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Town Administrator

BOARD OF SELECTMEN

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TO: CHAIRMAN GINA M. HANLON-CAVICCHI
MEMBERS OF THE SCHOOL COMMITTEE

FROM: RONALD E. CLARKE, CHAIRMAN

DATE: OCTOBER 7, 2015

RE: FY 17 OPERATIONAL BUDGET

The Board of Selectmen, at their October 6, 2015 meeting, voted unanimously that the available revenue for FY 17 is \$31,674,705. In accordance with the Financial Management Policies that were approved at the Annual Town Meeting, the General Government will receive 29.7% or \$9,407,387 and the School Department will receive 70.3% or \$22,267,318 to fund operations. In addition, the FY 17 Board of Selectmen Goals and Objectives were voted on as follows:

1. Motion by Dunham to change Goal #1 to: Continue to follow the Town of Carver's Financial Policies as voted at the 2014 Annual Town Meeting, applied uniformly through ALL town departments. Doing so should optimize costs of borrowing and bonding, second by Marrone. Vote 5-0. (The Financial Policies were approved by Article 4 of the 2014 ATM)
2. Motion by Dunham to: Continue to fund the OPEB trust fund, annually reviewing the size of the contribution with the intent of increasing it annually. Consider developing an annual formula that would determine the size of the contribution, second by Marrone. Vote 4-0 (Hewins recused herself from the vote as a retiree)
3. Motion by Dunham to revise #3 to: Develop a town-wide shared budget account where appropriate as part of the overall town budget, second by Marrone. Vote 5-0.
4. Motion by Dunham to revise #4 to: Establish, in coordination with the School Department, a town-wide IT department. Funding for the department to be under the town-wide shared budget account, second by Marrone. Vote 4-1
5. Motion by Dunham to revise #5 to: Establish a town-wide Health Benefits line item in the town-wide shared budget account to fund health benefits for all town employees; both municipal and school employees. The School Department will be consulted to get a full accounting of the number of employees eligible for health benefits. Health benefits for current employees and retirees will be funded by this line item. (the FY 14 Audit review under comments...line 7 at the Board of Selectmen meeting on 3/3/15 made this recommendation), second by Marrone. Vote 4-0 (Hewins recused herself from the vote as a retiree)

6. Motion by Dunham to revise #6 to: Using funding provided by the recently received State Grant, commission a study to determine cost savings and efficiencies in moving to a town-wide facilities department. At the completion of the study, and a review and approval of the recommendations of the study by the Board of Selectmen, implement the findings/recommendations of said study. The implementation of any findings/recommendations shall be done in coordination, as needed with the School Department, second by Marrone. Vote 5-0
7. Review the reorganization that took place in FY15 in the five land use departments – Board of Health, Conservation, Inspections, Planning and Zoning Board of Appeals – to ensure that all services needed by the residents are being met, and make adjustments as necessary. Motion to approve by Marrone, second by Dunham. Vote 5-0.
8. Investigate opportunities for regionalization. These efforts must prove to be a cost savings and/or result in a more efficient delivery of services. Motion to approve by Ward, second by Dunham. Vote 5-0.
9. Receive quarterly updates on the town's efforts and progress with ongoing drug problems. Review and consider any actions the Board of Selectmen can take to alleviate the issue. Motion to approve by Marrone, second by Dunham. Vote 5-0.
10. Work with the Capital Outlay Committee and other parties of interest to look forward to future capital building projects. The Board should work immediately to prioritize the establishment of a Police Station Study Committee. Motion to approve by Ward, second by Marrone. Vote 5-0. Evaluate the possibilities of using a portion/percentage of "one time funding" each year to help fund a new Elementary School if said school is approved by the town. Motion to approve by Ward, second by Marrone. Vote 5-0.

