



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

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

MARTHA COAKLEY  
ATTORNEY GENERAL

June 6, 2007

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

Kristin M. LaPlante, Town Clerk  
27 Sturbridge Road  
Holland, MA 01521

FILE COPY

RE: Holland Special Town Meeting of February 15, 2007 — Case # 4198  
Warrant Article # 13 (General)  
Warrant Article # 14 (Zoning)

Dear Ms. LaPlante:

Articles 13 and 14 - I return with the approval of this Office the amendments to the town by-laws adopted under these Articles on the warrant for the Holland special town meeting that convened on February 15, 2007.

Article 13 - The amendments adopted under Article 13 make changes to Chapter XI, "Hamilton Reservoir Dock Regulations." As amended, Section 4, "Enforcement," provides in pertinent part as follows:

3. Any individual abutter encroached upon can enforce these bylaws by bringing civil action for violation of these bylaws.

In approving Section 4 (3), we remind the town that an abutter may only assert a cause of action as authorized by state law. Section 4 (3) does not create a new or independent cause of action. We point out that Section 4 (3) might be construed as a recitation of an abutter's right to initiate a civil action to compel the town to enforce its by-laws. Strictly speaking, the town is a necessary party to a by-law enforcement action. While a by-law violation may be the basis for an individual's legal right to bring a civil action under state law doing so only in the most extended sense can be seen as enforcement of the by-law.

Article 14 - The amendments adopted under Article 14 make changes to a number of sections of the town's zoning by-laws. One change amends Section 7.8.1 of the zoning by-laws, which provides in pertinent part to the purpose of the town's Common Driveways by-law. As amended, Section 7.81, provides in pertinent part as follows [new text in bold]:

The purpose of this ordinance is to:  
Enhance the safety and welfare of residents of common driveways and

Clarify the rights and responsibilities of builders and residents common driveways, and of the Town of Holland, and to

Provide access to no more than three (3) lots over a common driveway, rather than by individual driveways on each lot, in order to: . . .

In approving Section 7.81, we point out that it is conventional to refer to towns as having "by-laws," and cities as having "ordinances." While the terminology ultimately is not dispositive, we recommend that towns use the term "by-law." This allows citizens – when comparing local laws to the requirements of the Commonwealth's General Laws – to more easily spot differences in procedures between towns and cities.

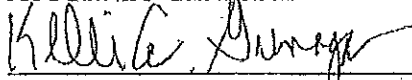
Note: Under G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the town has first satisfied the posting/publishing requirements of this section. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date that these posting and publishing requirements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

**WARRANT AND MINUTES  
SPECIAL TOWN MEETING, THURSDAY, FEBRUARY 15, 2007  
TOWN OF HOLLAND**

**HAMPDEN, ss**

**Chapter II  
Hamilton Reservoir Dock Regulations**

**SECTION 1 | DEFINITIONS (AS USED IN THIS DOCUMENT)**

1. "Waterfront lot" shall mean any lot of real property abutting the waters of Hamilton Reservoir.
2. "High water line" of any waterfront lot shall mean the water's edge of such lot at a time when the reservoir water level is at the spillway level.
3. The "waterfront area" of any waterfront lot shall mean an area of reservoir surface bounded as follows:
  - a. by the lot's high water line
  - b. by two extended side lines beginning at points at which the side lot lines of the waterfront lot intersect the high water line and extending on the same bearing as the side lot lined a distance of fifty feet from the high water line or 1/3 the distance to the opposite shore, whichever is less and
  - c. by a line connecting the offshore ends of the extended side lines and parallel to the shoreline.
4. "Dock" shall mean a walkway extending from the high water line into the waterfront suitable as a mooring place for boats and supported by a rigid framework, by a floating device, or by a combination of the two.
5. A "Mooring" shall mean the location of a boat or other floating object while tied to a dock or while secured by an anchor.
6. Docks, moorings, and other moored objects on or off of rights of way (easements to cross) shall abide by these bylaws.

**SECTION 2. LOCATION OF DOCKS AND MOORING**

1. No dock shall be installed or maintained in the waterfront area of any waterfront lot in such a location or in such a manner as to impinge upon or obstruct the waterfront area of an adjoining lot. No dock shall extend any longer than needed to safely moor a boat but shall not exceed fifty feet from the high water line or one-third of the distance to the opposite shore, whichever is less without the express written permission from the landowner being impinged upon.
2. No boat, float, raft, or other floating object shall be moored or anchored in the waterfront area of any lot in such a location or manner as to impinge upon or obstruct the waterfront area of an adjoining lot.
3. The strict application of the regulations in subsections 3a and 3b of this chapter may be waived by the board of selectmen on the application of the owner of a waterfront lot or his representative if the board finds:
  - a. that the strict enforcement of such regulations would unreasonably restrict the applicant in the use and enjoyment of his property and its waterfront area, and

b. that the requested waiver will not unreasonably detract from the use and enjoyment of adjoining waterfront lots and waterfront areas.

