

Massachusetts Land Court.
Department of the Trial Court, Norfolk County.
Bradley W. WRIGHT, Trustee of K & S Realty Trust, Plaintiff
v.
The TOWN OF BELLINGHAM, Defendant.
No. 311040(HMG).
July 2, 2007.

**MEMORANDUM AND ORDER ALLOWING PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

HARRY M. GROSSMAN, Justice.

I. Introduction

*1 This is an action under [G.L. c. 240, § 14A](#), in which plaintiff challenges the validity of § 4451, and §§ 3400 through 3433, inclusive, of the Town of Bellingham Zoning By-Laws (hereinafter “the By-law”).

For the reasons that follow, I determine that these Sections are inconsistent with the general statutory scheme and special permit process ^{FN1} set out in G.L. c. 40A, the Zoning Act, and are therefore violative of both § 6 of art. 89 of the Amendments to the Constitution of the Commonwealth, the Home Rule Amendment, and with [§ 13 of chapter 43B of the General Laws](#), the Home Rule Procedures Act. Consequently, I conclude that said § 4451 and §§ 3400 through 3433, inclusive, of the Town of Bellingham Zoning By-Laws, are void and of no effect.

[FN1](#). See for example, [§§ 9, 11 & 17 of G.L. c. 40A](#).

II. Background

The plaintiff, Bradley W. Wright, is Trustee of K & S Realty Trust (K & S) under a declaration of trust dated March 18, 1985, and recorded with the Norfolk County Registry of Deeds at Book 6650, Page 301. K & S owns approximately six acres of land located off Hartford Avenue and Hixon Street in Bellingham on which it intends to construct a multifamily residential development consisting of more than fifty dwelling units. The defendant, Town of Bellingham, is a Massachusetts municipal corporation.

The plaintiff is the owner in possession of land as contemplated by [G.L. c. 240, § 14A](#).^{FN2} The property is located in the Multifamily Zoning District as delineated by the Bellingham Zoning Map.^{FN3}

[FN2](#). Statement of Undisputed Facts, Paragraphs 2 & 4.

[FN3](#). Statement of Undisputed Facts, Para. 5.

On July 7, 2005, plaintiff commenced the instant action seeking a determination under [G.L. c. 240, § 14A](#), as to the validity of § 4451 and §§ 3400 through 3433, inclusive, of the Town of Bellingham Zoning Bylaw.

Section 4451 [FN4](#) establishes a legal predicate to the grant by the planning board of special permits resulting in 50 or more dwelling units or 100 or more bedrooms. These Special Residential Uses [FN5](#) are characterized under § 4451 as Major Proposals, i.e. certain residential developments for which a special permit may be granted only upon approval by town meeting of a Concept Plan pursuant to § 3400 of the By-law. [FN6](#)

[FN4](#). **4451. Major Development.** Special permits resulting in either 50 or more dwelling units or 100 or more bedrooms on that and abutting parcels which have been in common ownership at any time subsequent to January 1, 1989, shall be construed to be **Major Proposals**, and therefore maybe approved only following concept plan approval as provided in § 3400. [emphasis supplied]

[FN5](#). See § 4450 of the By-laws.

[FN6](#). Under § **4450. Special Residential Use Requirements, § 4451. Major Development** is made applicable to all Special Residential Uses consisting of Townhouse Dwellings, Assisted Elderly Housing and other Multifamily Dwellings, (with the exception of Public Housing), having the requisite number of dwelling units or bedrooms.

