1. Meeting Materials

    Documents:

        ATTORNEY GENERALS OFFICE - APPROVAL OF ARTICLE 7, 9 AND 12.PDF
        ATTORNEY GENERALS OFFICE - APPROVAL OF ARTICLE 8.PDF
        ATTORNEY GENERALS OFFICE - APPROVAL OF ARTICLE 10.PDF
        ATTORNEY GENERALS OFFICE - APPROVAL OF ARTICLE 11.PDF

MAURA HEALEY
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS
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January 6, 2022

Barbara Hancock, Town Clerk
Town of Deerfield
8 Conway Street
South Deerfield, MA 01373

Re: Deerfield Special Town Meeting of October 4, 2021 -- Case # 10331
Warrant Articles # 7, 8, 9, 10, 11, and 12 (Zoning)

Dear Ms. Hancock:

Articles 7, 9, and 12 - We approve Articles 7, 9, and 12 from the October 4, 2021, Deerfield Special Town Meeting. Our comments on Article 12 are provided below.

Article 8 - Because of a procedural defect in the adoption of Article 8, the Attorney General has elected to proceed under the authority conferred by G.L. c. 40, § 32, as amended by Chapter 299 of the Acts of 2000, and place Article 8 on "hold."

In the materials submitted to us the Town has certified the following information pursuant to G.L. c. 40, § 32 and c. 40A, § 5. The Town held two planning board hearings on the zoning by-law change proposed under Article 8: one on September 13, 2021 and the second on September 30, 2021. The notice for the September 30, 2021 Planning Board hearing was not mailed to DHCD, the regional planning agency, and to the planning boards of each abutting city and town as required by G.L. c. 40A, § 5. Apart from this defect, the notices for the September 13, 2021 and September 30, 2021 Planning Board hearings satisfy the requirements of the statute.

A signed copy of Form 299 is enclosed. Once the procedures outlined in Form 299 are completed, and after the expiration of the 21-day period required by Chapter 299 of the Acts of 2000, please return a copy of Form 299 to us along with your certification that a true copy has been posted and published as required by Chapter 299. Please feel free to contact this Office with any questions about this procedure.

Articles 10 and 11 - The Attorney General's deadline for a decision on Articles 10 and 11 is extended for an additional 60 days under the authority conferred by G.L. c. 40, § 32, as amended by Chapter 299 of the Acts of 2000. The agreement with Town Counsel for a 60-day extension is attached hereto. We will issue our decision on Articles 10 and 11 on or before **March 7, 2022**

Article 12 - Under Article 12 the Town voted to delete Section 3800 of the Town's zoning by-laws, "Solar Energy Systems," and insert a new Section 3800, "Solar Energy Systems." We approve Article 12 because it does not present a clear conflict with state law or the Constitution. Amherst v. Attorney General, 398 Mass. 793, 795-96 (1986) (requiring inconsistency with state law or the constitution for the Attorney General to disapprove a by-law). However, the Town must apply the amendments adopted under Article 12 consistent with the protections given to solar energy systems and the building of structures that facilitate the collection of solar energy under G.L. c. 40A, § 3 that provides as follows:

> No zoning . . . bylaw shall prohibit or unreasonably regulate the installation of solar energy systems or the building of structures that facilitate the collection of solar energy, except where necessary to protect the public health, safety or welfare.

There are no appellate level judicial decisions to guide the Town or this Office in determining what qualifies as an unreasonable regulation of solar uses under G.L. c. 40A, § 3. However, there are number of Land Court decisions that provide some guidance.

