



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

WESTERN MASSACHUSETTS DIVISION  
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SPRINGFIELD, MASSACHUSETTS 01103-1629

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August 20, 2008

Jeanette H. Fellows, Town Clerk  
12 Athol Road  
Warwick, MA 01378

**RE: Warwick Annual Town Meeting of May 5, 2008 --- Case # 4711  
Warrant Article # 31 (Zoning)**

Dear Ms. Fellows:

**Article 31** - I return with the approval of this Office the amendments to the Town by-laws adopted under this Article on the warrant for the Warwick Annual Town Meeting that convened on May 5, 2008.

The amendments adopted under Articles 31 were a recodification of the Town's zoning by-laws. The vote included a "25 page document with heading: Zoning Revisions for Town Meeting 3/14/08" with specific deletions indicated by "~~underlined and crossed out and in brackets~~ and highlighted" and additions indicated by *italics and highlighted*. In approving the specific changes adopted under Article 31, we offer the following comment.

Section Ten: "Site Plan Review" - Section 10 (C) provides that site plan review shall apply to Conservation Developments. Section 10 (D) establishes the procedures for site plan review and provides that the planning board as the site plan review authority may require a performance bond or other security sufficient to cover the costs for improvement required by the site plan.

In approving the performance bond requirement in Section 10 (D), we remind the Town of the requirements of G.L. c. 44, § 53. General Laws Chapter 44, Section 53, provides that "[a]ll moneys received by a city, town or district officer or department, except as otherwise provided by special acts and except fees provided for by statute, shall be paid by such officers or department upon their receipt into the city, town or district treasury." We can only find a few statutes that deal with monies held by a Town for the performance of obligations by a private party. For example, G.L. c. 41, § 81U, authorizes acceptance of a cash deposit in lieu of a performance bond to secure installation of infrastructure required by planning board approval of subdivision plans and, by local acceptance, such a deposit may be spent by the board for the completion the work if it is under \$100,000. Absent statutory authority, it is unclear if planning board or



treasurer can serve as an escrow agent if the money is not public funds or how the money could be spent without appropriation if the money is public funds. We suggest that the Town discuss this issue in more detail with Town Counsel and the Department of Revenue, Bureau of Municipal Finance Law.

**Note:** Under G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the Town has first satisfied the posting/publishing requirements of this section. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date that 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 voted by Town Meeting, unless a later effective date is prescribed in the by-law.

If the Attorney General has disapproved and deleted one or more portions of any by-law or by-law amendment submitted for approval, only those portions approved are to be posted and published pursuant to G.L. c. 40, § 32. We ask that you forward to us a copy of the final text of the by-law or by-law amendments reflecting any such deletion. It will be sufficient to send us a copy of the text posted and published by the Town Clerk pursuant to this statute.

Nothing in the Attorney General's approval authorizes an exemption from any applicable state law or regulation governing the subject of the by-law submitted for approval.

Very truly yours,

MARTHA COAKLEY  
ATTORNEY GENERAL



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Town Counsel