



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

WESTERN MASSACHUSETTS DIVISION  
1350 MAIN STREET  
SPRINGFIELD, MASSACHUSETTS 01103-1629

MARTHA COAKLEY  
ATTORNEY GENERAL

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

March 4, 2008

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

RE: **Brookfield Special Town Meeting of November 19, 2007 — Case # 4619**  
**Warrant Article # 8 (Zoning)**

Dear Ms. Lincoln:

**Article 8** - 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 special town meeting that convened on November 19, 2007.

In approving the amendments adopted under Article 8, we remind the town of the requirements of G.L. c. 40, § 32. Section 32 pertains to the by-law review process. Specifically, Section 32 provides in pertinent part as follows:

Except to the extent that a zoning by-law may take effect as provided in section five of chapter forty A, before a by-law takes effect it shall be approved by the attorney general or ninety days shall have elapsed without action by the attorney general after the clerk of the town in which a by-law has been adopted has submitted to the attorney general a certified copy of such by-law with a request for its approval, a statement clearly explaining the proposed by-law, including maps and plans if necessary, and adequate proof that all of the procedural requirements for the adoption of such by-law have been complied with. Such request and proof shall be submitted by the town clerk within thirty days after final adjournment of the town meeting at which such by-law was adopted. If the town clerk fails to so submit such request and proof within such thirty days, the selectmen, within fifteen days thereafter, may submit a certified copy of such by-law with a request for its approval, a statement explaining the proposed by-law, including maps and plans, if necessary, and adequate proof that all procedural requirements for the adoption of such by-law has been complied with. . . . Before a by-law or an amendment thereto takes effect it shall also be published in a town bulletin or pamphlet, copies of which shall be posted in at least five public places in the town; and if the town is divided into precincts, copies shall be posted in one or more public places in each precinct of the town; or instead of such publishing in a town bulletin or pamphlet and such posting, copies thereof may be published at least twice at least one week apart in a newspaper of general circulation in the town (emphasis added).

General Laws Chapter 40, Section 32, requires the town clerk to submit proposed by-law amendments to the Attorney General for review and approval thirty days after the final adjournment of town meeting. The amendments voted under Article 8 were adopted at the November 19, 2007, Special Town Meeting but not received by our Office until February 13, 2008.

**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

**THE COMMONWEALTH OF MASSACHUSETTS  
ANNUAL TOWN MEETING WARRANT  
MAY 5<sup>TH</sup>, 2008**

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 **TOWN HALL BANQUET HALL, 6 CENTRAL STREET, BROOKFIELD, MA ON MONDAY THE FIFTH DAY OF MAY IN THE YEAR 2008 FROM 7:00 A.M. TO 7:00 P.M. THEN AND THERE TO ACT ON THE FOLLOWING ARTICLE:**

**ARTICLE 1:** To elect all on one ballot the following officers: One Moderator for one year; One Selectman for three years; One Assessor for three years; One member of the Elementary School Committee for three years; One Water Commissioner for three years; One member of the Board of Health for three years; Two members of the Planning Board, one for two years and one for five years; One Cemetery Commissioner for three years; Two Trustees for the Merrick Public Library both for three years; Two members of the Housing Authority, one for four years and one for five years.

ALSO TO MEET AT THE **BROOKFIELD ELEMENTARY SCHOOL, 37 CENTRAL STREET, BROOKFIELD, MA ON FRIDAY, MAY 9, 2008 AT 7:00 P.M. TO ACT ON THE FOLLOWING:**

**ARTICLE 2:** To see if the Town will vote to accept the annual report of the Town officials, as printed, or take any action relative thereto.

**The Town voted to accept the Annual Report of the Town officials, as printed.**

**ARTICLE 3:** To see if the Town will vote to raise and appropriate such sums of money as may be necessary to defray the expenses of the Town for the ensuing year, or take any action relative thereto.

**The Town voted by a majority to raise and appropriate the sums of money for each department as printed in the Warrant Book, amended by the voters and read by the Town Moderator.**

**Articles shown in the boxes below are on the Annual Town Meeting Warrant every year and are often voted as a block.**

**ARTICLE 4:** To see if the Town will vote to authorize the Town Treasurer, with the approval of the Selectmen, to borrow money from time to time in anticipation of the revenue of the fiscal year beginning July 1, 2009 in accordance with the provisions of Massachusetts General Laws, Chapter 44, section 4 and to issue a note or notes as may be given for a period of less than one year in accordance with Massachusetts General Laws, Chapter 44, section 17, or take any action relative thereto.

**ARTICLE 5:** To see if the Town will vote to authorize the Town Treasurer, with the approval of the Selectmen, to foreclose on certain Tax Titles held by the Treasurer, or take any action relative thereto.

**ARTICLE 6:** To see if the Town will vote to instruct the Selectmen or their agent to sell for the Town any land or building acquired by the Town by Tax Title foreclosure after first giving notice of said sale by posting a notice at the Town Hall and the Post Office 14 days at least before said sale stating what parcels are to be sold, or offered for sale and the time and place of holding said sale, or take any action relative thereto.

**ARTICLE 7:** To see if the Town will vote to authorize the Selectmen to sell any old and obsolete equipment or personal property by sealed bids; at public auction after first giving notice of the time and place of sale by posting such notice of sale in some convenient and public place in Town, and by advertising once in a local newspaper, fourteen days at least before the sale, any old and obsolete equipment or personal property, provided that the Selectmen or whomsoever they may authorize to

hold such auction or sale may reject any bid which they deem inadequate; or at an established market, or take any action relative thereto.

**ARTICLE 8:** To see if the Town will vote to authorize the Board of Selectmen to apply for any and to expend any State, Federal or other grants that may become available to the Town of Brookfield, or take any action relative thereto.

**ARTICLE 9:** To see if the Town will vote to authorize the Board of Health to appoint one of its members to hold the position of Health Agent, Title V Administrator, and Transfer Station Administrator and to provide compensation therefore, or take any action relative thereto.

**ARTICLE 10:** To see if the Town will vote to establish a revolving fund for the Brookfield Local Public Access under M.G.L. Chapter 44, section 53E ½ and to authorize the license fee paid by Charter Cable and all monies raised through advertising and fundraising to be deposited in said revolving fund, provided that no monies shall be expended in excess of \$15,000.00, or take any action relative thereto.

**ARTICLE 11:** To see if the Town will vote to establish a revolving fund for the Board of Health under M.G.L. Chapter 44, section 53E ½ and to receive monies derived from engineering, inspection, and review fees charged in relation to witnessing of percolation test, septic plan review, site inspections, and resolution of variances, and to expend these monies to pay all costs associated with the Inspectors/Professional Engineers review of said activities provided that no monies shall be expended in excess of \$20,000.00, or take any action relative thereto.

**The Town voted unanimously to approve Articles 4 through 11 as printed on the Annual Town Meeting Warrant.**

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

**The Town voted unanimously to transfer the sum of \$2,860.00 from Free Cash to the Cemetery Preservation Fund Account.**

**ARTICLE 13:** To see if the Town will vote to transfer a sum of money from the Ambulance Billing Receipts Account which was established according to Chapter 40, section 5F to the Municipal Diesel Fuel Account, or take any action relative thereto.

**The Town voted unanimously to transfer the sum of \$1,700 from the Ambulance Billing Receipts Account which was established according to Chapter 40, section 5F to the Municipal Diesel Fuel Account.**

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

**The Town voted to pass over Article 14. (Town Hall Improvement Account)**

**ARTICLE 15:** To see if the Town will vote to raise and appropriate, transfer or borrow a sum of money for the Town Hall Wiring Account, or take any action relative thereto.