Most recently, the Land Court in Tracer Lane II Realty, LLC v. City of Waltham, 2021 WL 861157 * 5 (March 5, 2021), concluded that a categorical prohibition of solar facilities in a majority of the city without a showing that the prohibition is "necessary to protect the public health, safety or welfare" of the city is inconsistent with G.L. c. 40A, § 3's protections. In reaching its decision, the Land Court rejected as irrelevant the fact that solar energy facilities would be allowed as of right in four small areas of the city.[1] Similarly, in Northbridge McQuade, LLC v. Northbridge Zoning Bd. of Appeals, Mass. Land Ct., No. 18 Misc 000519 * 2 (June 17, 2019) (Piper, C.J.), the court concluded that before a Town may regulate or prohibit a proposed solar installation on any site in the town, there must be an analysis of the need to prohibit or regulate the solar installation measured against the legislatively determined public interest in allowing the solar energy installation. (See Order Granting Partial Summary Judgment). In addition, in PLH LLC v. Ware, 2019 WL 7201712, at *3 (December 24, 2019). (Piper, C.J.), the Land Court upheld a special permit requirement applicable to solar energy projects but ruled that "the review of the municipality conducted under the bylaw's special permit provisions must be limited and narrowly applied in a way that is not unreasonable, is not designed or employed to prohibit the use or the operation of the protected use, and exists where necessary to protect the health, safety or welfare."

However, in Duseau v. Szawlowski Realty Inc., 2015 WL 59500, * 8 (January 2, 2015) the Land Court concluded that a solar project proponent failed to demonstrate that restricting a solar energy project to the Town's Industrial Districts was an unreasonable regulation and not necessary to protect the public health and welfare. In Duseau the court acknowledged that G. L. c. 40A, § 3's exemption would invalidate such a prohibition "if it can be demonstrated that restricting solar energy systems only to the industrial districts is an 'unreasonable' regulation, and that such a regulation is not necessary to protect the public health and welfare." See also Briggs v. Zoning

[1] On April 5, 2021 the City filed a notice of appeal of this decision. While the appeal was pending in the Appeals Court (case # 2021-P-0429), the matter was taken sua sponte by Supreme Judicial Court and is now pending. See Supreme Judicial Court docket: https://www.ma-appellatecourts.org/docket/SJC-13195.

Board of Appeals of Marion, 2014 WL 471951 * 5 (February 6, 2014) (a zoning board of appeals' decision upholding a division between commercial solar energy and residential accessory solar energy was reasonable and did not violate G.L. c. 40A, § 3).

Based upon the limited record available to us in our review of town by-laws we do not have the complete factual record necessary to determine if Section 3800 would satisfy the test in Tracer Lane and G.L. c. 40A, § 3. If Section 3800 is challenged, the Town would need to demonstrate that it has engaged in the requisite balancing of interests required by G.L. c. 40A, § 3. The Town should consult closely with Town Counsel when applying Section 3800 to ensure that the Town does not run afoul of the solar use protections in G.L. c. 40A, § 3.

In light of the protections provided to solar installations, we offer the following comments on certain provisions in the new Section 3800.

A. Section 3870 "Design and Performance Standards"

Section 3875 prohibits the use of herbicides to control vegetation at solar energy facilities. Section 3875 must be applied consistent with the Pesticide Control Act, which establishes the Act's "exclusive authority in regulating the labeling, distribution, sale, storage, transportation, *use and application*, and disposal of pesticides in the commonwealth." See G.L. c. 132B, § 2, as amended by Chapter 264 of the Acts of 1994 (emphasis supplied). Herbicides are included in the definition of pesticides under G.L. c. 132B, § 2. [2] The Town should consult with Town Counsel regarding any questions on this issue.

