

Enabling Legislation May Limit Potential Uses of the Cotuit School Property

Potential uses of the Cotuit School property are limited by the enabling legislation of the Cotuit Fire District (CFD). At the August 15, 2023 meeting, the CFD's outside counsel, Mark Boudreau, gave a brief synopsis of those legal limitations.

The CFD is the legal entity created by an Act of the Massachusetts legislature in 1926. This "enabling legislation" created the CFD and granted that legal entity the power to run a fire department, water department, and police department and to install and maintain streetlights and sidewalks. The legislation allows the CFD to tax village residents and to issue bonds needed to support its goals. The CFD has never elected to create a police department. All other governmental duties and responsibilities are the responsibility of the Town of Barnstable.

The CFD consists of a Water Department, Fire Department, and the Prudential Committee, which is responsible for managing the finances of the CFD and dealing with business brought before the CFD. It is the entity that negotiated the agreement with the Town of Barnstable for an inter-governmental transfer of the Cotuit School property.

Any activities necessary to support the activities of the Water, Fire and Prudential Committee are allowed by the 1926 enabling legislation. Activities unrelated to those responsibilities are beyond the allowed scope of the CFD. Thus, the CFD could demolish the school building to protect its nearby water well. It could rehab the school itself and use it to house the offices of one or more of the departments (subject to protection of the water source). It could not, for example, use the school as commercial property or to run a community center. Such uses would be outside its "enabling legislation".

One possible exception would be to rehabilitate the school and rent it out to a non-profit organization for charitable or community services. This possibility remains to be closely reviewed for its legal viability. The specific proposed use would figure prominently in that analysis.

Alternatively, the CFD could seek to amend its enabling legislation to broaden its charter to allow other uses of the property. This would involve an Act of the Massachusetts legislature and would likely be a lengthy process. It should be noted that the CFD's enabling legislation has been amended before. In 1949, the legislation was amended to allow for the building of a World War II memorial and to allow annual contributions to the Cotuit Library. This illustrates the limitations inherent in the enabling legislation; the CFD is limited in its scope of allowable activities.

This summary was provided by Prudential Committee member Mark Lynch, 8/28/2023.