



**Town of Arlington
Legal Department**

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To: Select Board

Cc: Sandy Pooler

From: Douglas W. Heim, Town Counsel

Date: March 10, 2023

Re: Draft Votes and Comments re: Articles 19, 67, 68, and 69

I write to provide the Board Draft Votes and Comments regarding the above-referenced 2023 Annual Town Meeting Warrant Articles, based upon your prior hearings for same.

ARTICLE 19 SPECIAL LEGISLATION/REPEAL MBTA PROHIBITION

VOTED: That the Town does hereby request and authorize the Select Board to file Home Rule Legislation to provide substantially as follows:

“AN ACT REPEALING CHAPTER 439 OF THE ACTS OF 1976,”

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

SECTION 1. Notwithstanding any general or special law to the contrary, Chapter 439 of the Acts of 1976, *“An Act Prohibiting The Massachusetts Bay Transportation Authority From Locating Mass Transportation Facility Within Certain Distance Of The Arlington Catholic High School,”* is repealed and nullified.

SECTION 2. This act shall take effect upon its passage.

(3 – 1) Mr. DeCoursey voted in the negative and Mr. Helmuth recused himself.

COMMENT: The majority of the Select Board respectfully requests Town Meeting’s support to repeal a 1976 Special Act which prohibited the Massachusetts Bay Transportation Authority (“MBTA”) from constructing any mass transportation facility, including but not limited to a rapid transit station and parking garage, on any land located within seventy-five yards of Arlington Catholic High School. While there is some disagreement on the original purpose of this legislation and Mr. DeCoursey dissented in part because there is no immediate need to repeal the legislation, the balance of the Board agrees that it is valuable to clear outdated home rule legislation which serves little practical purpose today and may signal the Town’s reticence to improve its mass transit service options

ARTICLE 67

RESOLUTION/AFFORDABLE HOUSING OVERLAY

VOTED: That Town Meeting does and hereby resolves as follows:

WHEREAS, Eighty-eight percent of Arlington’s housing units (all types) were built prior to 1980; and

WHEREAS, Arlington residents participating in the 2020 Housing Production Plan community engagement sessions consistently expressed issues with housing instability and a need for more affordable housing; and

WHEREAS, the shortage of affordable housing in Arlington harms very-low, low, moderate, middle, and upper-middle income residents, especially renters; and

WHEREAS, the Arlington Housing Plan 2022 recommended but did not explicitly endorse the Affordable Housing Overlay District as an urgent measure; and

WHEREAS, the Arlington Housing Plan 2022 was adopted by ARB on January 24, 2022;

WHEREAS, the Arlington Housing Plan 2022 was adopted by the Select Board on April 20, 2022;

WHEREAS, the Department of Housing and Community Development (DHCD) approved the Arlington Housing Production Plan (HPP) pursuant to 760 CMR 56.03(4) on June 13, 2022; and

WHEREAS, the price of homes for sale in Arlington, like those in the rest of the Boston area, have increased over the past ten years; and

WHEREAS, 230 Arlington households are assisted through the Arlington Housing Stability Program [AHSP]; and

WHEREAS, meeting Chapter 40B affordability and unit creation standards will not alone address Arlington's housing needs; and

WHEREAS, Affordable Housing Overlay Districts ("AHODs") have proven to increase affordable housing in Cambridge, Somerville and North Reading, all Greater Boston communities that have passed AHOD bylaws and regulations; and

WHEREAS, establishing an AHOD will promote the public good by supporting the development of housing that is affordable to households earning at or below 120% of the area median income; and

WHEREAS, numerous communities have found that incremental increases in density, limited increases in height, and relaxation of certain other zoning limitations for residential developments in which all units are made permanently affordable to households earning at or below 120% of the area median income is achievable without stressing municipal infrastructure; and

WHEREAS, AHODs would serve to incentivize the reuse of existing, buildings in order to create AHOD Projects that are more compatible with established neighborhoods and align with Arlington's design objectives; and

WHEREAS, communities have seen significant benefits when AHOD Projects are permitted as-of-right, subject to non-binding advisory design consultation procedures that follow all design objectives; and

WHEREAS, AHODs will promote affordable housing objectives, promote greater socioeconomic diversity, and ensure a more equitable distribution of affordable housing town-wide; and

WHEREAS, Arlington has passed the Community Preservation Act and continues to seek passage of the real estate transfer fee which, along with Arlington's Affordable Housing Trust, can provide subsidy funds to promote AHOD development; and

WHEREAS Arlington, a MBTA community, is required to have zoning that provides for at least I district of reasonable size in which multi-family housing is permitted as of right; and

WHEREAS, having denser and smaller housing units around businesses, public transportation, and schools near Boston/Cambridge is more environmentally efficient; and

WHEREAS, creating significant additional affordable housing, with varying tiers of affordability, will provide housing opportunities for current and future Arlington residents, including people who live in Arlington Housing Authority properties; and

WHEREAS, housing density may also increase economic development and thus Arlington's goals for its commercial tax base;

THEREFORE BE IT RESOLVED that Arlington affirms the Affordable Housing Overlay District as a means to mitigate the worst of Arlington's housing crisis.