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 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 approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,
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ATTORNEY GENERAL
Kelli E. Gunagan
By: Kelli E. Gunagan
Assistant Attorney General
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10 Mechanic Street, Suite 301
Worcester, MA 01608
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cc: Town Counsel Lisa L. Mead

[2] The definition of "pesticide" in G.L. c. 132B, § 2 includes herbicides, as follows "a substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant…"

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March 15, 2022

Jenn Wallace, Assistant Town Clerk/Temporary Town Clerk
Town of Deerfield
8 Conway Street
South Deerfield, MA 01373

Re: Deerfield Special Town Meeting of October 4, 2021 -- Case # 10331
Warrant Articles # 7, 8, 9, 10, 11, and 12 (Zoning)

Dear Ms. Wallace:

Article 8 - Under Article 8 the Town voted to amend the minimum frontage requirements for town-owned lots used for municipal facilities in certain Town zoning districts. As explained in more detail below, we approve the by-law amendments adopted under Article 8 because they are not in conflict with state law, including the procedural requirements in G.L. c. 40A, § 5 for adopting zoning by-laws. See Amherst v. Attorney General, 398 Mass. 793, 795-96, 798-99 (1986) (requiring inconsistency with state law or the constitution for the Attorney General to disapprove a by-law).[1]

In this decision, we summarize the by-law amendments adopted under Article 8, including the procedural process and the Attorney General's standard of review of zoning by-laws, and then explain why, based on our standard of review, we approve Article 8.

During our review of Article 8 we received various communications urging us to either approve or disapprove the Article. [2] We emphasize that our approval of the by-law amendments in no way implies any agreement or disagreement with any policy reasons leading to Town Meeting's vote. The Attorney General's limited standard of review requires her to approve or

[1] In a decision dated On January 6, 2022, we approved Articles 7, 9, and 12; elected to proceed under the defect waiver provisions of Chapter 299 of the Acts of 2000 for Article 8, and placed Articles 10 and 11 on a sixty-day extension until March 7, 2022. In a certification received February 4, 2022, the Town Clerk affirmed that the notice for Article 8 was posted and published in accordance with the provisions of Chapter 299, and a claim was filed with the Office of the Town Clerk within 21 days of publication. On February 8, 2022, we placed Article 8 on a thirty-day extension with our decision due on March 15, 2022. On March 3, 2022, we approved Article 10 and elected to proceed under the defect waiver provisions of Chapter 299 for Article 11.

[2] We appreciate the letters from Attorney John M. McLaughlin on behalf of a Deerfield resident urging our Office to disapprove Article 8 because of the procedural requirements in G.L. c. 40A, §5; and the letters from Attorney Lisa Mead, Town Counsel for Deerfield, urging us to approve Article 8.

disapprove by-laws based solely on their consistency with state law, not on any policy views she may have on the subject matter or the wisdom of the by-law. Amherst, 398 Mass. at 795-96, 798-99.

I. Summary of Article 8

A. Article 8's Substantive Provisions

Under Article 8 the Town voted to amend the zoning by-laws to change the minimum frontage requirements for town-owned lots used for municipal facilities in the Town's Center Village Residential District (CVRD), Small Business (C-1) and Industrial (I) Districts. The Town amended Subsection 2320, "Table of Dimensional Requirements," by adding a new footnote "9" after "Frontage (feet)" in the column entitled "Principal Use," and by adding the text of footnote "9" at the end of the "NOTES" section as follows:

> In the CVRD, C-1 and I Districts only, the minimum Frontage requirement shall not apply to Town-owned lots used for Municipal Facilities, which shall be required to have no less than fifty (50) feet of frontage.

The existing frontage requirements in these Districts are 100 feet, 125 feet, and 200 feet respectively. Section 2320, "Table of Dimensional Requirements." The amendments adopted under Article 8 thus reduce the frontage requirements for town-owned lots used for municipal facilities in these Districts to a minimum of 50 feet.

B. Article 8's Procedural History

G.L. c. 40A, § 5 Section 5 requires a properly noticed Planning Board hearing and a two-thirds vote of Town Meeting for a town to adopt zoning by-law amendments such as those proposed in Article 8.

Here the Town conducted two Planning Board hearings on Article 8. The first hearing was held on September 13, 2021 and related to amending the minimum frontage requirements for Town-owned lots used for municipal facilities in two districts - the CVRD and C-1 Districts. The Town fully complied with the procedural requirements in G.L. c. 40A, § 5 for this first hearing by properly posting and publishing the hearing notice in the newspaper and mailing it to the Department of Housing and Community Development (DHCD), the regional planning agency, and to the planning boards of each abutting city and town ("Government Entities"). None of the Government Entities attended the September 13, 2021, hearing or filed any written comments.

