melissa Malone, Town Administrator; and Michael Hickey, Chair, Board of Selectmen. Sean O'Brien will operate the slides and Tim Lathwood, a representative from Option Technologies, will operate the electronic voting system.

The Moderator reviewed the general rules and procedures of Town Meeting which had been accepted at a previous session of 2019 Fall ATM. He indicated that all residents and taxpayers of the town and town officers and employees, whether or not residents, have the same right to speak as Town Meeting Members; however they do not have the right to submit motions for consideration at Town Meeting, nor vote on any matter before Town Meeting. Non-residents may only speak at Town Meeting after approval by Town Meeting Members. The proceedings of Town Meetings shall be governed by *Town Meeting Time*, the Town of Natick Home Rule Charter, the Natick By-Laws and the General Laws of the Commonwealth of Massachusetts.

No person shall speak upon any question more than once when any other person desires to be heard, nor more than twice on the same question without permission of Town Meeting; and no person shall speak more than ten (10) minutes at one time without permission of Town Meeting. Consistent with the Natick By-Laws, any person having a monetary or equitable interest in any matter under discussion at a Town Meeting, and any person employed by another having such an interest, shall disclose the fact of his/her interest or employment before speaking thereon.

The Moderator ruled on the point of order raised at a previous meeting regarding the Article 20. The Moderator explained that although there are issues relating to this article they do not result in the article not being able to move forward and therefore it is overruled. The Moderator announced that the meeting would proceed with Articles 26, 25, 12A and B and 9.

ARTICLE 26: 22 Pleasant Street (Recreation and Parks Commission and Seth Levine et al)

To see what actions the Town will take or vote to change, amend, modify, augment, or supplant its previous votes under Article 35 of 2015 Spring Annual Town Meeting, Article 29 of 2016 Spring Annual Town Meeting, Article 27 of 2017 Fall Annual Town Meeting, or any other Article of any Town Meeting which authorized negotiation, appropriation of funds, raising of funds, transfer from available funds and/or borrowing authorization for the acquisition of property known as 22 Pleasant Street; being shown as Assessors Map 64, Lot 44 in South Natick (the Site) by purchase, gift, eminent domain, or other means.

Provided however that no reduction of any previous appropriation or borrowing authorization may occur under this Warrant Article, except as expressly provided below regarding the substitution in whole or in part of other funds, and further provided that no previous authorization for negotiation, acquisition by gift, purchase, eminent domain or other means may be rescinded under this Warrant Article, but allowing that non-monetary restrictions and non-monetary conditions (the term 'non-monetary' meaning other than appropriation or borrowing) in any previous votes may be modified or removed as provided later within this Article; and to allow

- a) That such changes, amendments, or modifications to authorize the Board of Selectmen to purchase, acquire, accept by gift, or take by eminent domain a comprehensive surface and air rights easement for open space, recreation, park, playground, access, parking, boating, and/or other purposes ("Comprehensive Easement") for all, or substantially all, of the Site; and/or limited or total sub surface easements for all or portions of the Site and/or

