



Town of Dennis

P.O. BOX 2060, SOUTH DENNIS, MA 02660-1614 / Telephone: 508-394-8300 • Fax 508-394-8309

EXTRACT

ANNUAL TOWN MEETING

MAY 8, 2012

ARTICLE 32. To see if the Town will vote to amend the Town Code under Article V, Planning Board, by deleting §5-6 and §5-7 and replacing them with the following:

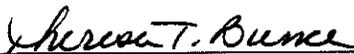
§5-6 Authority to appoint; membership; terms.

The Board of Selectmen shall appoint a Planning Board for the Town of Dennis, consisting of seven members, each of whom shall serve for a three-year term. The Planning Board, when acting as a special permit granting authority shall consist of the seven members and two associate members. The associate members shall be appointed by the Board of Selectmen for a one-year term of office, and when designated by the Chairman of the Planning Board, shall sit on the Board for the purposes of acting on a special permit application in the case of absence, inability to act, or conflict of interest on the part of any member of the Planning Board, or in the event of a vacancy on the Board.

MOTION. On motion of Planning Board Chairman Robert Mezzadri, duly seconded, it was unanimously voted to amend the Town Code under Article V, Planning Board, by deleting §5-6 and §5-7 and replacing them with "§5-6 Authority to appoint; membership; terms":

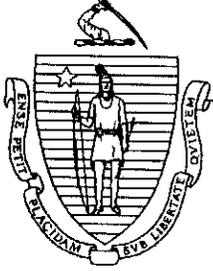
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A True Copy, Attest:



Theresa T. Bunce, Dennis Town Clerk





MARTHA COAKLEY
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

CENTRAL MASSACHUSETTS DIVISION
10 MECHANIC STREET, SUITE 301
WORCESTER, MA 01608

(508) 792-7600
(508) 795-1991 fax
www.mass.gov/ago

August 10, 2012

Theresa T. Bunce, Town Clerk
Town of Dennis
485 Main Street, P.O. Box 2060
South Dennis, MA 02660

**RE: Dennis Annual Town Meeting of May 8, 2012 – Case # 6291
Warrant Article # 32 (General)**

Dear Ms. Bunce:

Article 32 – Because the amendments adopted under Article 32 (on the warrant for the Annual Town Meeting which convened on May 8, 2012) were adopted as a general by-law amendment rather than a zoning by-law amendment as required by G.L. c. 40A, § 9, we are constrained to disapprove them. (We also note that under Warrant Article 31 at the May 8, 2012 Town Meeting the Town adopted very similar amendments to its zoning by-laws, which accomplish the same result as Article 32 and which we approve in a decision issued this date in Case # 6297).

The amendments adopted under Article 32 proposed to delete the existing Section 5-6 and Section 5-7 of the Town's general by-laws and replace them with the following text:

§ 5-6 Authority to appoint; membership; terms.

The Board of Selectmen shall appoint a Planning Board for the Town of Dennis, consisting of seven members, each of whom shall serve for a three-year term. The Planning Board, when acting as a special permit granting authority shall consist of the seven members and two associate members. The associate members shall be appointed by the Board of Selectmen for a one-year term of office, and when designated by the Chairman of the Planning Board, shall sit on the Board for the purposes of acting on a special permit application in the case of absence, inability to act, or conflict of interest on the part of any member of the Planning Board, or in the event of a vacancy on the Board.

General Laws Chapter 40A, Section 9 allows the Town to grant authority for associate members of a planning board to be designated to serve in certain circumstances when the planning board is acting as the special permit granting authority. However, G.L. c. 40A, § 9

requires that such a designation must be authorized by way of a zoning by-law, not a general by-law, as follows (emphasis supplied):

Zoning ordinances or by-laws may provide for associate members of a planning board when a planning board has been designated as a special permit granting authority. One associate member may be authorized when the planning board consists of five members, and two associate members may be authorized when the planning board consists of more than five members. A city or town which establishes the position of associate member shall determine the procedure for filling such position. If provision for filling the position of associate member has been made, the chairman of the planning board may designate an associate member to sit on the board for the purposes of acting on a special permit application, in the case of absence, inability to act, or conflict of interest, on the part of any member of the planning board or in the event of a vacancy on the board. (G.L. c. 40A, § 9, ¶ 11).

The comprehensive nature of the statutes which establish the powers and authority of a planning board “precludes any local by-law or ordinance on the subject of planning boards except as specifically authorized by the Legislature.” Del Duca v. Town Administrator of Methuen, 368 Mass. 1, 11-12 (1975). Because G.L. c. 40A, § 9 establishes that the authority of associate planning board members to serve may only be granted by way of a zoning by-law amendment, the Town cannot do so by way of a general by-law amendment. On this basis we disapprove and delete the amendments adopted under Article 32 (but again note that the Town has validly adopted zoning by-law amendments under Article 31 which accomplish the same result).

cc: Town Counsel John Giorgio Esq. and Elizabeth Lane, Esq. (via electronic mail)

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.

Very truly yours,

MARTHA COAKLEY
ATTORNEY GENERAL

Margaret J. Hurley

by: Margaret J. Hurley, Assistant Attorney General
Chief, Central Massachusetts Division
Director, Municipal Law Unit
Ten Mechanic Street, Suite 301
Worcester, MA 01608
(508) 792-7600 x 4402

CODE OF THE TOWN OF DENNIS

Chapter 5

BOARDS AND COMMISSIONS

Article I.