During the September 13, 2021, hearing the Planning Board and the Select Board became aware of the need to add the Town's Industrial District to the zoning by-law amendment. According to the Town, the Planning Board announced at the September 13, 2021, hearing that the Planning Board would hold another hearing to discuss adding the Industrial District to the amendment.

The Town then conducted a second Planning Board hearing on September 30, 2021, to add the third district (Industrial District) to the proposed zoning by-law amendment. As required by G.L. c. 40A, § 5, the notice for the second Planning Board hearing was properly posted and published in the newspaper. However, the notice was not sent to the Government Entities as required by G.L. c. 40A, § 5.

In instances where a town does not provide timely notice of the Planning Board hearing to the Government Entities, the statute authorizes the town to obtain waivers of notice from the Government Entities. G.L. c. 40A, § 5. Deerfield obtained those waivers of notice from the Government Entities for the September 30, 2021, Planning Board hearing.

Following Town Meeting, on October 18, 2021, the Town Clerk submitted the information required by G.L. 40, § 32 for the Attorney General's review of town by-laws. On January 6, 2022 we elected to proceed under the provisions of Chapter 299 of the Acts of 2000 (Chapter 299) (which amends G.L. c. 40, § 32). Chapter 299 allows the Attorney General to direct the Town Clerk to post and publish a notice of the defect and allows for objections or claims to be filed regarding the procedural defect.[3] On February 4, 2022, the Town Clerk certified that the notice of defect was posted and published in accordance with the provisions of Chapter 299 and that a letter from Attorney McLaughlin was filed in response to the Chapter 299 posting and publishing process. As required by Chapter 299, the Town Clerk submitted a copy of the letter to this Office.

Attorney McLaughlin's letter includes statements contending that the notice defect regarding Article 8 was misleading or otherwise prejudicial.[4] In this letter, Attorney McLaughlin contends on behalf of his client that the client attended and participated in both Planning Board hearings but was prejudiced by the Town's failure to provide notice of the second hearing to the

[3] General Laws Chapter 40, Section 32, ¶ 2 provides in relevant part as follows:

> Notwithstanding the provisions of the preceding paragraph, if the attorney general finds there to be any defect in the procedure of adoption or amendment of any zoning by-law relating to form or content of the notice of the planning board hearing prescribed in section 5 of chapter 40A, or to the manner or dates on which said notice is mailed, posted or published as required by said section 5, then instead of disapproving the by-law or amendment because of any such defect, the attorney general may proceed under the provisions of this paragraph. If the attorney general so elects, written notice shall be sent to the town clerk within a reasonable time setting forth with specificity the procedural defect or defects found, including a form of notice thereof . . . The town clerk shall forthwith post the notice in a conspicuous place in the town hall for a period of not less than 14 days, and shall publish it once in a newspaper of general circulation in the town. The notice shall state that any resident, the owner of any real property in the town, or any other party entitled to notice of the planning board hearing, who claims that any such defect was misleading or was otherwise prejudicial may, within 21 days of the publication, file with the town clerk a written notice so stating and setting forth the reasons supporting that claim. Forthwith after the expiration of said 21 days, the town clerk shall submit to the attorney general either (a) a certificate stating that no claim was filed within the 21 day period, or (b) a certificate stating that one or more claims were filed together with copies thereof. . . 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. . . .

[4] Attorney John M. McLaughlin filed the written notice on behalf of this Town resident. Letter dated January 22, 2022 from Attorney McLaughlin to Barbara Hancock, Deerfield Town Clerk.

Government Entities. As further explained below, we have determined that this letter does not qualify as a valid Chapter 299 objection or claim regarding Article 8.

