



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

WESTERN MASSACHUSETTS DIVISION

1350 MAIN STREET

SPRINGFIELD, MASSACHUSETTS 01103-1629

MARTHA COAKLEY
ATTORNEY GENERAL

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

July 8, 2008

Rosemary B. Harvell, Town Clerk
322 Concord Road
Sudbury, MA 01776

RE: Sudbury Annual Town Meeting of April 7, 2008 --- Case # 4648
Warrant Articles # 21, 22, 23, and 24 (General)
Warrant Article # 37 (Historical District)

Dear Ms. Harvell:

TOWN CLERK
SUDBURY, MASS
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Articles 21, 22, 23, 24, and 37 - I return with the approval of this Office the amendments to the town by-laws adopted under these Articles on the warrant for the Sudbury's Annual Town Meeting that convened on April 7, 2008, and the map pertaining to Article 37.

Article 22 - The amendments adopted under Article 22 add to Article V, "Public Safety," of the town's general by-laws new by-law captioned, "Sudbury River Boating Regulations." In approving the proposed by-law amendments adopted under Article 22, we remind the town that the proposed by-law amendments may require the approval of the Director of the Division of Law Enforcement of the Department of Fisheries, Wildlife and Environmental Law Enforcement before it can take effect, if the town has not done so already. See G.L. c. 90B, §§ 11 and 15, and c. 131, §§ 1 and 45. These sections require the approval of the Director of the Division of Law Enforcement within the Department of Fisheries, Wildlife and Environmental Law Enforcement in the Executive Office of Environmental Affairs before certain by-laws pertaining to Great Ponds and to motor boats and other types of vessels can take effect. We suggest that the town discuss with town counsel whether the proposed by-law and the existing by-law must be submitted to and approved by the Director, if the town has not done so already.

The proposed by-law provides in pertinent part as follows:

A. Operation of motor boats.

No motor boat shall be operated upon any portion of the Sudbury River or its tributaries within the Town of Sudbury in a manner which endangers the safety of the public or is detrimental or injurious to the neighborhood or to the value of property thereon.

B. Evidence of violation.

It shall be prima facie evidence of the violation of this Bylaw if such boat is operated:

* * *

e. At any speed in excess of 10 miles per hour.

C. Enforcement; cooperation with other towns and/or agencies

The Town may join with any other town through which said Sudbury River or any of its tributaries

flows, or a government agency, in the enforcement of this Bylaw or a similar bylaw adopted by such other town, insofar as such bylaws relate to said river or its tributaries, and may appropriate money for the enforcement in whole or in part of any and all such bylaws;

(Emphasis added.)

We point out that the purpose of the proposed by-law is to prohibit motor boats from operating in a manner that endangers the safety of the public, among other things. However, according to the Massachusetts Environmental Police, a motor boat traveling at a speed of 10 miles per hour inherently creates a larger wake than the wake created at greater speeds, which presents safety concerns. Also, a motor boat traveling at such speed may cause undue erosion. Thus, Section b (e) may actually be counter to the proposed by-law's purposes. The town may wish to discuss this issue with the Massachusetts Environmental Police.

In approving Section (C) of the proposed by-law, we remind the town that it exceeds its Home Rule authority if it purports to regulate beyond its geographical limits. William B. Beard v. Town of Salisbury, 378 Mass. 435, 441 (1979) (holding a by-law that prohibited the removal of sand, loam, or gravel from the confines of the town on the grounds that it was outside the authority granted by the Home Rule Amendment.) The town may wish to discuss with town counsel this issue in more detail.

Note: Under G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the town has first satisfied the posting/publishing requirements of this section. 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.

If the Attorney General has disapproved and deleted one or more portions of any by-law or by-law amendment submitted for approval, only those portions approved are to be posted and published pursuant to G.L. c. 40, § 32. We ask that you forward to us a copy of the final text of the by-law or by-law amendments reflecting any such deletion. It will be sufficient to send us a copy of the text posted and published by the Town Clerk pursuant to this statute.

Nothing in the Attorney General's approval authorizes an exemption from any applicable state law or regulation governing the subject of the by-law submitted for approval.

Very truly yours,

MARTHA COAKLEY
ATTORNEY GENERAL



by: Kelli E. Gunagan, Assistant Attorney General
By-law Coordinator, Municipal Law Unit
1350 Main Street, 4th Floor
Springfield, MA 01103-1629
(413) 784-1240, x 117

enc.
pc:

Town Counsel

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