- b) That any subsurface easement may vary in depth and/or in lateral scope within the Site in order to avoid areas of underground contamination including but not limited to any areas of contamination that rise or fall with periodic changes in the water table. (The purpose of this provision, including but not being limited to, that any subsurface easement does not need to extend down to or to include any layers of identified underground contamination or underground tanks); and/or
- c) That such Comprehensive Easement may alternatively be used for portions of the Site in conjunction with fee acquisition for other portions of the Site, provided that such combination result, at a minimum, in acquisition of all or substantially all the surface and air rights of the Site; and/or
- d) That a Comprehensive Easement for all or substantially all of the Site or in combination with fee acquisition include all beneficial surface and above ground rights, uses, buildings, structures, trees, areas of now or former canals located east of Pleasant St. , and the like, and/or in conjunction with limited or total subsurface easements for improvements for utilities and drainage or other subsurface areas; and/or
- e) That the intent of the above clause and purpose of this Warrant Article and the term Comprehensive Easement being that the Town would become the holder of all or substantially all of such beneficial surface and air uses and rights for the benefit of the public and/or Town such that no private rights of surface and/or air rights or uses remain with the current owner of the Site (except as expressly allowed below), but that any underground area or volume of and/or subsurface area of environmental contamination and any contaminated area of the building may be excluded. (This provision being a precaution that easement rights are often narrowly construed allowing a fee owner to retain all rights of ownership and use unless expressly taken or acquired and being that the town would acquire all or substantially all the beneficial surface and above ground uses and rights of the Site.); and/or
- f) That subject to the required provisions and prohibitions stated elsewhere in this Article, Town Meeting may expand the purposes and or remove or modify non-monetary conditions or non-monetary restrictions in any previous vote of Town Meeting for any acquisition of the Site but only in order to accomplish the purposes of this Article which are at a minimum acquiring all or substantially all of the surface and air rights of the Site; and/or
- g) That the condition in Article 27 of 2017 Fall Annual Town Meeting may be removed or modified, but only to accomplish or to allow the purposes of this Article, which condition stated "provided that the Board of Selectmen is not authorized to acquire said property unless a Purchase and Sale Agreement, satisfactory to the Board of Selectmen, is entered into with the owner of said property" (it being noted, among other things, that said provision of 2017 Fall Annual Town Meeting might prevent any exercise of any eminent domain power); and/or
- h) That said land be subject to an Activity and Use Limitation to encompass and/or to encapsulate or otherwise restrict use of any areas of or over identified contamination; and/or
- i) That any portion of the Site acquired under this Article may be acquired subject to or provide for a subsequent Activity and Use Limitation especially, but not necessarily, limited to any surface areas above underground contamination; and/or
- j) That an Activity and Use Limitation may provide or require that such areas be paved over and encapsulated. (For example purposes only, as is required of and in the purchase of the contaminated rail trail land acquired by the Town but not restricting the town to the same paving or encapsulation methods or approaches.); and/or
- k) To allow access, whether by right, permission or otherwise, through designated portions of the Site once acquired under this Article for the use of the Wellesley Cooperative Nursery School (or any similar charitable trust successor) located on deed restricted land under the deed of Isabella Pratt Hunnewell Shaw at Merrill Road (a private way) abutting Hunnewell Park; and/or
- l) That other funds may be appropriated, raised or transferred from available funds including, without limitation, any stabilization fund, to substitute for all or part of the borrowing authorization under previous votes of Town Meeting in which case only then may the previous borrowing authorization be reduced under this Article and in which case any remaining borrowing authorization must be maintained in an amount such that the sum of such other funds and any remaining borrowing authorization shall be equal , at a minimum, at the total dollar amount appropriated in previous votes of Town Meeting; and/or

- m) That FAR Bonus Stabilization Funds may be appropriated and used, as part of the acquisition contemplated under this Article, for the portions of the site which are zoned RG and/or RSB and/or for any portion zoned I-1 which is open space; and/or
- n) To allow any fee acquisition, Comprehensive Easement, or combination thereof, either to permit or to require the owner of the Site or other party to:
 - i) remove all or part of the existing building,
 - ii) fill any basement or substructure areas that are removed with clean fill,
 - iii) excavate, remove and replace any contaminated soil with clean fill,
 - iv) excavate and remove any underground tanks and replace same with clean fill,
 - v) excavate and remove any underground wheels, machines, generators, water flow harnessing devices, and the like and replace same with clean fill,
 - vi) the preference being that areas of now or former canals east of Pleasant St not be filled in such a way that such canal use cannot be revived
 - vii) specify that such removal and replacement activities may occur either before or for a period of time after the closing on or eminent domain taking of the Town contemplated under this Article,
 - viii) that access may be allowed for the owner or other party after the closing, or eminent domain taking for such period of time as the Selectmen may negotiate to accomplish the purposes of this Article, and/or
 - ix) that such subsequent access may include monitoring of the Site
 - x) that any such subsequent access shall be allowable under this Article notwithstanding any other provision of this Article; and/or
- o) To allow that the Comprehensive Easement may also be used in any combination with fee acquisition such as for example that the parts of the site which are clean and free of buildings may be acquired in fee and the other parts acquired by Comprehensive Easement and that the meaning of Comprehensive Easement may include any combination provided such combination is, at a minimum , for all or substantially all of the surface and air rights of the Site; and/or
- p) That any combination of fee acquisition and Comprehensive Easement may be authorized under this Article provided that any such combination, at a minimum, be for all or substantially all of the surface and air rights of the Site; and/or
- q) To allow that any Comprehensive Easement or fee under this Article to include:
 - i) the portions of the Charles River that are recorded as part of the 22 Pleasant Street lot; and
 - ii) any and/or all above ground, surface and/or subsurface utilities serving or accessible to 22 Pleasant Street; and
 - iii) any and/or all rights of 22 Pleasant St on, of and/or to lands, flow lands, dam access and repair, submerged lands and or all other real property interests and rights located to the west of Pleasant Street.

