

TOWN OF SOUTHBOROUGH



OFFICE OF THE TOWN CLERK

NOTICE OF ATTORNEY GENERAL REVIEW OF CHANGES TO SOUTHBOROUGH TOWN BY-LAWS

February 13, 2026

The Attorney General has approved this change to the Town zoning bylaws voted at the October 27, 2025, Special Town Meeting.

ARTICLE 1: To see if the Town will vote to amend the following sections of the Zoning Code of the Town of Southborough: (i) § 174-2.B titled: "Definitions" by adding "Highway Major Retail" as a new definition, as defined below, and (ii) § 174-8.6.C titled: "IP Industrial Park District", to include Highway Major Retail as a use allowed by special permit in the IP Industrial Park District.

This change to the zoning bylaws is effective as of October 27, 2025.

Claims of invalidity by reason of any defect in the procedure of adoption or amendment may only be made within ninety days of the posting of this notice.

Copies of the by-laws may be obtained and examined in the Town Clerk's office.

Pursuant to G.L. c. 40, § 32 this notice has been posted in the following places:

Town website

Mauro's Restaurant

Town House bulletin board

Southborough Library

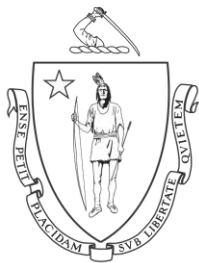
Southborough Transfer Station

Sincerely,

A handwritten signature in black ink that reads "James F. Hegarty".

James F. Hegarty

Southborough Town Clerk



THE COMMONWEALTH OF MASSACHUSETTS OFFICE OF THE ATTORNEY GENERAL

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February 13, 2026

James F. Hegarty, Town Clerk
Town of Southborough
17 Common Street
Southborough, MA 01772

**Re: Southborough Special Town Meeting of October 27, 2025 – Case # 12107
Warrant Articles # 1 and 9 (Zoning) ¹**

Dear Mr. Hegarty:

Article 1 – Under Article 1, the Town amended its zoning by-laws to add a new definition for the term “Highway Major Retail” and to allow the use “Highway Major Retail” by special permit in the Town’s IP Industrial Park District. We approve Article 1 because it does not conflict with the Constitution or laws of the Commonwealth. See Amherst v. Attorney General, 398 Mass. 793, 795-796 (1986) (requiring inconsistency with state law or the constitution for the Attorney General to disapprove a by-law). We emphasize that our decision in no way implies any agreement or disagreement with the policy views that may have led to the passage of Article 1. The Attorney General’s limited standard of review requires her to approve or disapprove by-laws based solely on their consistency with state law and not on any policy views she may have on the subject matter or wisdom of the by-law. Id. at 795-796, 798-99.

As explained in more detail below, during the course of our review of Article 1, we received input from a Town resident urging this Office to disapprove the by-law amendments asserting that Article 1 amounts to spot-zoning. We also received input from Town Counsel refuting the spot zoning assertion and urging us to approve Article 1 because it has a legitimate zoning purpose. We appreciate these communications as they have aided our review of Article 1. As explained below, the arguments advanced in the opposition do not provide us with grounds to disapprove Article 1.

I. Summary of Article 1

Under Article 1, by a vote of 771 in favor and 12 opposed, the Town voted to amend two sections of its zoning by-laws regarding the use “Highway Major Retail” in the IP Industrial Park District (“IP District”).

The first change amends Section 174-2.B, “Definitions,” to add a definition for the term

¹ We will issue our decision regarding Article 9 under separate cover on or before our February 16, 2026 deadline.

“Highway Major Retail” that provides as follows:

A large format, single tenant (including affiliates of the principal tenant) retail sales and services facility satisfying the development criteria in subsection (a) – (g) below, containing no less than 50,000 gross square feet devoted to retail sale to an end user of goods and services, including, but not limited to: traditional grocery store items (which may or may not be sold under its own brand) that contain a range of food products that are fresh, packaged or prepared (excluding storage), household goods, optical goods and services, pharmacy goods and services, liquor, automotive parts and repair, food service (such as fast food, counter service or kiosks) and automotive fueling stations. The Planning Board shall be the special permit granting authority subject to the procedural requirements and decision criteria of § 174-9, Special permit requirements, and § 174-10, Site plan approval, of the Zoning Bylaw. Highway Major Retail use shall be confined to Parcel ID: 25-0000-004-A on the Town’s Assessor’s Map as of October 27, 2025 and subject to the following development criteria:

