



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

WESTERN MASSACHUSETTS DIVISION  
436 DWIGHT STREET  
SPRINGFIELD, MASSACHUSETTS 01103

TOM REILLY  
ATTORNEY GENERAL

(413) 784-1240

July 23, 2001

Kathleen D. Middleton, Town Clerk  
Town Hall  
322 Concord Road  
Sudbury, MA 01776

01 JUL 25 PM 12:47  
SUDBURY, MASS

**RE: Sudbury Annual Town Meeting of April 2, 2001 ---Case #1502  
Warrant Articles # 14 & 31 (General)  
Warrant Articles # 9, 32 & 33 (Zoning)**

Dear Ms. Middleton:

I return the amendments to the town by-laws adopted under Articles 14, 31, 32, and 33 of the warrant for the Sudbury town meeting that convened on April 2, 2001, and the map pertaining to Article 33, with the approval of this Office.

Article 9 - I return the amendments to the town by-laws adopted under Article 9 of the warrant for the Sudbury town meeting that convened on April 2, 2001, with the approval of this Office, except as provided below. Article 9 is a complete recodification of the town's zoning by-laws. The amendments voted under this Article amend the town's zoning by-laws by deleting in their entirety the town's existing zoning by-laws and by replacing them with the text submitted to us for approval.

(a) Subsection 2130 - Subsection 2130 lists the specific sections of the town's zoning by-laws that will apply throughout the town's residential zoning districts to uses exempt under the provisions G.L. c. 40A, § 3. General Laws Chapter, 40A, Section 3, provides exemptions for religious purposes, educational purposes, and child care facilities. Specifically, Section 3 provides in pertinent part:

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,

Posted - 7/25/01  
Town Hall Pool  
Libman Postage

Fire Station #17





TOWN OF SUDBURY  
*Office of the Town Counsel*

December 11, 2001

Kelli E. Lawrence, Assistant Attorney General  
Municipal Law Unit  
436 Dwight Street  
Springfield, MA 01103-1317

Re: Sudbury Annual Town Meeting of April 2, 2001 – Case #1502  
Warrant Article #32 Zoning

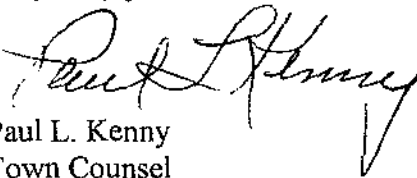
Dear Attorney Lawrence:

I refer to your letter of July 23, 2001, (copy enclosed) addressed to Sudbury Town Clerk Kathleen D. Middleton, with reference to Warrant Article #32, Amend Zoning Bylaw, Art. IX,IH – Flood Plains. This Article (copy enclosed) was forwarded to you for approval. Inadvertently, the “National Flood Insurance Program FIRM Flood Insurance Rate Map, Town of Sudbury, Massachusetts, Middlesex County, comprised of six panels, revision dated November 20, 1998” and the Flood Insurance Study booklet, dated November 20, 1998, which define the Flood District Boundaries, and which were incorporated therein by reference, were not sent to you with the Vote under Article 32.

I have enclosed the maps for your review and approval in connection with Article 32.

If you have questions, please do not hesitate to contact me.

Very truly yours,

  
Paul L. Kenny  
Town Counsel

CC: Town Clerk  
Town Manager  
Town Planner  
Town Engineer



*At a legal meeting of the qualified voters of the*

**Town of Sudbury, held April 4, 2001 the following business was transacted under**

**ARTICLE 32 - AMEND ZONING BYLAW IX.I.H - FLOOD PLAINS**

**VOTED:** In the words of the Article  
The Moderator declared a two-thirds vote

**ARTICLE 32. AMEND ZONING BYLAW, ART. IX.I.H - FLOOD PLAINS**

To see if the Town will vote to amend Section I.H of Article IX, the Zoning Bylaw, or however otherwise designated, by deleting Part H, "Flood Plains", in its entirety and substituting therefor a new Part H, as follows:

**"H. FLOOD PLAINS**

**Flood Plain District Boundaries**

The Flood Plain District is herein established as an overlay district. The District includes all "special flood hazard areas inundated by 100-year flood" designated as Zones A, AE, AH, AO and A99, and "floodway areas in Zone AE" on the Flood Insurance Rate Map (FIRM), issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program, entitled "National Flood Insurance Program FIRM Flood Insurance Rate Map, Town of Sudbury, Massachusetts, Middlesex County", comprised of six panels, revision date November 20, 1998, indicating the 100-year regulatory flood plain. The exact boundaries of the District may be defined by the 100-year base flood elevations shown on the FIRM and further defined by the Flood Insurance Study booklet dated November 20, 1998. The FIRM and Flood Insurance Study booklet are incorporated herein by reference and are on file with the Town Clerk, Planning Board, Building Official, Conservation Commission and Engineering Department.

**Floodway Data**

In Zones A, AE, AH, AO, A99, X and D along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

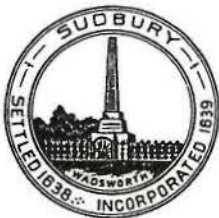
The areas included in the Flood Plain District are hereby deemed to be subject to seasonal or periodic flooding, and the use of any land in any such area is hereby declared to be dangerous to the health and safety of the occupants thereof, and each said area shall be known as a Flood Plain.";

or act on anything relative thereto.

Submitted by the Director of Public Works/Town Engineer

A true copy, Attest:

*Barbara A. Siira*  
Barbara A. Siira  
Acting Town Clerk



TOWN OF SUDBURY  
*Office of the Town Counsel*

TOWN CLERK  
SUDBURY, MASS

01 DEC 12 PM 4: 34

December 11, 2001

Kelli E. Lawrence, Assistant Attorney General  
Municipal Law Unit  
436 Dwight Street  
Springfield, MA 01103-1317

Re: Sudbury Annual Town Meeting of April 2, 2001 – Case #1502  
Warrant Article #32 Zoning

Dear Attorney Lawrence:

I refer to your letter of July 23, 2001, (copy enclosed) addressed to Sudbury Town Clerk Kathleen D. Middleton, with reference to Warrant Article #32, Amend Zoning Bylaw, Art. IX,I.H – Flood Plains. This Article (copy enclosed) was forwarded to you for approval. Inadvertently, the “National Flood Insurance Program FIRM Flood Insurance Rate Map, Town of Sudbury, Massachusetts, Middlesex County, comprised of six panels, revision dated November 20, 1998” and the Flood Insurance Study booklet, dated November 20, 1998, which define the Flood District Boundaries, and which were incorporated therein by reference, were not sent to you with the Vote under Article 32.

I have enclosed the maps for your review and approval in connection with Article 32.

If you have questions, please do not hesitate to contact me.

Very truly yours,

Paul L. Kenny  
Town Counsel

CC: Town Clerk  
Town Manager  
Town Planner  
Town Engineer

parking and building coverage requirements. . . . No zoning ordinance or bylaw in any city or town shall prohibit, or require a special permit for, the use of land or structures, or the expansion of existing structures, for the primary, accessory or incidental purpose of operating a child care facility; 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. As used in this paragraph, the term "child care facility" shall mean a day care center or a school age child care program, as those terms are defined in Section nine of chapter twenty-eight A.

It is our view that towns may establish reasonable regulations concerning yard size, lot area, setbacks, open space, parking, and building coverage requirements. Therefore, we caution the town not to apply the provisions of Subsection 2130 in a manner that infringes on the rights given to certain uses under G.L. c. 40A, § 3.

(b) Subsection 2325 - Subsection 2325 pertains to the requirements for swimming pools. Specifically, Section 2325 would provide in pertinent part as follows:

Pools, whether above or below ground, shall be so enclosed as to prevent children or animals from accidentally falling into them. At a minimum, any pool at ground level shall be enclosed by a five-foot high fence, which cannot be climbed through or under. Any above-ground pool shall be enclosed by a fence at least thirty inches in height above the edge of the pool and the top of any fence shall be at least five feet above the ground. Any fence shall have at an opening or doorway a self-latching type gate or door which is not operable by preschool aged children. Any stairway to any pool or pool areas shall be protected by a fence, the top of which is at least five feet above the ground.