Section 3400, in turn, is captioned *Major Proposals* and encompasses other substantive By-law provisions which plaintiff seeks to invalidate as follows:

1. Section 3410, captioned *Applicability*, is a critical provision requiring that town meeting approve a Concept Plan before the planning board may grant a special permit in the case of a Major Development. Town meeting approval requires a two-thirds vote and may include such conditions or limitations as deemed appropriate by town meeting. [FN7](#)

[FN7](#). **3410 Applicability.** Any use which elsewhere in this Bylaw is made subject to this Article requires Concept Plan approval by town meeting prior to being acted upon for special permit approval. Approval shall be by a two thirds vote of the town meeting, and may be made with conditions or limitations. Special permits shall be required, and shall be approved by the Planning Board only upon determination by that Authority that the proposal is consistent with the approved Concept Plan, or in the event of an inconsistency, that the departure is necessitated by changed conditions or earlier error, and that the inconsistency does not result in less beneficial development, based on the considerations of § 3420.

2. Section 3420 captioned *Considerations* mandates that the planning board report to the town meeting regarding compliance by each Concept Plan with a series of enumerated *Considerations* as set out in the sections that follow. [FN8](#)

FN8. 3420. Considerations. Compliance of the proposals with the following considerations shall be reported to the town meeting by the Planning board, and shall be the basis for subsequent special permit approval.

3. Sections 3421-3425 ^{FN9} enumerate a series of Considerations relating to *Location* (§ 3421); *Activity Type & Mix* (§ 3422); *Visual Consequences* (§ 3423); *Access* (§ 3424) and *Development Rate* (§ 3425). As noted above, the extent to which the planning board deems the Concept Plan to be in compliance with these Considerations is to be reported to town meeting “and shall be the basis for subsequent special permit approval” by the planning board. ^{FN10}

FN9. 3421. Location.

(a) The proposal should be located near uses which are similar to the proposed use or, if not, the nearby uses should be permanently buffered from the use or be ones likely to benefit from rather than be damaged by having the proposals nearby.

(b) Providing adequate water and sewerage to this location for this use should pose no public problems.

(c) The site should be able to accommodate the proposal without substantial environmental damage due to wetland loss, habitat disturbance or damage to valuable trees or other natural assets.

3422. Activity Type and Mix

(a) Non-residential proposals should contribute to the diversity of services available locally.

(b) Residential proposals should add to the range of housing choices available locally.

3423. Visual consequences

(a) Scenic views from public ways and developed properties should be considerably treated in the site arrangement and building design.

(b) Visibility of parking and service areas from public streets should be minimized through site arrangement and such areas should be screened from abutting premises by such method of screening as approved by the Planning Board.

(c) Domestic scale should be maintained in the building's design through massing devices, such as breaks in wall and roof planes and through the design of architectural features.

3424. Access

(a) Access to the location, considering any special access provisions committed (ride

sharing, etc. should increase existing traffic by no more than 10% at any point for residential developments, 25% for non-residential ones.

(b) Pedestrian and vehicular movements to, from, and within the site should be safe and convenient and arranged so as not to disturb abutting properties.

3425. Development Rate

(a) Town-wide development should not outpace the ability of the Town to provide necessary off-site services, including schools water and road capacity.

(b) Development making unusually large demands on service capacities should not be allowed to preempt smaller developments from gaining a fair share of that capacity.

[FN10.](#) § 3420.

*2 4. Section 3430 [FN11](#) captioned *Procedures*, includes § 3431 captioned, in turn, *Concept Plan Contents*. § 3431 [FN12](#) defines the nature and scope of the Concept Plan that must be prepared and submitted to the town by the applicant. The Plan is to include a development schematic showing lot boundaries, buildings, roads, parking, open space, topography, grading and planting areas, floor plans, elevations, floor area, form of tenure, sales price or rental ceilings, development schedule, service improvements to be made at developer's expense and those to be made at the town's expense. Lastly, the applicant must indicate the degree to which the Plan is "consistent" with each of the Considerations set out in §§ 3420-3425. [FN13](#)

[FN11.](#) Directly follows § 3425.

[FN12.](#) **3431. Concept Plan Contents.** A concept plan shall consist of the following:

(a) A schematic development plan, indicating boundaries of the lot, buildings, roads, drives, parking, reserved open space, existing topography and proposed grading, areas of retained vegetation and proposed planting areas.