- a) The Highway Major Retail use is located on a single Lot (which may be partially located in another jurisdiction) having a minimum Lot area of 20 acres; and
- b) The Lot has frontage on an existing public or private way which public or private way connects directly to the eastbound travel lanes of Route 9 – Turnpike Road; and
- c) The Lot does not abut any residential zoning district nor is located within 500 feet of a residential district boundary as of October 27, 2025; and
- d) The Lot does not have ingress or egress on a scenic road designated by the Town as of October 27, 2025; and
- e) The principal structure devoted to Highway Major Retail use shall be set back a minimum of 500 feet from Route 9 – Turnpike Road; and
- f) The principal structure devoted to Highway Major Retail use shall contain a minimum of 125,000 gross square feet of floor area; and
- g) The Highway Major Retail use is part of, or adjacent to, an industrial/office park environment.

On a Lot or Lots directly abutting the above reference Lot containing a Highway Major Retail use, a special permit from the special permit granting authority (which for Highway Major Retail use shall be the Planning Board), may be granted for, supporting and/or complimentary retail uses such as food service, general retail and general and/or personal services provided that said uses on all directly abutting Lots to the Lot containing the Highway Major Retail use shall not exceed 50,000 gross square feet in the aggregate (or greater if allowed pursuant to § 174-8.6, IP Industrial Park District, of the Zoning Bylaw). For purposes of this definition, a Lot directly abutting a Highway Major Retail use shall be deemed to include a Lot or Lots that may be separated from the Lot containing the Highway Major Retail use by a public or private way. On such qualifying Lots, supporting and/or complimentary uses may be in one or more structures.

In addition, under Article 1, the Town amended Section 174-8.6.C, “Uses requiring a

special permit,” to add a new paragraph 16 as follows: “(16) Highway Major Retail (Note: Special permit from the Planning Board.)”

According to the certified vote for Article 1, the Article was proposed by the Select Board and the Select Board supported the Article at Town Meeting. See Form 2, certified vote for Article 1. The certified vote also provides that the Advisory Committee supported Article 1. Id. Additionally, following the Planning Board’s statutorily required hearing under G.L. c. 40A, § 5, the Planning Board unanimously recommended Article 1 to Town Meeting. See Form 7, Attachment 5.

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

Our review of Article 1 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). “The legislative intent to preclude local action must be clear.” Id. 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).

Article 1, as an amendment to the Town’s zoning by-laws, must be given 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)).

Moreover, “[z]oning has always been treated as a local matter and much weight must be accorded to the judgment of the local legislative body, since it is familiar with local conditions.” Concord v. Attorney General, 336 Mass. 17, 25 (1957) quoting Burnham v. Board of Appeals of Gloucester, 333 Mass. 114, 117 (1955). “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.’” Durand, 440 Mass. at 51 quoting Crall, 362 Mass. at 101. In general, a municipality “is given broad authority to establish zoning districts regulating the use and improvement of land within its borders.” Andrews v. Amherst, 68 Mass. App. Ct. 365, 367-368 (2007). A zoning by-law must be approved unless “the zoning regulation is arbitrary, unreasonable, or substantially unrelated to the public health, safety, morals, or general welfare.” Johnson v. Town of Edgartown, 425 Mass. 117, 121 (1997). 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. The Issues Asserted in the Opposition and the Town’s Response

During the course of our review, we received correspondence from a Town resident urging our Office to disapprove Article 1 asserting that “I don’t know the specific definition of ‘spot zoning’, but this sure feels like it.” See email from Carl Guyer to the Attorney General’s Office dated January 12, 2026. The email contends, among other things, that the zoning changes relate to a “lot at 21 Coslin Drive;” that the changes were made by request of a property owner who “wanted to have the allowed use changed;” and that the change “initially only benefit[s] the owners of this property...” Id. On January 30, 2026, we received a subsequent communication from Mr. Guyer asking this Office “not approve the bylaw changes as they presently exist” and recommending that the Town “consider broadening the scope of the changes to include a significant part of all of the zoning district being affected by this change.” See email from Carl Guyer to the Attorney General’s Office dated January 30, 2026.

