

**FYI ITEMS (MAIL)**

**NOVEMBER 10, 2014**

- A. Memo from Cape Cod Tech, re; meeting on possibility of MSBA grant.
- B. Decision from Attorney General's office on article 31 from the May 5, 2014 Town Meeting.

CCJ  
FYI

**Robert P. Sanborn, III**  
*Superintendent - Director*

**Erin Orcutt**  
*Business Administrator*



**CAPE COD TECH**  
Cape Cod Regional Technical High School  
351 Pleasant Lake Avenue, Harwich, MA 02645

**Phone:** (508) 432-4500

**Fax:** (508) 432-7916

**Email:** [bsanborn@capetech.us](mailto:bsanborn@capetech.us)

October 27, 2014

Mr. Charles Sumner  
2198 Main Street  
Brewster, MA 02631

Mr. Charles Sumner,

Cape Cod Tech has been pursuing a Massachusetts School Building Authority (MSBA) project within their "core" program for the purpose of a major renovation or a new school. The district has submitted a total of five (5) Statements of Interest (SOI) to the MSBA since 2010. For nearly two years, my business manager, Erin Orcutt and I have been highlighting our facility needs and our pursuit of an MSBA project in order to share the financial costs with the state for our sending districts. During the last town meeting season, we secured the right to establish a stabilization fund for the purpose of financing the initial costs associated with a future MSBA project.

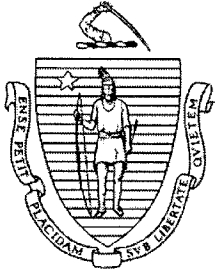
Our most recent SOI submission was in January 2014. This month we were notified that our school was designated for an MSBA "senior study" which entailed a tour of our facility and interviews with key staff to verify the contents of our SOI. On Tuesday October 21, 2014, the MSBA conducted the "senior study" of our school. At the meeting, we were informed that out of one hundred and eight SOI's submitted, Cape Cod Tech was one of twenty-five (25) schools designated for a "senior study". From the twenty-five (25), a substantial percentage of districts will be recommended to move forward with an invitation into the MSBA eligibility period. We expect to be notified before the end of 2014 if we will be offered an invitation.

Needless to say, the likelihood of a project here at our school has increased significantly and the need to fund our stabilization fund has increased as well. The initial costs will include an MSBA feasibility study and schematic design. It is these two phases in the MSBA process that ascertain the scope, schedule and budget for a potential project. I am inviting you to a breakfast meeting to discuss this matter here at the school on November 19<sup>th</sup> at 8:30 AM in our "Hidden Cove" restaurant.

Please RSVP to my office at 508-432-4500 x 214 at your earliest convenience. Thank you.

Respectfully,

Robert P. Sanborn, III  
Superintendent/Director



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](http://www.mass.gov/ago)

November 6, 2014

Colette M. Williams, Town Clerk  
Town of Brewster  
2198 Main Street  
Brewster, MA 02631

**SUPPLEMENTAL DECISION**<sup>1</sup>

**Re: Brewster Annual Town Meeting of May 5, 2014 ----- Case # 7120**  
**Warrant Articles # 21, 22, 24, 30, 31, and 34 (Zoning)**  
**Warrant Article # 25 (General)**

Dear Ms. Williams:

**Article 31** - As more fully explained below, we disapprove and delete Article 31 (and the related map) from the May 5, 2014 Annual Town Meeting.<sup>2</sup> Article 31 would have amended the Town's zoning by-laws by rezoning certain parcels of land from the Village Business District to the Commercial High Density District.

The Planning Board Hearing notice for Article 31 was not posted or published as required by G.L. c 40A, § 5. General Laws Chapter 40A, Section 5, provides in part as follows (with emphasis added):

*Notice of the time and place of such public hearing, of the subject matter, sufficient for identification, and of the place where texts and maps thereof may be inspected shall be published in a newspaper of general circulation in the . . . town once in each of two successive weeks, the first publication to be not less than fourteen days before the day of said hearing, and by posting such notice in a conspicuous place in the . . . town hall for a period of not less than fourteen days before the day of said hearing.*

---

<sup>1</sup> This letter explains in more detail the Planning Board Hearing process that occurred for Article 31 and supplements our decision dated November 5, 2014.

<sup>2</sup> In a decision dated June 19, 2014, we approved Articles 21, 22, 24, 25 and 34, and the map related to Article 24 and in a decision dated September 18, 2014, we approved Article 30.

The notice that was posted and published pursuant to G.L. c. 40A, § 5, referred to a March 26, 2014, hearing date. According to Town Officials, the March 26, 2014, meeting was cancelled due to weather and was later rescheduled to March 31, 2014. However, the only notice given for the March 31, 2014, hearing was the notice required under G.L. c. 30A, §§ 18-25 (the “Open Meeting Law”). There was not a 14-day notice of the March 31, 2014, hearing as required by G.L. c. 40A, § 5.

On June 19, 2014, the Attorney General elected to proceed under the provisions of Chapter 299 of the Acts of 2000 (which amended G.L. c. 40, § 32). This provision allows the Attorney General to direct the Town Clerk to post and publish a notice of the defect and allows for objection or claims to be filed regarding the procedural defect. On July 21, 2014, the Town Clerk certified that the notice of defect was posted and published in accordance with the provisions of Chapter 299.

The Town Clerk received letters from 20 people in response to the Chapter 299 posting and publishing process. These letters have been provided to us. All of the letters received by the Town Clerk include statements explaining why the notice defect regarding Article 31 was misleading or otherwise prejudicial. For example, a number of the letter writers assert that the Planning Board hearing notice was not widely circulated as is required and “we did not have an opportunity to attend the hearing to voice our opposition. Therefore, we regard the lack of notice to be prejudicial[.]”

In light of the statements in these letters regarding the prejudicial impact of the notice defect, we have determined that each of the documents qualifies as a valid Chapter 299 objection or claim regarding Article 31. Chapter 299 dictates that the Attorney General may not waive the notice defect if any valid claims are received. As amended, G.L. c. 40, § 32, provides in pertinent part as follows (with emphasis added):

If no claim was made, the attorney general may waive any such defect; but, if *any claim* is made then the attorney general *may not waive* any such defect.

Under the provisions of Chapter 299, the filing of a valid claim removes the Attorney General’s discretion to waive the defect. For this reason we must disapprove and delete Article 31. We recommend that the Town consult with Town Counsel regarding the steps the Town should take to resolve this issue at a future Town Meeting.<sup>3</sup>

---

<sup>3</sup> We also received correspondence from one resident urging this Office to approve the Article despite the Chapter 299 claim letters because the letters contain “many falsehoods.” We have carefully reviewed the information set forth in this letter. However, it does not furnish any basis for us to approve Article 31 because, once a Chapter 299 claim letter is received the Attorney General has no discretion to waive the defect and approve the Article. *See* G.L. c. 40, § 32, as amended by Chapter 299 of the Acts of 2000.

**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

*Kelli E. Gunagan*

Kelli E. Gunagan, Assistant Attorney General  
Municipal Law Unit  
Office of the Attorney General  
Ten Mechanic Street, Suite 301  
Worcester, MA 01608  
508-792-7600

cc: Town Counsel Sarah A. Turano-Flores