4. In ruling upon applications for waivers the selectmen may take into account the following factors:

- a. the depth of water and the bottom gradient in the waterfront area.
- b. the divergence or convergence of the extended lot lines defining the waterfront area pursuant to the definition thereof in section 1C of this chapter.
- c. the fact that a particular installation not strictly complying with these regulations may have existed without objection before the enactment of this bylaw.
- d. the fact that rights to the use of the waterfront in question are shared by two or more property owners pursuant to deeded rights of access.

5. An application of a waiver may be heard at any scheduled meeting of the board of selectmen. At least fourteen (14) days before the scheduled meeting at which the application is to be heard the applicant shall file with the selectmen a written application stating the nature of the waiver requested and shall notify the owners of adjoining waterfront lots by certified mail of the substance of the request and the date, time and place of the hearing. The Selectmen's ruling and the reasons therefore shall be entered in the minutes of the meeting.

6. Every dock or other moored object shall be removed from the waterfront area during the period from October 31 of each year to the following April 1st

a. Those docks existing PRIOR TO 1995 that are built in a permanent fashion are grandfathered. These docks are considered Grandfathered Docks and are excluded from section 2 #6 until they are replaced at which time they must comply with all the bylaws pertaining to docks. All new structures that comply with Section 4 are excluded from Section 2 #6.

b. The fine for non removal of every dock and every boat or other moored object will be \$100.00 per day per dock, or other moored object beginning on November 1<sup>st</sup> and each day thereafter during which each such violation continues shall constitute a separate violation of this bylaw.

7. Docks, Floats, rafts or moored objects need to be labeled with the Holland property address of the owner in a permanent method readily visible from the lake...

\* (AMENDED TO ADD "A MINIMUM OF 3" HEIGHT) SEE MINUTES

8. Boats may be temporarily anchored outside any waterfront area while occupied by persons for fishing or other recreational activities but shall not be left unattended.

### SECTION 3 | CONSTRUCTION IN WATERFRONT AREAS

No person shall install a dock, a pier, retaining wall, boat ramp, platform, building foundation or similar structure designed as a permanent installation in the waterfront area or along the high water line of any lot without having first filed with the conservation commission a notice of intent and obtained an order of condition from said commission permitting such installation and then must comply with all conditions and limitations of such order. This includes replacement of a dock which was previously grandfathered.

### SECTION 4 ENFORCEMENT

1. The police department is authorized by the Board of Selectmen to notify the owner or occupant of any waterfront lot, or the owner of any watercraft or other moored object of any observed violation of the provisions of this chapter excluding Section 2 .Item 6A Said owner or occupant has seven days after written notification has been received, to correct the violations(s), after which the police department may issue a non-criminal assessment of one hundred dollars (\$100.00) each day thereafter during which such

violation continues shall constitute a separate violation of this bylaw starting on the eighth day after notification. They may also demand removal of said structure at the owners expense due to non-compliance.

2. The Conservation Commission and/or Building Inspector is authorized to notify the owner or occupant of any waterfront lot of any observed violation of the provisions of section 4 of this chapter. Said owner or occupant has seven days after written notification has been received, to correct the violations(s). If such a violation is not removed within seven days from the date of such notification, each day during which such violation continues shall constitute a separate violation of this bylaw. The Conservation Commission may issue a non-criminal complaint pursuant to the provisions of section 21D of Chapter 40 of the General Laws and shall impose a non-criminal assessment of one hundred dollars (\$100.00) beginning on day eight for each such violation.

3. Any individual abutter encroached upon can enforce these bylaws by bringing civil action for violation of these bylaws.

**Changes**

1. Removed duplicate statements
2. Moved text to appropriate section.
3. Renumbered as a result of changes in text
4. Updated fines
5. Added requirement to label docks into Section 2 #7
6. For clarification
  - a. Added Section 1 #6
  - b. Added Section 4 #3
  - c. Removed first paragraph on Section 2 to eliminate confusion

**ARTICLE #13 WAS AMENDED TO ADD THE PHRASE " A MINIMUM OF 3" HEIGHT" DIRECTLY AFTER SECTION 2, PARAGRAPH 7. AMENDED ARTICLE PASSED.**