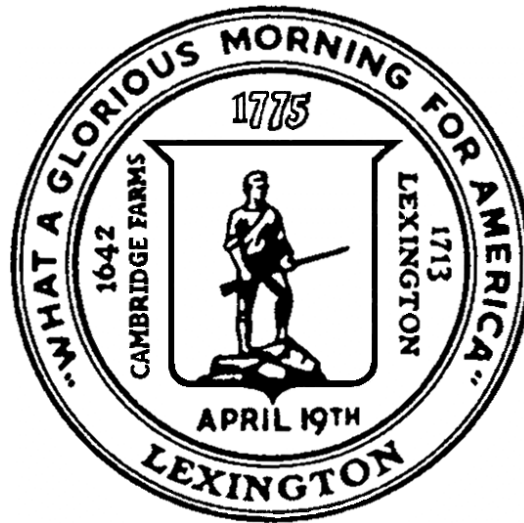


# CAPITAL EXPENDITURES COMMITTEE

## TOWN OF LEXINGTON



### REPORT TO THE 2009 SPECIAL TOWN MEETING (STM) November 9, 2009

*Released November 9, 2009*

**Submitted by:**

Charles Lamb, Chairman  
Ted Edson, Vice-Chairman  
William Hurley  
David G. Kanter  
Shirley Stolz



## **Warrant Article Analyses and Recommendations**

<b><i>Article 5: Authorize Munroe School Disposition</i></b>	<b>Funds Requested</b>	<b>Funding Source</b>	<b>Committee Recommendation</b>
	<b>None</b>	<b>Not Applicable</b>	<b>Indefinite Postponement (with the expectation that this matter will be brought back to the 2010 Annual Town Meeting) (5-0)</b>

“To see if the Town will vote to authorize the Selectmen to sell or lease the Munroe School building and the land it is situated on to a buyer or lessee approved by the Selectmen; or act in any other manner in relation thereto. [Town of Lexington Warrant to the 2009 STM, November 9, 2009]

We do not intend to provide great detail about the history of the use of the Munroe School as an arts-education center operated by an independent, non-profit, organization; however, the Munroe Center for the Arts [MCA] is the current manager of that arts-education center. After some 14 years of operating without a formal license, lease, or payment to the Town, MCA is now operating under a license, executed on or about June 23, 2009, until 1 Feb 2010—with an annual fee of \$24,000 in monthly payment of \$2,000, due on the first of each month, retroactive to October, 2008. (If neither party has filed for termination, that license has a provision for the Town to extend it, with proper notification to MCA, in 90-day increments, for up to 18 additional months (August 11, 2011).

We do point out that Town-owned building (21,672 gross square feet [Oct 2009 appraisal]), and the plot of land upon which it stands (68,833 square feet; 1.58 acres [Oct 2009 appraisal]), represent both an asset for potential Town needs and, with regard to its maintenance, a liability. In October 2007, On-Site Insight presented to the Town their report with a Capital Needs Assessment of the Munroe School and property for the following 20 years (i.e., through 2026). That report estimated the needed capital program would cost about \$2,359,000 in then-current dollars, or about \$2,565,000 in inflated dollars, if done as a Town procurement. That included a 25% contingency, the soft costs (e.g., design & engineering), general contractor costs, etc. (The relatively small difference when adjusting for inflation is because 71% of the total cost was placed in year 1 as most of the work was deemed as already needed; with another 22% being needed in years 2–10; and with the remaining 7% being needed in years 11–20.)

Separate from the obligations the Town has to provide services—and the assets it needs, or may need, to fulfill those obligations—are the goods and services that non-governmental entities provide to our Town’s residents and visitors. In the process of encouraging such non-governmental entities, the Town may well decide to provide them subsidies and other measures of relief. While such relief to those entities and the benefits received by the Town are seldom quantifiable in just financial terms and, instead, are often measured in subjective terms, this Committee feels it is crucial that there be clear transparency to all when the Town proposes to provide such relief to a non-governmental entity so any decision made to do so can be judged based upon concurrently fulfilling our fiduciary responsibilities. It had been urged that, because of the scale of the likely subsidy in the instant case, the matter should be presented for a Town-wide non-binding referendum so both the vocal and silent positions are known; however, the Board of Selectmen have been satisfied to leave the decision to Town Meeting and then, ultimately, to their Board.