**The Town voted to pass over Article 15. (Town Hall Wiring Account)**

**ARTICLE 16:** To see if the Town will vote to raise and appropriate, transfer or borrow a sum of money for the Quaboag Plantation 350<sup>th</sup> Anniversary Celebration Committee Account, or take any action relative thereto.

**The Town voted to pass over Article 16. (Quaboag Plantation 350<sup>th</sup> Anniversary Celebration Committee Account – Article on May 9, Special Town Meeting Warrant.**

**ARTICLE 17:** To see if the Town will vote to transfer a sum of money from the Ambulance Billing Receipts Account which was established according to Chapter 40, section 5F to fund the Ambulance Expense Account for fiscal year 2009, or take any action relative thereto.

**The Town voted unanimously to transfer the sum of \$31,450 from the Ambulance Billing Receipts Account which was established according to Chapter 40, section 5F to fund the Ambulance Expense Account for fiscal year 2009.**

**ARTICLE 18:** To see if the Town will vote to transfer a sum of money from the Ambulance Billing Receipts Account which was established according to Chapter 40, section 5F to fund the Emergency Squad Wages Account for fiscal year 2009, or take any action relative thereto.

**The Town voted unanimously to transfer the sum of \$111,993 from the Ambulance Billing Receipts Account which was established according to Chapter 40, section 5F to fund the Emergency Squad**

**Wages Account for fiscal year 2009.**

**ARTICLE 19:** To see if the Town will vote to transfer a sum of money from the Ambulance Billing Receipts Account which was established according to Chapter 40, section 5F to fund the new ambulance account, or take any action relative thereto.

**It was voted by the Town to pass over to transfer the sum of \$15,000 from the Ambulance Billing Receipts Account which was established according to Chapter 40, section 5F to fund the new ambulance account.**

**ARTICLE 20:** To see if the Town will vote to raise and appropriate, transfer or borrow a sum of money to perform fire station repairs, or take any action relative thereto.

**The Town voted to pass over Article 20. (Fire Station Building Repairs)**

**ARTICLE 21:** To see if the Town will vote to raise and appropriate, transfer or borrow a sum of money to the Fleet Stabilization Account, or take any action relative thereto.

**The Town vote to pass over Article 21. (Fleet Stabilization Account)**

**ARTICLE 22:** To see if the Town will vote to accept and to expend a sum of money from Chapter 90 funds or take any action relative thereto. For expenditure to repair local roads is \$127,949.00.

**The Town voted to accept and to expend the sum of \$127,949.00 from Chapter 90 funds.**

**ARTICLE 23:** To see if the Town will vote to raise and appropriate, transfer or borrow a sum of money for the Highway Construction, Reconstruction and Improvement of Town Roads, Bridges and Sidewalks Account or take any action relative thereto.

**The Town voted unanimously to transfer the sum of \$30,000 from the Stabilization Account for the Highway Construction, Reconstruction and Improvement of Town Roads, Bridges and Sidewalks Account.**

**ARTICLE 24:** To see if the Town will vote to raise and appropriate, transfer or borrow a sum of money to purchase a new loader with attachments for the Highway Department and further to trade in or sell the 1982 John Deere Loader, or take any action relative thereto.

**The Town voted to pass over Article 24. (Highway Department Loader)**

**ARTICLE 25:** To see if the Town will vote to amend Chapter X, Section 16 of the Town by Laws by deleting everything after the second sentence and by inserting the following:

“A permit from the Highway Superintendent is required to construct a curb cut or a driveway. As part of the application for the permit, the applicant must pay an application fee in an amount set forth in a fee schedule established by the Highway Superintendent. As a condition for issuance of a permit, the applicant shall place funds in an escrow account held by an escrow agent approved by the Highway Superintendent and in an amount to be determined by the Highway Superintendent as being reasonable to cover the cost of constructing and completing the curb cut or driveway. Upon written notice by the Highway Superintendent to the escrow agent and the applicant that the construction is completed in accordance with the permit, the escrow agent shall release to the applicant any funds being held. If the construction of the curb cut or driveway is not completed by the applicant in accordance with the permit, the escrow agent, upon written notice from the Highway Superintendent and written notice to the applicant, shall deposit with the Town Treasurer the funds or the portion of the funds determined by the Highway Superintendent to be necessary to complete construction. The funds would then be available for appropriation to complete the construction in order to protect the public health and safety, or take any action relative thereto.

**I move that the Town vote to pass over Article 25. (Curb Cut/Driver Permits)**

**ARTICLE 26:** To see if the Town will vote to raise and appropriate, transfer or borrow a sum of money for lake improvement, management and/or maintenance for Lake Quaboag (North Pond) and Lake Quacumquasit (South Pond) located in the Towns of Brookfield, East Brookfield, and Sturbridge, or take any action relative thereto.

**I move that the Town vote to pass over Article 26. (QQLA)**

**ARTICLE 27:** To see if the Town will vote to amend the Brookfield Zoning Bylaw by deleting Section 8.E. Cluster Development, and replacing it with a new Section 8.E. Open Space Residential Development, as follows:

**8.E. Open Space Residential Development**

The Planning Board may grant a special permit for an “Open Space Residential Development” (OSRD)

in accordance with the procedures and requirements of this by-law in the Rural Residential District or the Village District, on one or more parcels of land in common ownership having an area of no less than ten (10) acres in the Rural Residential District and seven (7) acres in the Village District. OSRD may consist of any combination of single family and two-family structures in which the buildings are clustered together in one or more groups in accordance with this by-law. The land not included in the building lots shall be preserved as Open Space.

### **1. Purpose**

The primary purpose of Open Space Residential Development is to allow greater flexibility and creativity in the design of residential subdivisions in order to benefit the Town of Brookfield by:

- providing the permanent preservation of open space, agricultural lands, forest lands, and other similar resources,
- promoting housing patterns that are designed to encourage a more economical and efficient form of development that is less sprawling, respects a sites physical characteristics and natural features, and minimizes the total disturbance of the site,
- preserving unobstructed natural views from roadways,
- encouraging more affordable and diverse housing types, and
- protecting historical features and structure.

### **2. Dimensional Requirements:**

- a. **Density.** The Basic Maximum Number of building lots in an OSRD shall not exceed the total number of building lots which could be reasonably expected to be developed upon the site under a conventional plan in full conformance with all zoning, subdivision regulations, health regulations, wetland regulations and other applicable requirements (see 5. **Application and Review** below).
- b. **Lot Size.** The minimum lot size for each single-family structure in an OSRD in the Rural Residential District shall be no less than 50,000 (fifty thousand) square feet; and for each two-family structure shall be no less than 60,000 (sixty thousand) square feet, and the minimum lot size for each single-family structure in an OSRD in the Village District shall be no less than 25,000 square feet and for each two-family structure shall be no less than 30,000 square feet unless a density bonus is granted pursuant to Section c. below. Two-family dwellings shall have no more than two bedrooms in each unit.
- c. **Density Bonus.** The Planning Board may award a density bonus to increase the number of dwelling units beyond the Basic Maximum Number. However, in no event shall a density bonus for the OSRD exceed twenty-five (25%) percent of the Basic Maximum Number. A density bonus may be awarded as follows:

For every four (4) dwelling units restricted to occupancy for a period of not less than 30 (thirty) years by persons over the age of fifty-five or qualifying as low or moderate income, one (1) dwelling unit may be added as a density bonus; provided, however, that this density bonus shall not exceed 25% (twenty-five percent) of the basic maximum number, and provided that no lot in the development shall, as a result of the grant of a density bonus be less than forty thousand (40,000) square feet for a single family structure or less than fifty thousand (50,000) square feet for a two-family structure in the Rural Residential District and no less than 20,000 square feet for a single family structure or less than 25,000 square feet for a two-family structure in the Village District.

