



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

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July 27, 2015

Wendy Houle, Town Clerk  
Town of Sunderland  
12 School Street  
Sunderland, MA 01375

**RE: Sunderland Annual Town Meeting of April 24, 2015 - Case # 7514  
Warrant Articles # 20 and 22 (General)**

Dear Ms. Houle:

**Article 22** - We approve Article 22 from the April 24, 2015 Sunderland Annual Town Meeting.

**Article 20** - Except for the disapprovals noted below pertaining to the school committee, the regional school committee and the regional school district (see pages 2 and 3), we approve Article 20.

Article 20 amends Article I, Section 14-1 of the Town's general by-laws by deleting the "Permanent Building Committee" and inserting a new "Capital Improvements Planning Committee." The new Section 14-1, subsections 2 and 3, provide in relevant part as follows (with emphasis added):

Section 2. The Committee shall study proposed capital projects and improvements involving major non-recurring tangible assets and projects which are purchased or undertaken at intervals of not less than five (5) years, have a useful life of at least five (5) years, and cost over \$10,000. All officers, boards, committees and commissions shall, by the first Friday in December of each year, submit to the Committee, on forms prepared by it, information concerning all anticipated projects requiring Town Meeting action during the ensuing six (6) years. This section is also applicable to projects sponsored by the Board of Selectmen, **the School Committee, and proposed capital asset expenditures by the Regional School Committee.** The Committee shall consider the criticality, relative need, impact, timing and cost of these expenditures, the effect each will have on the financial position of the Town and future maintenance and replacement costs, recognizing the useful life of assets in accordance with the Uniform Massachusetts Accounting System (UMAS) and Governmental Accounting Standards Board (GASB 34) accounting policies and procedures.

Section 3. The Committee shall prepare an annual report recommending a Capital Improvements Budget for the next fiscal year and a Capital Improvements Program, including recommended capital improvements, for the following five (5) fiscal years. The report shall be submitted to the Board of Selectmen for consideration and approval. The Board of Selectmen shall submit its approved Capital Budget to the Annual Town Meeting for adoption by the Town.

The Committee's report must include all projects submitted in accordance with Section 2, with the Committee's recommendation on each of the projects clearly written. No appropriation for a capital improvement expenditure requested by a department, board, committee, or the Regional School District shall be voted at a Town Meeting, unless the proposed capital improvement is included in the Committee's annual report, or the Committee shall first have submitted a supplemental report to the Board of Selectmen in accordance with Section 6, explaining the omission.

Capital improvements placed on a Town Meeting Warrant by citizen petition are excluded from the provisions of this section.

1. The School Committee.

We disapprove and delete the text in Section 2 above in underline and bold "**(the School Committee,)**" because it conflicts with the fiscal autonomy provided to the school committees by G.L. c. 71, § 34. **(Disapproval # 1 of 3)**. Section 2 seeks to have the School Committee "submit to the [Capital Improvements Planning] Committee, on forms prepared by it, information concerning all anticipated projects requiring Town Meeting action during the ensuing six (6) years." Section 2 also seeks to prohibit Town Meeting from voting on an "appropriation for a capital improvement expenditure requested by...[the School] committee...unless the proposed capital improvement is included in the [Capital Improvements Planning] Committee's annual report..."

General Laws Chapter 71, Section 34 provides (with emphasis added):

Every...town shall annually provide an amount of money sufficient for the support of the public schools as required by this chapter, provided however, that no...town shall be required to provide more money for the support of the public schools than is appropriated by vote of the legislative body of the... town. In acting on appropriations for educational costs, the...town appropriating body shall vote on the total amount of the appropriations requested and shall not allocate appropriations among accounts or place any restriction on such appropriations. The superintendent of schools in any... town may address the local appropriating authority prior to any action on the school budget as recommended by the school committee notwithstanding his place of residence. The...town appropriating body may make nonbinding monetary recommendations to increase or decrease certain items allocating such appropriations. The vote of the legislative body of a...town shall establish the total appropriation for the support of the public schools, but may not limit the authority of the school committee to determine expenditures within the total appropriation.