During the discussions leading up to the final form of the Town’s Request for Proposal (RFP) regarding sale of the Munroe School building and the plot of land upon which it stands, it had been urged that the Selectmen keep an open mind with regard to the use of the Munroe Building and have the RFP not prejudice for an arts-education center; instead, that the RFP should allow for all current, by-right, uses (i.e., single-family residential, educational, religious, conservation, municipal, governmental, & agriculture) and reserve judgment on use until seeing the responses. The intent was for the Selectmen, and Town Meeting, to better understand just what purchase prices the current market would provide and,

therefore, if a subsidy were to be considered for a specific use, the real monetary scope would be clear. The Selectmen, however, decided to maintain their previously stated desire for an arts-education center and the RFP reflected that priority interest.

The sole proposal submitted in response to the RFP is from the Lexington Friends of the Arts, Inc. (doing business as the MCA). They present the organization as one that has new executive leadership, new directors, and a new approach to meeting the financial needs of running the organization and maintaining, and upgrading, the building and its land. They see the need for spending about \$1,782,000 in capital improvements over the first 20 years of their ownership (in inflation-adjusted dollars)—about \$1,218,000 over the first 5 years, about \$300 thousand over years 6–10, and about \$264,000 over years 11–20. Their capital-program scope is reported, but not confirmed, to be somewhat comparable to that addressed by the above-cited 2007 report except there is reported to be some additional electrical work in the MCA capital program and there was \$225,000 in that 2007 report was for the fire-suppression and fire-alarm systems which have already been replaced by the Town using Community Preservation Funding (CPF) authorized at the 2008 Annual Town Meeting under Article 9q. (That Town Meeting authorized \$579,550 based on an early estimate. We understand the final cost to be about \$400,000—and the difference will be returned to the CPF.) Adjusting the 2007 report costing for the removal of those systems would bring the figures to about \$2,134,000 in then-year dollars and about \$2,340,000 in inflated dollars. (While it hasn't been confirmed the scopes are close to being the same, if they were, then the MCA estimate represents something on the order of a 23% reduction in their cost versus what the Town's expense was projected to be for the capital improvements.)

The proposal includes a purchase price of \$1,000 and, if exempt from real-estate taxes (which we believe would be the case), a payment in lieu of taxes of \$5,000 per year, beginning January 1, 2013, and increasing by 2.5% annually. The proposal also included a revised methodology for determining the minimum price if the Town were to exercise its right of first refusal to repurchase the building and the land—if and when the MCA should wish, or be forced, to sell them. This Committee's unanimous (5–0) position was that the MCA-proposed methodology should be unacceptable to the Town as it set a floor on the repurchase price that is too advantageous to MCA—especially in the light of the purchase subsidy—and, correspondingly, too unfair to the Town.

The Town obtained a formal appraisal, as of October 13, 2009, for the building and land. For unrestricted purposes (i.e., all by-right uses), the appraised value is \$1,500,000; if restricted to a non-profit, arts-education use, the appraised value is \$760,000. Those values recognize the recent replacement of the fire-suppression and fire-alarm systems in the Munroe School building.

**This Committee recommends Indefinite Postponement as all of the parameters of the proposed sale have not been public for a sufficient time for there to be an informed decision made by Town Meeting. For example, the size of the purchase subsidy was not made public until November 3, 2009. While this Committee does not know exactly what repurchase-price methodology will be included in the Letter of Intent or Purchase & Sale Agreement that we anticipate will be presented, first to the Board of Selectmen and then to this Town Meeting, we do know that negotiations are underway with the MCA to achieve a new, more-appropriate-for-the-Town, methodology; however, there are elements with which we have concerns. We feel strongly that having time to evaluate all aspects of the proposed sale is essential.**

<b><i>Article 8: Contracts For Solar Energy</i></b>	<b>Funds Requested</b>	<b>Funding Source</b>	<b>Committee Recommendation</b>
	<b>None</b>	<b>Not Applicable</b>	<b>Approve (5–0)</b>

“To see if the Town will vote to authorize the Town Manager to enter into a contract for the purchase of solar power for a term of 20 years; or act in any other manner in relation thereto.” [Town of Lexington Warrant to the 2009 STM, November 9, 2009]

Normally this Committee would not report on matters such as the provisions for the purchase of a utility as that is an operating expense that falls under the oversight of the Appropriation Committee; however, we see there is a companion capital-related matter: equipment for the generation of electricity from solar power. As the Town moves forward with regard to any initiative, we believe the Town must look into both operating & capital matters so as to consider what contribution each approach offers in the best, long-term, financial interests of the Town and often a combination approach, although more complicated, is preferable. To that end, contemplating locking in purchase of electricity for as much as 20 years—as opposed to a possible combination of power purchase and lease/lease purchase/purchase of solar-powered electricity-generation equipment—has not been sufficiently investigated to our knowledge or satisfaction.

