

**From:** Doug Heim <DHeim@town.arlington.ma.us>  
**Date:** April 24, 2020 at 1:56:27 PM EDT  
**To:** Chris Loreti <cloreti@verizon.net>, John Leone <JLeone@town.arlington.ma.us>  
**Cc:** Janice Weber <JWeber@town.arlington.ma.us>, Adam Chapdelaine <AChapdelaine@town.arlington.ma.us>, Jenny Raitt <JRaitt@town.arlington.ma.us>, "abunnell@town.arlington.ma.us" <abunnell@town.arlington.ma.us>, "KLau@town.arlington.ma.us" <KLau@town.arlington.ma.us>, "EBenson@town.arlington.ma.us" <EBenson@town.arlington.ma.us>, "DWatson@town.arlington.ma.us" <DWatson@town.arlington.ma.us>, "rzsembery@town.arlington.ma.us" <rzsembery@town.arlington.ma.us>, "freidy@town.arlington.ma.us" <freidy@town.arlington.ma.us>  
**Subject: RE: Your Warrant Article**

Good afternoon,

Mr. Loreti, thank you for sharing your concerns. While I think the vote proposed is meant to evidence that the ARB will take the steps necessary to ensure a full discussion before Town Meeting of any zoning articles without prejudice, I appreciate your attention to this detail regarding steps necessary. I understand how the importance of providing a sense of confidence that the Board will not prevent substitute motions from being considered.

I will leave it to others to outline the disadvantage of cancelling Town Meeting entirely without voting on the budget, capital budget, borrowing authorizations, CPA grants, etc.

With respect to the concern articulated here, the ARB could provide further confidence with the following additional language:

**VOTED:** That no action be taken at the 2020 Town Meeting on Articles 8, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, and 47; and that all such articles be placed on the Warrant for the next annual or special town meeting by the Redevelopment Board whichever occurs first, *AND further that such articles at a minimum, be recommended for favorable action in the final report of the Board for purposes of discussion only.*

**COMMENT:** The Redevelopment Board votes "no action" on all articles before it for the 2020 Annual Town Meeting for the purposes of allowing an abbreviated Meeting in light of the COVID-19 public health emergency. The Redevelopment Board offers no qualitative assessment of any of such articles, and hereby commits to placing each of such articles on the next special or annual town meeting warrant as articles of the of the Redevelopment Board *AND to voting favorable action in their final report for discussion purposes only* for the purposes of ensuring discussion of ~~that neither~~ such articles nor substitute motions regarding same would ~~will not~~ be prohibited by c. 40A sec. 5.

The Board cannot technically bind a future Town Meeting not yet before it. But to be clear, there is no perfect vote for this unprecedented scenario. The Courts are clear that even a vote at town meeting to "indefinitely postpone" action on an article is unfavorable action for the purposes of c. 40A sec. 5. *Wood v. Milton*, 197 Mass. 531 (1908). Hence, it's entirely possible that a decision to "cancel" Town Meeting could be construed as unfavorable action as well.

That said, the above vote reflects a three-step process:

First, the ARB takes the Vote outline above.

Second, the ARB would place all current resident petition articles on the Warrant as articles of the Board for the next special or annual town meeting.

Third, the ARB would regardless of its substantive opinion of any article, recommend "favorable action for the purposes of Town Meeting Discussion" in its final report.

Thereafter, the Board could submit substitute motions or other documents outlining its substantive position and what action it urges Town Meeting to take, but resident proponents would not be prejudice In the manner Mr. Loreti fears.

Please note that the third step does not apply to the Select Board or any other body. Only zoning articles are subject to the requirement referenced by Mr. Loreti.

Sincerely yours,

**Douglas W. Heim**  
Arlington Town Counsel  
50 Pleasant St  
Arlington, MA 02476

Tel: (781) 316-3150

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**From:** Chris Loreti [mailto:cloreti@verizon.net]

**Sent:** Friday, April 24, 2020 12:52 PM

**To:** John Leone

**Cc:** Janice Weber; Douglas Heim; Adam Chapdelaine; Jenny Raitt; abunnell@town.arlington.ma.us; KLau@town.arlington.ma.us; EBenson@town.arlington.ma.us; DWatson@town.arlington.ma.us;

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**Subject:** Re: Your Warrant Article

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Dear Mr. Leone:

I am in receipt of your April 23 letters concerning the two zoning article I submitted for the 2020 Annual Town Meeting and your plans for conducting that meeting. I have also reviewed the vote Town Counsel has recommended for the ARB's consideration to postpone all zoning articles to a future date.

Unfortunately, both your letters and Attorney Heim's recommended vote to the ARB seem to misunderstand the requirements of MGL Chapter 40A Section 5 (copied below) as it relates to zoning warrant articles that have been voted down by Town Meeting. While I appreciate that the ARB might use its authority under that same provision of the law to place all the zoning articles back on the warrant in the future, in no way does that ensure that Town Meeting Members will be able consider these articles at the next Town Meeting.

As the text of MGL Chapter 40A Section 5 makes clear, it is not sufficient for articles to be placed on the warrant to be considered by a future Town Meeting. Once voted down (as in the planned, abbreviated Town Meeting) Town Meeting cannot act upon them "unless the adoption of such proposed ordinance or by-law is recommended in the final report of the planning board." Thus, unless the ARB votes to support the articles through a recommended positive vote, there will no possibility of them coming before Town Meeting for two years following the "No Action" vote at the abbreviated meeting.

Your letter makes clear that the ARB may vote "No Action" on the articles for the future meeting. Whether it does so for technical or substantive reasons is irrelevant. Once it does so, the possibility of the article coming before Town Meeting through a substitute motion is foreclosed. Thus, the course of action town officials have proposed is very different from a mere postponement of the zoning articles. While substitute motions to the ARB's recommended vote of "No Action" would be allowed if Town Meeting proceeded as usual, such motions will not be allowed at the postponed meeting based on the two-year prohibition of MGL Chapter 40A Section 5.

If you disagree with my reading of the law, then given the text of the vote proposed by Town Counsel for the ARB, and the requirements of MGL Chapter 40A Section 5, could you explain how Town Meeting would not be prohibited from debating a substitute motion to an ARB recommended vote of No Action to any of the affected zoning articles at a future Town Meeting?

In closing, let me say that I fully appreciate the challenges of conducting Town Meeting electronically. I believe it is highly preferable to conduct the meeting in person. And I have yet

to hear any explanation as to why the town simply doesn't cancel Town Meeting this spring and continue to operate under the sort of continuing resolution allowed by Governor Baker's order. I believe that would be best not only for the zoning and other articles to be considered but for democracy in Arlington generally.

Sincerely,  
Christopher Loreti

From MGL Chapter 40A Section 5:

*No proposed zoning ordinance or by-law which has been unfavorably acted upon by a city council or town meeting shall be considered by the city council or town meeting within two years after the date of such unfavorable action unless the adoption of such proposed ordinance or by-law is recommended in the final report of the planning board.*

p.s. to Fran Reidy, could you kindly forward this message to all members of the Select Board? Thank you.

On 4/23/2020 1:56 PM, John Leone wrote:  
Dear Warrant Article Proponent:

You are the proponent of an Article on this year's Annual Town Meeting Warrant. Please allow the attached letter to advise you of the current state Town Meeting planning.

John D. Leone, Moderator  
Town of Arlington  
[jleone@town.arlington.ma.us](mailto:jleone@town.arlington.ma.us)  
781-648-2345 - day  
781-641-3546 - evening