- d. **Frontage.** The minimum lot frontage shall be 150 (one hundred fifty) feet in the Rural Residential District and 100 (one hundred) feet in the Village District. Lesser frontage as low as 100 (one hundred) feet in the Rural Residential District and 75 (seventy-five) feet in the Village District may be allowed along curves or in cul-de-sacs as long as the lot width at the building line meets the minimum frontage requirement for the District and the total area for the lot meets the minimum required.
- e. **Setbacks.** Front, side, and rear yard setbacks for single-family residential structures shall be at least 50, 25, and 25 feet respectively and for two-family structures shall be at least 50, 50 and 50 feet respectively in the Rural Residential District and front, side, and rear yard setbacks for both single-family and two-family residential structures shall be at least 25, 10 and 10 feet in the Village District.

### **3. Design Criteria.**

- a. No OSRD served by on-site sewage disposal systems shall be approved unless the applicant can demonstrate to the satisfaction of the Planning Board that the potential for groundwater pollution is no greater than would be expected from the conventional subdivision with single family lots meeting normal lot size requirements located on the same site.
- b. Where the proposed development abuts a body of water, a portion of the shoreline, as well as reasonable access to it, shall be part of the Open Space.
- c. Residences shall be grouped so that scenic views and long views remain unobstructed, particularly

those visible from roads.

- d. The removal of native vegetation shall be minimized. Removal of invasive species and restoration of native species as part of the landscaping design shall be encouraged.
- e. Disturbance of features or structures of historical significance shall be minimized.
- f. Any grading or earthmoving operation in conjunction with the proposed development shall be planned and executed in such a manner that the final contours are consistent with the existing terrain, both on and adjacent to the site. Retaining wall systems are strongly discouraged.
- g. Safeguards shall be employed where needed to mitigate against environmental degradation from erosion, sedimentation, water pollution, or flooding. A Storm water Management Plan shall be submitted as part of the application. Best management practices shall be employed.
- h. Roads and utilities. The principal roadway(s) and utilities serving the site shall be designed to conform to the standards of the *Town of Brookfield Subdivision Rules and Regulations*.
- i. Parking. Each dwelling unit shall be served by a minimum two (2) off-street parking spaces, each space having a minimum dimension of 9' x 18'.
- j. Access. OSRD shall have access on a public way or a way approved under the Subdivision Control Law.
- k. Common Driveways. Common driveways serving no more than two residential structures may be allowed in the OSRD, provided that all criteria in the *Brookfield Zoning Bylaw* Section 8.F. are met.
- l. Phasing. Where development of the OSRD will require more than one (1) year, the design submission shall include information on the following:
  - (1) The method to be used during construction to control erosion and sedimentation through use of sediment basins, mulching, matting, temporary vegetation, or covering of soil stockpiles and a description of the approximate size and location of portion of the site to be cleared at any given time and length of time of exposure.
  - (2) A description of the phased construction, if any or any required public improvements, and how such improvements are to be integrated into the development.

#### 4. Open Space

- a. **Area.** The area preserved as Open Space shall be not less than thirty percent (30%) of the gross area of the entire site. The area required for roadways and their appurtenances and any wetland areas shall not be considered Open Space area. At least seventy (70%) percent of the Open Space shall be contiguous, unless otherwise approved by the Planning Board.
- b. Open Space shall be planned as large, contiguous areas whenever possible. Long thin strips or narrow areas of open space (less than one hundred [100] feet wide) shall occur only when necessary for access, as vegetated buffers along wetlands or the perimeter of the site, or as connections between large open space areas.
- c. **Subdivision.** Further subdivision of open space, or its use for other than conservation, agriculture, forestry, or non-commercial recreation shall be prohibited, and the approved plan shall be so endorsed in writing.
- d. **Ownership.** All Open Space created hereunder shall either:
  1. Be conveyed to the Town of Brookfield, for a park or open space use if accepted by the Town; or
  2. Be conveyed to a nonprofit organization, the principal purpose of which is the conservation of open space; or,
  3. Be conveyed to a corporation or trust owned or to be owned by the owners of lots or residential units within the OSRD.
- e. **Access.** Access shall be provided to the Open Space from a public way or a way approved under the Subdivision Control Law. Such access shall be at least 20 (twenty) feet wide and may be in the form of a walking or hiking/biking path.

#### 5. Application and Review

- a. Ordos may be allowed only by Special Permit. All applications shall be made on the form published by the Planning Board and shall include all documents and supporting materials as required under Section 12.C. of the *Brookfield Zoning Bylaw*, as amended, and Article IV of the *Rules and Regulations of the Planning Board*, as amended.
- b. If the OSRD constitutes a subdivision, both the subdivision and special permitting approval processes may run concurrently. However, subsequent approval by the Planning Board of such portions of the development as constitute a subdivision shall be required as set forth in the Subdivision Control Law, including the approval of streets and utility systems. A favorable action which may be made by the Planning Board on a special permit application, shall not, therefore, be deemed either to constitute subdivision approval under the Subdivision Control Law

or the *Town of Brookfield Subdivision Rules and Regulations*, or imply that such approval will be given.

- c. The Planning Board shall require the applicant for an Open Space Residential Development to submit two preliminary plans, one of conventional design as stipulated under the Towns Subdivision Rules and Regulations, and one showing the proposed OSRD, as satisfactory evidence that the number of lots in the OSRD plan is no greater than that shown on the conventional plan. This preliminary plan shall be accompanied by the results of percolation tests (including soil logs and test locations), as administered by the Board of Health to confirm the number of potentially buildable lots on the parcel.
- d. The OSRD plan shall show compliance with the requirements of said Section 8.E and shall show any other particular features of the OSRD as requested by the Planning Board to enable the Planning Board to determine compliance with said Section 8.E.
- e. After notice and a public hearing in accordance with the Town of Brookfield Zoning Bylaw and *Rules and Regulations of the Planning Board*, the Planning Board may grant a Special Permit with any conditions, safeguards, and limitations, if it determines:
  1. that the application is properly completed in form and content; and
  2. that all the other requirements of this section and any other applicable sections of the Town of Brookfield Zoning Bylaw are fully met; and
  3. that the OSRD plan is superior to a conventional plan in meeting one or more of the purposes of this section.

## **6. Waiver of Compliance**

The Brookfield Planning Board, acting as the Special Permit granting authority under this section, may waive strict compliance with such requirements of this section, where such action is in the public interest and not inconsistent with the purpose and intent of this section and any other applicable sections of the *Town of Brookfield Zoning Bylaw*.

And further to amend the Zoning Bylaw to include references to Open Space Residential Development as follows:

Section 7.C. 2. *For dimensional regulations relative to Open Space Residential Development see Section 8.E.,*

Section 8.D.7. add \*\* to RR and V sections of table with a note below the table to read: *\*\* for dimensional regulations for two-family homes in Open Space Residential Developments, see Section 8.E.,*

Section 4.D, Table of Use Regulations, add to line 2, "f" showing that Open Space Residential Development is allowed by Special Permit in the Rural Residential and Village Zoning Districts. or take any other action relative thereto.

