

**THE COMMONWEALTH OF MASSACHUSETTS  
SPECIAL TOWN MEETING WARRANT  
MAY 11<sup>TH</sup>, 2007**

WORCESTER, SS:

TO EITHER OF THE CONSTABLES OF THE TOWN OF BROOKFIELD IN THE COUNTY OF WORCESTER

GREETINGS:

IN THE NAME OF THE COMMONWEALTH OF MASSACHUSETTS, YOU ARE HEREBY DIRECTED TO NOTIFY AND WARN THE INHABITANTS OF SAID TOWN, QUALIFIED TO VOTE IN ELECTIONS AND IN TOWN AFFAIRS, TO MEET AT THE TO MEET AT THE **BROOKFIELD ELEMENTARY SCHOOL, 37 CENTRAL STREET, BROOKFIELD, MA ON FRIDAY, MAY 11, 2007 AT 7:00 P.M.** TO ACT ON THE FOLLOWING ARTICLES:

**ARTICLE 1.** To see if the Town will vote to transfer the sum of \$98.12 from the Insurance Reimbursement Fund to the Stabilization Fund, or take any action relative thereto.

The Town voted unanimously to transfer the sum of \$98.12 from the Insurance Reimbursement Fund to the Stabilization Fund.

**ARTICLE 2.** To see if the Town will vote to transfer the sum of \$28.61 from the Stabilization Fund to the Recycling Revolving Fund, or take any action relative thereto.

The Town voted unanimously to transfer the sum of \$28.61 from the Stabilization Fund to the Recycling Revolving Fund.

**ARTICLE 3.** To see if the Town will vote to transfer the sum of \$683.52 from the Conservation Filing Fees Fund to the Wetland Protection Fund, or take any action relative thereto.

The Town voted unanimously to transfer the sum of \$683.52 from the Conservation Filing Fees Fund to the Wetland Protection Fund.

**ARTICLE 4.** To see if the Town will vote to transfer the sum of \$2,650.00 from the Maturing Interest-Roof Account to the Chapter 90-Ban Interest Account, or take any action relative thereto.

The Town unanimously to transfer the sum of \$2,650.00 from the Maturing Interest-Roof Account to the Chapter 90-Ban Interest Account.

**ARTICLE 5.** To see if the Town will vote to transfer the sum of \$3,500.00 from the Maturing Interest-Highway Garage Account to the Interest/Temporary Loan Account, or take any action relative thereto.

The Town voted unanimously to transfer the sum of \$3,500.00 from the Maturing Interest-Highway Garage Account to the Interest/Temporary Loan Account

**ARTICLE 6.** To see if the vote will vote to raise and appropriate, transfer or borrow a sum of money from available funds to be used to purchase police vests for the Police Department, or take any action relative thereto.

The Town voted unanimously to transfer the sum of \$7,380.00 from the Regional School Transportation Account to be used to purchase vests for the Police Department.

**ARTICLE 7.** To see if the Town will vote to raise and appropriate, transfer or borrow a sum of money from available funds to the Police Expense account for cruiser, maintenance and repair, or take any action relative thereto.

The Town voted by a majority vote to transfer the sum of \$5,000 from the Regional School Transportation Account to the Police Expense account for cruiser.

**ARTICLE 8.** To see if the Town will vote to raise and appropriate, transfer or borrow a sum of money from available funds to the Part Time Police Officers Fiscal Year 2006 Account for back wages due to an employee of the Brookfield Police Department, or take any action relative thereto.

The Town voted to defeat Article 8, the moderator declared that by a voice vote the article was defeated, and there was one vote in opposition.

**ARTICLE 9.** To see if the Town will vote to raise and appropriate, transfer or borrow a sum of money to the Planning Board Unpaid Bills Account to pay for legal expenses incurred as the result of a Definitive Subdivision application, or take any action relative thereto.

The Town voted unanimously to transfer the sum of \$3,508.02 from the Regional School Transportation Account to the Planning Board Unpaid Bills Account to pay for legal expenses incurred as the result of a Definitive Subdivision application

**ARTICLE 10.** To see if the Town will vote to raise and appropriate, transfer or borrow a sum of money to the Planning Board Expense Account to pay for legal expenses incurred as the result of a Definitive Subdivision application, or take any action relative thereto.

The Town voted unanimously to transfer the sum of \$1,957.60 from the Regional School Transportation Account to the Planning Board Expense Account to pay for legal expenses incurred as the result of a Definitive Subdivision application.

