



Kerry A. Lafleur

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MEMORANDUM

To: Henry Dane, Select Board Chair
Kerry Lafleur, Town Manager
TOWN OF CONCORD

From: Mina S. Makarious
ANDERSON & KREIGER LLP

Re: 2024 Annual Town Meeting Article 22: Authorize New Middle School Naming-Name
the New Middle School Ellen Garrison Middle School

Date: March 8, 2024

Article 22 on the 2024 Annual Town Meeting Warrant, entitled “Authorize New Middle School Naming-Name the New Middle School Ellen Garrison Middle School” reads as follows:

To determine whether the Town will urge the Select Board and the School Committee as outlined in Town of Concord Administrative Policies and Procedures # 43: Naming of Town Property, to approve the naming of the publicly-owned property currently being built at 923 Old Marlboro Road as the Ellen Garrison Middle School, or take any other action relative thereto.

You have asked me to opine on the following issues concerning this article:

1. The authority of the Select Board and the School Committee to name the Concord Middle School both while it is under construction or after construction is completed; and
2. Town Meeting’s authority to require a particular name for the Middle School.

Authority of Select Board and School Committee to name the Concord Middle School.

State law and the Concord Town Charter both vest authority over school buildings in the School Committee, not the Select Board or Town Meeting. *See* G.L. c. 71, § 68 (“The school committee, unless the town otherwise directs, shall have general charge and superintendence of the schoolhouses....”); Concord Town Charter § 9.E (placing all Town property under the jurisdiction of the Town Manager “[w]ith the exception of property under the jurisdiction of the

school committee”). Naming of property is a common feature of the control of property and thus would also fall under the jurisdiction of the School Committee under state law and the Charter.¹

In 1990, the Select Board promulgated Administrative Policies and Procedures #43: Naming of Town Property (“APP #43”), which has since been amended several times, providing a procedure by which the Select Board would solicit public input on requests to name public property. Importantly, APP#43 states that the Select Board’s ability to name a building will only be exercised “[i]f the facility is not under the jurisdiction of any other Board or Committee.” As school buildings are under the jurisdiction of the School Committee under state law and the Charter, APP#43 appropriately does not cover school buildings.

APP#43 also states:

It is the policy of the Select Board that renaming of a property be done very sparingly, for compelling reasons. Renaming of a property already named for a person or family shall be undertaken only by Town Meeting.

To the extent the naming of the new school building is considered a “renaming” based on an existing name, it is my understanding that some have argued that this rule would apply. However, since APP#43 is a statement of Select Board policy, the Select Board cannot give the right to name or rename school buildings to Town Meeting any more than it could undertake the naming or renaming itself.

It is my understanding, based on a letter from School Counsel to the School Committee Chair dated November 13, 2023, that the School Committee at one point did voluntarily adopt the process in APP#43 to the naming of school property under Concord School Committee Policy FF (“CSC Policy FF”). However, on December 19, 2023, the School Committee revised CSC Policy FF, making clear that the School Committee would once again have “the authority to approve the naming and renaming of buildings, structures, and facilities located on school property.” The revised CSC Policy FF also applies to new schools: “When the opportunity to name or dedicate a new school or school related property, structure or facility is forthcoming, an orderly procedure will be communicated at the next available School Committee meeting.”

Based on state law, the Town Charter, and current Select Board and School Committee policies the naming of the new Middle School is within the School Committee’s control.

¹ It is my understanding that a question has also been raised as to whether the Select Board *currently* has the ability to name the building since it is not yet built and construction is being managed by the Town Manager’s office. In theory, the Select Board could, under APP #43 name the building “site” while it is under construction, but there is no completed building yet to name. When the building is complete, it will be a school building under the School Committee’s jurisdiction to name.

Authority of Town Meeting to Require a Name for the Concord Middle School.

The School Committee's authority cannot be superseded by a Town Meeting vote under Article 22 for at least two reasons.

First, Article 22, as it appears in the Warrant, only allows Town Meeting to "urge" the School Committee and Select Board to adopt Ellen Garrison's name to the new school. This is typical language for a non-binding resolution. I have confirmed with the Town Moderator that a motion purporting to bind the School Committee to name the building a certain name would be out of scope under Article 22. The Moderator has the ultimate authority on issues of scope. The Moderator has also concluded that a Town Meeting vote to name the Middle School anything other than the "Ellen Garrison Middle School" would be beyond the scope of the article given its title and the specific references to the name in the article.

Section, Article 22 cannot supersede state law or the Town Charter, both of which grant the School Committee jurisdiction over school buildings. Accordingly, even if a purportedly binding motion were in scope, the School Committee would likely not be bound to follow it given its independent authority over the school building.