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September 20, 2011

Diane Crory, Town Clerk
37 Shattuck Street P.O. Box 1305
Littleton MA 01460

**RE: Littleton Annual Town Meeting of May 2, 2011 --- Case # 6042
Warrant Articles # 18, 19, 20, and 22 (Zoning)**

Dear Ms. Crory:

Articles 18, 19, 20, and 22 - We approve the amendments to the Town by-laws adopted under these Articles on the warrant for the Littleton Annual Town Meeting that convened on May 2, 2011. Our comments on Articles 18 and 20 are detailed below.

Article 18 – The amendments adopted under Article 18 amend the Use Regulations Schedule and add a new section, § 173-57 “Accessory Business Uses at Active Farms.” The amendments allow the Planning Board to grant a special permit for accessory business uses to allow owners engaged in active agricultural uses to engage in “certain other appropriate accessory business uses to supplement the income from said agricultural uses.” § 173-57(A). We approve this text but caution the Town that certain of the “accessory business uses” which the by-law requires to be approved by special permit may, in certain circumstances, be considered to be agricultural uses which are protected by the agricultural exemption of G.L. c. 40A, § 3. For example, the by-law’s listed accessory use of “animal boarding facilities for the boarding of up to 50 animals other than those stabled, raised, or kept onsite in connection with the primary agricultural use” may be covered by the definition of agriculture in G.L. c. 40A, § 3 and G.L. c. 128, § 1A. *See Steege v. Bd. of Appeals of Stowe*, 26 Mass. App. Ct. 970, 972 (1988) (upholding determination that plaintiffs’ stabling of horses was part of the agricultural use protected by G.L. c. 40A, § 3). Such a determination is fact-intensive, and we recommend the Town consult closely with Town Counsel to determine which uses are appropriately subject to a special permit under state law, including G.L. c. 40A, § 3.

Article 20 - The amendments adopted under Article 20 add a new Article XXVI, “Commercial Solar Photovoltaic Installations,” to the Town’s zoning by-laws, and amend the Definitions section of the zoning by-laws to provide a definition of these installations. We approve the amendments adopted under Article 20, but caution the Town that G.L. c. 40A, § 3 protects solar energy systems and the building of structures that facilitate the collection of solar

energy. General Laws Chapter 40A, Section 3, provides in pertinent part as follows:

No zoning ordinance or by-law shall prohibit or unreasonably regulate the installation of solar energy systems or the building of structures that facilitate the collection of solar energy, except where necessary to protect the public health, safety or welfare.

General Laws Chapter 40A, Section 3, prohibits Towns from adopting zoning by-laws that prohibit or unreasonably regulate the installation of solar energy systems or the building of structures that facilitate the collection of solar energy, except where necessary to protect the public health, safety or welfare. The amendments adopted under Article 20 cannot be applied in a manner that prohibits or unreasonably regulates solar energy or the building of structures that facilitate the collection of solar energy systems in violation of G.L. c. 40A, § 3. We suggest that the Town consult with Town Counsel to ensure that it is in compliance with G.L. c. 40A, § 3.

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

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