

# TOWN OF SOUTHBOROUGH



## OFFICE OF THE BOARD OF SELECTMEN

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November 15, 2018

Marnie Hoolahan  
26 Clifford Rd.  
Southborough, MA 01772

Ms. Hoolahan,

Thank you for sending your request for information on the concerns you have regarding the Board of Selectman and their actions on article 1 after it was passed on May 22, 2018 at a Special Town Meeting.

After consulting with Mr. Purple, I offer the following answer to your first question:

As Chair, I was the only Board member consulted about sending outside counsel's letter to the Attorney General's office, a process that is customarily an administrative matter. In July I had a brief conversation with Mr. Purple, and agreed with his assessment that the inclusion of outside counsel's letter was appropriate to provide context to the changes made to the warrant article as a direct result of Town Meeting's review of said letter, the letter was relevant background information and should be forwarded.

I not only supported article one, I voted to pass it and can assure you there was no underhandedness on my part nor attempt to circumvent the vote of Town Meeting. In hindsight, I would have handled it differently by discussing it with the full board at a public meeting. But to be clear there was no malintent to do a disservice to the voters, the only intent was to pass on relevant information to give context to the amended changes to the warrant.

I have attached Town Counsel's response to your other questions.

Very truly yours,

A handwritten signature in black ink that reads "Lisa M Braccio". The signature is fluid and cursive.

Lisa M Braccio  
Board of Selectman, Chair

November 15, 2018

Lisa Braccio, Chairperson  
Board of Selectmen  
Town of Southborough  
Town House  
17 Common Street  
Southborough, MA 01772

**Re: Memorandum of Marnie Hoolahan Dated November 11, 2018, Intervention of Southborough Officials into Article 1, May Town Meeting**

Dear Madam Chairperson and Members of the Board,

You have furnished this office with a copy of the correspondence from Marnie Hoolahan, a resident of the Town of Southborough, submitted as a public record, whereby in detail, she suggests that this office should not have responded with a supplemental filing to her lawyer's filing with the Attorney General's Office, Municipal Law Unit, citing an alleged sequence of scandalous events and secret work to manipulate certain outcome, all advanced with reckless sensationalism, without basis. In this regard, please be advised of the following.

At the time of the submittal of Article 1, where the Article attempted to intervene in the ministerial process of the Zoning Board of Appeals and with pending litigation on the same topic in Worcester Superior Court in which I was representing the Defendant Zoning Board of Appeals as general Town Counsel, I decided that, so as to not give an appearance of conflict, I would not speak to the sufficiency or lack of sufficiency of the Warrant Article thereby influencing the ultimate decision of the Town Meeting. This was a personal and professional decision and not a requirement.

Accordingly, the Town assigned Special Counsel, Jay Talerman, to address the petitioned Article. We remained silent throughout the proceedings of the Town Meeting as per my self imposed decision to give no advice.

On October 11, 2018, we received from the Attorney General's office, an e-mail correspondence

attaching a letter from Attorney Ginny Kremer, dated October 4, 2018, whereby Attorney Kremer advanced her legal position on why the By-law should be approved. In turn, Special Counsel Talerman gave a summary response to the Attorney General's office. Upon our review of Attorney Kremer's filing, she apparently decided to now address the pending litigation in Worcester Superior Court on Pages 2 and 3 citing the exact case of which I am counsel of record where she stated:

"The approval of the Park Central, LLC's application was appealed by abutters, an appeal in which cross-motions for summary judgment are currently pending in the Superior Court. Huang et al. v. Leo Bartolini et al., Worcester Superior Court Civil Action No. 16-01359. One of the claims asserted by the Plaintiffs is that Code § 249 required four ZBA members to be present at the hearings, a provision to which the ZBA ultimately failed to adhere. The Defendants, citing no legal authority, argued that Code § 249 "is not necessarily applicable to a c.40B proceedings [*sic*] and can be waived by an applicant."...The Plaintiffs countered by pointing out that there is no inconsistency between 40B's *voting* requirement (which requires three affirmative *votes* of a five member Board) and the Code § 249's *quorum* requirement (which requires four members to be *present* to hold a hearing.

The Court (Freniere, J.) held a hearing on the summary judgment motions on January 11, 2018, and seemed to credit the distinction between a quorum requirement and a voting requirement; she took the matter under advisement...Almost immediately thereafter, the Defendants filed an "EMERGENCY Motion and Memorandum for Leave to Clarify and Advance Facts and Legal Argument on Quorum Issue."...In those "emergency" pleadings, the Defendants (the ZBA represented by Attorney Cipriano and Park Central, LLC) asserted, for the first time, that Code § 249 had been "superseded" in 2007...This assertion was made despite the fact that through 2015, with *Mr. Bartolini serving as Chair*, the ZBA consistently adhered to Code § 249's quorum requirement..."

At that juncture, with certain motions addressing the status of the Rules and Regulations of the Zoning Board of Appeals referenced in the Town Code and with Attorney Kremer crossing the bright line into pending litigation of which I am attorney of record for the Zoning Board of Appeals, I was compelled, as legal counsel, to make response so that, in the alternative, my silence would not be construed as complicity in her commentary. To have done otherwise would have not served my clients, the Zoning Board of Appeals, as an agency of the Town, in the continued defense of the zoning appeal in the Worcester Superior Court.

In the alternative, if Attorney Kremer had made no reference or mention as to the pending litigation, then we would have seen no purpose in a response. That correspondence was ill conceived and ill advised from its inception as to the litigation.

We hope this clarifies for the record the reason why we were compelled, as professional lawyers, to respond to the Attorney Kremer's submittal as furnished directly by the Attorney General's office.



Respectfully submitted,



Aldo A. Cipriano, Esq.  
Town Counsel

AAC/fc

Cc: Mark Purple, Town Administrator  
James Hegarty, Town Clerk  
Margaret Hurley, Attorney General  
Kelli Gunagan, Municipal Law Division  
Ginny Kremer, Esq.