At the Monday, February 25th Select Board meeting, the Board voted to provide the comments from the Hollis Town Attorney regarding Article 17 and Article 19.

As to article 17, the town is entitled to adopt by laws (ordinances) relative to a number subjects pursuant to RSA 31:39. That statute is set forth below with highlights on sections which could, arguably, allow the regulation:

I. Towns may make bylaws for:

(a) The care, protection, preservation and use of the public cemeteries, parks, commons, libraries and other public institutions of the town;

(b) The prevention of the going at large of horses and other domestic animals in any public place in the town;

(c) The observance of Memorial Day, whereby interference with and disturbance of the exercises for such observance, by processions, sports, games or other holiday exercises, may be prohibited;

(d) Regulation of the use of mufflers upon boats and vessels propelled by gasoline, oil or naphtha and operating upon the waters within the town limits;

(e) The kindling, guarding and safekeeping of fires, and for removing all combustible materials from any building or place, as the safety of property in the town may require;

(f) The collection, removal and destruction of garbage, snow and other waste materials;

(g) Regulating the operation of vehicles, except railroads as common carriers, upon their streets;

(h) Regulating the conduct of public dances;

(i) Regulating the conduct of roller skating rinks;

(j) Regulating the sanitary conditions of restaurants within town limits in accordance with the provisions of RSA 147:1;

(k) Issuing a license for the operation of a restaurant and other food serving establishments within the town limits and charging a reasonable fee for same;

(l) Making and ordering their prudential affairs;

(m) Issuing permits for tattooing facilities and charging a fee for the permit; and
(n) Regulating noise.

(o) Requiring the reporting of contributions to, and expenditures by, any candidate or political committee made for the purpose of influencing the election of any candidate for local elective office, or any person or committee for the purpose of influencing the vote on any local ballot or referendum question.

(p) Regulating the retail display and accessibility of martial arts weapons including throwing stars, throwing darts, nunchaku, blow guns, or any other objects designed for use in the martial arts that are capable of being used as lethal or dangerous weapons.

II. Towns may appoint all such officers as may be necessary to carry the bylaws into effect.

III. Towns may enforce the observance of the bylaws by suitable penalties not exceeding $1,000 for each offense to enure to such uses as the town may direct.

This statute also bumps into the statute authorizing the BOS to control town properties, RSA 41:11-a:

RSA 41:11-a - I. The selectmen shall have authority to manage all real property owned by the town and to regulate its use, unless such management and regulation is delegated to other public officers by vote of the town, or is governed by other statutes, including but not limited to RSA 31:112, RSA 35-B, RSA 36-A:4, and RSA 202-A:6.

II. The authority under paragraph I shall include the power to rent or lease such property during periods not needed for public use, provided, however, that any rental or lease agreement for a period of more than one year shall not be valid unless ratified by vote of the town.

III. Notwithstanding paragraph II, the legislative body may vote to authorize the board of selectmen to rent or lease municipal property for a term of up to 5 years without further vote or ratification of the town. Once adopted, this authority shall remain in effect until specifically rescinded by the legislative body at any duly warned meeting provided that the term of any lease entered into prior to the rescission shall remain in effect.

In my opinion, the two statutes above are not inconsistent and, accordingly, a town approved by-law containing the wording in the article would be binding and not advisory on the town and the board, in spite of the authority given the board in RSA 41:11-a.

A more difficult question is whether the proposed ordinance would survive a challenge under the language of RSA 159:26 (‘... no ordinance or regulation of a political subdivision may regulate the...use...[of] matter[s] pertaining to firearms, firearms components, ammunition, or firearms supplies in the state. ...’). My opinion is that the same reasoning that justified our opinion that the BOS may regulate the use of public property under the authority of RSA 41-11-a would apply here. The regulation arguably does not regulate guns, it regulates town property. My use of the word ‘arguably’ is motivated by the fact that, currently, this issue is a ‘moving target’ (no pun intended), in the legislature and is likely to prompt additional legislation on this controversial subject.

As to Article 19, this article, on its face, seeks to invade the legal prerogatives of the BOS and HCC to manage town conservation lands and does not appear to have any legal justification. It cites a tax statute, (RSA 79-A) as the source of the scope of the term ‘passive uses’ which, if passed, in my opinion, would not be legally binding on either the BOS or the HCC. The article ignores the fact that many (if not all) conservation properties were purchased or otherwise acquired subject to conditions of use with which the town is legally obligated to comply. The purported ‘grandfathering’ of existing lands does not solve this issue. In my opinion, the effect of this article, if it passes, would
be to establish a ‘sense of the meeting’ resolution which would guide, but not control, the future acquisition of
conservation lands and which would not be binding on future boards or meetings. I can find no authority that
would allow this meeting to govern and/or control the manner in which future boards and/or town meetings would
address the scope of use of any properties which the town would acquire or seek to acquire in future years.