We disapprove and delete the above text. **[Disapproval # 1 of 3]**. We disapprove and delete the above text because it is inconsistent with the State Building Code, 6th Edition, 780 C.M.R. § 421.0, and G.L. c. 140, § 206. Section 421.10 of the State Building Code provides the criteria for fencing of outdoor private swimming pools, and G.L. c. 140, § 206 sets the criteria for outdoor public and semi-public pools.

Beginning with Chapter 802 of the Acts of 1972, as amended by Chapter 541 of the Acts of 1974, the Legislature eliminated local building codes, the purpose of which was to create a state-wide "comprehensive" state building code which it intended should be applied uniformly throughout all the communities of the Commonwealth. The State Building Code is a comprehensive statewide act and no local by-law that exceeds, competes or conflicts with any provisions of the State Building Code has legal effect. Today, any town seeking to enforce regulations more restrictive than those currently imposed under the state building code must request that the State Board of Regulations and Standards adopt such regulation. G.L. c. 143, § 98. The Board will grant such a request only upon a finding, after conducting a public hearing, "that more restrictive standards are reasonably necessary because of special conditions prevailing within such city or town and that such standards conform with accepted national and local engineering and fire prevention practices, with public safety and with the

general purposes of a statewide building code . . . ”. Id.

General Laws, Chapter 40A, §3, likewise, begins with the admonition: “No zoning ordinance or by-law shall regulate or restrict the use of materials, or methods of construction of structures regulated by the state building code . . . .”

As stated above, the State Building Code preempts local laws. Any provisions of local law that exceeds, competes, conflicts, with the State Building Code or even deals with subject matter that has been preempted by the State Building Code will not have legal effect in the state.

We recognize that this section may include text similar to that in the State Building Code. However, by including text similar to that found in the the State Building Code in the town’s by-laws, the issues of enforcement and appeal become clouded. By including such a section in the town by-laws, people may think that relief from such requirements may be granted at the local level rather than through the mechanism provided for in the State Building Code. It is for these reasons that we disapprove and delete Section 2325.

(c) Subsection 2632 - Subsection 2632 pertains to height limitations and amateur radio operations. Specifically Subsection 2632 would provide in pertinent part as follows:

. . . except towers, whether or not they are to be attached to any building, may be erected for the sole purpose of amateur radio operation in any district in the Town if a permit is granted by the Board of Appeals subject to such conditions and regulations as may be imposed by such board which shall include a provision that, in the event of the discontinuance of any such tower either by limitation of time or otherwise, that the expense of the demolition and removal of all the component parts thereof from the land on which it may stand, shall be borne by the permittee, and, to insure the faithful performance of such provision the permittee shall furnish a surety company bond to the Town as obligee together with the owner of the land on which such tower may be erected, if it be not owned by the permittee, in a penal sum which shall not be less than the estimate cost of the demolition and removal of component parts as aforesaid, plus twenty-five percent (25%); and said bond shall be in such form as shall be approved by the Town Counsel.

(Emphasis added.)

The above underlined text is disapproved and deleted. **[Disapproval # 2 of 3]** The basis of our disapproval is that the above underlined text is inconsistent with General Laws c. 40A, § 3. Specifically, G. L. c. 40A, § 3, states in pertinent part:

No zoning ordinance or by-law shall prohibit the construction or use of an antenna structure by a federally licensed amateur radio operator. Zoning ordinances and by-laws may reasonably regulate the location and height of such antenna structures for the purposes of health, safety, or aesthetics; provided, however, that such ordinances and by-laws reasonably allow for sufficient height of such antenna structures so as to effectively accommodate amateur radio communications by federally licensed amateur radio operators and

constitute the minimum practicable regulation necessary to accomplish the legitimate purposes of the city or town enacting such ordinance or by-law.