II. Attorney General's Standard of Review of Zoning By-laws

Our review of Article 8 is governed by G.L. c. 40, § 32. Pursuant to G.L. c. 40, § 32, the Attorney General has a "limited power of disapproval," and "[i]t is fundamental that every presumption is to be made in favor of the validity of municipal by-laws." Amherst, 398 Mass. at 795-96. The Attorney General does not review the policy arguments for or against the enactment. Amherst at 798-99 ("Neither we nor the Attorney General may comment on the wisdom of the town's by-law.") Rather, to disapprove a by-law (or any portion thereof), the Attorney General must cite an inconsistency between the by-law and the state Constitution or laws. Id. at 796. "As a general proposition the cases dealing with the repugnancy or inconsistency of local regulations with State statutes have given considerable latitude to municipalities, requiring a sharp conflict between the local and State provisions before the local regulation has been held invalid." Bloom v. Worcester, 363 Mass. 136, 154 (1973). Massachusetts has the "strongest type of home rule and municipal action is presumed to be valid." Connors v. City of Boston, 430 Mass. 31, 35 (1999) (internal quotations and citations omitted). "The legislative intent to preclude local action must be clear." Bloom, at 155.

Article 8, as an amendment to the Town's zoning by-laws, must be accorded deference. W.R. Grace & Co. v. Cambridge City Council, 56 Mass. App. Ct. 559, 566 (2002) ("With respect to the exercise of their powers under the Zoning Act, we accord municipalities deference as to their legislative choices and their exercise of discretion regarding zoning orders."). When reviewing zoning by-laws for consistency with the Constitution or laws of the Commonwealth, the Attorney General's standard of review is equivalent to that of a court. "[T]he proper focus of review of a zoning enactment is whether it violates State law or constitutional provisions, is arbitrary or unreasonable, or is substantially unrelated to the public health, safety or general welfare." Durand v. IDC Bellingham, LLC, 440 Mass. 45, 57 (2003). Because the adoption of a zoning by-law by the voters at Town Meeting is both the exercise of the Town's police power and a legislative act, the vote carries a "strong presumption of validity." Id. at 51. "If the reasonableness of a zoning bylaw is even 'fairly debatable, the judgment of the local legislative body responsible for the enactment must be sustained.'" Durand, 440 Mass. at 51 (quoting Crall v. City of Leominster, 362 Mass. 95, 101 (1972)). However, a municipality has no power to adopt a zoning by-law that is "inconsistent with the constitution or laws enacted by the [Legislature]." Home Rule Amendment, Mass. Const. amend. art. 2, § 6.

III. Analysis of Article 8's Consistency with State Law

The substance of the by-law amendments proposed by Article 8 pose no conflict with state law. As to the procedural requirements in G.L. c. 40A, § 5 and Chapter 299 of the Acts of 2000, we cannot conclude that Attorney McLaughlin's letter is a "valid claim" under Chapter 299 that requires this Office to disapprove Article 8. We explain our decision in more detail below.

In his letter Attorney McLaughlin claims that his client was prejudiced and mislead by the Town's failure to send the September 30, 2021, Planning Board hearing notice to the Government Entities. But any claim that the failure to send notice to the Governmental Entities was misleading or prejudicial belongs to the Governmental Entities, not to Attorney McLaughlin's client. And the Government Entities here have all filed waivers of late notice and are not asserting any such claims.