(b) Floor plans and elevations of all existing and proposed structures.

(c) Materials indicating the proposed ultimate floor area in each use; the number of dwelling units distinguishing by number of bedrooms and any special occupancies (e.g. elderly or handicapped); form of tenure; any subsidies or sales price or rent ceilings anticipated; time schedule for development; service improvements proposed at the developer's and those anticipated at the Town's expense.

(d) Analysis indicating degree of consistency with each of the considerations of § 3420.

[FN13.](#) By-law § 3431(d)

5. Section 3432, captioned *Pre-Town Meeting Hearing* specifies that prior to town meeting action, the planning board is to hold a hearing on the Concept Plan, reporting its recommendations to town meeting, and filing a copy with the Town Clerk at least 14 days prior to the town meeting vote on the Plan.

6. Lastly, § 3433 captioned *Special Permit* requires that a special permit application be filed with the Planning Board no more than 12 months after approval of the Concept Plan by town meeting.^{FN14}

FN14. 3433. Special Permit. Application for an initial special permit must be made not more than 12 months after the town meeting approval of the Concept Plan.

In the instant matter, on September 8, 2005, plaintiff filed a Motion for Summary Judgment regarding the validity of sections of the By-law, as well as a Memorandum of Law in support of the Motion. On October 7, 2005, the defendant filed an Opposition to Plaintiff's Motion for Summary Judgment and a Memorandum in Support of Defendant's Opposition. On October 27, 2005 the plaintiff filed a Reply to the Opposition of the Town of Bellingham. A hearing on Summary Judgment was held on November 28, 2005.

III. The Summary Judgment Standard

Summary judgment is appropriate where there are no genuine issues of material fact and where the summary judgment record entitles the moving party to a judgment as a matter of law. See [*Cassese v. Commissioner of Correction*, 390 Mass. 419, 422 \(1983\)](#). [*Community National Bank v. Dawes*, 369 Mass. 550, 553 \(1972\)](#). [Mass R. Civ. P. 56\(c\)](#) permits the disposition of controversies if in essence there is no real dispute as to the salient facts or only if a question of law is involved. For summary judgment to enter, the undisputed facts have to be sufficient to furnish the judge with evidence upon which the key question of law might be resolved.

With respect to the root issue whether the Concept Plan approval process set forth in the By-law is “not inconsistent” with Chapter 40A of the General Laws, there is no dispute as to the underlying facts. Consequently, this case is ripe for summary judgment.

IV. Discussion & Analysis

Plaintiff advances several arguments, chief among them is that the By-law provisions in question impermissibly authorize the “Bellingham Town Meeting to issue *de facto* special permits through the grant of Concept Plan approval.”^{FN15} Alternatively, and to a lesser degree, plaintiff argues that even if Concept Plan approval does not constitute a *de facto* special permit process, it is an additional procedural requirement that the Town was without authority to adopt under [G.L. c. 40A, § 9](#).

FN15. Plaintiff's Memorandum in Support of Motion for Summary Judgment. p. 9.

*3 Defendant, in turn, advances a number of arguments, central among them is that the town meeting vote is not part of the special permit process at all, but merely a step

preceding that process.^{FN16} “[It] is simply a condition precedent to a special permit....”^{FN17} Defendant argues further that the sections at issue “should not be stricken from the By-law simply because they subject applicants to a two step process, one of which is Concept Plan Approval, and the second one being a special permit approval by a Planning Board.”^{FN18} Defendant readily acknowledges that town meeting is not an authorized special permit granting authority. It concedes too, that most By-law sections at issue do not meet procedural requirements for the grant of special permits, nor do they contain adequate standards for such grant.^{FN19} These factors are of no moment, defendant argues, as town meeting is not, in any event, engaged in the grant of special permits.^{FN20} “This condition [town meeting approval] is an integral part of the permission granted by the town meeting for a *new form of permit process*.”^{FN21} (emphasis supplied)

FN16. Defendant's Memorandum in Opposition to Plaintiff's Motion for summary Judgment. p. 3.

