



KOPELMAN AND PAIGE, P.C.

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December 10, 2013

Jonathan D. Eichman
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Mr. Robert J. Spain
Town Manager
Millbury Town Hall
127 Elm Street
Millbury, MA 01527

Re: Ramshorn Pond Dam Reconstruction Project

Dear Mr. Spain:

You have requested an opinion concerning whether the Town Meeting vote under Article 16 of the May 7, 2013 Town Meeting appropriating funds for the repair of the Ramshorn Pond Dam (the "Town Meeting Vote") is sufficient to allow the Town as part of the repairs to construct a small public parking strip alongside Dolan Road on top of the dam and a small canoe ramp and launch area for public use in the dam wall (the "Public Use Improvements"). I understand that the proposed repairs consist of replacing the existing outlet pipe and associated low level control outlet structure in the dam with a new pipe, structure and slide gate; removing the existing spillway at the northern end of the dam and replacing it with a new spillway at the center of the dam; stabilizing the upstream side of the dam with a sheet pile wall and improved revetment; improving the public way on top of the dam (Dolan Road); and installing new drainage improvements on Dolan Road and the dam, including curbing, catch basins, toe drains, swales, drain pipes and manholes. As part of the improvements to the upstream side of the dam, the sheet pile wall will be designed to stabilize the upstream side of the dam and to provide a positive cutoff to seepage flow through the embankment. The wall will extend along a majority of the upstream side of the dam and will result in the creation of a level area approximately twelve (12) feet in width and 350 feet long between Dolan Road and the slope of the dam wall on the pond side. In this area, the Town proposes to provide for public parking (one car-width wide alongside Dolan Road) and a nine-foot wide ramp from the top of the dam to a small canoe launch area. The parking is expected to be used by Town maintenance trucks for inspections and repairs of the dam, and by the public using the canoe launch area. Residents of the pond area have asserted that the Town Meeting Vote does not allow the monies appropriated thereunder to be used for construction of the parking area and the ramp and canoe launch. Ramshorn Pond is classified as an enlarged natural great pond by the Massachusetts Executive Office of Energy and Environmental Affairs.

In my opinion, the Town Meeting Vote sufficiently authorizes use of the appropriated funds to construct the Public Use Improvements as part of that repair. The power to appropriate funds for public use is a legislative power. In re Opinion of the Justices, 302 Mass. 605, 612 (1939). As a corollary of this principle, the Town may incur no liability without an appropriation. See G.L. c.44, §31. In towns, the Town Meeting is the legislative body with power to appropriate funds.

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In the exercise of its legislative power of appropriation, Town Meeting as the legislative body “has a broad scope for determining whether it will prescribe in detail the particular purposes for which money appropriated shall be expended or, on the other hand, will permit executive or administrative officers or boards to exercise judgment and discretion within a wide field in the expenditure of money appropriated for a given object to accomplish the general purposes of the appropriation.” In re Opinion of the Justices, 302 Mass. 605, 613 (1939). Even when appropriations are minutely itemized, “some scope is left for the exercise of judgment and discretion by executive or administrative officers or boards in the expenditure of money within the limits of the appropriation.” Further, if the object of the appropriation is a legitimate one, it is immaterial whether it anticipates expenditures “which the future requirements of the public service may render expedient or necessary.” Opinion of the Justices, 302 Mass at 613, quoting, Lowell v. Oliver, 8 Allen 247, 257.

Here, Town Meeting appropriated funds “to complete repairs on Ramshorn Pond Dam.” It is reasonable to conclude, in my opinion, that the purpose of the appropriation is to provide for the stability of the dam and the public way on top of it, and thereby preserve and regulate the waters of Ramshorn Pond both for public safety purposes and to provide for the continuing use of this great pond by all those entitled thereto. Pursuant to G.L. c.131, §45, every great pond not actively used as a source of water supply shall be open to public use for the purposes of hunting, boating, and fishing, subject to local regulation. Further, while the appropriation is specific as to its purpose, it is silent on the manner in which such purpose will be carried out, and thus, in my opinion, leaves that decision to the discretion of the appropriate executive officers of the Town.

In light of the purpose of the appropriation as set forth above, and the latitude given to the Town’s executive officers to carry out that purpose, in my opinion, use of the appropriated funds to provide for the Public Use Improvements is within the authority conferred by the Town Meeting Vote. Provision of limited parking will allow the Town to more easily maintain the dam and related structures, will provide an additional margin of safety for persons using Dolan Road, and will provide for limited public access to a great pond owned by the Commonwealth in trust for the public and maintained in part by these public funds. Likewise, providing a small canoe ramp and launch area for public use is consistent with the purpose (preservation of the Pond for its continuing use) for which the funds were appropriated.

In addition, the Public Use Improvements are integral parts of the structure of the renovated dam that can be realized only because of the work to regrade, stabilize and support the upstream side of the dam, and thus, in my opinion, are within the discretion given to Town officials to decide the manner in which the appropriation will be expended. In sum, in my opinion it is reasonable to interpret the Town Meeting Vote as providing for improvements to the dam in order to preserve Ramshorn Pond as a public resource, and the Public Use Improvements constitute such improvements.

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If you have any questions concerning this matter please do not hesitate to contact me.

Very truly yours,



Jonathan D. Eichman

JDE/smm
cc: Board of Selectmen
Director, Department of Public Works

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