APPROPRIATION COMMITTEE

TOWN OF LEXINGTON

ADVANCE REPORT TO THE 2009 ANNUAL TOWN MEETING

Warrant Articles 20, 34, 35, 38 and 39

Distributed Electronically Only March 21, 2009

<u>Appropriation Committee Members</u>

Alan M. Levine *Chair* • John Bartenstein *Vice Chair* • Susan McLeish *Secretary*
Robert N. Addelson *(ex-officio; non-voting)* • Richard Eurich • Mollie Garberg
Pam Hoffman • Michael J. Kennealy • Eric Michelson • Glenn Parker

Article 20: Street Acceptance – Pitcairn Place (Citizens' Petition)	Funds Requested	Funding Source	Committee Recommendation
	$125,000	Betterments	Approve (8-0-1)

This article, brought by residents of Pitcairn Place, requests that the unaccepted portion of that street (approximately 500 feet) be accepted as a Town way. Acceptance is the formal process which converts a private street (owned by the abutters) into a public street. After the street is accepted, the Town takes responsibility for all future upkeep of the street. The funds requested are $125,000 to bring the street up to Town standards and such costs will be allocated amongst the affected residents through the assessment of a betterment.

The committee (8-0-1) supports this request. Please note that one member recused himself from the deliberation and vote as he is one of the abutters impacted by this Article.

Article 34: Establish Qualifications for Tax Deferrals	Funds Requested	Funding Source	Committee Recommendation
	none	N/A	Approve (9-0)

This article seeks to raise the income threshold for participation by seniors in the Town's 41A tax deferral program from $40,000 to $50,000. The change is authorized by recently enacted home rule legislation for which the Town petitioned in 2007.

<u>Background</u>

In early 2004, the Board of Selectmen created an ad hoc Tax Deferral and Exemption Study Committee to explore ways in which the property tax relief available to senior citizens and other needy residents could be enhanced and made more accessible. Since then, Town Meeting has taken a succession of steps to expand such relief, for the most part maximizing the options that the Town is allowed to adopt under existing State law. The principal programs now available to Lexington homeowners are:

- a *tax exemption* program, under which homeowners age 65 or over with limited income and limited assets other than the value of their home may deduct $1,000 from their annual property tax, G.L. c. 59, § 5, cl. 41C ("the 41C Program");
- a Community Preservation Act *surcharge exemption* program, under which low-to-moderate income homeowners age 60 or over, and low-income homeowners under age 60, may obtain a 100% exemption from the CPA surcharge on their property tax;
- a locally-controlled *Senior Service* program, adopted by Town Meeting in 2006 to replace the pre-existing state program, under which low-income seniors may perform volunteer work for the Town in exchange for a reduction in their property tax, currently up to $935;
- an exclusively State-run program called the *"Circuit Breaker"* program under which low- and moderate-income homeowners age 65 and over, whose homes have an assessed valuation not greater than a specified ceiling ($793,000 for tax year 2008), may obtain a tax credit on their state tax returns (up to $930 for tax year 2008) for the amount that their property tax, plus half their annual water and sewer bill, exceeds 10% of their annual income, G.L. c. 62, § 6(k); and
- a tax *deferral* program, under which homeowners age 65 or over with a household income of not more than $40,000 may defer any or all of their property tax due, after applying any available

exemptions, up to half the value of their house, at an interest rate equal to the Town's cost of funds (1.66% for FY 2009 deferrals), until the house is sold or transferred, G.L. c. 59, § 5, cl. 41A ("the 41A Program");

The 41A Deferral Program

The 41A deferral program, although it has not been widely used, is an important tool in the tax-relief toolbox because it offers immediate and substantial property tax relief to cash-strapped seniors. Those who qualify may defer any part or all of their property tax, until the property is ultimately disposed of, at an interest rate that is now quite reasonable. The interest rate, formerly pegged at 8%, is now based on a floating Treasury rate equivalent to Lexington's cost of funds, but not to exceed 8%, which remains in effect for the life of each year's deferral. The interest rate for FY2008 deferrals was 4.77%, for FY2009 deferrals was 1.66%, and for FY2010 deferrals will be just 0.66%.

At the same time, the 41A deferral program is an attractive form of tax relief from the Town's point of view because it is essentially revenue-neutral. While the unlikely event of a significant increase in the number of participants in any particular year could potentially create a short-term cash flow problem, the Town is in effect making well-secured loans. The Town should eventually be repaid all the funds that are deferred with interest, and over time an equilibrium should be reached under which as many deferral agreements are repaid as are entered into.

