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Christina Teter, Town Clerk
Town of Granville
P.O. Box 247
Granville, MA 01034

**Re: Granville Annual Town Meeting of June 6, 2022 -- Case # 11200
Warrant Article # 25 (Zoning)**

Dear Ms. Teter:

Article 25 - Under Article 25 the Town amended the zoning by-laws by adding a new Section 4.5, "Accessory Agricultural Uses," to allow accessory agri-tourism uses on land where the primary use is agriculture. We approve Article 25 because it does 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). However, we offer the following comments for the Town's consideration when applying the new Section 4.5.

I. Summary of Article 25

Under Article 25, the Town voted to amend the zoning by-laws to add a new Section 4.5, "Accessory Agricultural Uses," that allows agricultural uses to engage in agri-tourism activities. The purpose of the new by-law is to provide "additional economic development opportunities for Granville farmers . . ." by "diversifying their operations to include businesses" related to agri-tourism. Section 4.5.1. The by-law defines terms used in Section 4.5, including definitions for "Agri-commercial," "Agriculture & Agricultural," and "Agri-tourism." Section 4.5.3, "Definitions." Section 4.5.5 (A) lists approximately twenty agri-commercial and agri-tourism activities and uses that are allowed as-of-right as part of an agricultural use. The list includes corn mazes; petting zoos; farmstands; winery, brewery, and liquors tours and tastings; garden tours; horseback riding; and rural bed and breakfasts. Section 4.5.5. (B) lists uses that are allowed as of right subject to site plan review, including private parties; concerts festivals, and other special events; art galleries; and non-motorized recreational activities, including disc golf, cross-country skiing, and zip lining. As part of the site plan review process, the Planning Board must find that the site plan adequately addresses noise, parking, traffic, refuse disposal, crowd control, fire protections, lighting and screening. The by-law also authorizes the Planning Board to impose

reasonable conditions as part of the site plan approval. Section 4.5.5 (D) ¹ Finally, Section 4.5.5 (C) prohibits accessory activities that are not “customarily incidental” to commercial agricultural uses.

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

Our review of Article 25 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. 793, 795-96 (1986). 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). “

Article 25, 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 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). “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)). 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.

¹ The Town’s existing zoning by-laws do not address site plan review generally. Rather, the Town appears to require site plan review for certain uses. See Sections 4.1.4 and 4.1.5, site plan for commercial recreation uses, and Section 4.4.3, site plan review for large-scale ground mounted solar photovoltaic uses. However, there are only very limited circumstances under which a Town can deny an application for site plan approval of a by-right use, including those uses allowed under the new Section 4.5. 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...[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).

III. General Laws Chapter 40A, Section 3' Agricultural Protections

General Laws Chapter 40A, 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 by-law authorizes several agri-tourism related uses, but there may be additional agri-tourism related activities that are incidental to an agricultural parcel and qualify as commercial agriculture.² The Town cannot prohibit or unreasonably regulate such agri-tourism related activities because they also enjoy the zoning protection under Section 3. We suggest that the Town discuss with Town Counsel the proper application of G.L. c. 40A, § 3 to the by-law amendments adopted under Article 25.

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>.

IV. Wine, Beer, and Liquor Tours and Tastings

Section 4.5.5 allows wine, beer, and liquor tours and tastings as an accessory use to agriculture. However, the Town must ensure that agricultural operations comply with General Laws Chapter 138, the state liquor licensing statute.

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. A “farmer-brewery” is licensed by the ABCC pursuant to G.L. c. 138, § 19C and a farm-distillery is licensed by the ABCC pursuant to G.L. c. 138, § 19E.

The Town must ensure that any alcohol sales allowed under the new Section 4.5, such as the allowance for wine, beer, and liquor tours and tastings as part of an agricultural use, comply with the requirements of G.L. c. 138. The Town should consult with Town Counsel with any questions on this issue.

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,
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