Notwithstanding that reservation, this Committee recognizes that the 5-year limit—even with the approval of the Board of Selectmen—in the Town’s General By-Laws on contracts for the purchase of oil, fuel, and electricity (Code of Lexington, §32-4, Authorization to solicit, award and enter certain contracts) makes it unlikely that the Town will be able to find a supplier to the Town in the near- or mid-term period under equitable financial provisions for solar-power-generated electricity. That same Section of the By-Laws provides 10-year limits for the lease or lease purchase of any equipment—which we acknowledge may be only a marginally practical limit in the current market for solar-powered, electricity-generation, equipment; however, very preliminary—and only anecdotal—information suggests that a power-purchase/lease purchase may be obtainable wherein the Town obtains electricity at a reasonable, protected, rate yet ends up owning the equipment for many years during which at least the solar-panel equipment is still under the manufacturer’s warranty and, then, from which equipment the Town receives electricity at no operating cost.

We’ve been advised that the Motion under this Article will not call for incorporating the proposed increase in number of years to 20 in the Code of Lexington—specifically in the above-cited Section—but rather as some time-limited authority to so contract—but still requiring the approval of the Board of Selectmen. We are reserving our judgment on the merit of that outside-the-By-Laws approach pending receipt of the final Motion.

This Committee recognizes that providing the authority to contract for a longer term for solar-power-generated electricity does not obligate the Town to contract for that long.

So, although we may take issue with that authority being outside the By-Laws, this Committee supports the Town having that authority to contract for up to 20 years for the purpose of solar-power-generated electricity, if subject to approval by the Board of Selectmen.

Because we expect there will be technology and market changes in even the near term that might affect whether an operating-only, capital-only, or some combination approach provides the Town with the better arrangement, we ask for an assurance that both our Committee and, we would expect, the Appropriation Committee be included in the discussions before the Town issues any Request for Proposal in regard to solar-power-generated electricity and, then, prior to any award in response thereto.

<b><i>Article 12: Appropriate For Waltham Street Pedestrian Crossing</i></b>	<b>Funds Requested</b>	<b>Funding Source</b>	<b>Committee Recommendation</b>
	<b>\$25,000</b>	<b>Traffic Mitigation Stabilization Fund</b>	<b>Approve (5–0)</b>

“To see if the town will vote to appropriate a sum of money from the Traffic Mitigation Stabilization Fund...for a pedestrian crossing in the vicinity of 1010 Waltham Street; or act in any other manner in relation thereto.” [Town of Lexington Warrant to the 2009 STM, November 9, 2009]

While the Motion under this article requests funding for the study and construction of a pedestrian crossing on Waltham Street in the neighborhood of Brookhaven and the Watertown Savings Bank, the dollar amount is not likely to cover much more than just the design and engineering—with most of that dealing with the planned traffic signal, especially if it is more than just a pedestrian signal. (Including “construction” in the language of the appropriation will allow any remaining funds to be applied toward the construction without having to be reauthorized.) This \$25,000 would come from the Transportation Mitigation Stabilization Fund. At the 2008 Special Town Meeting, under Article 7(b), that same amount was placed in that Fund after being accepted from the Watertown Savings Bank as part of their zoning change agreement ratified during the 2005 Annual Town Meeting.

Funds, if needed, for, or to complete the funding for, the construction are expected to be requested in the FY2011 budget at the 2010 Annual Town Meeting. At the time of this writing, it is not known if that future request would be from the Transportation Mitigation Stabilization Fund, the tax levy, or both. We hope that any subsequent FY2011 construction request also can be appropriated from the Transportation Mitigation Stabilization Fund, but we recognize that this traffic-mitigation projects is relatively narrow in focus—with a primary target audience being the residents in the Brookhaven area. Therefore, if any relevant transportation-mitigation contribution(s) are inadequate, we may agree—once we know the scope of the full construction cost—this project warrants the use of tax-levy funding to complete it.