MAURA HEALEY
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
CENTRAL MASSACHUSETTS DIVISION
10 MECHANIC STREET, SUITE 301
WORCESTER, MA 01608

(508) 792-7600
(508) 795-1991 fax
www.mass.gov/ago

November 16, 2022

Marion Bonoldi, Town Clerk
Town of Medfield
459 Main Street
Medfield, MA 02052

Re: Medfield Annual Town Meeting of May 2, 2022 -- Case # 10545
Warrant Articles # 16 and 17 (Zoning)
Warrant Articles # 14 and 20 (General)

Dear Ms. Bonoldi:

Article 16 - Article 16 seeks to amend the Town's zoning by-laws, Attachment 1, "Table of Use Regulations," (Table) to add the use "Community facility for the distribution of food and necessities" under the heading "Public, Semi-Public/Institutional." We approve Article 16 because it has substantial lawful applications apart from uses protected by G.L. c. 40A, § 3, the "Dover Amendment." However, the Town should consult closely with Town Counsel in applying the by-law so as not to violate G.L. c. 40A, § 3, and consider a future amendment, as detailed below. [1]

This decision briefly describes the by-law amendments adopted under Article 16; discusses the Attorney General's limited standard of review of town by-laws under G.L. c. 40, § 32; and explains why, governed as we are by that standard, we approve the by-law amendments.

We emphasize that our approval implies no agreement or disagreement with any policy views that may have led to the passage of the by-law amendments. The Attorney General's limited standard of review requires her to approve or disapprove by-law text based solely on its consistency with state law and not on any policy views she may have on the subject matter or wisdom of the by-law text. Amherst v. Attorney General, 398 Mass. 793, 795-96, 798-99 (1986). The proper focus of our review of a zoning enactment is whether the by-law 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).

[1] By agreement with Town Counsel as authorized by G.L. c. 40, § 32 we extended our deadline for a decision on Article 16 through November 16, 2022. We have issued decisions on the other Articles in Case # 10545 (see decisions issued October 1, 2022 and October 13, 2022).

I. Description of the By-law Amendments

Under Article 16 the Town amended the zoning by-laws, Attachment 1, Table of Uses, to add the use "Community facility for the distribution of food and necessities" under the heading "Public, Semi-Public/Institutional." The amendment allows this new use in all zoning districts as follows: (1) by special permit from the Planning Board (SPPB) in the Agricultural (A), Residential Estate (RE), Residential Town (RT), Residential Suburban (RS), and Residential Urban (RU) districts; and (2) by right, subject to site plan review (PB), in the Business (B), Business Industrial (BI) and Industrial-Extensive (IE) districts.

Neither the existing by-law nor the proposed amendment define the use "community facility for the distribution of food and necessities." However, Article 2, "Definitions" does define the term "Community Facilities:"

> Community Facilities: Premises owned and operated by a governmental or other chartered nonprofit organization, including public housing for the elderly, but not including fraternal, sports or similar membership organizations.

The by-law amendments appear to have been requested by the operator of a food bank in the Town, the Medfield Food Cupboard, a non-profit organization, to make it easier to locate in a potential future operating space. See Medfield Planning Board Minutes, June 21, 2021.[2] The description of the use "Community facility for the distribution of food and necessities" was apparently suggested by Jeff Marble, a representative of the Medfield Food Cupboard. See Medfield Planning Board Minutes, February 7, 2022.[3]

II. Attorney General's Standard of Review of Zoning Bylaws

Our review of Article 16 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. Id. 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).

Article 16, 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

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[2] https://www.town.medfield.net/AgendaCenter/ViewFile/Minutes/_06212021-2612 (last visited Nov. 16, 2022).

[3] https://www.town.medfield.net/AgendaCenter/ViewFile/Minutes/_02072022-2910 (last visited Nov. 16, 2022).

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, 440 Mass. at 57. "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.'" Id. at 51 (quoting Crall v. City of Leominster, 362 Mass. 95, 101 (1972)). "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." Rogers v. Provincetown, 384 Mass. 179, 181 (1981) (internal citations and quotations omitted). 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. The Dover Amendment (G.L. c. 40A, § 3, ¶ 2)

The by-law amendments adopted under Article 16 implicate important land use protections in G.L. c. 40A, § 3. In adopting G.L. c. 40A, § 3, ("Section 3"), the Legislature determined that certain land uses are so important to the public good that it was necessary "to take away" some measure of municipalities' "power to limit the use of land" within their borders. Attorney General v. Dover, 327 Mass. 601, 604 (1950) (discussing predecessor to G.L. c. 40A, § 3); see Cnty. Comm'rs of Bristol v. Conservation Comm'n of Dartmouth, 380 Mass. 706, 713 (1980) (noting that Zoning Act as a whole, and G.L. c. 40A, § 3 specifically, aim to ensure that zoning "facilitate[s] the provision of public requirements"). To that end, the provisions of Section 3 "strike a balance between preventing local discrimination against" a set of enumerated land uses while "honoring legitimate municipal concerns that typically find expression in local zoning laws." Trustees of Tufts Coll. v. City of Medford, 415 Mass. 753, 757 (1993). Over the years, the Legislature has added to the list of protected uses, employing different language—and in some cases different methods—to limit municipal discretion to restrict those uses.