The Home Rule Amendment

In 2007, Town Meeting approved a citizen's article calling for a petition to the State legislature to enact a home rule amendment to 41A that would allow the Town to expand eligibility beyond that permitted under the existing state law. The legislature enacted the requested special act last summer and it was signed into law on July 22, 2008. The new law permits the Town, by vote of Town Meeting and with the approval of the selectmen, to raise the income limit for deferrals beyond $40,000; to lower the age limit (65 years of age); and to condition eligibility for deferral by those under 65 on objective criteria of hardship or disability.

Proposed Increase in Income Threshold

In the fall of 2008, the Tax Deferral and Exemption Study Committee (TDESC) recommended to the Board of Selectmen that the Town exercise its authority under the Home Rule Amendment to increase the income threshold for the 41A deferral program from $40,000 to $50,000.[1] Based on data obtained from the Massachusetts Department of Revenue, the TDESC estimated that this change in the income threshold would qualify approximately 180 additional households beyond the approximately 1,175 now eligible under current limits, or about a 15% increase. The TDESC did not recommend that action be taken at this time to lower the age limit.

Although the number of households eligible to defer property taxes is already substantial and would increase with this change, it is unlikely that the proposal will result in a large number of additional deferrals or have any material impact on the Town's finances because utilization of the program has traditionally been very low. The 41A deferral program has not been popular because senior citizens who have paid off their mortgages have traditionally been reluctant to place a new lien on their home and accumulate debt, or to reduce the value of an asset that can be passed on to their heirs. When the interest rate for 41A deferrals was changed several years ago from 8% to a lower, floating rate based on Lexington's cost of funds, participation increased somewhat, but not substantially. Participation rates in Lexington for the last several years are shown below.

[1] Coincidentally, the state legislature also amended Clause 41A last July on a statewide basis to permit towns to adopt, in lieu of the $40,000 income threshold, the income limit established annually under the "Circuit Breaker" program for single seniors who are not heads of households. The Tax Year 2007 income limit is $48,000 and the Tax Year 2008 income limit is $49,000. The proposed increase, therefore, is just a bit higher than would be allowed if the Town adopted the new statewide option.

Fiscal Year	Interest Rate	Number of Deferrals	Amount Deferred
2002	8%	24	$99,582
2003	8%	21	$80,459
2004	8%	23	$80,459
2005	8%	16	$75,000
2006	8%	16	$74,000
2007	8%	15	$73,578
2008	4.77%	20	$101,832

This Committee believes that the change proposed by this article is reasonable. Prior to last year, the State legislature had not changed the $40,000 household income threshold for the 41A deferral program since it was adopted by the Town of Lexington in the early 1990's. The proposed $10,000 adjustment is modest in view of intervening inflation, and it is not likely to create any significant cash flow risk for the Town. Depending on the response to this modest expansion of eligibility, the Town will be in a better position to evaluate whether further increases in the income threshold, or changes in the age limit, will be appropriate in the future.

The Committee unanimously (9-0) supports this request.

Article 35: Establish Demand Charge for Delinquent Taxes	Funds Requested	Funding Source	Committee Recommendation
	none	N/A	Approve (9-0)

The Town currently assesses a demand fee of $5 when a payment on a real estate tax, personal property tax or motor vehicle excise tax bill is delinquent. In 2008, the State amended Chapter 60, § 15 of the Massachusetts General Laws to increase the allowable fee assessment to an amount not to exceed $30. The level of the assessment must be set by Town Meeting. The Board of Selectmen and Town staff propose to increase the fee to $15.

The Committee unanimously (9-0) supports this request.

Article 38: Petition General Court for Municipal Utility Act	Funds Requested	Funding Source	Committee Recommendation
	none	N/A	Approve (9-0)

The 2005 Annual Town Meeting approved, in Article 14, the submission of a home rule petition to the state legislature that would enable the Town to establish a municipal utility company. Because that home rule petition was not acted on during the legislature's following two-year session, the 2008 Annual Town Meeting, in Article 44, voted to reaffirm the petition as a prerequisite to its continued consideration. The current article calls for Town Meeting once again to reaffirm its desire for a home rule petition, as well as to support related bills working their way through both houses that would enable any municipality state-wide to establish a municipal utility company.