**I move that the Town vote to amend the Brookfield Zoning Bylaw by deleting Section 8.E. Cluster Development, and replacing it with a new Section 8.E. Open Space Residential Development, as follows:**

### **8.E. Open Space Residential Development**

**The Planning Board may grant a special permit for an "Open Space Residential Development" (OSRD) in accordance with the procedures and requirements of this by-law in the Rural Residential District or the Village District, on one or more parcels of land in common ownership having an area of no less than ten (10) acres in the Rural Residential District and seven (7) acres in the Village District. OSRD may consist of any combination of single family and two-family structures in which the buildings are clustered together in one or more groups in accordance with this by-law. The land not included in the building lots shall be preserved as Open Space.**

#### **1. Purpose**

**The primary purpose of Open Space Residential Development is to allow greater flexibility and creativity in the design of residential subdivisions in order to benefit the Town of Brookfield by:**

- **providing the permanent preservation of open space, agricultural lands, forest lands, and other similar resources,**
- **promoting housing patterns that are designed to encourage a more economical and efficient form of development that is less sprawling, respects a site's physical characteristics and natural features, and minimizes the total disturbance of the site,**
- **preserving unobstructed natural views from roadways,**
- **encouraging more affordable and diverse housing types, and**
- **protecting historical features and structure.**

#### **2. Dimensional Requirements:**

- a. **Density. The Basic Maximum Number of building lots in an OSRD shall not exceed the total number of building lots which could be reasonably expected to be developed upon the site under a conventional plan in full conformance with all zoning, subdivision regulations,**

health regulations, wetland regulations and other applicable requirements (see 5. Application and Review below).

b. **Lot Size.** The minimum lot size for each single-family structure in an OSRD in the Rural Residential District shall be no less than 50,000 (fifty thousand) square feet; and for each two-family structure shall be no less than 60,000 (sixty thousand) square feet, and the minimum lot size for each single-family structure in an OSRD in the Village District shall be no less than 25,000 square feet and for each two-family structure shall be no less than 30,000 square feet unless a density bonus is granted pursuant to Section c. below. Two-family dwellings shall have no more than two bedrooms in each unit.

c. **Density Bonus.** The Planning Board may award a density bonus to increase the number of dwelling units beyond the Basic Maximum Number. However, in no event shall a density bonus for the OSRD exceed twenty-five (25%) percent of the Basic Maximum Number. A density bonus may be awarded as follows:

For every four (4) dwelling units restricted to occupancy for a period of not less than 30 (thirty) years by persons over the age of fifty-five or qualifying as low or moderate income, one (1) dwelling unit may be added as a density bonus; provided, however, that this density bonus shall not exceed 25% (twenty-five percent) of the basic maximum number, and provided that no lot in the development shall, as a result of the grant of a density bonus be less than forty thousand (40,000) square feet for a single family structure or less than fifty thousand (50,000) square feet for a two-family structure in the Rural Residential District and no less than 20,000 square feet for a single family structure or less than 25,000 square feet for a two-family structure in the Village District.

d. **Frontage.** The minimum lot frontage shall be 150 (one hundred fifty) feet in the Rural Residential District and 100 (one hundred) feet in the Village District. Lesser frontage as low as 100 (one hundred) feet in the Rural Residential District and 75 (seventy-five) feet in the Village District may be allowed along curves or in cul-de-sacs as long as the lot width at the building line meets the minimum frontage requirement for the District and the total area for the lot meets the minimum required.

e. **Setbacks.** Front, side, and rear yard setbacks for single-family residential structures shall be at least 50, 25, and 25 feet respectively and for two-family structures shall be at least 50, 50 and 50 feet respectively in the Rural Residential District and front, side, and rear yard setbacks for both single-family and two-family residential structures shall be at least 25, 10 and 10 feet in the Village District.

### 3. Design Criteria.

a. No OSRD served by on-site sewage disposal systems shall be approved unless the applicant can demonstrate to the satisfaction of the Planning Board that the potential for groundwater pollution is no greater than would be expected from the conventional subdivision with single family lots meeting normal lot size requirements located on the same site.

b. Where the proposed development abuts a body of water, a portion of the shoreline, as well as reasonable access to it, shall be part of the Open Space.

c. Residences shall be grouped so that scenic views and long views remain unobstructed, particularly those visible from roads.

d. The removal of native vegetation shall be minimized. Removal of invasive species and restoration of native species as part of the landscaping design shall be encouraged.

e. Disturbance of features or structures of historical significance shall be minimized.

f. Any grading or earthmoving operation in conjunction with the proposed development shall be planned and executed in such a manner that the final contours are consistent with the existing terrain, both on and adjacent to the site. Retaining wall systems are strongly discouraged.

g. Safeguards shall be employed where needed to mitigate against environmental degradation from erosion, sedimentation, water pollution, or flooding. A Storm water Management Plan shall be submitted as part of the application. Best management practices shall be employed.

h. **Roads and utilities.** The principal roadway(s) and utilities serving the site shall be designed to conform to the standards of the *Town of Brookfield Subdivision Rules and Regulations*.

i. **Parking.** Each dwelling unit shall be served by a minimum two (2) off-street parking spaces, each space having a minimum dimension of 9' x 18'.

j. **Access.** OSRD shall have access on a public way or a way approved under the Subdivision Control Law.

k. **Common Driveways.** Common driveways serving no more than two residential structures may be allowed in the OSRD, provided that all criteria in the *Brookfield Zoning Bylaw*

Section 8.F. are met.

1. **Phasing.** Where development of the OSRD will require more than one (1) year, the design submission shall include information on the following:

(1) The method to be used during construction to control erosion and sedimentation through use of sediment basins, mulching, matting, temporary vegetation, or covering of soil stockpiles and a description of the approximate size and location of portion of the site to be cleared at any given time and length of time of exposure.

(2) A description of the phased construction, if any or any required public improvements, and how such improvements are to be integrated into the development.

**4. Open Space**

- a. **Area.** The area preserved as Open Space shall be not less than thirty percent (30%) of the gross area of the entire site. The area required for roadways and their appurtenances and any wetland areas shall not be considered Open Space area. At least seventy (70%) percent of the Open Space shall be contiguous, unless otherwise approved by the Planning Board.
- b. **Open Space** shall be planned as large, contiguous areas whenever possible. Long thin strips or narrow areas of open space (less than one hundred [100] feet wide) shall occur only when necessary for access, as vegetated buffers along wetlands or the perimeter of the site, or as connections between large open space areas.
- c. **Subdivision.** Further subdivision of open space, or its use for other than conservation, agriculture, forestry, or non-commercial recreation shall be prohibited, and the approved plan shall be so endorsed in writing.
- d. **Ownership.** All Open Space created hereunder shall either:
1. Be conveyed to the Town of Brookfield, for a park or open space use if accepted by the Town; or
  2. Be conveyed to a nonprofit organization, the principal purpose of which is the conservation of open space; or,
  3. Be conveyed to a corporation or trust owned or to be owned by the owners of lots or residential units within the OSRD.
- e. **Access.** Access shall be provided to the Open Space from a public way or a way approved under the Subdivision Control Law. Such access shall be at least 20 (twenty) feet wide and may be in the form of a walking or hiking/biking path.

**5. Application and Review**

- a. OSRD's may be allowed only by Special Permit. All applications shall be made on the form published by the Planning Board and shall include all documents and supporting materials as required under Section 12.C. of the *Brookfield Zoning Bylaw*, as amended, and Article IV of the *Rules and Regulations of the Planning Board*, as amended.
- b. If the OSRD constitutes a subdivision, both the subdivision and special permitting approval processes may run concurrently. However, subsequent approval by the Planning Board of such portions of the development as constitute a subdivision shall be required as set forth in the Subdivision Control Law, including the approval of streets and utility systems. A favorable action which may be made by the Planning Board on a special permit application, shall not, therefore, be deemed either to constitute subdivision approval under the Subdivision Control Law or the *Town of Brookfield Subdivision Rules and Regulations*, or imply that such approval will be given.
- c. The Planning Board shall require the applicant for an Open Space Residential Development to submit two preliminary plans, one of conventional design as stipulated under the Town's Subdivision Rules and Regulations, and one showing the proposed OSRD, as satisfactory evidence that the number of lots in the OSRD plan is no greater than that shown on the conventional plan. This preliminary plan shall be accompanied by the results of percolation tests (including soil logs and test locations), as administered by the Board of Health to confirm the number of potentially buildable lots on the parcel.
- d. The OSRD plan shall show compliance with the requirements of said Section 8.E and shall show any other particular features of the OSRD as requested by the Planning Board to enable the Planning Board to determine compliance with said Section 8.E.
- e. After notice and a public hearing in accordance with the Town of Brookfield Zoning Bylaw and *Rules and Regulations of the Planning Board*, the Planning Board may grant a Special Permit with any conditions, safeguards, and limitations, if it determines:
1. that the application is properly completed in form and content; and
  2. that all the other requirements of this section and any other applicable sections of the Town of Brookfield Zoning Bylaw are fully met; and
  3. that the OSRD plan is superior to a conventional plan in meeting one or more of the