FN17. *Id.* at 6. Note also that this argument is not unlike plaintiff's alternative argument that Concept Plan approval is an additional procedural requirement.

FN18. *Id.* at 7

FN19. *Id.* at 6

FN20. *Id.* at 6-7

FN21. *Id.* at 4

Simply stated, an applicant seeking the grant of a special permit for a Major Development (at least 50 dwelling units or 100 bedrooms) must, under the By-law, secure the approval of a comprehensive Concept Plan by means of a two-thirds vote of town meeting. Town meeting may approve the Concept Plan, may approve it with “conditions or limitations,” or absent a two-thirds vote in favor, may presumably deny it outright.

Prior to the town meeting's consideration of the Concept Plan, the planning board will have conducted a Pre-Town Meeting Public Hearing on the Plan and will have reported its recommendations to town meeting.^{FN22} It is at this juncture as well, that the planning board will likely advise town meeting of the extent to which the Concept Plan meets the criteria specified in the Considerations.^{FN23} In no event, is the planning board's advice or recommendations made binding upon the town meeting. Only if the applicant is able to secure the requisite town meeting approval, may it apply thereafter to the planning board for a special permit.

FN22. The actual reporting process is not clearly specified.

FN23. By-law § 3420, et seq.

In analyzing the validity of the By-law provisions at issue, an appropriate point of departure is § 6 of art. 89 of the Amendments to the Constitution of the Commonwealth

(art. 89). § 6, captioned *Governmental Powers of Cities and Towns* provides that “[a]ny city or town may, by the adoption ... of local ordinances or by-laws, exercise any power which the general court has power to confer on it, which is *not inconsistent* with the constitution or laws enacted by the general courtin conformity with the powers reserved to the general court by section eight“ (emphasis supplied) The powers reserved to the General Court by § 8 of art. 89 include “the power to act in relation to cities and towns but only by means of general laws which apply alike to all cities, or to all towns, or to all cities and towns, or to a class of not fewer than two....” ^{FN24} Chapter 734 of the Acts of 1966 ^{FN25} inserted G.L. c. 43B, the Home Rule Procedures Act whose purpose was to implement § 6 of art. 89. Not surprisingly, [§ 13](#) substantially restates the language of § 6. ^{FN26} Thus, the Home Rule Amendment as well as its implementing legislation permit a city or town to enact by-laws or ordinances provided they are “not inconsistent” with the General Laws.

[FN24](#). Under § 8 of art. 89, the general court may act by special law on a home rule petition that applies to a single city or town only.

[FN25](#). Enacted pursuant to the ‘reservation clause’ of § 8 of art. 89.

[FN26](#). [C. 43B § 13](#): Any city or town may, by the adoption, amendment or repeal of local ordinances or by-laws, exercise any power or function which the general court has power to confer upon it. Which is not inconsistent with the constitution or laws enacted by the general court in conformity with power reserved to the general court by § 8 of Article LXXXIX of the Amendments to the Constitution and which is not denied, either expressly or by clear implication, to the city or town by its charter.

*4 The case of *DelDuca v. Town Administrator of Methuen*, [368 Mass. 1 \(1975\)](#) is especially germane to the issue of consistency and ultimately, to this court's determination under [G.L. c. 240, § 14A](#). The relevant facts in *DelDuca* were these: In 1938, Methuen adopted a by-law pursuant to [G.L. c. 41 § 81A](#) establishing a five-member elected planning board. Thereafter, in 1972, the Town adopted a Home Rule Charter, so-called, under G.L. c. 43B that authorized the town administrator to appoint a seven-member planning board while prescribing various powers and duties for the board. Members of the prior five-member board who failed at reappointment to the newly constituted board challenged the validity of those provisions arguing that they were inconsistent with [c. 41 § 81A of the General Laws](#).