The Appropriation Committee supported Article 14 at the 2005 Annual Town Meeting and Article 44 at the 2008 Annual Town Meeting. The Committee continues its support of legislation that would give the Town the option to create a municipal utility, and therefore unanimously (9-0) supports this request.

Article 39: Petition General Court for Mid-Year Tax Relief for Property Tax Loss from Fire	**Funds Requested**	**Funding Source**	**Committee Recommendation**
	none	**N/A**	**Approve (8-0-1)**

Under current Massachusetts law, Lexington is not able to provide mid-fiscal year tax relief to a taxpayer whose real estate property is substantially damaged or destroyed by fire or natural disaster. Such a mechanism is provided in Chapter 59, section 2D, subsection (e) of the Massachusetts General Laws. The same statute, in subsection (a), also empowers a municipality to tax new construction, in mid-fiscal year, on its value at the time a temporary or permanent occupancy permit is granted, whenever the new construction increases the assessed value of the real estate by more than 50%. The landowner is then required to pay a pro rata increase in his real estate taxes for that fiscal year.

Section 2D became law in 1998 but it only applied to municipalities whose voters affirmatively voted to accept it. The question of whether or not to accept it was never submitted to Lexington voters. In 2003, Section 2D was amended to provide that "[t]he local appropriating authority [in Lexington's case, the Board of Selectmen] . . . may reject this section by written notification to the Department of Revenue (DOR)." The Board of Selectmen subsequently notified the DOR that Lexington rejected Section 2D.

The Town, through its Board of Assessors, assesses property in terms of its value as of January 1 of each calendar year. The assessed value then becomes the basis for the tax bill on the property for the following fiscal year. For example, the FY2009 tax bill for a property is based upon the assessed value as of January 1, 2008.

This article, if approved by Town Meeting, authorizes the Board of Selectmen to petition the Massachusetts General Court to pass special legislation authorizing the Town to abate, or to refund payments already received for, real estate taxes whenever in any fiscal year the assessed value of real estate is decreased by more than 50% as a result of fire or natural disaster. The amount of the abatement or refund will be determined by the reassessed value of the property, presumably calculated as of the day immediately after the fire, natural disaster or other qualifying event, and the portion of the fiscal year remaining after the event. In effect, the special legislation contemplated by this article will result in the provisions of only Section 2D(e) being made applicable to Lexington, a selective adoption of the statutory provision previously rejected. The Town's prior rejection of all other provisions of the statute, subsections (a) through (d), will not be affected.

At the time of this Report, the actual motion and text of the proposed legislation to be presented to Town Meeting under this article has not been furnished to the Committee. However, it is contemplated that the motion and the special legislation to be sought will apply to fires and natural disasters occurring in FY2009 and all subsequent years. It will not apply to any events occurring before July 1, 2008.

Under existing law, applications for abatement of real estate taxes must be filed with the Assessors' Office no more than 30 days after the first "actual" tax bill is rendered for the fiscal year (generally the third quarter installment mailed on January 1). It is contemplated that the special legislation requested will include language ensuring that its protection is afforded to all taxpayers whose property sustains substantial damage or destruction by fire or other natural disaster, resulting in a more than 50% decrease in the assessed value of the property, even when the event occurs after the ordinary deadline for filing abatement applications.

The Committee understands that in past years other municipalities have filed similar petitions seeking special legislation of this type. In each of those instances, the General Court has passed the requested legislation.

The impetus for this article is the October 31, 2008 fire at the Hancock School condominiums. However, as mentioned above, the special legislation sought will benefit any property owner whose property is destroyed, or sustains severe damage resulting in a greater than 50% decrease in its assessed value, at any time in FY2009 or thereafter or, in other words, at any time on or after July 1, 2008. Additionally, the "relief" to the taxpayer is only a temporary event, since on January 1 following the event the assessed value of the property, and the resulting real estate tax for the next fiscal year, will reflect the property's damaged or destroyed condition.

The Committee fully appreciates the sentiment and intention underlying this article, and supports it. The Committee believes that the Town should also reconsider its rejection of the remainder of Section 2D, since those provisions would enable the Town, immediately upon the Town's issuance of a temporary or permanent occupancy permit, to assess and collect earlier than it normally would, a proportionately increased real estate tax on any new construction which increases the assessed value of the property by more than 50%. We understand, however, that the associated administrative burdens may be prohibitive.

The committee (8-0-1) supports this request. Please note that one member recused herself from the deliberation and vote as she is one of the unit-owners at the former Hancock School building and would be impacted by this Article.