



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

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October 29, 2020

Tracy Kenney, Town Clerk  
Town of Canton  
801 Washington Street  
Canton, MA 02021

**Re: Canton Special Town Meeting of June 22, 2020 -- Case # 9945**  
**Warrant Article # 4 (Zoning)**  
**Warrant Article # 2 (General)**

Dear Ms. Kenney:

Article 2 - We approve Article 2 from the June 22, 2020 Canton Special Town Meeting. Our comments regarding Article 2 are provided below.

Article 4 - Because of procedural defects in the adoption of Article 4, the Attorney General has elected to proceed under the authority conferred by G.L. c. 40, § 32, as amended by Chapter 299 of the Acts of 2000, and place this Article on "hold."

In the materials submitted to us the Town has certified the following information pursuant to G.L. c. 40, § 32, and c. 40A, § 5: (1) the Planning Board Hearing notice was first published in a newspaper on May 7, 2020 for a Planning Board Hearing to be held on May 20, 2020; thus, the Planning Board Hearing notice was not published for the first time at least 14 days prior to the hearing, as required by G.L. c. 40A, § 5; (2) a Planning Board Hearing notice as required pursuant to 40A, § 5 was not posted in the Town Hall; and (3) notice of the Planning Board Hearing was not sent to the Department of Housing and Community Development, the Regional Planning Agency and the planning boards of the abutting cities and towns, as required by G.L. c. 40A, § 5. Apart from these defects, the notice appears to satisfy the requirements of the statute.

Therefore, the 90-day period prescribed for the Attorney General's review of Article 4 is suspended in accordance with G.L. c. 40, § 32.

A signed copy of Form 299 is enclosed. Once the procedures outlined in Form 299 are completed, and after the expiration of the 21-day period required by Chapter 299 of the Acts of 2000, please return a copy of Form 299 to us along with your certification that a true copy has

been posted and published as required by Chapter 299. Please feel free to contact this Office with any questions about this procedure.

**Article 2** – Article 2 amends the Town’s general by-laws to add a new Article XXI, “Stormwater Management.”<sup>1</sup> The purposes and objectives of the new by-law include: (1) protecting the water resources; (2) preventing and reducing pollutants from entering the Town’s municipal separate storm sewer system (MS4); and (3) complying with state and federal statutes and regulations relating to stormwater discharges. Section 1 (A) and (B), “Purpose and Objective.”

## I. Law Applicable to the New Stormwater Management Bylaw

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 the new Stormwater Management Bylaw is part of the Town’s efforts to effectively manage stormwater.

## II. Comments on the New Stormwater Management Bylaw

### 1. Section 4 (B) – Stormwater Regulations

Section 4 (B) authorizes the Conservation Commission, acting as the Stormwater Authority (“Stormwater Authority”), to “adopt, and periodically amend, rules and regulations” related to procedures and the administration of the by-law. In addition, Section 4 (D) authorizes the Stormwater Authority to “adopt rules and regulations further defining the Stormwater Management Permit (SMP) for projects as described in Section 2.A.” of the by-law. Any rules or regulations adopted by the as the Stormwater Authority must be consistent with state law. *See American Lithuanian Naturalization Club v. Board of Health of Athol*, 446 Mass. 310, 321 (2006) (“A town may not promulgate a regulation that is inconsistent with State law.”) We suggest that the Town discuss with Town Counsel any proposed rules and regulations adopted pursuant to Section 4 to ensure that they comply with state law.

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<sup>1</sup> In addition, Article 2 also “repeal[s]” the Town’s existing Article XX, “Soil Erosion and Sediment Control bylaw” and Article XXI, “Stormwater Bylaw.”

2. Section 8 – Definitions

Section 8 defines the term “Person” as follows:

Person: Any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to Town Bylaws, administrative agency, public or quasi-public corporation or body, the Town of Canton and any other legal entity, its legal representatives, agents or assigns.

We approve the definition of “Person.” However, the Town’s authority to regulate state 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). The Town’s enforcement of its new by-law cannot impermissibly interfere with the operation of state entities. The Town should discuss any questions regarding the proper application of the by-law with Town Counsel.

**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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**SPECIAL TOWN MEETING  
TOWN OF CANTON  
JUNE 22, 2020**

**ARTICLE 2**

**STORMWATER MANAGEMENT**

**Article 2** To see if the town will vote to adopt the following new Canton General Bylaw entitled Stormwater Management and upon approval of this new Bylaw by the Attorney General of the Commonwealth, to replace, with this new General Bylaw, and otherwise to repeal existing Canton General Bylaw "Soil Erosion and Sediment control" (Bylaw Article XX) and Canton General Bylaw "Stormwater Bylaw" (Bylaw Article XXI), as follows:

**BYLAW ARTICLE XX**

**STORMWATER MANAGEMENT**

**1. PURPOSE AND OBJECTIVE**

A. The purpose of this bylaw is to protect public health, safety, general welfare, and environment by controlling the adverse effects of construction site stormwater runoff and post-construction runoff from new development and redevelopment. The construction phase and post-development impacts of stormwater runoff quantity and quality can adversely affect public safety, public and private property, surface water drinking water supplies, groundwater drinking water supplies, recreation, aquatic habitats, fish and other aquatic life, property values, and other uses of lands and waters.

B. The objectives of this bylaw are to:

1. Protect water resources;
2. Comply with state and federal statutes and regulations relating to stormwater discharges;
3. Prevent and reduce pollutants from entering the Canton's municipal separate storm sewer system (MS4);
4. Establish minimum construction and post construction stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality;
5. Require the use of nonstructural stormwater management, stormwater better site design practices or "low-impact development practices", such as reducing impervious cover and the preservation of greenspace and other natural areas, unless infeasible
6. Establish provisions for the long-term responsibility for, and maintenance of, structural stormwater control facilities and nonstructural stormwater best management practices to ensure that they continue to function as designed are maintained;
7. Establish administrative procedures and fees for the submission, review, approval or disapproval of stormwater management plans, and for the inspection of approved active projects, and long-term follow up;
8. Ensure that there is an adequate funding mechanism, including surety, for the proper review of applications, inspection of projects, and assurance of the long-term maintenance of stormwater facilities implemented as part of this Bylaw;
9. Recognize Canton's legal authority to ensure compliance with the provisions of this bylaw through inspection, monitoring, and enforcement.
10. Require, through issuance of a Stormwater Management Permit, and through an inspection program described in the Stormwater Regulations, the proper management of construction phase soil erosion and sediment control to minimize or eliminate erosion and maintain sediment on site so that it is not transported in stormwater