General Laws Chapter 40A, § 3, allows cities and towns to “reasonably regulate” the height and location of such towers. The protections accorded to antenna structures of federally licensed amateur radio operators continue for so long as the license is in effect. The above underlined text purports to constrict the scope of those protections beyond the limited extent permitted by Section 3, i.e., the location and height of such antenna structures for the purposes of health, safety, or aesthetics. For this reason we find the text to be inconsistent with the provisions of G.L. c. 40A, § 3, and must be disapproved and deleted.

While we do not find the permit process provided for above to be facially inconsistent with state law, we caution the town that pursuant to G.L. c. 40A, § 3, regulations imposed by the permit granting authority may only relate to location and height of antennas for the purposes of health, safety, and aesthetics.

(d) Subsection 3233 - Subsection 3233 authorizes the Board of Selectmen to establish and from time to time review a sign permit fee. In approving this section, we caution the town to apply Section 3233 in a manner that does not result in the fee being considered an unlawful tax. Valid fees are distinguishable from invalid taxes by three criteria: (i) the fee is assessed for a particular government service benefitting the party paying the fee in a manner not shared by other persons; (ii) the person assessed has the option to decline the service and thus avoid the charge; and (iii) the amounts paid compensate the town for its costs and expenses of providing the services rather than raising revenues. Emerson College v. Boston, 391 Mass. 415, 427-428 (1984).

(e) Subsection 3252 - Section 3250 pertains to signs that do not require a sign permit. Specifically, Subsection 3252 pertains to religious institutions and provides in pertinent part as follows:

Two signs identifying churches, synagogues, and other similar religious uses are permitted on each street frontage, one of which may not exceed 16 square feet in area and the other of which may not exceed 10 square feet in area. One sign may be a free-standing sign used for notices and announcements of events at the religious institution.

The above text is disapproved and deleted. **[Disapproval # 3 of 3]**. We disapprove and delete the above text because it is inconsistent with the First Amendment to the United States Constitution as applied to the states via the Fourteenth Amendment, and with Article 16 of the Massachusetts Declaration of Rights. Subsection 3252 allows religious signs, but places restrictions on the placement of the signs, that are not placed on other signs that enjoy constitutional protections.

It is well settled that protected speech may be subject to reasonable time, place, and manner restraints as long as legitimate governmental interests exist and are cited as the basis of

restraint. Time, place, and manner restrictions are allowable if they are content neutral; however, the above portion of Subsection 3252 turn expressly on the content of the signs. Other forms of constitutionally protected speech, i.e., political speech signs, and flags, are not subject to such restrictions.

(f) Subsection 4231 - Section 4200 establishes a Water Resource Protection Overlay District, and Subsection 4230 establishes the location of the overlay district. Moreover, Subsection 4231 establishes a procedure for providing relief from the requirements of the overlay district for land that does not possess the characteristics by which the district was delineated.

We call your attention to the provisions of G.L. c. 40A, § 5, which vests exclusively in town meeting the authority to establish and amend the boundaries of any zoning district. Section 5 states that no amendment of the district's boundaries may lawfully be effected other than by action of town meeting under an appropriate warrant article seeking such action. G.L. c. 40A, §§ 4 and 5.

District boundaries must be shown on a zoning map, and such map is part of the town's zoning by-laws. G.L. c. 40A, § 4. General Laws Chapter 40A, Section 5, provides the procedure that must be followed in order for a zoning by-law change to take effect. Zoning by-laws may not be adopted, amended or repealed unless it is done in compliance with the statutory requirements of G.L. c. 40A, § 5. Moreover, Section 5 states that no amendment of the district boundaries may lawfully be effected other than by action of town meeting under an appropriate warrant article seeking such action. Town meeting alone has the power to change district boundary lines, and this power can not be delegated to any other person or group or automatically triggered by events outside of town meeting. This means that any change to district boundaries, and thus the zoning map, must be accomplished by way of a zoning by-law amendment.