We also received correspondence from Town Counsel urging our approval of Article 1 and asserting that the email “does not provide any detailed argument or case law support for the proposition that this is spot zoning.” See email from Attorney Talerman to AAG Caprioli dated January 13, 2026. Town Counsel also provided this Office with his October 20, 2025 Memorandum to the Planning Board responding to the Planning Board’s request for an opinion regarding whether Article 1 constituted spot zoning. See Memorandum from Attorney Talerman to the Southborough Planning Board (“Talerman Memo”), dated October 20, 2025.

The Talerman Memo opines to the Planning Board that Article 1 is not spot zoning. Id. As part of this conclusion, Town Counsel asserts that the Highway Major Retail use would require a special permit and that no new lots or overlay district are being introduced in the IP District. Id. In addition, the Talerman Memo cites to extensive case law noting: “The Courts have also concluded that, so long as the zoning in question addresses a legitimate planning concern, it is irrelevant that only one parcel can satisfy the requirements of the particular zoning bylaw. W.R. Grace & Co. v. City Council of Cambridge, 56 Mass. App. Ct. 559, 569 (2002).” Id. Town Counsel provided this Office with an additional communication on February 2, 2026, again urging our approval of Article 1 and stating “[f]or the reasons we have previously noted and which are contained in my opinion letter, we believe the bylaw is legal on its face and that the claims of spot zoning miss the mark.” See email from Attorney Talerman to AAG Caprioli dated February 2, 2026.

IV. We Approve Article 1 Because There is No Clear Conflict Between Article 1 and State Law

The opposition urges our disapproval of Article 1 for two main reasons: the motive behind Article 1 and spot zoning. As explained below, neither assertion provides us with grounds to disapprove Article 1.

A. Motive of Town Meeting

The opponent urges disapproval of Article 1 asserting in part that the Town boards only supported the Article when they received information about a possible development project and that the amendments are not broad enough such that Town Meeting should consider “broadening the scope of the changes.” (see Guyer emails).

The Attorney General’s review of a by-law is for consistency with state law, not the wisdom of the by-law. Amherst, 398 Mass. at 798. The Attorney General does not consider policy arguments for or against the proposed zoning by-law. Id. at 798-99 (“Neither we nor the Attorney General may comment on the wisdom of the town’s by-law.”) Further, the motive for proposing the amendments and Town Meeting’s motive for adopting the by-law is beyond the scope of our review. See Durand, 440 Mass. at 51 (analysis of by-law’s validity “is not affected by consideration of the various possible motives that may have inspired legislative action.”). Here, the Town adopted Article 1 by a vote of 771 in favor and 12 opposed. In determining if Article 1 is consistent with state law, the Attorney General’s standard of review does not include a review of the motives of the Town in adopting the by-law. Amherst at 795-796, 798-99 (Attorney General does not review policy choices in reviewing town by-laws). For this reason, any assertions by the opponent that we should disapprove Article 1 based on the motivation of the Town or Town Meeting, do not furnish this Office grounds to disapprove the by-law amendments.

B. Spot Zoning

The opponent further urges our disapproval of Article 1 because the by-law amendments amount to spot zoning because the zoning changes “may be setting a precedent that may eventually effect the entire community while initially only benefiting the owners of this property...” (see Guyer email, dated January 12, 2026). As explained below, this assertion does not provide us with grounds to disapprove Article 1.

Spot zoning exists only where there is a “singling out of a particular parcel for different treatment from that of the surrounding area, producing, *without rational planning objectives*, zoning classifications that fail to treat like properties in a uniform manner.” (with emphasis added). National Amusements, Inc. v. Boston, 29 Mass. App. Ct. 305, 312 (1990) citing Shapiro v. Cambridge, 340 Mass. 652, 659 (1960); see also Board of Appeals of Hanover v. Housing App. Committee, 363 Mass. 339, 362 (1973) (spot zoning arises “when a zoning change is designed solely for the economic benefit of the owner of the property receiving special treatment and is not in accordance with a well-considered plan for the public welfare.”)