**ARTICLE 11.** To see if the Town will vote to raise and appropriate, transfer or borrow a sum of money from available funds to the Highway Part-Time Salary Account, or take any action relative thereto.

The Town voted unanimously to transfer the sum of \$250 from the Regional School Transportation Account to the Highway Part-Time Salary Account.

**ARTICLE 12.** To see if the Town will vote to transfer a sum of money from the General Fund to the Highway Expense Account, or take any action relative thereto.

The Town voted unanimously to transfer the sum of \$53.00 from the Regional School Transportation Account to the Highway Expense Account.

**ARTICLE 13.** To see if the Town will vote to transfer a sum of money from available funds to the Alternate Wiring Inspector Fiscal Year 2006 Unpaid Salary Account, or take any action relative thereto.

The Town voted unanimously to transfer the sum of \$260 from the Municipal Website Account to the Alternate Wiring Inspector Fiscal Year 2006 Unpaid Salary Account.

**ARTICLE 14.** To see if the Town will vote to raise and appropriate, transfer or borrow a sum of money to the Municipal Telephone Account, or take any action relative thereto.

The Town voted unanimously to transfer the sum of \$2,380 from the Unemployment Account to the Municipal Telephone Account.

**ARTICLE 15.** To see if the Town will vote to raise and appropriate, transfer or borrow a sum of money from available funds to reimburse the Department of Housing & Urban Development (HUD) for interest earned on grant receipts during Fiscal Years 2005, 2006 and 2007, or take any action relative thereto.

The Town voted unanimously to transfer the sum of \$4,000 from the Unemployment Account to reimburse the Department of Housing & Urban Development (HUD) for interest earned on grant receipts during Fiscal Years 2005, 2006 and 2007.

And you are directed to serve this warrant, by posting up attested copies thereof, at the Town Hall and Post Office in said Town, fourteen days at least before the time of the holding of said meeting.

Hereof, fail not, and make due return of this warrant, with your doings thereon, to the Town Clerk, at the time and place of the meeting, as aforesaid. Given under our hands this Seventeenth (17<sup>th</sup>) day of April, in the year of our Lord, Two Thousand and Seven.

Respectfully Submitted,

**SELECTMEN OF BROOKFIELD**

Beverly A. Lund, Chairman  
James W. Allen, Vice Chairman  
Ronald J. Dackson, Clerk

A True Copy, Attest:

Ross B. Ackerman  
Constable of Brookfield

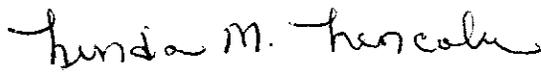
Worcester, SS:  
Brookfield, Massachusetts

Pursuant to the within warrant, I have notified and warned the inhabitants of the Town of Brookfield by posting up attested copies of same at the U.S. Post Office on April 19, 2007 at 11:40 a.m. and at the Brookfield Town Hall at 11:35 a.m.. on the same day.

Fourteen days before the date of the meeting, as within directed.

Ross B. Ackerman  
Constable of Brookfield

A TRUE COPY ATTEST:

  
LINDA M. LINCOLN, CMMC

The meeting adjourned at 7:45 PM, there were ninety-two (92) registered voters in attendance.



MARTHA COAKLEY  
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL  
WESTERN MASSACHUSETTS DIVISION  
1350 MAIN STREET  
SPRINGFIELD, MASSACHUSETTS 01103-1629

(413) 784-1240  
www.ago.state.ma.us

October 25, 2007

FILE COPY

Linda M. Lincoln, Town Clerk  
6 Central Street  
Brookfield, MA 01506

RE: Brookfield Annual Town Meeting of May 11, 2007 — Case # 4458  
Warrant Article # 32 (General)

Dear Ms. Lincoln:

Article 32 - I return with the approval of this Office the amendments to the town by-laws adopted under this Article on the warrant for the Brookfield annual town meeting that convened on May 11, 2007, except as provided below.

The amendments adopted under Chapter X, Section 16 would have deleted everything after the second sentence and would have inserted the following text:

No building permit may be issued for the construction of a curb cut or driveway until the applicant deposits a certified check with the Town Treasurer in the amount of \$725.00. The applicant also shall pay an application fee to the Town for the curb cut or driveway in the amount of \$25.00. If the construction of the curb cut or driveway is not completed by the applicant to the satisfaction of the Highway Superintendent, the Town's Highway Department may use the funds deposited with the Town Treasurer to complete the work. If the cost of the work exceeds the amount being held, the Town shall bill the applicant for the remaining balance due to Town, and no occupancy permit may be issued for a building or structure on the lot where the curb cut or driveway is located until the applicant pays the balance owed.

