



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

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September 23, 2020

Elizabeth Cunniff, Town Clerk
Town of Groveland
183 Main Street
Groveland, MA 01834

RE: Groveland Annual Town Meeting of June 22, 2020 - Case # 9825
Warrant Articles # 11, 12, and 13 (Zoning)
Warrant Articles # 8 and 10 (General)

Dear Ms. Cunniff:

Articles 8, 11, 12, and 13 - We approve Articles 8, 11, 12, and 13 from the June 22, 2020, Groveland 2020 Annual Town Meeting. Our comments regarding Articles 8, 12, and 13 are provided below.

Article 10 - Except for the text in Section 14-7 (D) prohibiting the issuance of a building permit for failure to comply with the Town's Stormwater Management and Land Disturbance by-law, we approve Article 10. Article 10 amends the Town's Stormwater Management and Land Disturbance by-law in order to comply the National Pollutant Discharge Elimination System (NPDES) Permit requirements and effectively manage stormwater.

A. Section 14-7

Article 10 adds a new section D to Section 14-7 pertaining to building permits and provides in pertinent part as follows (with emphasis added):

Every person seeking a building permit in the Town shall obtain a stormwater management and land disturbance permit as may be required for such proposed improvement and shall present a copy of same or sufficient evidence that such stormwater permit is not required to the Building Inspector with the building permit application. **No building permit may issue and no property may be used or improved pursuant to a building permit issued in violation of this section.**

We disapprove and delete the above bold and underlined text that prohibits the issuance of a building permit for failure to comply with the Town's Stormwater Management and Land Disturbance general by-law because it is inconsistent with the State Building Code.

The State Building Code ("Code") governs the issuance of a building permit. *See* State Building Code, 8th Edition, 780 C.M.R. §§ 105.3.1. More specifically, the Code requires the Building Inspector (as Code Enforcement Officer under the Code) to issue a building permit where the applicant has demonstrated compliance with the Code and the town's zoning by-laws. 780 C.M.R. § 105.3.1; *see also* G.L. c. 40A, § 7. In addition, G.L. c. 40A, § 7, authorizes the withholding of a building permit only if the applicant's proposed project is in violation of the town's zoning by-laws. Thus, a town cannot withhold a building permit for failure to comply with a town's general (non-zoning) by-law requirements. For this reason, we disapprove and delete the above bold and underlined text from Section 14-7 (D).

Article 8 - Article 8 amends Section 2-42 of the general by-laws by adding a new revolving fund, the "Groveland Day Revolving Fund" to the list of revolving funds authorized by G.L. c. 44, § 53E ½. The revenue source for the Groveland Day Revolving Fund includes proceeds from fundraising, advertising, *donations*, and other fees (with emphasis added). It is unclear whether the "donations" referred to are actually "fees" for programs and services, or if the donations are true "gifts." General Laws Chapter 44, Section 53A, pertains to the acceptance and expenditure of grants and gifts, and requires:

An officer or department of any...town, or of any regional school or other district, may accept grants or gifts of funds from the federal government and from a charitable foundation, a private corporation, or an individual, or from the commonwealth, a county or municipality or an agency thereof, and in the case of any grant or gift given for educational purposes may expend said funds for the purposes of such grant or gift with the approval of the school committee, and in the case of any other grant or gift may expend such funds for the purposes of such grant or gift...in towns with the approval of the board of selectmen...

Further, Section 53A provides that "[n]otwithstanding the provisions of section fifty-three, any amounts so received by an officer or department of a city, town or district shall be deposited with the treasurer of such city, town or district and held as a separate account and may be expended as aforesaid by such officer or department receiving the grant or gift without further appropriation." The Town should consult with Town Counsel to ensure that any donations deposited in the Town's Groveland Day Revolving Fund comply with the requirements of G.L. c. 44, § 53A and § 53E ½.

Articles 12 and 13 - Article 12 amends the Town's zoning by-laws to: (1) correct grammatical and spelling errors; (2) make housekeeping and other non-substantive changes; and (3) delete unused definitions, all as set forth in the "list of Zoning By-law Changes" in Appendix D as on file with the Town Clerk. Article 13 amends the Town's zoning by-laws to renumber, recaption, rearrange and sequence the Town's zoning by-law as set forth in the Final Draft of the Zoning Bylaw dated February 2020 as on file with the Town Clerk.

We approve Articles 12 and 13. However, our approval of the recodified zoning by-laws is limited solely to those changes that were identified in the documents submitted to this Office and does not include any other changes.

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,

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cc: Town Counsel Jonathan D. Eichman