In analyzing the issue of spot zoning, the singling out of one parcel for different treatment does not constitute spot zoning if there is a legitimate planning purpose for such proposal. W.R. Grace & Co., 56 Mass. App. Ct. at 565; see also extensive case law cited in the Talerman Memo.²

² For example, the Talerman Memo cites the following: Sturges v. Town of Chilmark, 380 Mass. 246, 257 (1980) (the municipality does not bear the burden of proving that the ordinance was reasonable, but need only “bring forward some indication that the zoning provision has some reasonable prospect of a tangible benefit to the community.”); Maider v. Town of Dover, 1 Mass. App. Ct. 683, 687 (1974) (even if similar land is treated differently, a zoning amendment will be valid if the land can be distinguished for separate treatment that advances the public interest.); and W. R. Grace & Co., 56 Mass. App. Ct. at 569 (2002)

Moreover, someone challenging a zoning by-law bears a “heavy burden” to show that a by-law amendment lacks a rational basis. Leibovich v. Antonellis, 410 Mass. 568, 576 (1991). “A legislative enactment carries with it a presumption of constitutionality, and the challenging party must demonstrate beyond a reasonable doubt that there are no conceivable grounds which support its validity.” Id. (citation and internal quotations omitted). “A classification will be considered rationally related to a legitimate purpose if there is any reasonably conceivable state of facts that could provide a rational basis for the classification.” Massachusetts Federation of Teachers v. Board of Education, 436 Mass. 763, 777 (2002) (citation and internal quotations omitted).

Article 1 amends Section 174-8.6, “IP Industrial Park District,” Subsection C, “Uses requiring a special permit as follows:” to add a new paragraph (16) that allows the use “Highway Major Retail” in the IP District by special permit. In addition, under Article 1, the Town amended Section 174-2, “Definitions,” Subsection B, “Definitions,” to add a new definition for the term “Highway Major Retail.”³ We acknowledge that the definition of “Highway Major Retail” includes extensive qualifying requirements in order for a parcel or lot to fall under the new definition, including reference to a specific Assessors Map parcel ID. The opponent’s assertion of spot zoning appears to be based solely on the definition’s reference to a specific parcel.

But our analysis must go beyond the assertion that only one parcel may benefit from these zoning amendments. Instead, to conclude that a zoning amendment constitutes spot zoning, the singling out of the specific parcel must lack all “rational planning objectives.” National Amusements, Inc., 29 Mass. App. Ct. at 312. As the W.R. Grace court put it, a spot zoning argument boils down to one issue: “whether the amendments were a legitimate exercise of the [municipality’s] authority under the Zoning Act. If the [municipality’s] position is sustained on that issue, it follows that the amendments do not constitute spot zoning.” W.R. Grace & Co., 56 Mass. App. Ct. at 565. We therefore must consider whether Article 1’s amendments have a legitimate planning purpose.

According to the Planning Board’s written report to Town Meeting, the Planning Board engaged in robust and extensive discussion of Article 1 spanning six Planning Board hearings between August and October of 2025. See Form 7, Attachment 5; see also Planning Board minutes at <https://www.southboroughma.gov/AgendaCenter>.⁴ Throughout these six hearings, the Planning Board comprehensively discussed Article 1, including the pros and cons of the zoning changes;

(Courts have concluded that, so long as the zoning in question addresses a legitimate planning concern, it is irrelevant that only one parcel can satisfy the requirements of the particular zoning bylaw.).

³ We note that Town Counsel further contends that because Article 1 does not rezone any land or create any new overlay districts, it cannot be classified as spot zoning. See Talerman Memo, pg. 2 citing Hammond v. Town of Middleton, 5 LCR 33 (1997) (Court rejected arguments that a use classification, rather than a rezoning could result in a conclusion that spot zoning occurred.”). Town Counsel further asserts, relying on the Hammond case, that the special permit requirement “obviated any argument that the by-law in question ran afoul of the uniformity requirements of G.L. c. 40A, § 4. Id. Because we conclude that Article 1 reflects a legitimate planning purpose, we do not need to address these assertions.

