



THE COMMONWEALTH OF MASSACHUSETTS  
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TOWN OF GROVELAND  
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TOWN CLERK  
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July 26, 2019

Anne Brodie, Town Clerk  
Town of Groveland  
183 Main Street  
Groveland, MA 01834

Re: Groveland Annual Town Meeting of April 29, 2019 -- Case # 9370  
Warrant Articles # 11 and 12 (General)

Dear Ms. Brodie:

**Articles 11 and 12** - Except for a portion of Article 12 pertaining to fines that conflicts with G.L. c 40, § 21, (see **Disapproval # 1 of 1** on page 3), we approve Articles 11 and 12 from the April 29, 2019 Groveland Annual Town Meeting. Our comments regarding Article 12 are provided below.

**Article 12** - Article 12 amends the Town's general by-laws to add a new Chapter 15, "Bylaw Governing Discharges to the Municipal Storm Drain System." The purposes of the new Chapter 15 include: (1) preventing pollutants from entering the Town's municipal separate storm sewer system (MS4); (2) prohibiting illicit connections and unauthorized discharges to the MS4; and (3) complying with state and federal statutes and regulations relating to stormwater discharges. Section 1, "Purpose."

**I. Law Applicable to Article 12**

Both the federal government and the Commonwealth of Massachusetts have enacted certain regulations relative to stormwater management by municipalities. For instance, the federal Environmental Protection Agency has enacted requirements pertaining to operators of municipal separate storm sewers. See 40 C.F.R. § 122.34. The Massachusetts Department of Environmental Protection (the Department) has promulgated regulations at 310 C.M.R. § 10.05 (6) (k)-(q) ("Stormwater Management Standards"), pursuant to G.L. c. 131, § 40. Furthermore, the Department has promulgated stormwater regulations at 314 C.M.R. §§ 3.04 and 5.04, pursuant to G.L. c. 21, §§ 26-53 (the Massachusetts Clean Waters Act). Any local regulation of stormwater management must be supplementary to and consistent with the regulation of such

matters by the federal government and the Commonwealth of Massachusetts. Operators of municipal separate storm sewers are required to develop and implement a stormwater management plan that meets certain minimum measures. *See* 40 C.F.R. § 122.34.

The federal regulations suggest that municipalities adopt local laws or regulations as part of an effective stormwater management plan. *See, e.g.,* 40 C.F.R. § 122.34 (b) (3) (ii) (B); 40 C.F.R. § 122.34 (b) (4) (ii) (A); 40 C.F.R. § 122.34 (b) (5) (ii) (B). It appears that the new Chapter 15 is part of Town's efforts to effectively manage stormwater.

## **II. Comments on Chapter 15 - Discharges to the Municipal Storm Drain System**

### **1. Section 2 - Definitions**

Section 2 defines the term "Person" as:

An individual, partnership, association, firm, company, trust, corporation, agency, authority, department or political subdivision of the Commonwealth or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.

We approve this definition of "Person." However, the Town's authority to regulate state and federal entities is limited. "The doctrine of essential governmental functions prohibits municipalities from regulating entities or agencies created by the Legislature in a manner that interferes with their legislatively mandated purpose, absent statutory provisions to the contrary." Greater Lawrence Sanitary Dist. v. Town of North Andover, 439 Mass. 16 (2003). *See also* Teasdale v. Newell & Snowling Const. Co., 192 Mass. 440 (1906) (holding local board of health could not require state park commissioners to obtain license to maintain stable on park land). Similarly, municipalities may not regulate federal governmental entities in a manner that impedes with their purpose. *Cf. First Nat'l Bank v. Missouri*, 263 U.S. 640, 656 (1926) (state laws may not regulate federal entities if "such laws interfere with the purposes of their creation [or] tend to impair or destroy their efficiency as federal agencies"); Palfrey v. City of Boston, 101 Mass. 329 (1869) (federal internal revenue stamps not subject to state or local property tax). The Town's enforcement of Chapter 15 cannot impermissibly interfere with the operation of state or federal entities. The Town should discuss any questions regarding the proper application of this definition with Town Counsel.

### **2. Section 11 - Enforcement**

#### ***a. Imposition of a Lien***

Section 11 pertains to enforcement of the by-law. Specifically, it allows the Town to charge the property owner for costs incurred by the Town to abate or remediate violations of the by-law. If the costs are not paid by the property owner, then the costs shall become a "special assessment" and "constitute a lien" on the owner's property.

Betterments or special assessments are special property taxes assessed to recover costs of installing infrastructure or other public improvements that specifically benefit properties in a

defined area. See G.L. c. 80 and c. 83. According to the Department of Revenue, Division of Local Services (DOR/DLS), an expense incurred by a Town to abate or remediate violations of a by-law is not a betterment or special assessment and cannot be added to the real estate tax for collection purposes as a betterment or special assessment. Absent express statutory authority, the Town cannot impose a "special assessment" for the costs incurred by the Town for remediating violations of the by-law.

Here, although Section 11 uses the term "special assessment," it appears that the by-law contemplates a lien against the owner's property, rather than adding such costs to a real estate tax bill. As such, the expenses incurred by the Town to abate or remediate violations of the by-law or permit may be considered a charge for purposes of G.L. c. 40, § 58, the municipal charges lien statute. However, in order for the Town to utilize the provisions of G.L. c. 40, § 58, the Town must either amend its by-law to specify that the costs will be liens for purposes of G.L. c. 40, § 58, or take a separate vote authorizing the use of G.L. c. 40, § 58, for charges the Town may incur abating or remediating by-law violations. Before it imposes a "lien" against a property owner, the Town should discuss any questions on this issue with Town Counsel.

*b. Non-Criminal Disposition*

Section 11 authorizes the Town to use the non-criminal procedures of G.L. c. 40, § 21D, as a means of enforcing the by-law. Specifically, Section 11 provides in relevant part:

The penalty for the 1<sup>st</sup> violation shall be \$100. The penalty for the 2<sup>nd</sup> violation shall be \$200. The penalty for the 3<sup>rd</sup> and (sic) violation shall be \$300. **The penalty for the 3<sup>rd</sup> and subsequent violations shall be \$400** (sic) each day or part thereof that such violation occurs or continues shall constitute a separate offense.

We disapprove and delete the text above in bold and underline ("The penalty for the 3<sup>rd</sup> and subsequent violations shall be \$400") because it conflicts with G.L. c. 40, § 21. (**Disapproval # 1 of 1**). Pursuant to G.L. c. 40, § 21, the Town's by-laws may be enforced only by way of a fine not to exceed \$300.00. The proposed penalty of \$400 for a 3<sup>rd</sup> or subsequent violation exceeds the maximum penalty the Town may assess for a by-law violation. For that reason, we disapprove and delete the text above in bold and underline.

**Note:** Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the Town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,

MAURA HEALEY  
ATTORNEY GENERAL

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cc: Town Counsel William Hewig