Article 16's land use description "community facility for the distribution of food and necessities," along with the existing by-law definition of Community Facilities that includes both governmental and "other chartered nonprofit organizations," creates a scenario whereby the by-law amendments adopted under Article 16 are broad enough to potentially include a variety of land uses protected under Section 3. For example, Section 3 provides that a town cannot "prohibit, regulate or restrict the use of land or structures for…religious …or nonprofit educational" purposes as follows:

> No zoning . . . by-law shall prohibit, regulate or restrict the use of land or structures for religious purposes or for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and

> determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements . . . .

"The Dover Amendment bars the adoption of a zoning ordinance or by-law that seeks to prohibit or restrict the use of land for [religious or] educational purposes." Trustees of Tufts College, 415 Mass. at 757. Relying on the Dover Amendment's protections for religious and educational uses, the court in The Bible Speaks v. Board of Appeals of Lenox, 8 Mass. App. Ct. 19, 33 (1979) invalidated a town by-law that required an application for a special permit for all new religious and educational uses, or changes in such uses, in residential districts. As the court explained, the by-law conflicted with the Dover Amendment because the special permit process granted wide discretion to the zoning board of appeals to deny the application, therefore enabling the zoning board to nullify the zoning protections for educational uses:

> In our opinion, the provisions of the by-law taken together invest the board with a considerable measure of discretionary authority over an educational institution's use of its facilities and create a scheme of land use regulation for such institutions which is antithetical to the limitations on municipal zoning power in this area prescribed by G.L. c. 40A, § 3. The Legislature did not intend to impose special permit requirements, [that are] designed under c. 40A, § 9, to accommodate uses not permitted as of right in a particular zoning district, on legitimate educational *uses which have been expressly authorized as of right in any zone.*

Id. at 33 (emphasis added).

Given this Office's limited review of zoning by-laws, we cannot conclude that the by-law amendments present a sharp facial conflict with G.L. c. 40A, § 3. The amendments here cover both "governmental" uses (not protected by Section 3) and nonprofit uses that are protected by Section 3. And there is no indication that they were proposed to stymie Section 3 protected uses – rather, the record reflects they were proposed by a food pantry operator to assist with future siting of the food pantry. Thus, the by-law amendments here have a substantial legitimate sweep separate and apart from any impact on protected uses. That said, the application of the special permit requirement to a nonprofit organization entitled to zoning protections under the Dover Amendment would conflict with G.L. c. 40A, § 3, that prohibits a zoning by-law from prohibiting, regulating or restricting the use of land or structures owned or leased by "a religious sect or denomination, or by a nonprofit educational corporation." Any attempt to apply Article 16's special permit requirement to a Section 3 protected use would make the Town vulnerable to a court challenge asserting that such application violates G.L. c. 40A, § 3. Accordingly, the Town should consult closely with Town Counsel in applying Article 16 to ensure that the by-law amendments do not impact any protected use under Section 3.[4]

The Town must also carefully apply the by-law's site plan review requirement. As amended by Article 16, the zoning by-law allows the use "Community facility for the distribution of food and necessities" by right, subject to site plan approval in the business and industrial districts

[4] The Town should also consult with Town Counsel about a potential future amendment to the Table of Uses to carve out Section 3 protected uses from the special permit requirement.

(B, BI and IE). Although the Dover Amendment forbids a town from "prohibit[ing], regulat[ing] or restrict[ing]" the use of land or structures for religious or educational uses, the statute does allow a municipality to adopt reasonable regulations in eight specific areas: bulk and height of structures, yard sizes, lot area, setbacks, open space, parking and building coverage requirements. See G.L. c. 40A, § 3, ¶ 2.

However, the Town cannot (under the guise of site plan review) prohibit an as-of-right use entitled to zoning protections under G.L. c. 40A, § 3. Site plan approval acts as a method for reasonably regulating as-of-right uses rather than for prohibiting them. Y.D. Dugout, Inc. v. Bd. of Appeals of Canton, 357 Mass. 25, 31 (1970). Where "the specific area and use criteria stated in the by-law [are] satisfied, the [reviewing] board [does] not have discretionary power to deny… [site plan approval], but instead [is] limited to imposing reasonable terms and conditions on the proposed use." Prudential Ins. Co. of America v. Westwood, 23 Mass. App. Ct. 278, 281- 82 (1986), quoting from SCIT, Inc. v. Planning Bd. of Braintree, 19 Mass. App. Ct. 101, 105 n.12 (1984).

In light of these G.L. c. 40A, § 3 limitations on the use of site plan approval for protected uses, the Town should consult closely with Town Counsel during the site plan approval process to ensure that the by-law is applied correctly to uses protected under G.L. c. 40A, § 3.

IV. Conclusion

We recognize that a substantial number of uses not entitled to zoning protections under G.L. c. 40A, § 3 could be covered by the by-law amendments adopted under Article 16. For this reason, and based upon our standard of review, we approve it. However, the Town should consult with Town Counsel to ensure that the by-law is applied consistent with the Dover Amendment, as discussed above. In addition, the Town should consult with Town Counsel to determine if a future amendment to the by-law is needed.

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



By: Margaret J. Hurley
Chief, Central Massachusetts Division
Director, Municipal Law Unit
10 Mechanic Street, Suite 301
Worcester, MA 01608
(508) 792-7600 ext. 4402

cc: Town Counsel Mark Cerel