



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

CENTRAL MASSACHUSETTS DIVISION  
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October 4, 2017

Lynne Girouard, Town Clerk  
Town of Sturbridge  
308 Main Street  
Sturbridge, MA 01566

RECEIVED  
2017 OCT -4 A 11:33  
OFFICE OF TOWN CLERK  
STURBRIDGE, MA

RE: **Sturbridge Annual Town Meeting of June 5, 2017 - Case # 8557**  
**Warrant Articles # 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 40 and 41 (Zoning)**

Dear Ms. Girouard:

Articles 29, 31, 32, 33, 34, 35, 36, 37, 38 and 40 - We approve Articles 29, 31, 32, 33, 34, 35, 36, 37, 38 and 40, and the map amendments related to Article 40, from the June 5, 2017 Sturbridge Annual Town Meeting.<sup>1</sup> We will return the approved map to you by regular mail. Our comments regarding Article 33 are provided below.

Article 33 - Article 33 amends the Town's zoning by-law, Chapter Seventeen, "Open Space Residential Development," by adding specific text indicated in underline and deleting specific text indicated in strikethrough. One change amends Section 17.05 (A), "Application for Special Permit OSRD," to add the following text: "An applicant for an OSRD Special Permit will be required to file plans showing both a conventional residential subdivision and an open space residential development in accordance with the provisions of this Bylaw." After such submittal, Sections 17.12 (C) and (E) (which were not amended under Article 33 and are not before this office for review and approval), require a Definitive Subdivision plan application and condition the approval of an OSRD upon Definitive Subdivision approval.

The Town must apply the OSRD by-law, including the amendments to Section 17.05 (A) and the existing Section 17.12, consistent with G.L. c. 41, § 81M, which requires planning board approval of any subdivision plan "which conforms to the recommendations of the board of health and to the reasonable rules and regulations of the planning board pertaining to the subdivision of land..." The by-law cannot be used to deny approval of a subdivision plan which fully complies with the Town's subdivision rules and regulations because such applications must be approved by right." See Wall Street Development Corp. v. Westwood, 72 Mass. App. Ct. 844 (2008) (by-law which authorized planning board to reject plans which were in total compliance with

<sup>1</sup> In a decision issued September 20, 2017, we approved Articles 30 and 41.

applicable laws and regulations was in conflict with G.L. c. 41, § 81M). The Town should consult closely with Town Counsel on this issue.

**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.

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Very truly yours,

MAURA HEALEY  
ATTORNEY GENERAL

*Nicole B. Caprioli*

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cc: Town Counsel Joel B. Bard