Further, to authorize the Board of Selectmen and other applicable boards, commissions, and personnel to apply for and receive grants or gifts for the purposes of this Article and to take all action necessary or appropriate to accomplish the purposes of this Article; and/or

And further provided that the Town may vote to increase the previous appropriation and/or borrowing authorization; and/or otherwise raise, and/or transfer from available funds, or appropriate from Stabilization Funds; for the acquisition by purchase or taking by eminent domain of fee, or Comprehensive Easement, or combination thereof, and/or to see what sums the Town will appropriate, raise or transfer from available funds for due diligence regarding the Site; and

And further provided that under this warrant article:

The term “substantially all” under this Article shall have a meaning of more than 80% of the total of surface rights (including associated air rights), and that surface rights include above ground improvements areas providing, for purposes of clarity, that where the Selectmen agree or the owner provides that the building may be removed, that then the footprint area of the building or any portion so removed will count as part of surface rights (including associated air rights); and

The term “substantially all” under this Article can exclude areas of contamination below the surface or below the bed in the Charles River bed and may exclude identified areas of surface or building contamination that are not remediated by the owner or other party; and

Any such surface areas or building areas so excluded shall first be deducted from 100% for the purposes of measuring 80%; and

Any further exclusions, which are not for reasons of environmental contamination, may not result in less than “more than 80%” of the total overall surface rights and building footprint areas being acquired; and

Any easement or fee acquisition or combination thereof for only driveways and/or streets to access the Hunnewell Park is not permitted under this Article; and

The term “substantially all” under this Article cannot be used to reduce the acquisition under this Article to the sum of driveway or street access to Hunnewell Park plus de minimis additional land area or rights;

Or otherwise act thereon.

FINANCE COMMITTEE RECOMMENDATION

By a vote of 10-0-0 on October 1, 2019 the Finance Committee recommended **referral to the Sponsor** on the subject matter of Article 26.

Motion (requires a two-thirds vote)

Moved by Ms. Sanchez, seconded by Mr. Jennett, that the Town vote to amend its previous votes under Article 35 of 2015 Spring Annual Town Meeting, Article 29 of 2016 Spring Annual Town Meeting, Article 27 of 2017 Fall Annual Town Meeting which votes authorized negotiation, appropriation of funds borrowed for the acquisition of property known as 22 Pleasant Street; being shown as Assessors Map 64, Lot 44 in South Natick (the Site) by purchase, gift, eminent domain, or otherwise but which contain a condition that Board of Selectmen were not authorized to acquire said property unless a Purchase and Sale Agreement, satisfactory to the Board of Selectmen, is entered into with the owner of said property in order to