(4 – 0 – 1) Mr. Diggins abstained

COMMENT: The Select Board supports this resolution affirming an important recommendation of the Arlington Housing Production Plan, previously approved by this Board and the Arlington Redevelopment Board. Among the potential tools available to address the Town's commitment to creating affordable housing, the Affordable Housing Overlay District is an effective measure for encouraging the development of affordable housing within identified areas in Town. The specific details of an overlay ordinance are expected to be discussed and debated in future town meetings, but the majority of this Board recommends this resolution as a means of affirming that this tool is important for achieving the Town's goals. Select Board member Diggins expressed reservations about utilizing a resolution in a general manner, but supported the concept of utilizing appropriate Affordable Housing Overlay Districts.

ARTICLE 68

RESOLUTION/IN-STATE TUITION

VOTED: That no action be taken on Article 68.

COMMENT: The Select Board recommends no action on this resolution because the issue – ensuring in-state tuition rates for all Massachusetts high school graduates regardless of immigration status is both beyond the scope of Town Meeting's authority and without a direct target audience. Several members of the Board expressed support for the overall idea, but overall the resolution did not seem ripe for Town Meeting action.

ARTICLE 69

RESOLUTION/CHANGE STATE FLAG & SEAL

WHEREAS the history of the Commonwealth of Massachusetts is replete with instances of conflict between European Colonists and the Native Nations of the region, who first extended the hand of friendship to the Colonist on their shores in 1620, and helped them survive starvation during the settlers' first winters on their land; and

WHEREAS members of the Native Nation for whom the Commonwealth of Massachusetts is named were ambushed and killed by Myles Standish, first commander of the Plymouth Colony, at Wessagussett (now Weymouth) in April of 1623, barely two years after the Pilgrims arrived; and

WHEREAS the Colonial broadsword held by a white hand above the head of the Indigenous person on the Massachusetts Flag and Seal is modeled after Myles Standish's own broadsword, borrowed for that purpose from Pilgrim Hall in Plymouth by the illustrator Edmund Garrett in 1884; and

WHEREAS the belt binding the Native's cloak on the Flag and Seal is modeled after a belt for my Metacomet, known to the English as King Philip, who was among the Indigenous leaders that resorted to a mutually destructive war in 1675-76 in defense of Native lands against Colonial encroachment; and

WHEREAS the proportions of the body of the Indigenous person on the Flag and Seal were taken from the skeleton of an Indigenous person unearthed in Winthrop, the bow modeled after a bow taken from an Indigenous man shot and killed by a colonist in Sudbury in 1665, and the facial features taken from a photograph of an Ojibwe chief from Great Falls, Montana, considered by the illustrator to be a "fine specimen of an Indian," though not from Massachusetts; and

WHEREAS the history of relations between Massachusetts since Colonial times and the Native Nations who continue to live within its borders includes the forced internment of thousands of so13 called "praying Indians" on Deer Island, in Boston Harbor, where they died by the hundreds of exposure in the winter of 1675, the enslavement of Indigenous people in Boston , Bermuda , and the Caribbean Islands, the offering of 40 pounds sterling as bounty for the scalps of indigenous men, women and children in Massachusetts beginning in 1686 , increased to 100 pounds sterling for the scalps of Indigenous adult males by 172 2, half that amount for Indigenous women and children; and

WHEREAS Indigenous people were legally prohibited from even stepping foot into Boston from 1675 until 2004, when that Colonial law was finally repealed; and

WHEREAS the 400th anniversary of the landing of the Colonists at Plymouth Plantation, which gave rise to the long chain of genocidal wars and deliberate government policies of cultural destruction against Native Nations of this continent, occurred in the year 2020, affording every citizen of the Commonwealth a chance to reflect upon this history and come to an appreciation of the need for better relations between the descendants of the Colonial immigrants and the Native Nations of the Commonwealth; and

WHEREAS the land area now known as the Town of Arlington, shares a rich Native history with modern tribal Nations such as the Massachusetts, who have inhabited this area long before the first colonial settlers arrived, in 1635; and

NOW THEREFORE, BE IT RESOLVED that the Town of Arlington hereby adopts this resolution in support of the work of the Special Commission on the Official Seal and Motto of the Commonwealth, established by a Resolve of the General Court in 2021 and appointed by the Governor to recommend changes to the current flag and seal of Massachusetts, and in support of a new flag and seal for the Commonwealth that may better reflect our aspirations for harmonious and respectful relations between all people who now call Massachusetts home. The town clerk shall forward a copy of this resolution to Sen. Cindy Friedman, Rep. Dave Rogers, and Rep. Sean Garballey, with the request that they continue their strong support of the work of the aforementioned Special Commission and advocacy for a new flag and seal for the Commonwealth;

COMMENT: The Select Board urges Town Meeting's positive action to join with a wide swath of municipalities who have resolved their support for changing the Flag and Seal of the Commonwealth to amend its depiction of an Algonquian Native American and the Myles Standish sword and motto "Ense Petit Placidam, Sub Libertate Quietem" ("By the Sword We Seek Peace, But Peace Only Under Liberty"). The Commonwealth has already passed a resolve to change the flag and seal, appointing the Special Commission on the Official Seal and Motto of the Commonwealth to recommend alterations or alternatives. However, such work has yet to result in recommendations for a new seal, flag, or motto and requires further financial and political support. It is the Board's hope that a resolution of Town Meeting can add further momentum to push the effort to completion and result in a flag and seal of the Commonwealth that does not evoke violence towards or oppression of the indigenous peoples who resided on this land before the arrival of colonists.