



February 17, 2009

Sheila Vanderhoef
Town Administrator of Eastham
2500 State Highway
Eastham, MA 02642-2544

Re: Debt Exclusion Question
Our File # 2008-982

Dear Ms. Vanderhoef:

You have sought guidance as to whether the debt exclusion passed by Eastham voters for the establishment of a municipal water system would apply to a scaled-back project limited to developing test wells, evaluating volume potential, and source permitting ("Phase I"). In our opinion, "Phase I" falls within the scope of the debt exclusion to the extent it is intended to lead to further phases of work needed to complete the water system.

On May 15, 2007, the voters approved a debt exclusion for the financing costs

of establishing a water system for the Town, including, without limitation, the taking or purchase of water sources or water or flowage rights, the taking or purchase of land for the protection of the water system, the construction and development of wells, the construction of water towers, the construction of buildings for water treatment and pumping stations, the laying and relaying of water mains, the purchase and installation of water meters, fire hydrants and other water department equipment, and design and engineering and other costs incidental thereto.

However, at two separate Town Meetings, the warrant article for the appropriation of funds and authorization of borrowing to finance the water system failed to pass by the requisite 2/3 majority. A warrant article may be proposed for the upcoming Annual Town Meeting to appropriate funds and authorize borrowing for "Phase I" only.

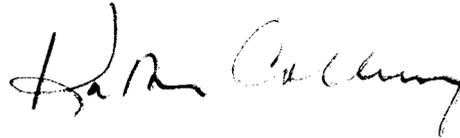
The scope of a debt exclusion is determined by the voters' understanding of the subject matter of the project before them. As you know, debt exclusion questions are tied to particular borrowings for the described purposes. Ordinarily, voter intent can be easily determined because the underlying borrowing has already been authorized, or is scheduled to be considered, by the municipal legislative body at the time of the referendum. Thus, the amount and purpose of the exclusion are clearly defined. Here, however, the exclusion was approved without reference to an existing or upcoming borrowing vote. In that case, we must try to determine what voters intended

based on the information available to them at the time of the referendum and upon which they presumably relied in making their decisions.

Generally, an approved debt exclusion continues to apply to a project that is scaled back for the purpose of reducing its cost, unless the project is fundamentally different from that envisioned at the time of the referendum. We believe that "Phase I" as described is consistent with the purposes of the debt exclusion approved by voters, provided that "Phase I", as the term suggests, is intended to lay the groundwork for future steps to build a town water system. Voters could reasonably have foreseen that the development of a town water system required certain preparatory activities of the kind contemplated for "Phase I." Such preparatory work was given approval in the context of a plan to create a municipal water system. However, if "Phase I" were merely exploratory, and not calculated to result in eventual completion of the water system, the project would not entail the end-user benefits voters sought when they approved the ballot question, and would be materially different from the proposal presented to the electorate.

In sum, we conclude that the existing debt exclusion can be applied to an appropriation and borrowing to fund the "Phase I" activities, on the assumption that "Phase I" is intended to be followed by further phases necessary to construct the town water system voters were presented with on May 15, 2007. No further voter action would be required. Please do not hesitate to contact us if you have further questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kathleen Colleary". The signature is fluid and cursive, with the first name being more prominent.

Kathleen Colleary, Chief
Bureau of Municipal Finance Law

KC: DG