⁴ The Planning Board hearings were held on August 18, September 8, September 15, September 29, October 20, and October 27, 2025. See minutes at: <https://www.southboroughma.gov/AgendaCenter>.

possible other zoning changes such as an overlay district; issues related to a potential claim of spot zoning and how the zoning proposal aligned with the Town's Master Plan. Id. During these six extensive public hearings, in addition to comments provided by individual Planning Board members, the Planning Board received comments from many others, including the Select Board chair, Town residents, attorneys in support of the proposal, and Town Counsel. We summarize some of these comments below:

- the Town's 2021 Master Plan notes that: the Route 9 corridor is "an integral part of the community;" "[t]his high traffic area is the preferred focus of industry and commerce because of its easy transportation access and because it is relatively separated from residential areas" of the Town; a goal of the Master Plan is to "[d]evelop an economically strong, diverse, and self-sustaining business community i.e., an economic engine along the Route 9 corridor;" and that the Master Plan goal can be reached by "increase[ing] use-intensity for currently underutilized property parcels" and "[increase[ing] commercial tax revenue..." (See Planning Board's August 18, 2025 minutes; footnote 4);
- support from the Select Board Chair noting "the fiscal significance of this proposal and the lack of significant development along Rt. 9." (See Planning Board's September 8, 2025 minutes; footnote 4);
- Planning Board Member Braccio's statement that "many residents have said they are looking for more businesses on the Route 9 corridor" and that there are "benefits of developing the parcel and...believes the guardrails are there to avoid unintended consequences." She further stated that "these changes and the potential and opportunity for that site would truly benefit the taxpayers of Southborough." Planning Board Member Belniak's statement that "[t]his piece of land has been empty and unused for more years than I can count...A development like this could greatly lower the tax burden on our residents by bringing our residential-to-commercial tax split closer to 80/20" and concluding that the Planning Board should consider "the big, long-term benefits this amendment could bring to our community, boosting our economy and financial stability for years to come." (See Planning Board's September 15, 2025 minutes; footnote 4);
- specific discussion over a resident's spot zoning concerns including opinions from Town Counsel⁵ and the proponent's attorney that it is not spot zoning because "if there is any public benefit or any policy objective that arguably is in favor of or seeks to promote the amendment [it] would be upheld (such as Southborough's Master Plan does)." In response to these comments, the minutes reflect that a Planning Board member "retracted her comments from previous meetings calling this spot zoning and said it clearly helps the Town meet one of its Master Plan objectives." (See Planning Board's September 19, 2025 minutes; footnote 4);
- a town resident's comment supporting the zoning change "because of the jobs this would bring, its use of an under-utilized site..." (See Planning Board's October 20, 2025 minutes; footnote 4); and

⁵ Town Counsel contends that the specific qualifications found in the definition of Highway Major Retail are not designed to "confer a unique economic benefit but, rather, are intended to address common sense planning goals designed to protect the public's health, safety, and welfare." Talerman Memo, pg. 2. Specifically, Town Counsel asserts that Article 1 includes "protection of adjacent residential zones, the preservation of scenic roads and requirements to ensure proper mitigation of traffic impacts" and further asserts that these considerations are "all valid rationales for imposing conditions on the proposed use." Id.

- the Planning Board's 5-0 vote that they unanimously support Article 1 at Town Meeting (See Planning Board's October 27, 2025 minutes; footnote 4; see also Form 7, Attachment 5).

It is clear that the Planning Board extensively discussed all aspects of the proposed zoning changes under Article 1, including the pros and cons of the zoning changes. The minutes reflect a collaborative and thoughtful approach to the zoning amendments that included some Planning Board members who voiced initial concerns, but later supported Article 1, such that Article 1 garnered the unanimous support of all Planning Board members at Town Meeting. Given the thorough analysis by the Planning Board of all aspects of Article 1, and their ultimate conclusion that the zoning changes would benefit the Town, we cannot conclude, based on our standard of review, that Article 1 lacks a legitimate planning purpose. National Amusements, Inc., 29 Mass. App. Ct. 312; see also Durand, 440 Mass. at 51 quoting Crall, 362 Mass. at 101 (if the reasonableness of the Town's vote is "fairly debatable, the judgment of the local legislative body responsible for the enactment must be sustained.") For this reason, we approve Article 1.

V. Conclusion

Based on the limited record before us, and under the Attorney General's standard of review, we cannot conclude that Article 1 lacked a legitimate planning purpose, such that it constitutes unlawful spot zoning. For this reason, we approve Article 1.

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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cc: Town Counsels Jason Talerman and Elizabeth Lydon