

September 22, 2023

Jeffrey T. Blake
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Mr. Steven F. Ellis
Town Administrator
Montague Town Hall
One Avenue A
Turners Falls, MA 01376

Re: Rezoning of Turnpike Road

Dear Mr. Ellis:

You have requested an opinion as to the Select Board's authority to not include a zoning amendment on the Special Town Meeting Warrant that proposes to rezone properties off Turnpike Road. Additionally, you have asked if the Town has up to 6 months from the close of the Planning Board public hearing date (August 22, 2023), to act on the zoning amendment petition at Town Meeting. In my opinion, the Select Board has the authority to not include the proposed amendment on the Special Town Meeting Warrant and the six month limitation on including a proposed zoning amendment on a town meeting warrant under c.40A, s5 does not prohibit the Town from addressing the zoning amendment at a special or annual town meeting later than six months. The six month requirement only applies to the recommendation made the Planning Board and if the Town were to take up the rezoning after the expiration of the six month, the Planning Board would be required to hold another hearing on the amendment pursuant to c.40A, s5.

I reach this conclusion based on the language of c.40A, s5 which states in relevant part:

No vote to adopt any . . . by-law or amendment thereto shall be taken until a report with recommendations by a planning board has been submitted to the town meeting . . . or twenty-one days after said hearing has elapsed without submission of such report. After such notice, hearing and report, or after twenty-one days shall have elapsed after such hearing without submission of such report, a . . . town meeting may adopt, reject, or amend and adopt any such proposed . . . by-law. If . . . a town meeting fails to vote to adopt any proposed by-law within six months after the planning board hearing, no action shall be taken thereon until after a subsequent public hearing is held with notice and report as provided.

As provided in the above underlined section, in my opinion, the six month only pertains to the expiration of the hearing recommendation not on the Town's ability to actually consider the amendment at a subsequent Town Meeting.

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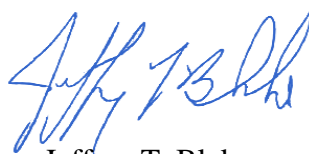
Additionally, you have asked if the Select Board can decline to include the proposed amendment on the upcoming Special Town Meeting Warrant. In my opinion, the Board, pursuant to c.39, s10 can decline to include the proposed amendment on the Special Town Meeting Warrant. I reach this conclusion based on the following provisions of c.39, s10.

Section 10. Every town meeting or town election, except as hereinafter provided, shall be called in pursuance of a warrant, under the hands of the selectmen The selectmen shall insert in the warrant for the annual meeting all subjects the insertion of which shall be requested of them in writing by ten or more registered voters of the town and in the warrant for every special town meeting all subjects the insertion of which shall be requested of them in writing by one hundred registered voters or by ten per cent of the total number of registered voters of the town whichever number is the lesser. The selectmen shall call a special town meeting upon request in writing, of two hundred registered voters or of twenty per cent of the total number of registered voters of the town, whichever number is the lesser; such meeting to be held not later than forty-five days after the receipt of such request, and shall insert in the warrant therefor all subjects the insertion of which shall be requested by said petition.

Based on the plain language of the above quoted statute, the Select Board has authority to determine what is placed on a Town Meeting warrant with few limited exceptions specifically addressed in the statute. Because, in my opinion, nothing in c.39 or c.40A, s 5 require a Select Board to include a petition to amend a zoning bylaw submitted by the Planning Board, the Select Board has the discretion to not include the zoning amendment.

If you have any further questions, please do not hesitate to contact me.

Very truly yours,



Jeffrey T. Blake