



**TOWN OF WESTWOOD**  
COMMONWEALTH OF MASSACHUSETTS  
**BOARD OF SELECTMEN**

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August 22, 2018

Margaret J. Hurley, Director  
The Commonwealth of Massachusetts  
Office of the Attorney General  
Chief, Central Massachusetts Division  
Municipal Law Unit  
10 Mechanic Street, Suite 301  
Worcester, Ma 01608

RE: Town of Westwood, Case No. 8691, 2017 Fall Annual Town Meeting, Articles 10, 11 & 12

Dear Director Hurley:

On behalf of the voters in the Town of Westwood, the Board of Selectmen would like to respectfully respond to your decision of July 19, 2018 disapproving Articles 10, 11 and 12 which were voted and approved by 2/3 of the voters present at a duly posted Town Meeting held on November 13, 2017. As documented, the Planning Board held its public hearings on the three articles in question and received and considered public comment as required by statute. The Board opened its public hearing on October 3, 2017. After full open discussion and opportunity for public input, the Board voted to recommend approval of these articles by the Finance and Warrant Commission. It then continued the public hearing to the place and time of the October 17, 2017 Finance and Warrant Commission public hearing on the articles so it might consider and, if necessary, modify its final version of the articles based on comments received from the Commission and/or the residents and/or property owners in attendance at that hearing. It should be noted that the Planning Board's clear intent was a sincere and diligent effort to listen to and consider all of the relevant facts and comments prior to making its final recommendation on these articles to Town Meeting.

Unfortunately, by the time the Finance and Warrant Commission concluded its hearing and voted to approve the articles as written that evening, there were only two Planning Board members present – an insufficient number to either close the hearing or continue it to the Board's next regular meeting date. The hearing needed to be continued merely so it could be properly closed and so the Planning Board could vote on its recommendations to Town Meeting. Although no additional information was sought, and no revisions were made to the three articles before the Planning Board voted at its November 7, 2017 meeting to recommend Town Meeting approval of the three articles, the public hearing was not re-advertised as prescribed in the statute (Ch. 40A Sec. 5 MGL). Accordingly, the public notice for the November 7<sup>th</sup> session did not meet the letter of the law. To your credit, the Attorney General's office was willing to consider waiving such a minor defect in accordance with Ch. 40 Sec. 32 MGL as amended by Chapter 299 of the Acts of 2000.

The Town Clerk of the Town of Westwood, following the direction given by your office, posted and published respectively on June 20 and 21, 2018 a true copy of the Attorney General's Notice that Articles 10, 11 and 12 of the Town Meeting held on November 13, 2017 had been placed on hold in accordance with authority conferred to it by M.G.L. Ch. 40, Sec. 32 for 21 days. At 4:40 PM on Thursday, July 12, 2018, ten minutes after the Town's 4:30 pm close of business, a claim of defect was filed in the Town Clerk's Office by email delivery followed by a phone call by the claimant. Had the staff of the Town Clerk's office not answered the telephone after the close of business and indulged the claimant's request to access the Town Clerk's email, print and stamp the submitted letter, the claim would have been stamped and dated July 13, 2018, a day late.

It must be further stated that although the letter is four pages long, it does not raise one relevant claim of departure on the part of the Town or its Planning Board to hold and consider public comment made at public hearings on the three articles. The claimant's letter only presents and repeats the reasons for her after-the-fact opposition to the articles, none of which have bearing in fact, and none of which were raised by the claimant or others during the October 3<sup>rd</sup> and October 17<sup>th</sup> Planning Board hearings, the October 17<sup>th</sup> Finance and Warrant Commission public hearing, nor at the November 17<sup>th</sup> Town Meeting. Note that the claimant was in attendance and offered an opportunity to speak on each of these occasions, as well as at the November 7<sup>th</sup> hearing session suffered from the defect of notice.

The claimant inaccurately describes the defect of notice as intentional, misleading and prejudicial, and states that this defect was "*intended as a means to limit resident citizen input to ensure successful passage of the Articles*". The defect was none of these things. It was unintentional, accidental, and of no significant consequence. Had the November 7<sup>th</sup> Planning Board hearing been properly advertised, the Planning Board still would have closed that hearing without substantive discussion on the articles, and then would have voted to recommend the articles in the final form that had been approved by the Finance and Warrant Commission at the properly noticed hearing session on October 17<sup>th</sup>. There would have been no opportunity to amend the articles, since the Town Meeting Warrant had already been set and the recommendation of the Finance and Warrant Commission had already been made. The November 7<sup>th</sup> hearing session, while unfortunately not covered by the original hearing notice, was merely a procedural matter and not a substantive matter. The claimant cannot credibly state to have been harmed by this procedural error, since she had actual notice of the November 7<sup>th</sup> hearing session, attended that session and failed to ask any questions or make any comments about Articles 10, 11 or 12.

