

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

CENTRAL MASSACHUSETTS DIVISION
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April 12, 2024

Laura J. Caruso, Town Clerk
Town of Sutton
4 Uxbridge Road
Sutton, MA 01590

Re: Sutton Annual Town Meeting of October 16, 2023 – Case # 11184
Warrant Articles # 13, 14, 15, 16, 17 and 18 (Zoning)
Warrant Articles # 8 and 12 (General)

Dear Ms. Caruso:

Articles 17 and 18 - Under Article 17 the Town amended the zoning by-laws, Section VI, "Special Regulations," to add a new Section Q, "Special Event Facility." Under Article 18 the Town amended Section III.A.4, Table 1, "Table of Use Regulations," to add to Subsection E, "Retail, Trade and Service Uses," a new section 23, "Special Event Facility," allowing this use by special permit from the Planning Board in some districts.

We approve Articles 17 and 18 from the October 16, 2023 Sutton Annual Town Meeting because they do not conflict with the Constitution or laws of the Commonwealth. See 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).¹ However, we offer comments for the Town's consideration when applying the new Section Q, "Special Event Facility" by-law.

I. Summary of Articles 17 and 18

The purpose of the new Section Q is to "encourage the preservation of agricultural and other larger parcels of land by allowing income generating events using the grounds and structures while also minimizing impact on abutting properties." The by-law allows Special Event Facilities (Facilities) by special permit, subject to certain provisions. See Section, "General Provisions."

¹ In a decision issued January 16, 2024 we approved Articles 8, 12, 13, 14, 15 and 16 and by agreement with Town Counsel as authorized by G.L. c. 40, § 32, we extended the deadline for our decision on Articles 17 and 18 for a 45-days until March 2, 2024. On March 1, 2024, by agreement with Town Counsel, we extended the deadline for our decision on Articles 17 and 18 for an additional 45-days until April 16, 2024.

TOWN OF SUTTON
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Facilities are allowed on “Qualifying Properties,” defined as properties with a minimum of 40 acres. See Subsection a. The by-law allows private events (not open to the general public at any time) such as bridal showers, single day retreats, weddings, family gatherings or similar kinds of activities. Subsection c. The by-law limits attendance at private events to 125 people (including guests and staff) and limits the maximum number of events that can be held annually (based on attendance). Subsections d and e. The by-law also regulates the hours of events, parking requirements and insurance requirements. Subsections g, h and o. Finally, the by-law requires appropriate licenses and inspections if food or alcohol will be served; approval of the Board of Health to ensure proper sanitary facilities; and an entertainment license from the Select Board as needed. Subsections k, l, m and n.

Under Article 18 the Town amended Section III.A.4 Table 1, “Table of Use Regulations,” Section E, “Retail, Trade and Service Uses,” to add a new section 23, “Special Event Facility,” that allows this use by special permit from the Planning Board in the Residential-Rural (R-1), Business-Highway (B-2) and Office and Light Industrial (OLI) districts and prohibits the use in the Residential-Suburban (R-2), Village (V) and Industrial (I) districts.

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

Our review of Articles 17 and 18 is governed by G.L. c. 40, § 32. Under 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.”) “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). “

Articles 17 and 18, as amendments 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). 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. Section Q Must be Applied Consistent with G.L. c. 40A, § 3’s Agricultural Protections

Section Q provides as one of its purposes to “encourage the preservation of agricultural...land by allowing income generating events using the grounds and structures...”

Under the by-law, Special Event Facilities are allowed only on properties with “a minimum of forty (40) acres.” While we approve the by-law amendments adopted under Articles 17 and 18, the Town must apply these provisions consistent with the protections given to agriculture under G.L. c. 40A, § 3. Section 3 provides exemption from local zoning by-laws for certain agricultural uses and provides in relevant part as follows:

No zoning...by-law...shall...prohibit unreasonably regulate, or require a special permit for the use of land for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, nor prohibit, unreasonably regulate or require a special permit for the use, expansion, reconstruction or construction of structures thereon for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, including those facilities for the sale of produce, wine and dairy products.....

General Laws Chapter 128, Section 1A defines agricultures and provides in pertinent part as follows:

“Farming” or “agriculture” shall include farming in all of its branches and the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural, aquacultural, floricultural or horticultural commodities, the growing and harvesting of forest products upon forest land, the raising of livestock including horses, the keeping of horses as a commercial enterprise, the keeping and raising of poultry, swine, cattle and other domesticated animals used for food purposes, bees, fur-bearing animals, and any forestry or lumbering operations, performed by a farmer, who is hereby defined as one engaged in agriculture or farming as herein defined, or on a farm as an incident to or in conjunction with such farming operations, including preparations for market, delivery to storage or to market or to carriers for transportation to market.

