

Wm. Andrew MacIlwaine, Esq.
E-mail: amacilwaine@dinse.com

January 18, 2023

Via email only

South Hero Selectboard
333 Route 2
PO Box 175
South Hero, VT 05486-0175

Re: Petition of Legal Voters to South Hero Selectboard

Dear South Hero Selectboard,

We were asked to review the legitimacy of a petition from certain legal voters of South Hero to the South Hero Selectboard. The petition requests that the following articles be added to the warning of the upcoming March 7, 2023 Town Meeting or a Town Meeting thereafter:

1. Pursuant to 24 V.S.A. § 4441, shall the Town of South Hero reduce the size of the approximately 354-acre South Hero Village Zoning District by changing its boundary (and the official zoning map accordingly) to match that of the approximately 52-acre, officially designated South Hero Village Center and reverting areas outside the designated Village Center to the zoning districts of which they were a part prior to the creation of the Village Zoning Districts in 2020?
2. Pursuant to 24 V.S.A. § 4441, shall the Town of South Hero reduce the size of the approximately 280-acre Keeler Bay Village Zoning District by changing its boundary (and the official zoning map accordingly) to match that of the approximately 14-acre, officially designated Keeler Bay Village Center and reverting areas outside the designated Village Center to the zoning districts of which they were a part prior to the creation of the Village Zoning Districts in 2020?

Based on their wording, the articles submitted by Petitioners effectively seek to amend Town zoning regulations. Zoning regulations can only be amended in strict compliance with the requirements set forth in Title 24.

The boundaries of the South Hero and Keeler Bay Village Zoning Districts are shown on the official town zoning map. 24 V.S.A. § 4411(b) (“The provisions of [town] bylaws may be classified so that different provisions may be applied to different classes of situations, uses, and structures and to different and separate districts of the municipality as may be described by a zoning map made part of the bylaws.”). The official town zoning map is incorporated by reference under Article II of the Town’s Development Regulations (“Zoning Districts and

District Regulations”). *See Auditorium, Inc. v. Bd. of Adjustment of Mayor & Council of Wilmington*, 47 Del. 373, 382, 91 A.2d 528, 533 (1952) (“The establishment of zone boundaries by reference to a map specifically incorporated as a part of the zoning ordinance complies with the requirement of reasonable certainty and definiteness of zone boundaries.”). Accordingly, the official town map is part of the Regulations.

The Regulations themselves make explicit that they “may be amended according to the requirements and procedures established in [Title 24].” *See* Regulations, effective September 13, 2021, at page 1. Moreover, in March 2020, in accordance with 24 V.S.A. § 4442(c)(2), the Town voted that adoption of bylaws, bylaw amendments, and bylaw repeals must be done by Australian ballot. Thus, to change the boundaries of the South Hero and Keeler Bay Village Zoning Districts, the Town must follow the procedures outlined in Title 24, including adoption by Australian ballot.

Under 24 V.S.A. § 4441(a), “[a]n amendment . . . of a bylaw may be prepared by the planning commission or by any other person or body.” Further, the planning commission is required to “prepare and approve a written report on the proposal” and hold a public hearing on any proposed amendment after notice is made to the public. *Id.* § 4441(c)-(d). The planning commission must then submit the proposed amendment to the Town’s legislative body (i.e. the selectboard). *Id.* § 4441(g). Indeed, “if a proposed amendment was supported by a petition signed by not less than five percent of the voters of the municipality, the planning commission shall promptly submit the amendment, with changes only to correct technical deficiencies, to the legislative body of the municipality, together with any recommendation or opinion it considers appropriate.” *Id.* Under section 4442(a) the selectboard has up to 120 days to duly warn and hold a public hearing on the proposed amendment. Further, the selectboard is permitted to make “substantial changes in the concept, meaning, or extent of the proposed . . . amendment” but must thereafter hold a duly warned public hearing on those changes. *Id.* § 4442(b). Finally, where towns have so elected, a vote by Australian ballot is required to adopt a proposed bylaw amendment. *Id.* § 4442(c)(2).

In sum, if the two proposed articles are submitted for a vote at the upcoming Town Meeting, the outcome would not change the boundaries of the Zoning Districts. While it may provide a vehicle for taking the pulse of town voters on whether such a change is desired, absent conformance with Title 24, the proposed changes would be non-binding. As specified above, the South Hero Planning Commission, and then the Selectboard, must hold duly warned public hearings on the proposed amendment in order to then place it on the warning for adoption or rejection by Australian ballot at a duly warned special or regular meeting. *Id.* Thus, should the Town decide to put the articles on the ballot in March, to avoid confusion, we recommend that the language of the proposals be modified to specify that should either proposal pass, such passage will not result in legal modification of the boundaries of the South Hero and Keeler Bay Village Zoning Districts.

Sincerely,

Wm. Andrew MacIlwaine