The claimant inaccurately states that the defect of notice:

*provided limited opportunity to the residents of Westwood as well as the planning boards of each abutting town to comprehensively examine the proposed zoning bylaw amendment language during the public vetting process in addition to precluding equal and meaningful participation of all interested parties to express concerns and raise questions in order to gain a true and complete understanding of the intended consequences of the subject articles as written.*

And that it:

*created a clear obstruction to public access, which subsequently precluded all interested residents from gaining critical information necessary in order to make a thoughtful and informed decision at the referenced Town Meeting*

Neither was the case. The residents of Westwood, the Planning Boards of abutting towns, and all interested parties had ample opportunity to review and comment on, and to ask questions about the proposed articles from the date of the first publication of notice through the finalization of the article language at the October 17<sup>th</sup> public hearing session. Those same parties had ample opportunity to present questions or comments during discussion on each article at the November 17<sup>th</sup> Town Meeting. Had the claimant raised questions about any of the articles, including Article 11, on any of these occasions, she



would have received full and complete answers and explanations and might have then understood the true nature and intent of each article.

The claimant refers to “the extremely controversial proposed redevelopment of Islington Center” and asserts that there has been “a premeditated plan on behalf of town officials in support of one particular developer”. None of the three articles were, in fact, proposed in relation to the Islington Center Redevelopment Project, and none of these articles have any bearing on that project. Nonetheless, in relation to this redevelopment project, which actually enjoys the support of a large majority of Westwood’s voters, the claimant purports:

*an established pattern of intentional omissions from public hearing agendas dating back to (at a minimum) July 17, 2017 as well as a total lack of transparency serving to reinforce the town’s objective to conceal and cloud the intent of the actual Article prior to presenting the same at Town Meeting for a vote.*

Nothing could be farther from the truth. The Town, in fact, prides itself on the high level of transparency it brings to bear on all proposed warrant articles, including Articles 10, 11 and 12. All articles were printed in their entirety in publications mailed to every residential address in town, which included detailed explanations of each article and of the Finance and Warrant Commission’s reasoning for supporting each article. In addition, a memorandum explaining the content and intent of each article was made available to all interested parties via posting to the town’s webpage. In addition, all discussions on these articles, at Board of Selectmen, Planning Board and Finance & Warrant Commission meetings, were filmed by Westwood Media Center and posted for anyone to watch at their convenience.

The claimant states that:

*this proposed bylaw change as presented in Article 11 had already been put in place many months prior to having been officially presented and subsequently voted on at November 13 2017 Town Meeting. The specific bylaw change allowed for a physical therapy practice to be placed with the Flexible Multiple Use Overlay District 6 (the “FMUOD6”) during the calendar year 2017 despite our then existing zoning bylaws only allowing a “dentist or doctor office”, and no other such language was then in existence.*

and

*Confusion was simply exasperated [sic] when it became evident that this proposed zoning bylaw change had already been incorporated into the town’s zoning bylaw indicating successful approval by the Attorney General’s Office when in fact your office had not yet made a legal determination regarding its validity.*

This statement is wrong on several levels. The Zoning Bylaw amendments proposed in Article 11 were never put into place prior to approval by the Attorney General’s Office. These amendments would have had no bearing on the Flexible Multiple Use Overlay District 6 (FMUOD6) nor on the operation of a physical therapy establishment. The physical therapy establishment was allowed at a property within the FMUOD6 overlay district, beginning in July 2017 – long before Article 11 was even drafted. This business was lawfully permitted as a personal services establishment in full accordance with the Zoning Bylaw in effect as of that date and is completely unrelated to Article 11.

The claimant further states that:

*residents were misled [sic] by the intent of Article 11 in "defining" a substance abuse rehabilitation and/or treatment facility, under this article, when its intent was to 'allow' it in a particular district as previously reflected in Section 4.0 of the Westwood Zoning Bylaw and further elaborated on in Section 4.1.2 "Table of Principal Uses". Again, the publication defect presented an obstacle to the residents in fully understanding the applicability of Article 11, and once again prevented public discussion of the then existing location of the 'substance abuse rehabilitation and/or treatment facility' and further discussion of the potential alternative areas relating to the proposed amendment.*

This again is untrue. No residents were misled. The purpose of Article 11 was clearly stated at each hearing session and in the Town Meeting warrant books mailed to every residence. This article was intended to clearly differentiate between doctors' and dentists' offices and higher intensity medical centers and clinics, so that the higher intensity uses could be prohibited in Residential and Local Business districts. The current Zoning Bylaw permits "Office of a doctor or dentist not a resident on premises" by-right in both Local Business districts (High Street and Washington Street), in the Highway Business, Industrial, Industrial Office, and Administrative-Research-Office districts, and allows for the issuance of a special permit by the Zoning Board of Appeals for such uses in the General Residence district. The current Zoning Bylaw does not clearly define "Office of a doctor or dentist not a resident on premises", but does define "Office of Health Care Professional" and "Medical Center or Clinic". This was recognized as an inconsistency with the potential for exposing both Local Business Districts and the General Residence district to the potential of a new Medical Center or Clinic. Article 11 was also designed to correct the Zoning Bylaw's failure to address Hospitals or Substance Rehabilitation Facilities, thus exposing the town to the potential for a "use not mentioned" appeal to the ZBA for the potential development of either use in any district. This article, which was supported by the Planning Board, Finance and Warrant Commission, and Town Meeting voters, would have addressed those inconsistencies by establishing clear definitions and appropriate districts for each use. Disapproval of this article has the unfortunate effect of leaving our neighborhoods exposed to the potential for uses which voters expressly chose to prohibit.