Ronald E. Clarke, Chairman

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Statutory Overview: Respective roles of school committees and towns in overseeing the maintenance of school buildings

This provides a brief overview of respective roles of school committees and towns in overseeing the maintenance of school buildings and circumstances in which maintenance services may be consolidated between a town and the school committee. It particularly addresses statutes of general applicability that may serve to prevent the town from unilaterally assuming jurisdiction and control over maintenance of school buildings previously exercised by the school committee. Note that additional statutes applicable to specific towns as well as town by-laws may also need to be reviewed for a full analysis of the respective rights and responsibilities of a particular town and school committee.

M.G.L. c. 71, §37M (entitled “Consolidating Administrative Functions of School Committee with Those of the Municipality”)

M.G.L. c. 71, §37M (“Section 37M”), specifically sets forth the respective roles of school committees and towns in the control of maintenance of school properties, as follows:

- (a) Notwithstanding the provisions of chapter forty-one or chapter seventy-one or any other special or general law to the contrary, any city or town which accepts the provisions of this section **may consolidate administrative functions, including** but not limited to financial, personnel and **maintenance functions**, of the school committee with those of the city or town; provided, however that such consolidations may occur **only upon a majority vote of both the school committee and ... in a town, the annual town meeting** or in a town with no town meeting, the town council.
- (b) Notwithstanding any general or special law to the contrary, a **decision** to consolidate functions pursuant to paragraph (a) of this section **may be revoked by a majority vote of either the school committee** of the city or town, or the city or town, or both as such vote is described in said paragraph (a).

As such, Section 37M on its face prohibits a town from unilaterally taking control of the maintenance of school property. Rather, the school committee’s vote is also required. Indeed, at any time after consolidation, the school committee can unilaterally revoke its consent.

M.G.L. c. 71, §68 (entitled "Duty of Towns to Maintain Schools. . .")

A town may argue that M.G.L. c. 71, §68 (Section 68) supersedes the provisions of Section 37M to act unilaterally in assuming control of school property maintenance. Section 68 states, in part:

...The school committee, unless the town otherwise directs, shall have general charge and the superintendence of the school houses, [and] shall keep them in good order.

However, based upon basic rules of statutory construction, it appears unlikely that this statute could be read to authorize a town to unilaterally assume control of the maintenance of school property. Courts are generally bound to construe two potentially competing statutes in a way that will give effect to both statutes. See generally Sullivan v. Chief Justice for Admin. and Management of the Trial Court, 448 Mass. 15, 27 (2006) (in determining whether or not there is a conflict between statutes, the court will give preference to a harmonious reading of the statutes). Further, where a general statute conflicts irreconcilably with a specific one, it is understood that the general statute must yield to the specific one (Saccone v. State Ethics Comm., 395 Mass. 326, 332 (1985)). Likewise, in the event there is a conflict between two statutes, the courts find that there is implied repeal of an older statute if it is repugnant to and inconsistent with a later statute. Boston v. Board of Education, 392 Mass. 788, 792 (1984) (competing statutes will be construed in a manner that gives reasonable effect to both, and implied repeal will be found when the prior statute is repugnant to and inconsistent with a later statute so that both cannot stand.)

A harmonious reading of the two statutes at issue can be made by interpreting Section 37M as establishing the means by which a town can "otherwise direct" and take control of the maintenance of school property as contemplated by Section 68, i.e., by seeking and obtaining the consent of the school committee. However, absent such a harmonious reading, Section 68 must yield to Section 37M since it is more specific in nature. Further, Section 37M was enacted in 1992 and amended in 1996. In stark contrast, Section 68 was enacted in 1934, with no amendments since that date affecting the portion of the statute quoted above.

Given the rules of statutory construction, it is unlikely that a court could hold Section 68 to permit a town to unilaterally strip the school committee of its authority to control maintenance of school properties.

In the event of litigation relating to the matters described above, this analysis is not intended to restrict the causes of action and arguments to be presented on behalf of a school committee in reserving its rights and authority under law to control the maintenance of school property.