Under G.L. c. 71, § 34, a municipal school committee has fiscal autonomy regarding all amounts appropriated annually "for the support of the public schools." According to the Department of Revenue, Bureau of Municipal Finance Law (DOR/DLS) this fiscal autonomy

generally includes the school's operating or educational expenses. While the school committee's fiscal autonomy does not extend to capital spending, it does include spending for equipment and materials, such as classroom computers, projectors and the like, used in the instruction of students that might otherwise be considered a capital expense. *See Ring v. Woburn*, 311 Mass. 679, 688 (1942) (holding that the purchase of typewriters in the school committee's budget properly pertained to the instruction of students.) General Laws Chapter 71, Section 34 limits the municipal legislative body to a bottom line appropriation to the school committee for the committee's education operating budget. While the statute impliedly requires the school committee to submit an itemized education operating budget request to Town Meeting, Town Meeting may only make nonbinding recommendations on line item allocations and the Town Meeting may not "limit the authority of the school committee to determine expenditures within the total appropriation." *See* G.L. c. 71, § 34

Because the proposed text in Section 2 requires that the School Committee's proposed capital expenses for instructional equipment be submitted to and included in the Capital Improvements Planning Committee's report in order for Town Meeting to vote on funding, it is inconsistent with the School Committee's fiscal autonomy under G.L. c. 71, § 34. For this reason, we disapprove and delete the text set forth above in underline and bold in Section 2 pertaining to the School Committee ("**the School Committee**").

2. The Regional School Committee and Regional School District.

We disapprove and delete the text in Sections 2 and 3 above in underline and bold ("**and proposed capital asset expenditures by the Regional School Committee**" and "**or the Regional School District**") because this text is inconsistent with G.L. c. 71, § 16B. (Disapprovals # 2-3 of 3). Sections 2 and 3 seek to require the Regional School Committee to "submit to the [Capital Improvements Planning] Committee, on forms prepared by it, information concerning all anticipated projects requiring Town Meeting action during the ensuing six (6) years." Sections 2 and 3 also seek to prohibit Town Meeting from voting on an "appropriation for a capital improvement expenditure requested by...the Regional School District...unless the proposed capital improvement is included in the [Capital Improvements Planning] Committee's annual report..."

The approval of budgets for a regional school district is governed by G.L. c. 71, § 16B and the regulations promulgated by the Department of Elementary and Secondary Education (603 CMR 41.05). According to the Department of Revenue, Division of Local Services, the approval of a regional school district budget by a member town comprises two separate actions; first, the granting of approval for the district's complete budget, which includes all proposed operating and capital spending for the upcoming year and second, the appropriation of town funds to pay for its assessment. The Town's assessment for the regional school district is calculated by the district treasurer in accordance with state law and the regional school district agreement. According to the Department of Revenue, Division of Local Services, it is inconsistent with G.L. c. 71, § 16B and 603 CMR 41.05 for a town by-law to require that all proposed regional school district capital expenditures be included in the Town's Capital Improvements Planning Committee's report in order for funding to be approved by Town Meeting, or to otherwise impose a restriction on an individual capital (or other) expenditure budgeted by a regional school district. For this reason, we disapprove the text in Sections 2 and 3 above in underline and bold pertaining to the Regional School Committee and Regional School

District (“and proposed capital asset expenditures by the Regional School Committee” and “or the Regional School District”).

3. Capital Budget Recommendation

Section 14-1, Subsection 6, provides (with emphasis added):

The Committee may amend, add to, or delete from any Capital Budget recommendation previously adopted by the Town if it determines that an extraordinary and unforeseen circumstance occurred after such time information was required to be submitted for consideration at the Annual Town Meeting, and that it must be acted upon before the next Annual Town Meeting. Any such amendment, addition or deletion shall be explained and submitted in a supplemental Committee report to the Board of Selectmen for consideration and approval, and placement on the next Special Town Meeting Warrant.

Section 14-1 (6) may not be applied so as to authorize the Capital Improvements Planning Committee to defer or rescind spending previously approved by Town Meeting or to authorize spending for items that Town Meeting has not approved. The authority to defer or rescind spending previously approved rests solely with Town Meeting (and in some circumstances the Board of Selectmen in order to avoid a deficit). That authority cannot be granted to the Capital Improvements Planning Committee by way of a by-law. Nor can a by-law authorize the Capital Improvements Planning Committee to add previously unfunded items to the Town's budget. The Town should consult closely with Town Counsel when applying Section 6 to ensure that the Capital Improvements Planning Committee is not intruding on the authority of Town Meeting to make appropriations and to rescind previously made appropriations.