The claimant did not discuss Articles 10 in any detail, but it is worth noting that this article was presented to Town Meeting at the request of a reputable commercial property owner. It was designed to enable that property owner to add a cafeteria within his Highway Business (HB) building. Section 4.351 of the current Zoning Bylaw permits cafeterias, snack bars, gift shops and vending machines as by-right accessory uses in the Industrial (I) and Industrial Office (IO) districts, and allows for the issuance of a special permit by the Zoning Board of Appeals for such uses in the Administrative-Research Office (ARO) district, while prohibiting these accessory uses in all other districts. The proposed amendment of the Zoning Bylaw, which was supported by the Planning Board, Finance and Warrant Commission, and Town Meeting voters, would have allowed these accessory uses in the HB district, and would have enhanced the commercial marketability of the 80 Wilson Way property (and other properties in the HB district). The disapproval of Article 10 means that these accessory uses remain prohibited in all buildings within the HB district, which impairs the town's economic development opportunities by detracting from the potential for higher-end office and R&D users to consider moving into the 80 Wilson Way building and similar properties in the HB district. Reinvestment in Westwood's limited number of commercial properties is so important to the preservation of our split tax rate, which protects residential property owners from significant tax increase. Disapproval of this article sets the town back in that regard, and runs completely counter to residents' strong desire to preserve our split tax rate.




While the disapproval of Articles 10 and 11 expose the town, its residents and property owners to the potential for significant harm, Article 12 was only intended to correct minor housekeeping errors or inconsistencies discovered in the text of the Zoning Bylaw. None of these items are significant, and all can be addressed in the future without detriment.

The Westwood Board of Selectmen believes that the Attorney General's decision to not approve articles 10, 11 and 12 of the 2017 Fall Annual Town Meeting amounts to a decision which places the misguided and factually incorrect assumptions of the claimant over the declared 2/3 vote taken by the electorate that chose to attend and vote on the articles at the duly called, posted and held town meeting. The Board contends that this decision would be justified if the claimant had made a relevant case for how she or someone had been harmed, or how the outcome might have been changed by the Planning Board's failure to re-advertise the November 7<sup>th</sup> closing of its public hearing before voting to recommend Town Meeting approval of the articles that had been finalized within the properly noticed public hearing on October 17<sup>th</sup>. But no such relevant justification was made. In fact we contend that there are property owners, businesses, and residents in the town of Westwood who have been harmed by the decision to set aside their legislative super majority decision to change the town's zoning bylaw. The October 3<sup>rd</sup> and October 17<sup>th</sup> Planning Board hearing, the October 17<sup>th</sup> Finance and Warrant Commission hearing, and the November 17<sup>th</sup> Town Meeting were all appropriately advertised to all residents. Ample opportunity was given to all parties to make a case for why the articles should or should not be approved, before individual near unanimous votes were taken approving all three articles. The claimant was present on each of these occasions, and had ample opportunity to raise the same false claims about the intent and effect of Article 11 that she has since raised in her claim. Had she done so, she would have received a complete and thorough response as to the nature, intent and effect of that article. We believe the will of the legislative branch should be upheld and Articles 10, 11 and 12 should be reviewed on their merits.

Therefore, in light of the arguments made above, the Board of Selectmen, the Chief Executive Body of the Town of Westwood, respectfully asks the Attorney General's Office to reconsider its decision to disapprove the 2/3 vote taken on Articles 10, 11 and 12 at the November 13, 2017 Town Meeting, the Legislative Body of the Town of Westwood, to amend that decision, and to approve the Articles so that they might be in full force and benefit to the town, its businesses, and its residents.

Finally, the claimant made a most serious and egregious allegation that a distinguished member of our Finance and Warrant Commission and community failed to recuse himself from a vote on Article 11, which she mistakenly claims has applicability to Meditech where he is employed. Article 11 seeks to distinguish and clarify different medical facilities that provide onsite patient care, namely medical centers, clinics, mental health care offices, substance abuse rehabilitation and treatment facilities, and hospitals. Meditech is a software company, which has nothing to do with onsite patient care; therefore Article 11 has no direct or indirect applicability to any Meditech facility.

Sincerely,



Michael Walsh  
Chairman

Cc: Board of Selectmen File  
Michael Jaillet, Town Administrator  
Thomas McCusker, Town Counsel  
Nora Loughnane, Community and Economic Development Director  
Abigail McCabe, Town Planner  
Dottie Powers, Town Clerk