



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

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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 tourism [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,

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