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24 January 2020

Via E-mail and U.S. Mail

William M. Manzi, III
Town Manager
Town of Seabrook
P.O. Box 456
Seabrook, NH 03874

RETIRED
MICHAEL J. DONAHUE
CHARLES F. TUCKER
NICHOLAS R. AESCHLIMAN

Re: **2020 Town Meeting**

Dear Bill:

This letter comments on the draft warrant for the 2020 Town Meeting you have directed to our attention. The latest draft we reviewed, which is the subject of our analysis below, is that version forwarded to us on 23 January. We understand that the Town has already filed the warrant electronically with the Department of Revenue Administration (“DRA”) and we strongly recommend that that Town incorporate any changes recommended by the DRA to the extent they are not captured by our comments herein. Also, we would appreciate you forwarding us the substance of any such comments from the DRA. Finally, the Town has until the last Monday in January, 27 January 2020 this year, to post the warrant (and budget) per RSA 40:13, II-a(d). We understand that the Board of Selectmen will be meeting to execute the warrant on that date

Introduction & Summary

Warrant articles on which we have not commented under separate cover or have not commented on below are in our opinion textually and substantively proper, square with any applicable statutes and rules. A redlined version of the Town’s 2020 draft warrant as well as a “clean” version reflecting the changes depicted in the redline are attached hereto.

1. Warrant Articles Proposed by Planning Board

As you know, no zoning ordinance warrant articles can be amended at a town meeting because the planning board must hold at least one public hearing on the proposed ordinance. RSA 675:3, II. Once the public hearing is held, the law requires that the planning board vote to determine the final form of the ordinance, amendment or amendments to be presented to the Town. RSA 675:3, III. Moreover, a second public hearing, to be held at least 14 days after the

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first, must be held if the proposal is substantively altered by the planning board. RSA 675:3, IV. Lastly, official copies of the final proposals to adopt or amend the zoning ordinance shall be placed on file and made available to the public at the Town Clerk's office not later than the fifth Tuesday prior to the date when action is to be taken and an official copy of the proposals shall be on display for the voters at the meeting place on the date of the meeting. RSA 675:3, V. Our analysis of these warrant articles proposing amendments to the Town Zoning Ordinance presumes that the Town has complied with the above statutory requirements.

2. Amendments to Warrant Articles

RSA 40:13, IV prohibits amending any warrant article at the First Session if such amendment "eliminate[s] the subject matter of the article." As we first noted a few years ago, we have historically advised that in the case of Bailey v. Town of Exeter, No. 211-CV-203 (May 31, 2011) the Rockingham County Superior Court interpreted RSA 40:13, IV to mean that "any amendment that ma[kes] the subject matter of [an] article a nullity [is] forbidden." However, in the 2017 Supreme Court of New Hampshire case of Cady v. Deerfield, 169 N.H. 575 (2017), the Supreme Court interpreted the Bailey decision and stated that "RSA 40:13, IV(c) [only] prohibits amendments that eliminate the entirety of the subject matter of a warrant article." It stated further that "RSA 40:13, IV(c) prohibits only amendments that eliminate a warrant article's textual subject matter, not amendments that may change the intent or purpose sought to be achieved by the article's drafters." This new interpretation of RSA 40:13, IV constitutes a change in the status of the law in this area and is something we will be aware of at the Deliberative Session. Pursuant to Cady v. Deerfield, our perspective at the Deliberative Session will be that even amendments that change the intent or purpose of a warrant article are permitted under Cady as long as they do not eliminate the textual subject matter of the article, e.g., amending an article to simply read "To see . . ."

In addition, zoning articles and those articles the wording of which are prescribed by law may not be amended at the first session. RSA 40:13 IV(a).

3. Petition Warrant Articles

Pursuant to RSA 39:3, upon the written application of 25 or more registered voters or two percent of the registered voters in a town, whichever is less (although in no event shall fewer than 10 registered voters be sufficient), the Selectmen shall insert in their warrant for the town meeting the petitioned article with only such minor textual changes as may be required, provided such written application is submitted on or before the second Tuesday in January (this year, 14 January 2020). RSA 40:13, II-a(b):

We are aware of two citizens' petitions this year, Articles 48 and 49 on the warrant and note your request for an analysis regarding the legal effect that Article 49, dealing with the

issuance of resident stickers, etc., will have on the Board of Selectmen's authority in this context. We will provide that analysis to you in the coming days.

4. General Recommendations

We recommend making minor grammatical, spelling and stylistic edits throughout the draft warrant, which are depicted in the enclosed redline and are not otherwise addressed herein. These minor changes bring the warrant into accord with the DRA's recommended articles. Accordingly, we recommend you review the redlined version of the warrant provided herewith.

Draft Town Warrant for 2020

1. Articles 2 – 4

We assume that Articles 2 and 3 appear on the draft warrant in substance and form as they do in the final proposal to be filed at the Town Clerk's office pursuant to RSA 675:3, V. We also assume that the Town Planning Board conducted all necessary public hearings before the requisite deadline. If you have any questions on this matter, or request additional analysis, please let us know.

2. Articles 6 – 9 (Collective Bargaining Agreements)

As we have noted in years past, the DRA recommends depicting proposed individual increases in salaries and benefits within the body of the article itself to reinforce the notion that ratification of the underlying collective bargaining agreements ("CBAs"), requires full knowledge of the financial terms thereof by the legislative body. The DRA also recommends, pursuant to its interpretation of the "Sanborn Decision", Appeal of Sanborn Regional Sch. Bd., 133 N.H. 513 (1990), that towns include a distinct warrant article seeking approval for the governing body to call a special meeting on CBA cost items to be held in the event that the legislative body does not approve the CBA articles at town meeting. We note that the Town has complied with both of these recommendations but also recommend that the Town incorporate any changes recommended by DRA upon its review of the warrant.

3. Article 27

Article 27 seeks authorization to operate sports book retail locations within the Town. As we previously advised, the Board of Selectmen have an obligation to hold a public hearing on the question at least 15 days but not more than 30 days before the question is to be voted on. Notice of that meeting has to be posted in at least 2 public places in the municipality and published in a newspaper of general circulation at least 7 days before the hearing. Further, Article 27 must be voted on by ballot.

William M. Manzi, III, Town Manager
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Conclusion

Do not hesitate to contact us with any questions. As always, thank you for the opportunity to assist the Town.

Very truly yours,
DONAHUE, TUCKER & CIANDELLA, PLLC

A handwritten signature in black ink, appearing to read 'R. Ciandella', is centered below the firm name.

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Enclosures (2)