These statutes together establish that, to the extent the use of land or structures constitutes commercial agriculture, the Town cannot require a special permit for, unreasonably regulate, or prohibit such activities: (1) on land zoned for agriculture; (2) on land that is greater than five acres in size; and (3) on land of 2 acres or more if the sale of products from the agricultural use generates \$1,000 per acre or more of gross sales.

The Special Event Facility by-law authorizes events, such as bridal showers, single day retreats, and weddings to be held at Qualifying Properties (those with a minimum of 40 acres) and imposes regulations on the use of property for these events. The by-law intends for “agricultural or other larger parcels” to utilize its provisions and requires a special permit for these uses. However, these uses may include additional related activities, including “agri-tourism” types of uses, that are incidental to an agricultural parcel and therefore qualify as commercial agriculture.² In these situations, the Town should consult with Town Counsel about

² The Massachusetts Department of Agricultural Resources (MDAR) offers the resources to towns and farmers on agri-tourism type activities: <https://www.mass.gov/agritourism-program>

the proper application of the by-law to a parcel that enjoys the zoning protections under G.L. c. 40A, § 3.

IV. The new Section Q Must be Applied Consistent with G.L. c. 138

Section "General Provisions," Subsections b and k, allow Facilities to serve alcohol if "the appropriate licenses and inspections" are obtained and certain information is reported to the Select Board. The Town must ensure that Subsection b and k are applied consistent with G.L. c. 138, that regulates alcohol including the sale of alcoholic beverages.

General Laws Chapter 138 regulates alcohol including the sale of alcoholic beverages. The "[r]egulation of the liquor industry in Massachusetts is comprehensive and pervasive." Cellarmaster Wines of Mass., Inc. v. Alcoholic Bevs. Control Commn., 27 Mass. App. Ct. 25, 27 (1989). The Legislature set out a broad prohibition in the first sentence of G.L. c. 138, § 2, which provides, in pertinent part: "No person shall ... sell or expose or keep for sale, store, transport ... alcoholic beverages or alcohol, *except as authorized by this chapter* (with emphasis added.) Under G.L. c. 138, the local liquor licensing authority (LLA) issues retail licenses for both on-premises consumption and off-premises consumption of alcoholic beverages. See G.L. c. 138, §§ 12 and 15, respectively. Once the LLA grants a license, the Alcohol Beverage Control Commission ("ABCC") approves the license, and then the LLA issues the license upon the payment of the required fees. See, e.g., G.L. c. 138, § 15.

The Town must ensure that any alcohol use allowed under the new Section Q, complies with the requirements of G.L. c. 138. The Town should consult with Town Counsel with any questions on this issue.

V. Conclusion

Because Articles 17 and 18 do not conflict with state law, we approve them.

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.

Very truly yours,

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

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By: Nicole B. Caprioli
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cc: Town Counsel Thomas W. McEnaney

ARTICLE 17

SPONSOR: Planning Board

Voted by a 2/3's vote to amend Section VI. of the Zoning Bylaw – Special Regulations, by adding Section Q. Special Event Facility, as printed in the warrant.

As printed in the warrant:

Q. Special Event Facility

Purpose

The purpose of this section is to encourage the preservation of agricultural and other larger parcels of land by allowing income generating events using the grounds and structures while also minimizing impact on abutting properties.

Permitting

Special Event Facilities shall only be allowed via Special Permit granted by the Planning Board in accordance with the provisions of this bylaw and the Special Permit procedures set forth in G.L. c. 40A.

General Provisions:

- a. Facilities shall only be allowed on a single property, or directly adjacent properties held in identical ownership, with a minimum of forty (40) acres ("Qualifying Property"). For purposes of this by law, a "facility" means any building or other improvement now or hereafter existing on a Qualifying Property, constructed and maintained by the owner pursuant to all laws and regulations.
- b. The owner of the Qualifying Property shall be responsible to supervise and control conduct at all events held on the Qualifying Property. No later than the last day of the first week of January and July of each year, the owner shall provide a list of each event anticipated to be held in the next six months, and a list of those events actually held in the prior six months. These lists shall be provided to the Planning Department, Select Board, and Board of Health. These lists shall include the type of event, number of attendees, staff, and whether food or alcohol was served, and what form of entertainment was provided, if any.
- c. Events shall be restricted to private events, not open to the general public at any time. Permitted types of events may include bridal showers, single day retreats, weddings, family gatherings and similar kinds of activities. No more than one (1) event shall be held on any calendar day.
- d. Persons present at events shall not exceed one hundred twenty-five (125) persons, including guests and staff supporting the event.
- e. The maximum number of events held annually shall be as follows.