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

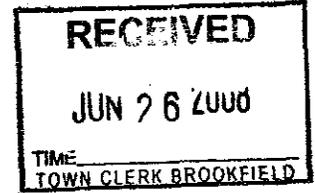
WESTERN MASSACHUSETTS DIVISION  
1350 MAIN STREET  
SPRINGFIELD, MASSACHUSETTS 01103-1629

MARTHA COAKLEY  
ATTORNEY GENERAL

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

June 25, 2008

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



RE: Brookfield Annual Town Meeting of May 9, 2008 -- Case # 4740  
Warrant Articles # 27 and 28 (Zoning)

Dear Ms. Lincoln:

Articles 27 and 28 - I return with the approval of this Office the amendments to the town by-laws adopted under these Articles on the warrant for the Brookfield annual town meeting that convened on May 9, 2008.

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



purposes of this section.

## 6. Waiver of Compliance

The Brookfield Planning Board, acting as the Special Permit granting authority under this section, may waive strict compliance with such requirements of this section, where such action is in the public interest and not inconsistent with the purpose and intent of this section and any other applicable sections of the *Town of Brookfield Zoning Bylaw*.

And further to amend the Zoning Bylaw to include references to Open Space Residential Development as follows:

Section 7.C. 2. *For dimensional regulations relative to Open Space Residential Development see Section 8.E.,*

Section 8.D.7. add \*\* to RR and V sections of table with a note below the table to read: *\*\* for dimensional regulations for two-family homes in Open Space Residential Developments, see Section 8.E.,*

Section 4.D, Table of Use Regulations, add to line 2, "F" showing that Open Space Residential Development is allowed by Special Permit in the Rural Residential and Village Zoning Districts.

The Town voted unanimously to amend the Brookfield Zoning By-law by deleting Section 8.E. Cluster Development, and replacing it with new Section 8.E. Open Space Residential .

**ARTICLE 28:** To see if the Town will vote to amend the Brookfield Zoning Bylaws, by deleting the first sentence of *Section 8.D.3.*, or take any action relative thereto. (This amendment deletes the provision for more than one multi-family structure on a lot.)

The Town voted unanimously to amend the Brookfield Zoning Bylaws, by deleting the first sentence of *Section 8.D.3.*

**ARTICLE 29:** To see if the Town will vote to amend the Brookfield Zoning Bylaws by inserting, after the first paragraph in Section 7.A., a new paragraph to provide as follows:

No building permit or certificate of occupancy shall be issued for any new construction on a lot which has a regularity factor of less than .40. The regularity factor shall be determined by the formula:

$$R = \frac{16A}{P^2}$$

Where R = Regularity Factor  
A = Land Area in Square Feet  
P = Perimeter in Feet

That part of the lot area in excess of the required lot area may be excluded from the Regularity Formula in determining the regularity factor. The perimeter containing the excess area shall not include the required frontage. The regularity formula shall not apply to lots of record as of the date of adoption of this section. The Planning Board may, by Special Permit, authorize new construction on a lot with a Regularity Factor of less than 0.4 if it finds that the proposed lot will not have a detrimental impact on abutters or on the character of the district, cause a traffic or safety hazard, or have a negative impact on the environment, or take any action relative thereto.

I move that the Town vote to amend the Brookfield Zoning Bylaws by inserting, after the first paragraph in Section 7.A., a new paragraph to provide as follows:

No building permit or certificate of occupancy shall be issued for any new construction on a lot which has a regularity factor of less than .40. The regularity factor shall be determined by the formula:

$$R = \frac{16A}{P^2}$$

Where R = Regularity Factor  
A = Land Area in Square Feet  
P = Perimeter in Feet

That part of the lot area in excess of the required lot area may be excluded from the Regularity Formula in determining the regularity factor. The perimeter containing the excess area shall not include the required frontage. The regularity formula shall not apply to lots of record as of the date of adoption of this section. The Planning Board may, by Special Permit, authorize new construction on a lot with a Regularity Factor of less than 0.4 if it finds that the proposed lot will not have a detrimental impact on abutters or on the character of the district, cause a traffic or safety hazard, or have a negative impact on the environment

The Town voted 71 yes and 8 no to approved Article 29, but after discussion by Daniel Leahy a Planning Board Member about the regularity factor of the formula, the Town voted to amend the approval and bring this article up again at a special Town Meeting in the fall.



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

WESTERN MASSACHUSETTS DIVISION  
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SPRINGFIELD, MASSACHUSETTS 01103-1629

MARTHA COAKLEY  
ATTORNEY GENERAL

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

September 8, 2008

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

**RE: Brookfield Annual Town Meeting of May 9, 2008 — Case # 4788  
Warrant Article # 31 (General)**

Dear Ms. Lincoln:

**Article 31-** We 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 9, 2008, except as provided below. [See page # 1 for Disapproval # 1 of 1]

The amendments adopted under Article 31 add a new Subsection d to Chapter X, Section 17, of the Town's general by-laws, which pertains to dogs. The new Subsection d provides as follows (with emphasis added):

d. Dog Fund Account

Mones placed in the Dog Fund shall immediately be made available to the Animal Control Officer for special projects proposed by the Animal Control Officer and approved by the Board of Selectmen. Funds in the Dog Fund Account exceeding \$2,000 on December 31<sup>st</sup> of each year shall be returned to the General Fund. The \$2,000 bar may be raised or suspended indefinitely or for a fixed time by a vote of the Board of Selectmen.

We disapprove and delete the above underlined text as inconsistent with G.L. c. 44, § 53, for the reasons provided in more detail below. [Disapproval # 1 of 1] Subsection d of the proposed by-law provides that monies placed in a special "Dog Fund Account" shall be immediately available to the Animal Control Office for expenditures for special projects by the Animal Control Officer and approved by the Board of Selectmen. Subsection d also provides that any surplus in such account in excess of \$2,000 on December 31<sup>st</sup> if each year will revert to the Town's General Fund, unless the \$2,000 cap is raised or suspended by the Board of Selectmen.

<sup>1</sup> It is unclear what the Town chose December 31<sup>st</sup>, which is in the middle of the fiscal year, as the reversion date rather than June 30<sup>th</sup>, which is the end of the fiscal year.

General Laws Chapter 44, Section 53, provides that “[a]ll moneys received by a city, town or district officer or department, except as otherwise provided by special acts and except fees provided for by statute, shall be paid by such officers or department upon their receipt into the city, town or district treasury.” Under Section 53 all moneys received by the Town become a part of the general fund, unless the Legislature has expressly made other provisions that are applicable to such receipt. In the absence of any general or special law to the contrary, funds of the sort contemplated here must be deposited with the Town Treasurer and made part of the Town’s general fund, pursuant to G.L. c. 44, § 53. The Town cannot then use the money for special projects proposed by the Animal Control Officer and approved by the Board of Selectmen unless in accordance with an appropriation made by Town Meeting. Thus, it is inconsistent with G.L. c. 44, § 53, for the proposed by-law to provide that the money in the Dog Fund shall immediately be made available to the Animal Control Officer. For these reasons, we disapprove and delete the above underlined text from the new Subsection d.