- 1) Amend the condition which currently reads “provided that the Board of Selectmen is not authorized to acquire said property unless a Purchase and Sale Agreement, satisfactory to the Board of Selectmen, is entered into with the owner of said property” so that such condition now reads “provided, in the event of a fee purchase of all of said property, that the Board of Selectmen is not authorized to acquire all of said property unless a Purchase and Sale Agreement, satisfactory to the Board of Selectmen, is entered into with the owner of said property and that such requirement for a Purchase and Sale Agreement shall not apply to acquisition by eminent domain taking or gift”
- 2) Amend the condition of Article 35 of 2015 Spring Annual Town Meeting which currently reads “to authorize the Board of Selectmen to negotiate with the Owner of the 22 Pleasant Street Property to purchase and acquire the property for park and recreation purposes. Said property is to be acquired free and cleaned of all contamination for its intended use and purpose” to now read “to authorize the Board of Selectmen to negotiate with the Owner of the 22 Pleasant Street Property to purchase and acquire the fee simple interest in all of the property for park, recreation access and related parking purposes. Said fee simple interest in the property is to be acquired free and cleaned of all contamination for its intended use and purpose” and
- 3) to provide an additional and alternative authorization for the Board of Selectmen
 - a) To purchase, acquire, accept by gift, or take by eminent domain a comprehensive surface and air rights easement for park, recreation, access, and related parking purposes (“Comprehensive Easement”) for all, or substantially all, of the Site;
 - b) To purchase, acquire, accept by gift, or take by eminent domain a limited or total sub surface easements for all or portions of the Site in conjunction with a Comprehensive Easement
 - c) To use a Comprehensive Easement for portions of the Site in conjunction with fee acquisition for other portions of the Site, provided that such combination result, at a minimum, in acquisition of all or substantially all the surface and air rights of the Site;
 - d) To use a Comprehensive Easement either on a standalone basis or in combination with fee acquisition to acquire all or substantially all of the beneficial surface and above ground rights, uses, buildings, structures, trees, areas of now or former canals located east of Pleasant Street, and the like, in conjunction with limited or total subsurface easements for improvements for utilities and drainage or other subsurface areas; and/or
 - e) To use a Conservation Restriction or Conservation Easement as part of or all of any

Comprehensive Easement

- 4) To provide the authorization the Board of Selectmen and other applicable boards, commissions, and personnel to apply for and receive grants or gifts for the purposes of this Article and to take all action necessary to accomplish the purposes of this Article;
- 5) And further provided that the term “substantially all” shall have the meaning provided under the warrant article
- 6) And further to appropriate \$3,200,000 to be expended under the direction of the Board of Selectmen for the purposes of this article and that to meet said appropriation \$3,200,000 the Treasurer with the approval of the Board of Selectmen is authorized to borrow \$3,200,000 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 \$3,200,000 in principal amount, and further, that any premium received by the Town upon the 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.
- 7) And further provided that all other provisions of the votes of Article 35 of Spring 2015 Town Meeting, Article 29 of Spring 2016 Town Meeting and Article 27 of Fall 2017 Town Meeting as amended shall remain in full force and effect

Moved by Mr. Sidney, seconded by Mr. Jennett to waive the reading of the motion, seconded by Mr. Jennett. ***The motion to waive the reading passed by majority vote (by hand count).***

The Moderator requested that Mr. Chenard provide a presentation on the history of this particular piece of property (22 Pleasant St) as well as an overview of all of the options that are being presented in this and upcoming articles. Mr. Chenard, Deputy Town Administrator of Operations, gave a presentation. Mr. Brandt, Chair of the Recreation and Parks Commission spoke to this article.

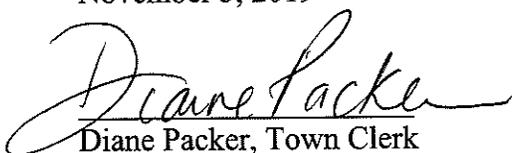
Moved by Ms. Sanchez, seconded by Mr. Gath to amend paragraph 6) of the main motion for Article 26 by deleting paragraph 6) in its entirety and replacing it with the following: “6) And further to appropriate \$1,000,000 from FAR Stabilization and to appropriate \$2,200,000 from borrowing and that to meet this \$2,200,000 appropriation the Treasurer with the approval of the Board of Selectmen is authorized to borrow \$2,200,000 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 \$2,200,000 in principal amount, and further, that any premium received by the Town upon the 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.”

Discussion ensued on the amendment. ***The amendment passed by majority vote (87-26-0).***

Discussion ensued on the amended main motion. Moved by Mr. Coffey, seconded by Mr. Krentzman to refer the subject matter of Article 26 to the Sponsor. Town Meeting discussed the two motion simultaneously. Moved by Mr. Grady, seconded by Mr. Sidney to move the question and close debate. ***The motion to close debate passed by a two-thirds vote (85-20-0). The motion to refer the subject matter of Article 26 to the Sponsor passed by majority vote (58-48-0).***

Mr. Jennett moved seconded by Mr. Sidney to adjourn. ***The motion to adjourn passed by majority vote. The meeting adjourned at 10:55 PM until Thursday, November 7, 2019 at 7:30 PM.***

A record of the Sixth Session of
2019 Fall Annual Town Meeting
November 5, 2019


Diane Packer, Town Clerk