We disapprove and delete the above underlined text as inconsistent with the State Building Code and municipal finance laws, including G.L. c. 44, § 53. [Disapproval # 1 of 1]

Beginning with Chapter 802 of the Acts of 1972, as amended by Chapter 541 of the Acts of 1974, the Legislature eliminated local building codes, in order to create a state-wide "comprehensive" State Building Code which it intended to be applied uniformly throughout all communities of the Commonwealth. No local law that exceeds, competes, or conflicts with any provision of the State Building Code, or otherwise deals with subject matter reserved to the state building code, will have legal

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effect in the Commonwealth. Cf. Town of Wendell v. Attorney General, 394 Mass. 518, 529 (1985), where the legislature, in enacting another state-wide "comprehensive" act, was found to have preempted the field from further regulation by municipalities within the area of concern, i.e., the use and applications of pesticides. Today, any town seeking to enforce regulations that are more restrictive than those currently imposed under the State Building Code must request that the State Board of Regulations and Standards adopt such regulation. G.L. c. 143, § 98. The Board will grant such request only upon a finding, after conducting a public hearing, "that more restrictive standards are reasonably necessary because of special conditions prevailing within such city or town and that such standards conform with accepted national and local engineering and fire prevention practices, with public safety and with the general purposes of a statewide building code . . ." Id. It is our understanding that the town had not availed itself of this process.

The building inspector enforces the provisions of the State Building Code and the rules and regulations promulgated thereunder. Moreover, the building inspector in a town is charged with the enforcement of zoning by-laws and can deny permits only when there are violations of the zoning by-laws or other laws as specified in the State Building Code. Thus, a town cannot withhold the building permit for failure to comply with a general by-law. The State Building Code also governs whether a "building permit" is required. If a "building permit" is not required by the State Building Code, then the town cannot require a "building permit." Whether a curb cut or a driveway requires a building permit or has to comply with the State Building Code is a matter preemptively dealt with by the State Building Code.<sup>1</sup> For these reasons, we disapprove and delete the above underlined text from Article 32.

We also point out that in the absence of a special or general law to the contrary, a deposit of \$725.00 must, pursuant to G.L. c. 44, § 53, be deposited with the Town Treasurer and made part of the town's general fund, thus not available to the Town's Highway Department for the purpose for which they were assessed unless in accordance with an appropriation made by Town Meeting. 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 treasurers 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.

Another such statute is G.L. c. 44, § 53E ½, which authorizes revolving funds for the deposit of "departmental receipts received in connection with the programs supported by such revolving fund." It is not entirely clear whether the term "program" is malleable enough to be applicable to include deposits

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<sup>1</sup> Based on our review of the State Building Code, the State Building Code does not require a building permit for curb cuts or driveways. The State Building Code regulates the garage floor portion of a structure (not the driveway, but rather the floor condition of the garage structure) in 780 C.M.R. Section 3603.5.3, "Floor surface" and sets forth requirements for the kind of allowed floor material, the resulting floor slab thickness and the slope of the garage floor toward the garage doorway for one and two family dwellings.

collected to ensure curb cuts and driveways are completed according to the requirements of local law. Moreover, G.L. c. 44, § 53E ½, requires revolving funds to be established and renewed annually by Town Meeting and may not be set up in the body of a town by-law. Each town meeting has the power to decide whether or not to authorize a revolving fund for the upcoming fiscal year and, if so, what particular receipts will be credited to the fund and how the funds may be spent. Also, Section 53E ½ provides no mechanism for refunding unused fees to the applicant. The town may wish to discuss this issue in more detail with town counsel before it adopts a similar by-law a future town meeting.

We point out that the existing by-law contains text similar to what was adopted under Article 32. We believe such text is inconsistent with state law for the same reasons articulated in more detail above.

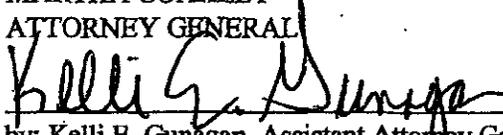
**Note:** Under G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the town has first satisfied the posting/publishing requirements of this section. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date that these posting and publishing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

  
by: Kelli E. Gunagan, Assistant Attorney General  
By-law Coordinator, Municipal Law Unit  
1350 Main Street, 4<sup>th</sup> Floor  
Springfield, MA 01103-1629  
(413) 784-1240, x 117

enc.  
pc:  
Town Counsel