In approving the remaining portions of the proposed by-law, we caution the Town that its provision must be applied in a manner consistent with G.L. c. 44, §§ 53, and 53E ½, or c. 140, § 147A. The Dog Fund Account established under Subsection d does not reference any account authorized under state law. It is unclear whether the Dog Fund Account is a G.L. c. 140, § 147A, account or a G.L. c. 44, § 53E ½ account. According to the Department of Revenue, Bureau of Municipal Finance Law (“DOR”), under G.L. c. 140, § 147A, a Town may enact a by-law providing for the deposit of dog license fees into a special account for certain designated purposes. However, DOR takes the position that a Section 147A account is a so-called “receipts reserved for appropriation” account, and such funds may not be expended without further appropriation by Town Meeting under G.L. c. 44, §53. If the Dog Fund Account is a G.L. c. 140, § 147A, account then in order for the proposed by-law to be consistent with state law the monies in the account must be appropriated for the proposed spending purpose by Town Meeting. The Department of Revenue, does not believe a G.L. c. 140, § 147A, account is a so-called “revolving fund,” where monies that are set aside can be spent by the Dog Officer with the approval of the Board of Selectmen, but without further Town Meeting appropriation. However, DOR does take the position that a G.L. c. 44, § 53E ½, departmental revolving fund, could be used, but such fund must be annually voted by Town Meeting for the local dog program and its attendant receipts and cannot be set up by by-law.

General Laws Chapter 44, Section 53E ½, “revolving funds,” are used for the deposit of “departmental receipts received in connection with the programs supported by such revolving fund.” Section 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. Thus, if a fund is not authorized for the fees covered by this by-law, then the fees would become part of the general fund pursuant to G.L. c. 44, § 53. Absent an annual Town Meeting vote, the “Dog Fund Account” cannot be construed as creating a G.L. c. 44, § 53E ½, revolving fund.

Based on the above comments, we caution the Town that the remaining portions of the

proposed by-law creating the "Dog Fund Account" must be applied in a manner consistent with state municipal finance laws, including G.L. c. 44, §§ 53, and 53E 1/2, or c. 140, § 147A, and our approval is so limited.

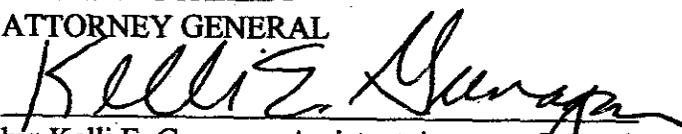
**Note:** Under G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the town has first satisfied the posting/publishing requirements of this section. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date that these posting and publishing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

cc: Town Counsel



**OFFICE OF THE TOWN CLERK**  
*Justice of the Peace*  
**LINDA M. LINCOLN CMMC**  
**6 CENTRAL STREET**  
**BROOKFIELD, MA 01506**  
**508-867-2930 EXT. 12**

This is to certify that at the annual Town Meeting held on May 9<sup>th</sup>, 2008, held at the Brookfield Elementary School located at 37 Central St., Brookfield MA. Article 31 was voted on and approved and is as follows;

**ARTICLE 31:** To see if the Town will vote to amend Chapter X Use of Public Ways and Places Section 17 of the General By-Laws of the Town of Brookfield by adding the following at the end of the current by-law:

d. Dog Fund Account

Monies placed in the Dog Fund Account shall immediately be made available to the Animal Control Officer for special projects proposed by the Animal Control Officer and approved by the Board of Selectmen. Funds in the Dog Fund Account exceeding \$2,000 on December 31st of each year shall be returned to the General Fund. The \$2,000 bar may be raised or suspended indefinitely or for a fixed time by a vote of the Board of Selectmen.

The Town voted unanimously to amend Chapter X Use of Public Ways and Places Section 17 of the General By-Laws of the Town of Brookfield by adding the following at the end of the current by-law:

d. Dog Fund Account

Monies placed in the Dog Fund Account shall immediately be made available to the Animal Control Officer for special projects proposed by the Animal Control Officer and approved by the Board of Selectmen. Funds in the Dog Fund Account exceeding \$2,000 on December 31st of each year shall be returned to the General Fund. The \$2,000 bar may be raised or suspended indefinitely or for a fixed time by a vote of the Board of Selectmen.

Certified this 2<sup>nd</sup> day of June 2008

A handwritten signature in cursive script that reads "Linda M. Lincoln".

Linda M. Lincoln CMMC

Town Clerk

**ARTICLE 30:** To see if the Town will vote to amend Chapter IV Advisory Committee Section of the General By-Laws of the Town of Brookfield as follows:

To delete Section 2 and Section 3 in its entirety and insert the following;

Section 2. The Selectmen in office and the members of the Advisory Committee shall annually, within thirty days after the Annual Town Meeting is dissolved, by a majority vote of the Board of Selectmen and a majority vote of the Advisory Committee appoint three members whose term of office shall expire at the dissolution of the third Annual Town Meeting after their appointment. To be appointed a member of the Advisory Committee, the appointee must receive a majority vote of both the Board of Selectmen and the Advisory Committee.

Section 3. Whenever a vacancy occurs in said committee, said vacancy shall be filled by a majority vote of the Selectmen in office and a majority vote of the Advisory Committee by the appointment of a person to serve until the dissolution of the next Annual Town Meeting, when the Selectmen in office and the Advisory Committee by a majority vote of the Selectmen and a majority vote of the Advisory Committee shall appoint, a successor to fill out the unexpired term of the person whose office has been vacated. To be appointed a member of the Advisory Committee, the appointee must receive a majority vote of both the Board of Selectmen and the Advisory Committee., or take any action relative thereto.

**The Town voted by majority to pass over Article 30 to amend Chapter IV Advisory Committee Section of the General By-Laws of the Town of Brookfield .**

**ARTICLE 31:** To see if the Town will vote to amend Chapter X Use of Public Ways and Places Section 17 of the General By-Laws of the Town of Brookfield by adding the following at the end of the current by-law:

d. Dog Fund Account

Monies placed in the Dog Fund Account shall immediately be made available to the Animal Control Officer for special projects proposed by the Animal Control Officer and approved by the Board of Selectmen. Funds in the Dog Fund Account exceeding \$2,000 on December 31st of each year shall be returned to the General Fund. The \$2,000 bar may be raised or suspended indefinitely or for a fixed time by a vote of the Board of Selectmen,"

**"D .Dog Fund Account**

**Monies placed in the Dog Fund Account shall immediately be made available to the Animal Control Officer for special projects proposed by the Animal Control Officer and approved by the Board of Selectmen. Funds in the Dog Fund Account exceeding \$2,000 on December 31st of each year shall be returned to the General Fund. The \$2,000 bar may be raised or suspended indefinitely or for a fixed time by a vote of the Board of Selectmen."**

**The Town voted unanimously to amend Chapter X use of Public Ways and Places Section 17 of the General By-Law by adding "d". Dog Fund Account**

**ARTICLE 32:** To see if the Town will vote to raise and appropriate, transfer or borrow a sum of money to purchase a new police cruiser and further to trade in or sell the 2002 Crown Victoria police cruiser, or take any action relative thereto.