Cemetery Commission

[Adopted 4-21-1953 ATM, Art. 7]

§ 5-1. Election of members; terms. [Amended 5-1-1989 Annual Election]

Members of the Cemetery Committee shall be appointed by the Board of Selectmen. Members of this Committee shall be appointed to serve for one-year terms.

§ 5-2. When effective.

Election upon the official ballot shall become effective commencing with the Annual Election of 1954 and shall not affect the present incumbents of the Cemetery Committee or their term or terms of office until such term or terms shall have expired.

Article II.

Conservation Commission

[Adopted 3-3-1964 ATM, Art. 65]

§ 5-3. Establishment; membership; terms. [Amended 3-8-1971 ATM, Art. 54]

The Town voted to accept the provisions of MGL c. 40, § 8C, as amended, and established a Conservation Commission of the Town of Dennis for the purposes and with the rights and duties provided by law, to be composed of seven residents of the Town appointed by the Selectmen for terms of three years, except that initial appointments shall be as adjusted by the Board of Selectmen so that full terms of office will expire sequentially two in one year, two the next year and three the following year.

Article III.

Historical Commission

[Adopted 3-6-1973 ATM, Art. 36]

§ 5-4. Establishment; membership; terms. [Amended 10-25-1979 STM, Art. 2]

Under the provisions of MGL c. 40, § 8D, there is established an Historical Commission of the Town of Dennis for the purposes and with the rights and duties provided by law, to be composed of seven members appointed by the Selectmen for terms of three years.

Article IV.

Waterways Commission

[Adopted 5-6-1974 ATM, Art. 51]

§ 5-5. Authority to appoint; purpose; alternate members.

- A. The Board of Selectmen is authorized and instructed to appoint a Dennis Waterways Commission consisting of seven registered voters of the Town of Dennis to consider and make recommendations to the Executive Secretary regarding the use, maintenance, regulations, administration and development of all navigable Town waterways and lakes over 10 acres in area, not privately owned, including related shore facilities, but exclusive of shellfish areas and areas under the jurisdiction of the Beach Operations Committee and the Conservation Commission.
- B. The Board of Selectmen shall appoint two alternate members, one member to serve for a one-year term and the other for a two-year term. Said alternate members shall be called to vote in the absence of a regular member. [Added 5-3-1994 STM, Art. 40]

Article V.

Planning Board

[Adopted 5-4-1977 ATM, Art. 37; amended in its entirety
5-5-1998 ATM Art. 35]

§ 5-6. Authority to appoint; membership; terms.

The Board of Selectmen shall appoint a Planning Board for the Town of Dennis, consisting of seven members, each of whom shall serve for a three-year term. The Planning Board, when acting as a special permit granting authority shall consist of the seven members and two associate members. The associate members shall be appointed by the Board of Selectmen for a one-year term of office, and when designated by the Chairman of the Planning Board, shall sit on the Board for the purposes of acting on a special permit application in the case of absence, inability to act, or conflict of interest on the part of any member of the Planning Board, or in the event of a vacancy on the Board.

Article VI.

Recreation Commission

[Adopted 5-2-1983 ATM, Art. 21; amended 5-8-2001 ATM, Art. 23]

§ 5-8. Appointment; membership; terms; alternate members.

- A. The Board of Selectmen shall appoint a Recreation Commission for the Town of Dennis consisting of seven members, each of whom shall serve a term of three years. Upon the expiration of the current term of each member of the Recreation Commission, the Board of Selectmen shall appoint a member to serve a term of three years.
- B. The Board of Selectmen shall appoint two alternate members, one member to serve for a one-year term and the other for a two-year term. Said alternate members shall be called to vote in the absence of a regular member.

§ 5-9. Vacancies.

Upon the occurrence of a vacancy in the Recreation Commission prior to the expiration of the then-current three-year term of a member, the Board of Selectmen shall appoint a member to serve the balance of said three-year term.

Article VII.
Removal of Appointed Officers
[Adopted 10-26-1999 STM, Art. 16]

§ 5-10. Failure to attend meetings.

Where not inconsistent with Massachusetts General Laws, any appointed official who is a member of a multi-member board, committee or commission may be removed by the appointing authority after a public hearing for failure to attend more than three consecutive meetings. Failure to attend, if not adequately explained to the satisfaction of the appointing authority, shall be considered cause for removal.

Article VIII.
Board Member Attendance and Participation at
Adjudicatory Hearings
[Adopted 9-26-2006 STM, Art. 28]

§ 5-11. Effect of absence on participation; review of evidence from missed sessions.

Notwithstanding any general or special law to the contrary, upon municipal acceptance of this section for one or more types of adjudicatory hearings, a member of any municipal board, committee or commission when holding an adjudicatory hearing shall not be disqualified from voting in the matter solely due to that member's absence from no more than a single session of the hearing at which testimony or other evidence is received. Before any such vote, the member shall certify in writing that he has examined all evidence received at the missed session, which evidence shall include an audio or video recording of the missed session or a transcript thereof. The written certification shall be part of the record of the hearing. Nothing in this section shall change, replace, negate or otherwise supersede applicable quorum requirements.

§ 5-12. Additional attendance requirements.

By ordinance or bylaw, a city or town may adopt minimum additional requirements for attendance at scheduled board, committee, and commission hearings under this section.

A True Copy, Attest:

Theresa T. Bunce, Dennis Town Clerk