Moreover, the Government Entities received notice of the first Planning Board hearing (September 13, 2021) and none of the Government Entities responded to or appeared at the first hearing. Attorney Mclaughlin's claim that participation by the Government Entities in the second hearing would have somehow changed his client's input or the Planning's Board's recommendation to Town Meeting is purely speculative, especially because the Government Entities did not participate in the first hearing after timely notice and waived their timely notice to the second hearing. Importantly, Attorney McLaughlin's client attended both the September 13, 2021, and September 30, 2021, Planning Board hearings and participated in the hearings by providing comments against the amendments. In these circumstances we cannot determine that the Town's failure to provide notice of the second hearing to the Government Entities was "misleading or otherwise prejudicial" as required by Chapter 299. See e.g., Hallenborg v. Town Clerk of Billerica, 360 Mass. 513, 529-530 (1971) ("amendments of zoning by-laws or ordinances ought not to set aside lightly as invalid because of trivial procedural defects in their adoption...at the behest of persons who have not shown themselves to be prejudiced significantly by the procedural deficiencies"). For these reasons, we cannot conclude that the letter filed by Attorney McLaughlin on behalf of his client qualifies as a valid claim under Chapter 299.

IV. Conclusion

Because we have determined that the letter filed by Attorney McLaughlin on behalf of his client does not constitute a valid claim as required by Chapter 299, the Attorney General is authorized by Chapter 299 to waive (and does so waive) the defect pertaining to Article 8. We approve Article 8 because we conclude that Article 8 is not in conflict with state law.

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 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 approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,

MAURA HEALEY
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March 3, 2022

Jenn Wallace, Assistant Town Clerk/Temporary Town Clerk
Town of Deerfield
8 Conway Street
South Deerfield, MA 01373

Re: Deerfield Special Town Meeting of October 4, 2021 -- Case # 10331
Warrant Articles # 7, 8, 9, 10, 11, and 12 (Zoning)

Dear Ms. Wallace:

Article 10 - We approve Article 10 from the October 4, 2021, Deerfield Special Town Meeting. Our comments on Article 10 are provided below.

Article 11 - Because of a procedural defect in the adoption of Article 11, the Attorney General has elected to proceed under the authority conferred by G.L. c. 40, § 32, as amended by Chapter 299 of the Acts of 2000, and place Article 11 on "hold."

In the materials submitted to us the Town has certified the following information pursuant to G.L. c. 40, § 32 and c. 40A, § 5. The notice for the September 30, 2021 Planning Board hearing was not mailed to DHCD, the regional planning agency, and to the planning boards of each abutting city and town as required by G.L. c. 40A, § 5. Apart from this defect, the notice for the September 30, 2021 Planning Board hearing satisfies the requirements of the statute.

A signed copy of Form 299 is enclosed. Once the procedures outlined in Form 299 are completed, and after the expiration of the 21-day period required by Chapter 299 of the Acts of 2000, please return a copy of Form 299 to us along with your certification that a true copy has been posted and published as required by Chapter 299. Please feel free to contact this Office with any questions about this procedure.

Article 10 - Under Article 10 the Town voted to add to the Town's zoning by-laws a new Section 4950, "Tourism Overlay District," ("Overlay District"). The purpose of the Overlay District is "to supplement the existing Town of Deerfield Zoning By-Law to provide regulating flexibility to encourage development of entertainment venues within the [Overlay District] to enhance tourisms [in the Town] while preserving open space, forested areas, and other scenic views." Section 4951. The new by-law establishes the uses that are allowed as of right and by special permit in the Overlay District and imposes dimensional, parking, and open space

requirements on the uses allowed in the Overlay District. Sections 4956, 4957, and 4958. The Overlay District is shown on a map entitled "Tourism Overlay District, Deerfield, MA" that is on file with the Town Clerk. Because we cannot conclude that Article 10 is inconsistent with state law, we approve it.

In our decision below, we summarize the by-law adopted under Article 10 and the Attorney General's standard of review of town by-laws, and then explain why, based on that standard of review, we approve Article 10.

During our review of Article 10, we received input urging our Office to disapprove the Article because it is "spot zoning" resulting in the unequal treatment of similarly situated lands and because it does not conform to the Town's Comprehensive Plan. This input has informed our review of Article 10. However, as explained in more detail below, based on our standard of review and the Town's authority under state law, we have determined that the asserted reasons for disapproval of Article 10 do not provide grounds for us to disapprove it.