**The Town voted by a standing vote of 33 yes and 29 no (2/3 vote is required) not to transfer the sum of \$32,000 from the Fleet Stabilization Account to purchase a new police cruiser and further to trade in or sell the 2002 Crown Victoria police cruiser.**

**ARTICLE 33:** To see if the Town will vote to accept sections 3 to 7, inclusive, of Chapter 44B of the General Laws, otherwise known as the Massachusetts Community Preservation Act, by approving a surcharge on real property for the purposes permitted by said Act, including the acquisition, creation and preservation of open space, the acquisition, preservation, restoration and rehabilitation of historic resources, the acquisition, creation and preservation of land for recreational use, the acquisition, creation, preservation and support of community housing, and the rehabilitation and restoration of such open space, land for recreational use and community housing that is acquired or created as provided under said Act; to determine the amount of such surcharge on real property as a percentage of the annual real estate tax levy against real property; to determine whether the Town will accept any of the exemptions from such surcharge permitted under Section 3(e) of said Act; or to take any other action relative thereto

Selectman Rudy Heller explained the Massachusetts Community Preservation Act to the voters at the meeting.

The Town voted by a standing vote 29 yes and 27no to pass over Article 33. (Massachusetts Community Preservation Act)

**ARTICLE 34:** To see if the Town will vote to accept a provision of Chapter 60A, section 1 of the M.G.L which exempts the payment of Excise Tax on motor vehicles owned and registered by former prisoners of war or the surviving spouses of former prisoners of war, or take any action relative thereto.

The Town voted by a majority to accept a provision of Chapter 60A, section 1 of the M.G.L which exempts the payment of Excise Tax on motor vehicles owned and registered by former prisoners of war or the surviving spouses of former prisoners of war.

**ARTICLE 35:** To see if the Town will vote to raise and appropriate, transfer or borrow a sum of money to the Town Building Property/Purchase/Expansion/Improvement Stabilization Account, or take any action relative thereto.

The Town vote to pass over Article 35. (Town Building/Property/Purchase/Expansion/Improvement Stabilization Account.)

**ARTICLE 36:** To see if the Town will vote to amend the Personnel By-Law, Chapter XV, Section 3. Employee Categories as follows:

Delete (B) in its entirety and replace it with the following section:

**“(B) Part Time with Benefits (20-35 hours):** An employee whose regular and continuous work schedule averages more than twenty (20) but less than thirty-five (35) hours per week during a fiscal year.

A part time employee with benefits (20-35) will receive sick, vacation, holiday, bereavement and personal time pro-rated based on the regularly scheduled number of hours worked per week.”,

or take any action relative thereto.

**THE REST OF THE BY LAW REMAINS THE SAME.**

The Town voted by a majority vote to amend the Personnel By-Law, Chapter XV, Section 3. Employee Categories as follows:

Delete (B) in its entirety and replace it with the following section:

**“(B) Part Time with Benefits (20-35 hours):** An employee whose regular and continuous work schedule averages more than twenty (20) but less than thirty-five (35) hours per week during a fiscal year.

A part time employee with benefits (20-35) will receive sick, vacation, holiday, bereavement and personal time pro-rated based on the regularly scheduled number of hours worked per week.

**ARTICLE 37:** To see if the Town will vote to amend the Personnel By-Law, Chapter XV, Section 14. Holidays with Pay as follows:

Delete the first sentence which reads “All full-time employees shall receive one day at straight time for the following twelve (12) holidays:” and add the following:

“All full-time employees and part-time employees with benefits who are not required to work the holiday shall receive holiday pay at the employees regular daily rate for the employees regularly schedule hours for the following twelve (12) holidays:”,

Delete the second sentence which reads “All part-time (20-35) employees shall receive one day at straight time normal pay for the holidays listed above when they fall on a regularly scheduled work day.”,

or take any action relative thereto.

**THE REST OF THE BY LAW REMAINS THE SAME.**

The Town voted unanimously to amend the Personnel By-Law, Chapter XV, Section 14. Holidays with Pay as follows:

Delete the first sentence which reads "All full-time employees shall receive one day at straight time for the following twelve (12) holidays:" and add the following:

"All full-time employees and part-time employees with benefits who are not required to work the holiday shall receive holiday pay at the employee's regular daily rate for the employee's regularly schedule hours for the following twelve (12) holidays:",

Delete the second sentence which reads "All part-time (20-35) employees shall receive one day at straight time normal pay for the holidays listed above when they fall on a regularly scheduled work day.

**ARTICLE 38:** To see if the Town will vote to amend the Personnel By-Law, Chapter XV, Section 15. Personal Days with Pay, as follows:

Delete the first sentence which reads "All full-time employees shall be awarded two Personal days per year" and add the following:

"All full-time employees and part-time employees with benefits shall receive two (2) personal days per year. A personal day is equal to the number of hours an employee would be regularly scheduled to work on the day requested.",

or take any action relative thereto.

**THE REST OF THE BY LAW REMAINS THE SAME.**

The Town voted unanimously to amend the Personnel By-Law, Chapter XV, Section 15. Personal Days with Pay, as follows:

Delete the first sentence which reads "All full-time employees shall be awarded two Personal days per year" and add the following:

"All full-time employees and part-time employees with benefits shall receive two (2) personal days per year. A personal day is equal to the number of hours an employee would be regularly scheduled to work on the day requested."

**ARTICLE 39:** To see if the Town will vote to amend the Personnel By-Law, Chapter XV, Section 16. Vacations with Pay as follows:

Delete the first sentence which reads "Annual vacation with pay will be granted to all full-time and part-time (20-35) employees from their anniversary date in the following manner:" and add the following:

"Annual vacation with pay will be granted to all full-time employees and part-time employees with benefits. Paid vacation time is equal to the number of hours an employee would be regularly scheduled to work during the week or day requested. Following the completion of one year of service, vacations will be calculated on July 1 of each year in the following manner:",

or take any action relative thereto.

**THE REST OF THE BY LAW REMAINS THE SAME.**

The Town voted unanimously to amend the Personnel By-Law, Chapter XV, Section 16. Vacations with Pay as follows:

Delete the first sentence which reads "Annual vacation with pay will be granted to all full-time and part-time (20-35) employees from their anniversary date in the following manner:" and add the following:

"Annual vacation with pay will be granted to all full-time employees and part-time employees with benefits. Paid vacation time is equal to the number of hours an employee would be regularly scheduled to work during the week or day requested. Following the completion of one year of service, vacations will be calculated on July 1 of each year in the following manner:

**ARTICLE 40:** To see if the Town will vote to amend the Personnel By-Law, Chapter XV, Section 18. Sick Leave with Pay as follows:

Add the following sentence to the end of the first paragraph:

Unused sick leave can be accrued from year to year, except that the maximum accrual shall not exceed 60 days.", and,

Delete the second paragraph which reads "All part-time (20-35) employees shall be granted ten (10) sick days per year. These sick days cannot be accumulated." and add the following:

All part-time employees with benefits shall be granted ten (10) sick days per year which shall be calculated on a pro-rated basis. These sick days cannot be accumulated. A sick day is equal to the number of hours an employee would be regularly scheduled to work on the day the employee is absent.", and,

Delete in its entirety, the second sentence in the last paragraph:

Unused sick leave can be accrued from year to year, except that the maximum accrual shall not exceed 60 days.

or take any action relative thereto.

**THE REST OF THE BY LAW REMAINS THE SAME.**

**The Town voted unanimously to amend the Personnel By-Law, Chapter XV, Section 18. Sick Leave with Pay as follows:**

**Add the following sentence to the end of the first paragraph:**

**"Unused sick leave can be accrued from year to year, except that the maximum accrual shall not exceed 60 days.", and,**

Delete the second paragraph which reads "All part-time (20-35) employees shall be granted ten (10) sick days per year. These sick days cannot be accumulated." and add the following:

**"All part-time employees with benefits shall be granted ten (10) sick days per year which shall be calculated on a pro-rated basis. These sick days cannot be accumulated. A sick day is equal to the number of hours an employee would be regularly scheduled to work on the day the employee is absent.", and,**

Delete in its entirety, the second sentence in the last paragraph:

**"Unused sick leave can be accrued from year to year, except that the maximum accrual shall not exceed 60 days.**

**ARTICLE 41:** To see if the Town will vote to amend Chapter XV, Section 20. Bereavement with Pay of the Personnel By-Law as follows:

Add the following at the end of the current by-law:

**"All part-time employees with benefits shall be granted the following bereavement days equal to the amount of hours the employee would regularly be scheduled to work on the day(s) requested:**

- A. Up to three (3) days of leave for the death of an employees spouse or child;
- B. Up to two (2) days of leave for the death of an employees mother, father, mother-in-law, father-in-law, brother, sister or other member of the immediate family living under the same roof;
- C. One (1) day of leave for the death of an employees grandparent, not living in the same household.",

or take any action relative thereto.

