



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

CENTRAL MASSACHUSETTS DIVISION
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May 1, 2024

Ryan J. Witkos, Town Clerk
Town of Hardwick
P.O. Box 575
Hardwick, MA 01031-0575

Re: Hardwick Annual Town Meeting of June 24, 2023 -- Case # 11301
Warrant Article # 20 (Zoning)
Warrant Articles # 18, 19, and 20 (General) ¹

Dear Mr. Witkos:

Article 20 - Under Article 20, the Town voted to amend the general and zoning by-laws with gender neutral wording by replacing the words: (1) Board of Selectmen or Selectmen wherever they appear in reference to the body with "Select Board;" and (2) Selectman or Selectmen wherever they appear in reference to an individual Board member with "Select Board Member" or "Select Board Members."

We approve the amendments to the Town's general by-laws, but we disapprove the amendments to the Town's zoning by-laws because the Town did not hold a planning board hearing as required by G.L. c. 40A, § 5. General Law Chapter 40A, Section 5 establishes the required procedure that the Town must follow when amending its zoning by-laws, as follows:

No zoning...by-law or amendment thereto shall be adopted until after the planning board in a...town has...held a public hearing thereon...at which interested persons shall be given an opportunity to be heard....Notice of the time and place of such hearing, of the subject matter, sufficient for identification, and of the place where texts and maps thereof may be inspected shall be published in a newspaper of general circulation in the...town once in each of two successive weeks, the first publication to be not less than fourteen days before the day of said hearing, and by posting such notice in a conspicuous place in the...town hall for a period of not less than fourteen days before the day of said hearing. Notice of said hearing shall also be sent by mail, postage prepaid to the executive office of housing and livable

¹ In a decision issued March 12, 2024 we approved Articles 18 and 19.

Posted: May 8, 2024 @ Hardwick, Wheelwright, Gilbertville, MA post offices; Town of Hardwick municipal bulletin board, and at www.hardwick-ma.gov.

A true copy. Attest at Hardwick, Massachusetts.

Ryan J. Witkos, Constable

communities, the regional planning agency, if any, and to the planning board of each abutting city and town.

Here, the Planning Board did not hold a hearing on the proposed amendments to the zoning by-law or follow any of the notice requirements in G.L. c. 40A, § 5. The failure to hold the Planning Board hearing required under G.L. c. 40A, § 5, is a fatal defect that renders the adoption of the zoning by-law amendments inconsistent with state law.² For this reason, we disapprove and delete the zoning amendments adopted under Article 20. The Town should consult with Town Counsel with any questions on this matter.

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.

Very truly yours,

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

Nicole B. Caprioli

By: Nicole B. Caprioli
Assistant Attorney General
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cc: Town Counsel David C. Jenkins

² Although G.L. c. 40, § 32 (as amended by Chapter 299 of the Acts of 2000), grants this Office the discretion to waive certain defects in the Planning Board notice in certain circumstances, the Attorney General does not have discretion to waive the defect when the Planning Board held no hearing at all.



Commonwealth of Massachusetts

Town of Hardwick

Town Clerk, Ryan J. Witkos

TOWN OF HARDWICK
ANNUAL TOWN MEETING
JUNE 24, 2023

CERTIFICATE OF VOTE

ARTICLE #20

To see if the Town of will vote to amend the Town's General and Zoning Bylaws to change the name of the Board of Selectmen to the "Select Board," by striking out, in every instance in which they appear in reference to that body, the words "Board of Selectmen" or "Selectmen" and inserting in place thereof the words "Select Board"; and by striking out, in every instance in which they appear in reference to Board members individually, the word "Selectman" and "Selectmen" and inserting in place thereof the words "Select Board Member" or "Select Board Members"; and further to authorize the Town Clerk to make non-substantive, ministerial revisions to ensure that gender and numerical issues in related text is revised to properly reflect such change in title; or take any other action relative thereto.

Motion made, seconded, and voted unanimously that the Town adopt this article as printed in the June 24th 2023 Annual Town Meeting Warrant. FCA

A TRUE COPY. ATTEST at HARDWICK, MASSACHUSETTS.

RYAN J. WITKOS

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