I. The Attorney General's Standard of Review and General Zoning Principles

Pursuant to G.L. c. 40, § 32, the Attorney General has a "limited power of disapproval," and "[i]t is fundamental that every presumption is to be made in favor of the validity of municipal by-laws." Amherst v. Attorney General, 398 Mass. 793, 795-96 (1986). The Attorney General does not review the policy arguments for or against the enactment. Id. at 798-99 ("Neither we nor the Attorney General may comment on the wisdom of the town's by-law.") Rather, in order to disapprove a by-law (or any portion thereof), the Attorney General must cite an inconsistency between the by-law and the state Constitution or laws. Id. at 796. "As a general proposition the cases dealing with the repugnancy or inconsistency of local regulations with State statutes have given considerable latitude to municipalities, requiring a sharp conflict between the local and State provisions before the local regulation has been held invalid." Bloom v. Worcester, 363 Mass. 136, 154 (1973). "The legislative intent to preclude local action must be clear." Id. at 155. Massachusetts has the "strongest type of home rule and municipal action is presumed to be valid." Connors v. City of Boston, 430 Mass. 31, 35 (1999) (internal quotations and citations omitted).

Article 10, as an amendment to the Town's zoning by-laws, must be accorded deference. W.R. Grace & Co. v. Cambridge City Council, 56 Mass. App. Ct. 559, 566 (2002) ("With respect to the exercise of their powers under the Zoning Act, we accord municipalities deference as to their legislative choices and their exercise of discretion regarding zoning orders."). When reviewing zoning by-laws for consistency with the Constitution or laws of the Commonwealth, the Attorney General's standard of review is equivalent to that of a court. "[T]he proper focus of review of a zoning enactment is whether it violates State law or constitutional provisions, is arbitrary or unreasonable, or is substantially unrelated to the public health, safety or general welfare." Durand v. IDC Bellingham, LLC, 440 Mass. 45, 57 (2003). Because the adoption of a zoning by-law by the voters at Town Meeting is both the exercise of the Town's police power and a legislative act, the vote carries a "strong presumption of validity." Id. at 51. "Zoning has always been treated as a local matter and much weight must be accorded to the judgment of the local legislative body, since it is familiar with local conditions." Concord v. Attorney General, 336 Mass. 17, 25 (1957) (quoting Burnham v. Board of Appeals of Gloucester, 333 Mass. 114, 117

(1955)). "If the reasonableness of a zoning bylaw is even 'fairly debatable, the judgment of the local legislative body responsible for the enactment must be sustained.'" Durand, 440 Mass. at 51 (quoting Crall v. City of Leominster, 362 Mass. 95, 101 (1972)). In general, a municipality "is given broad authority to establish zoning districts regulating the use and improvement of the land within its borders." Andrews v. Amherst, 68 Mass. App. Ct. 365, 367-368 (2007). However, a municipality has no power to adopt a zoning by-law that is "inconsistent with the constitution or laws enacted by the [Legislature]..." Home Rule Amendment, Mass. Const. amend. art. 2, § 6.

II. Article 10's Consistency with State Law

During our review of Article 10 we received a letter from a Town citizen urging our disapproval of it asserting that it results in illegal "spot zoning" and in unequal treatment of similarly situated lands. However, as discussed herein, based on our standard of review, we approve Article 10.