**Note:** Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the Town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,

MAURA HEALEY  
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**CODE OF THE TOWN OF SUNDERLAND, MASSACHUSETTS, v17 Updated  
through 11-01-2015 / PART I ADMINISTRATIVE LEGISLATION / Chapter 14,  
COMMITTEES AND COMMISSIONS / ARTICLE I, Capital Improvements Planning  
Committee [Adopted 4-24-2015 ATM, Art. 20EN]**

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**ARTICLE I, Capital Improvements Planning Committee [Adopted 4-24-2015 ATM,  
Art. 20EN(1)]**

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**CODE OF THE TOWN OF SUNDERLAND, MASSACHUSETTS, v17 Updated  
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COMMITTEES AND COMMISSIONS / ARTICLE I, Capital Improvements Planning  
Committee [Adopted 4-24-2015 ATM, Art. 20EN] / § 14-1. Establishment;  
purpose; responsibilities.**

**§ 14-1. Establishment; purpose; responsibilities.**

- A. In accordance with Chapter 41, Section 106B of the Massachusetts General Laws, the Board of Selectmen shall establish and annually appoint a committee to be known as the Capital Improvements Planning Committee ("Committee"), composed of one member of the Board of Selectmen, one member of the Finance Committee, one member of the School Committee, one member of the Planning Board, one member of the Board of Assessors, one member of the Board of Library Trustees, and three (3) at-large members not serving on any of the above boards or committees, to bring the total voting membership to nine (9). The Town Administrator shall be a non-voting member. The Committee shall elect its own officers.
- B. The Committee shall study proposed capital projects and improvements involving major non-recurring tangible assets and projects which are purchased or undertaken at intervals of not less than five (5) years, have a useful life of at least five (5) years, and cost over \$10,000. All officers, boards, committees and commissions shall, by the first Friday in December of each year, submit to the Committee, on forms prepared by it, information concerning all anticipated projects requiring Town Meeting action during the ensuing six (6) years. This section is also applicable to projects sponsored by the Board of Selectmen. The Committee shall consider the criticality, relative need, impact, timing and cost of these expenditures, the effect each will have on the financial position of the Town and future maintenance and replacement costs, recognizing the useful life of assets in accordance with the Uniform Massachusetts Accounting System (UMAS) and Governmental Accounting Standards Board (GASB 34) accounting policies and procedures,

C. Annual report.

- (1) The Committee shall prepare an annual report recommending a Capital improvements Budget for the next fiscal year and a Capital Improvements Program, including recommended capital improvements, for the following five (5) fiscal years. The report shall be submitted to the Board of Selectmen for consideration and approval. The Board of Selectmen shall submit its approved Capital Budget to the Annual Town Meeting for adoption by the Town.
  - (2) The Committee's report must include all projects submitted in accordance with Subsection B, with the Committee's recommendation on each of the projects clearly written. No appropriation for a capital improvement expenditure requested by a department, board, or committee shall be voted at a Town Meeting, unless the proposed capital improvement is included in the Committee's annual report, or the Committee shall first have submitted a supplemental report to the Board of Selectmen in accordance with Subsection F, explaining the omission.
  - (3) Capital improvements placed on a Town Meeting Warrant by citizen petition are excluded from the provisions of this subsection.
- D. Such Capital Improvements Program, after adoption, shall permit the expenditure on projects included therein of sums from departmental budgets for surveys, architectural or engineering advice, options or appraisals; but no such expenditure shall be incurred on projects which have not been so approved by the Town through the appropriation of sums in the current year or in prior years, or for preliminary planning for projects to be undertaken more than five (5) years in the future.
- E. The Committee's report and the Board of Selectmen's recommended Capital Budget shall be published with the Annual Town Meeting Warrant and made available to Town residents in a manner consistent with the Annual Town Report. The Committee shall deposit its original report with the Town Clerk.
- F. The Committee may amend, add to, or delete from any Capital Budget recommendation previously adopted by the Town if it determines that an extraordinary and unforeseen circumstance occurred after such time information was required to be submitted for consideration at the Annual Town Meeting, and that it must be acted upon before the next Annual Town Meeting. Any such amendment, addition or deletion shall be explained and submitted in a supplemental Committee report to the Board of Selectmen for consideration and approval, and placement on the next Special Town Meeting Warrant.

## **Endnotes**

### **1 (Popup - Popup)**

Editor's Note: This article also repealed former Art. I, Permanent Building Committee, adopted 2-25-1967 ATM, Art. 18, as amended.