



THE COMMONWEALTH OF MASSACHUSETTS
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February 17, 2015

Doreen A. Cedrone, Town Clerk
Town of Northbridge
7 Main Street
Whitinsville, MA 01588

Re: Northbridge Fall Annual Town Meeting of October 28, 2014 ----- Case # 7420
Warrant Article # 11 (Zoning)
Warrant Article # 12 (General)

NORTHBRIDGE TOWN CLERK
DOREEN A. CEDRONE
15 FEB 17 PM 2:36
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Dear Ms. Cedrone:

Articles 11 and 12 - We approve Articles 11 and 12 from the Northbridge October 28, 2014, Fall Annual Town Meeting. Our comments on Article 12 are provided below.

Article 12 - Article 12 adds a new Paragraph (C) to Section 9-400, "Prohibited Refuse." The new Paragraph C prohibits hazardous wastes and contaminated soils from being deposited within the Town. Specifically, the new Paragraph C provides as follows:

No person shall deposit within the Town of Northbridge any hazardous wastes or contaminated soils taken from without the Town limits, including but not limited to, those wastes or contaminated soils as defined in DEP Policy # COMM-97-001 (Reuse and Disposal of Contaminated Soil at Massachusetts Landfills), including Construction & Demolition fines and/or residuals, and grading and shaping materials, as well as sediments, including dredged sediments, which are subject to compliance requirements of DEP Interim Policy # COMM-94-007 (Interim Policy for Sampling, Analysis, Handling and Tracking Requirements for Dredged Sediment Reused or Disposed at Massachusetts Permitted Landfills).

Based on our standard of review, we approve the new Paragraph C. However, for the reasons provided below, the Town must apply the by-law consistent with state environmental laws.

I. Attorney General's Standard of Review.

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. Amherst, 398 Mass. 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, 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) (emphasis added). “The legislative intent to preclude local action must be clear.” Bloom, 363 Mass. 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).

II. Laws Applicable to Hazardous Waste, Hazardous Waste Facilities, Solid Waste and Solid Waste Facilities.

There are a number of state laws that govern hazardous waste, hazardous waste facilities, solid waste and solid waste facilities, See G.L. c. 21C, 21D, 21E and c. 111, §§ 150A and 150A 1/2, and 310 CMR §§ 30.00 and 40.00. The Town must ensure that it applies the new Paragraph C consistent with the state’s environmental laws, especially those highlighted below.¹

A. Solid Waste and Solid Waste Facilities.

The Town must apply the new Paragraph C consistent with state environmental laws that authorize or require the importation of COMM-97 soils as part of an environmental cleanup or as part of the operation or closing of a solid waste facility. Specifically, the Town cannot apply the new Paragraph C in a manner that interferes with DEP’s authority over solid waste facilities pursuant to G.L. c. 40A, § 9, and G.L. c. 111, § 150A, and its implementing regulations found at 310 C.M.R. § 19.000 *et seq.* See, e.g. Buckley v. Wilmington, 68 Mass. App. Ct. 1113 (2007) (unpub.) (invalidating a landfill height limitation by-law because it interferes with and frustrates DEP’s authority under G.L. c. 111, § 150A, to properly close and cap a landfill.).

General Laws Chapter 111, Section 150A, grants broad authority to the Department of Environmental Protection (“DEP”) to regulate solid waste facilities. Through its implementing regulations found at 310 C.M.R. § 19.000 *et seq* DEP imposes operating conditions on solid waste facilities. Towns may impose reasonable requirements on solid waste facilities. See e.g. G.L. c. 40A, § 9. However, Towns cannot apply such requirements in a manner that interferes with DEP’s authority over solid waste facilities pursuant to G.L. c. 111, § 150A, and 310 C.M.R. § 19.000 *et seq.* See Buckley, 68 Mass. App. Ct. 1113 (2007). We suggest that the Town discuss the proper application of Paragraph C with Town Counsel.

¹ The Town should also be aware that there is a case pending in Plymouth County Superior Court, Boston Environmental Corporation v. Leslie E.J. McKinley, et al., PLCV2014-00642, challenging as inconsistent with G.L. c. 21E and c. 111, § 150A, a Dartmouth Board of Health regulation that prohibits the importing, transporting, and use of COMM-97 soils in the Town. The Town should consult with Town Counsel regarding this case.

B. Hazardous Waste and Hazardous Waste Facilities.

The Town must apply the new Paragraph C consistent with state environmental laws that authorize or require the importation of hazardous waste as part of the operation of a hazardous waste facility. General Laws Chapter 40A, Section 9, pertains to hazardous waste facilities and provides in pertinent part as follows:

A hazardous waste facility as defined in section two of chapter twenty-one D shall be permitted to be constructed as of right on any locus presently zoned for industrial use pursuant to the . . . by-laws of any . . . town provided that all permits and licenses required by law have been issued to the developer and a siting agreement has been established pursuant to sections twelve and thirteen of chapter twenty-one D, provided however, that following the submission of a notice of intent, pursuant to section seven of chapter twenty-one D, a city or town may not adopt any zoning change which would exclude the facility from the locus specified in said notice of intent. This section shall not prevent any . . . town from adopting a zoning change relative to the proposed locus for the facility following the final disapproval and exhaustion of appeals for permits and licenses required by law and by chapter twenty-one D.

General Laws Chapter 40A, § 9, allows hazardous waste facilities to be constructed on land presently zoned for industrial uses, providing all permits and licenses required by law have been issued and a siting agreement has been established. The Town cannot prohibit such facilities on land presently zoned for industrial use other than as provided in G.L. c. 40A, § 9. Therefore, we suggest that the Town discuss the prohibition on the disposal of hazardous waste with Town Counsel to ensure it is consistent with G.L. c. 40A, § 9.

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-law.

Very truly yours,
MAURA HEALEY
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cc: Town Counsel David J. Doneski