Subsection 4231 places the burden of proof on the owner(s) of the land to determine whether the land at issue possesses the characteristics by which the overlay district is delineated. Therefore, we caution the town that if new or corrected data supports a redefinition of the overlay district boundaries, the act of redefining the boundaries must await town meeting action.

(g) Subsection 4273 (c) - We call your attention to what we believe is a typographical error in Subsection 4273 (c). Subsection 4273 (c) refers to the Massachusetts Hazardous Waste Regulations, 310 CAR 30.00. We believe the town meant to refer to 310 C.M.R. § 30.00. We suggest that the town fix this typographical error by way of a zoning by-law amendment at a future town meeting.

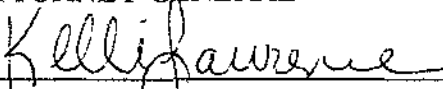
**Article 32** - In approving the amendments adopted under Article 32, we call your attention to the provisions of G.L. c. 40A, §§ 4 and 5. Article 32 amends the town's zoning by-law by deleting the existing by-law section pertaining to Flood Plains and inserting an entirely a new section pertaining to Flood Plains. The proposed by-law amendment specifically included the description of the Flood Plain District boundaries.



In the materials submitted to our Office, we were not provided with a map. We remind the town that if changes in the description of the Flood Plain District result in changes to the boundaries of the district, town meeting is required to amend the zoning map to reflect such change. Since the zoning map is a part of the town's zoning by-laws, revisions to the zoning map must be voted by town meeting and the updated map must be submitted to our Office for review and approval (G.L. c. 40A, §§ 4 and 5.)

Very truly yours,

THOMAS F. REILLY  
ATTORNEY GENERAL

  
by: Kelli E. Lawrence, Assistant Attorney General  
Municipal Law Unit  
436 Dwight Street  
Springfield, MA 01103-1317  
(413) 784-1240, x 46

enc.  
pc:

Town Counsel

01 JUN 24 11:15:48  
SUDBURY



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

WESTERN MASSACHUSETTS DIVISION  
1350 MAIN STREET  
SPRINGFIELD, MASSACHUSETTS 01103-1629

TOM REILLY  
ATTORNEY GENERAL

(413) 784-1240  
www.ago.state.ma.us

February 13, 2002

Barbara Siira, Acting Town Clerk  
Town Hall, 322 Concord Road  
Sudbury, MA 01776

02 FEB 14 PM 1:57  
TOWN CLERK  
SUDBURY, MASS

**RE: Sudbury Annual Town Meeting of April 2, 2001 — Case #1502  
Warrant Article # 32 (Zoning) — SUPPLEMENTAL LETTER**

Dear Ms. Siira

This letter is in reference to the letter that we sent to you on July 23, 2001, approving various by-law amendments from the April 2, 2001, Annual Town Meeting. In our letter we approved the amendments voted under Article 32 which amended the town's zoning by-laws by deleting the existing by-law section pertaining to Flood Plains and inserting an entirely new section pertaining to Flood Plains. However, in the packet of materials submitted to our Office we were not provided with any maps. In our letter we reminded the town that a map showing the changes voted by Town Meeting must be submitted to our Office for review and approval as required by General Laws Chapter 40, Section 32, and c. 40A, §§ 4 and 5.

On December 13, 2001, we received certified copies of the zoning maps from the town for our approval. I now return the maps pertaining to the amendments of the town by-laws adopted under Article 32 of the warrant for the Sudbury town meeting that convened on April 2, 2001, with the approval of this Office. Please include this letter with the previous letter written by our Office in order to complete the approval of Article 32.

Very truly yours,

THOMAS F. REILLY  
ATTORNEY GENERAL

by: Kelli E. Lawrence, Assistant Attorney General  
Municipal Law Unit  
1350 Main Street, 4<sup>th</sup> Floor  
Springfield, MA 01103-1629  
(413) 784-1240, x 117

Enclosure

cc: Town Counsel