> A claim of "spot zoning" is a claim that a zoning by-law violates the uniformity requirement in G.L. c. 40A, § 4 that states: "[a]ny zoning ordinance or by-law which divides cities and towns into districts shall be uniform within the district for each class or kind of structures or uses permitted." "The uniformity requirement is based upon principles of equal treatment…." SCIT, Inc. v. Planning Board of Braintree, 19 Mass. App. Ct. 101, 107 (1984) citing Everpure Ice Mfg. Co. v. Bd. of Appeals of Lawrence, 324 Mass. 433, 439 (1949) ("A zoning ordinance is intended to apply uniformly to all property located in a particular district … and the properties of all the owners in that district [must be] subjected to the same restrictions for the common benefit of all."). In evaluating whether different treatment violates the uniformity principle, "[p]rimary attention is…focused on the reasonableness of such classification." Williams, American Land Planning Law 32:1 (Rev. ed. 2003). "[A] classification as the means for attaining a permissible end is not to be declared invalid 'if any state of facts reasonably can be conceived that would sustain it.'" Caires v. Building Comm'r of Hingham, 323 Mass. 589, 596-597 (1949) (quoting Rast v. Van Deman & Lewis Co., 240 U.S. 342, 357 (1916)).

A town may validly treat certain parcels within the town differently from other parcels so long as the town does so for a legitimate zoning purpose. Spot zoning only exists where there is a "singling out of a particular parcel for different treatment from that of the surrounding area, producing, without rational planning objectives, zoning classifications that fail to treat like properties in a uniform manner." National Amusements, Inc. v. Boston, 29 Mass. App. Ct. 305, 312 (1990) citing Shapiro v. Cambridge, 340 Mass. 652, 659 (1960).

Based upon the documents submitted to us by the Town Clerk, pursuant to G.L. c. 40, 32, and our standard of review, we cannot conclude that the Town's vote under Article 10 to create an overlay district that includes approximately twenty-four parcels along or near Route 5 lacks a legitimate planning purpose, or is "arbitrary and unreasonable, or substantially unrelated to the public health, safety, morals, or general welfare." Johnson v. Town of Edgartown, 425 Mass. 117, 121 (1997). Because the reasonableness of the Town's vote is "fairly debatable, the judgment of the local legislative body responsible for the enactment must be sustained." Durand v. IDC

Bellingham, LLC, 440 Mass. 45, 51 (2003) quoting Crall v. City of Leominster, 362 Mass. 95, 101 (1972). On this basis, we approve Article 10.

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 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 approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,

MAURA HEALEY
ATTORNEY GENERAL
Kelli E. Gunagan
By: Kelli E. Gunagan
Assistant Attorney General
Municipal Law Unit
10 Mechanic Street, Suite 301
Worcester, MA 01608
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cc: Town Counsel Lisa L. Mead

MAURA HEALEY
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April 4, 2022

Jenn Wallace, Assistant Town Clerk/Temporary Town Clerk
Town of Deerfield
8 Conway Street
South Deerfield, MA 01373

Re: Deerfield Special Town Meeting of October 4, 2021 -- Case # 10331
Warrant Articles # 7, 8, 9, 10, 11, and 12 (Zoning)

Dear Ms. Wallace:

Article 11 - We approve Article 11 and the map amendments voted under Article 11, from the October 4, 2021, Deerfield Special Town Meeting. We will send the approved map to you by regular mail. [1, 2]

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-

[1] In a decision dated January 6, 2022, we approved Articles 7, 9, and 12; elected to proceed under the defect waiver provisions of Chapter 299 of the Acts of 2000 for Article 8, and placed Articles 10 and 11 on a sixty-day extension until March 7, 2022. In a certification received February 4, 2022, the Town Clerk affirmed that the notice for Article 8 was posted and published in accordance with the provisions of Chapter 299, and a claim was filed with the Office of the Town Clerk within 21 days of publication. On February 8, 2022, we placed Article 8 on a thirty-day extension with our decision due on March 15, 2022. On March 15, 2022, we approved Article 8.

[2] On March 3, 2022, we approved Article 10 and elected to proceed under the defect waiver provisions of Chapter 299 for Article 11. In a certification received on March 4, 2022, the Town Clerk affirmed that the notice was posted and published in accordance with the provisions of Chapter 299, and that no claims were filed with the Office of the Town Clerk within 21 days of publication. For this reason, the Attorney General is authorized by Chapter 299 to waive (and does so waive) the defects.

MAURA HEALEY
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