Number of Attendees	Maximum Events Per Year
75-125 Persons	10 Events
25-74 Persons	20 Events
Less than 25 Persons	As determined by Planning Board during permitting

- f. For events utilizing a structure, occupancy shall not exceed the lesser of the maximum number of persons allowed at an event per this bylaw and the permitted maximum occupancy of a structure as determined by Town Officials.
- g. Events shall be held only within the hours of 9 AM to 9 PM. However, no event shall exceed 8 hours in duration. Event hours and duration exclude set-up and break-down, which are limited to 2 hours each.
- h. All events require on-site and off-street parking for all vehicles.
- i. Special Permits for this use shall be limited to three (3) years from the date of the approval. All operations shall cease immediately on this date if the applicant does not obtain a new Special Permit before this expiration.
- j. Those portions of the Qualifying Property that will be used for events, including parking, or other active parts of use shall be situated and conducted in a location which provides a substantial buffer to abutting properties and/or shall be screened with vegetation, fencing, sound walls, or the like as deemed necessary and appropriate by the Planning Board.
- k. If alcohol is to be served the appropriate license must be secured through the Select Board.
- l. If food is to be served the appropriate licenses and inspections must be secured through the Select Board and Board of Health.
- m. Adequate restroom facilities, including hand washing, and waste disposal must be provided and approved by the Board of Health.
- n. An entertainment license shall be secured as applicable from the Select Board.
- o. The property owner shall provide evidence of current liability insurance for the type of events to be held on the property.
- p. Special Event Facilities must comply with all other applicable State and local statutes, ordinances and regulations.

A True Copy Attest:



Laura J Caruso
Town Clerk

Town Meeting Action Oct 16, 2023 Article 18 Town of Sutton

ARTICLE 18

SPONSOR: Planning Board

Voted unanimously to amend the Zoning Bylaw Section III.A. 4. Table 1 – Table of Use Regulations, by adding the underlined text, as printed in the warrant.

As printed in the warrant:

Section E. - Retail, Trade and Service Uses

	R-1	R-2	V	B-2	I	OLI
<u>23. Special Event Facility</u>	<u>S*</u>	=	=	<u>S*</u>	=	<u>S*</u>

A True Copy Attest:

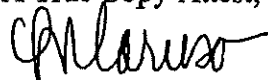


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(additions in bold italics)

	R-1	R-2	V	B-2	I	OLI
1. Funeral home or mortuary establishment	S	S	P	-	-	-
2. Hospital or medical clinic	-	-	S	S	S	S*
11. Convalescent or nursing home	S	S	S	S	-	-
12. Repair services for appliances, furniture, and other goods, except for vehicular and automotive repairs	-	-	P	S	-	-
13. Motion picture establishment, amusement facilities, or sports complexes	-	-	S	S	-	S*
14. For profit educational establishments	-	-	P	S	S	S*
15. Communications and television towers (does NOT include wireless communication facilities)	S	-	-	-	S	S
16. Wireless communications facility (refer to Section V.C. of this Bylaw)	-	-	-	S	S	S
17. Antique Shop (retail sale of antique furniture, artwork, collectible merchandise to the general public in a premises occupying less than 1,000 square feet)	S*	-	-	-	-	-
18. Commercial Kennels	S	-	-	S	S	-
19. Rental of goods, not including vehicles or construction equipment	-	-	S*	P	P	P
20. Wholesale Trade	-	-	S	S	P	S*
21. Brewery, Distillery, Winery	-	-	S*	S*	S*	S*
22. Service Companies	-	-	S	S	P	S*
23. <i>Special Event Facility</i>	<i>S*</i>	-	-	<i>S*</i>	-	<i>S*</i>
F. VEHICULAR AND AUTOMOTIVE USES:						
1. Establishments selling new and/or used automobiles, trucks, motorcycles, trailers, construction equipment, or boats	-	-	-	-	-	-
2. Establishments selling new and/or used automobiles at or over 26,000 gvwt, including but not limited to trucks, construction equipment, municipal equipment.	-	-	-	-	S*	-
3. Automotive repair, automobile services (not including a junk yard or open storage of abandoned automobiles and other vehicles)	-	-	S	S	P	-
4. Railroad and railway express service	-	-	S	P	P	P
5. Commercial Gas Station primarily for passenger vehicles	-	-	S	S	S	-
6. Warehouse with Distribution	-	-	-	-	S*	S*
7. Package and/or Freight Delivery Company	-	-	-	-	S*	S*

A True Copy Attest;



Laura J. Caruso
Town Clerk