**THE REST OF THE BY LAW REMAINS THE SAME.**

**The Town voted unanimously to amend Chapter XV, Section 20. Bereavement with Pay of the Personnel By-Law as follows:**

**Add the following at the end of the current by-law:**

**"All part-time employees with benefits shall be granted the following bereavement days equal to the amount of hours the employee would regularly be scheduled to work on the day (s) requested:**

- A. Up to three (3) days of leave for the death of an employee's spouse or child;
- B. Up to two (2) days of leave for the death of an employee's mother, father, mother-in-law, father-in-law, brother, sister or other member of the immediate family living under the same roof;
- C. One (1) day of leave for the death of an employee's grandparent, not living in the same household."

of the Personnel By-Laws to read as follows:

Delete "Medical examinations will be required of all new employees and anyone being transferred or promoted. These examinations will be performed by a town-approved physician and the cost will be paid by the hiring department." and add the following:

"As a condition of employment, all new employees will be required to undergo a medical examination certifying that the individual is able to perform the essential functions of the positions. These examinations will be performed by a Town approved physician and the cost will be paid by the hiring authority.", or take any action relative thereto.

**The Town voted unanimously to amend Chapter XV, Section 24. Medical Examination of the Personnel By-Laws to read as follows:**

Delete "Medical examinations will be required of all new employees and anyone being transferred or promoted. These examinations will be performed by a town-approved physician and the cost will be paid by the hiring department." and add the following:

"As a condition of employment, all new employees will be required to undergo a medical examination certifying that the individual is able to perform the essential functions of the positions. These examinations will be performed by a Town approved physician and the cost will be paid by the hiring authority."

**ARTICLE 47:** To see if the Town will vote to raise and appropriate, transfer or borrow a sum of money to the Library Repair and Maintenance Account, or take any action relative thereto.

**The Town voted to pass over Article 47. (Library Repair and Maintenance)**

**ARTICLE 48:** To see if the Town will vote to raise and appropriate, transfer or borrow a sum of money to the Brownfield's Clean Up -- Mill Street Account for the Brownfield MCP Phase III Project, or take any action relative thereto.

**The Town voted unanimously to transfer the sum of (2/3 vote needed ) \$5,000 from the Stabilization Fund to the Brownfield's Clean Up -- Mill Street Account for the Brownfield MCP Phase III Project.**

**ARTICLE 49:** To see if the Town will vote to transfer a sum of money from Free Cash to reduce the tax rate, or take any action relative thereto.

Donald Faugno made an amendment to transfer \$8,500 from Free Cash to reduce the tax rate. The amendment passed by a majority vote.

The Town voted by a majority vote to transfer \$8,500.00 from Free Cash to reduce the tax rate.

**ARTICLE 50:** To see if the Town will vote to transfer a sum of money from Free Cash to the Stabilization Account, or take any action relative thereto.

**The Town voted to pass over Article 50. (Free Cash to Stabilization)**

**ARTICLE 51:** To see if the Town will vote to combine the Open Space and Recreation Committee and the Master Plan Committee both formed at the May 2005 Annual Town Meeting into one committee, the Master Plan & Open Space Committee, to be appointed by the Board of Selectmen, or take any action relative thereto.

**The Town voted unanimously to combine the Open Space and the Master Plan Committee both formed at the May 2005 Annual Town Meeting into one committee, the Master Plan & Open Space Committee, to be appointed by the Board of Selectmen.**

**ARTICLE 52.** To see if the Town will vote to amend the Town By-Laws by adding the following new section under Chapter II, Town Meeting: Section 19 - All appropriations exceeding the amount of \$25,000 must be considered at the Annual Town Meeting, unless deemed an emergency measure. Only the Board of Selectmen by a majority vote may deem an appropriation an emergency measure and place an appropriation exceeding \$25,000 on the warrant for a Special Town Meeting, or take any action relative thereto.

**The Town voted by a standing 2/3 vote to defeat the Article 52.**

TOTAL OF 52 ARTICLES.

And you are directed to serve this warrant, by posting up attested copies thereof, at the Town Hall and Post Office in said Town, seven 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 fifteenth (15<sup>th</sup>) day of April, in the year of our Lord, Two Thousand and Eight.

Respectfully Submitted,

**SELECTMEN OF BROOKFIELD**

James W. Allen, Chairman  
Ronald J. Dackson, Vice Chairman  
Rudy Heller, Clerk

A True Copy, Attest:

Joseph F. Murray  
**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 17, 2008 at 11:00 am and at the Brookfield Town Hall at 11:05 am on the same day.

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

Joseph F. Murray  
**Constable of Brookfield**

The meeting adjourned at 10:05 P.M., there were ninety-two registered voters in attendance.

**A TRUE COPY ATTEST:**

LINDA M. LINCOLN, CMMC

**TOWN OF BROOKFIELD ANNUAL TOWN ELECTION-MAY 5, 2008**

**MODERATOR 1YR-VOTE FOR ONE**  
**William J. Frangiamore Candidate for Re-Election** 286  
19 Howard St.

**Board of Selectmen 3 YRS-VOTE FOR ONE**  
**James W. Allen Candidate for Re-Election** 238  
17 South Maple St.  
Heather R. Lemieux 91  
104 Town Farm Rd.

**ASSESSOR 3YRS-VOTE FOR ONE**  
**Donna A. Wentzell** 299  
49 Town Farm Rd.

**ELEMENTARY SCHOOL COMMITTEE 3YRS-VOTE FOR ONE**  
Stephen J. Comtois II Candidate for Re-Election 154  
35 Webber Rd.  
Sheila A. Frangiamore 202  
19 Howard St.

**PLANNING BOARD 5YRS-VOTE FOR ONE**  
**Sharon A. Mahoney** 288  
130 Long Hill Rd.

**PLANNING BOARD 2YRS-VOTE FOR ONE**  
**Daniel F. Leahy** 278  
14 Maple St.

**WATER COMMISSIONER 3YRS-VOTE FOR ONE**  
**Joseph F. Murray Candidate for Re-Election** 294  
31 Pleasant St.

**BOARD OF HEALTH 3YRS-VOTE FOR ONE**  
**Keith S. Karmann** 280  
44 Town Farm Rd.

**TRUSTEE FOR MERRICK PUBLIC LIBRARY 3YRS-VOTE FOR TWO**  
**Barbara A. Clancy Candidate for Re-Election** 295  
6 Common St.  
**Wilfred A. Steadman** 215  
5 Rice Corner Rd.

**HOUSING AUTHORITY 5YRS-VOTE FOR ONE**  
**Holly J. Chisholm** 283  
23A Pine Lane

**HOUSING AUTHORITY 4YRS-VOTE FOR ONE**  
**Linda M. Lincoln** 294  
24 Quaboag St.

**CEMETERY COMMISSIONER 3YRS-VOTE FOR ONE**  
**Wayne C. Yaskoski Candidate for Re-Election** 301  
26 Draper St.

**360 Total Voters** 2,258 Total Voters  
**16 % of registered voters**

**A True Copy Attest: Linda M. Lincoln 6-May-08**