Citing [Bloom v. Worcester](#), [363 Mass. 136, 155 \(1973\)](#), the Court enunciated the standard for determining consistency under § 6 of art. 89 and § 13 of G.L. c. 43B, as follows:

In determining whether a local ordinance or by-law is ‘not inconsistent’ with any general law within the meaning of those words in Section 6 of the Home Rule Amendment and in [Section 13](#) of the Home Rule Procedures Act, the same process of ascertaining legislative intent must be performed as has been performed in the Federal preemption cases and in our own cases involving ‘inconsistent’ or ‘repugnant’ local ordinances or by-laws. The legislative intent to preclude local action must be clear. If the Legislature has made no explicit indication of its intention in this respect, a legislative intention to bar local

ordinances and by-laws purporting to exercise a power or function on the same subject as State legislation may nonetheless be inferred in all the circumstances.

The Court went on to observe that if legislation deals in a comprehensive manner with a subject, describing what cities and towns can or cannot do, a reasonable inference may be drawn that the legislature intended to preclude the exercise of any local action or function on the same subject, lest the legislative purpose of the statute be frustrated. By way of example, the Court pointed to the comprehensive statutory schemes that relate to municipal borrowing,^{FN27} tax assessments,^{FN28} and collections^{FN29} as justifying an inference of preemption.^{FN30}

[FN27.](#) See G.L. c. 44.

[FN28.](#) See G.L. c. 59.

[FN29.](#) See G.L. c. 60.

[FN30.](#) The Court was aware that § 7 of art. 89, the Home Rule Amendment, expressly precluded local action in the foregoing areas.

A conclusion that the Legislature intended to preempt a topic may also be inferred if the Legislature has explicitly limited the manner in which cities and town may act on that subject. One must inquire whether the legislative purpose can be achieved in the face of a local ordinance or by-law on the same subject. If so, the local regulation is not, as a rule, inconsistent with the State legislation. *DelDuca* at 11.

Applying the *Bloom* standard, the Court concluded that [G.L. c. 41 § 81A](#), in conjunction with “related legislation” precluded any local by-law or ordinance on the subject of planning boards, except as authorized by the Legislature. “The legislation described here deals comprehensively with the subject, [i.e. planning boards], describing in detail what municipalities can and cannot do.”^{FN31}

[FN31.](#) *Id* at 11-12.

*5 The Court found moreover that the Legislature specifically limited the manner in which cities and towns may act on the subject of planning boards noting that [G.L. c. 41 § 81A](#) “is mandatory in its terms... [It] is one of more than thirty separate, but interconnected sections of [c. 41](#) dealing with the creation and operation of planning boards.... In short, the Legislature has ... taken the entire subject of the establishment, powers, duties of local ... planning boards in hand, and has thereby precluded any local action which would impair the operation and effect of the statutes in that field.”^{FN32}

[FN32.](#) *Id* at 12.

Methuen was therefore powerless to specify the planning board's powers and duties in a manner which deviated from those established by the Legislature. Insofar as the Methuen Ordinances purported to prescribe powers and duties for the planning board that were in addition to those fixed by statute, the court held them to be a nullity.^{FN33}

[FN33](#). *Id* at 13.

Turning to the case at hand, it should be noted that town meeting has two basic functions. It encompasses the annual town election by which municipal officers are elected, and it “function[s] as the legislative arm of each Massachusetts town....” The Court has recognized that “the Legislature has extensive powers over cities and towns. [T]he powers of a town and of its town meeting, and the very existence of the town, are subject to the will of the Legislature.” [Opinion of the Justices, 358 Mass. 838, 840-841 \(1971\)](#). The distinctive characteristic of town government ... is the town meeting ..., in which are vested the traditional powers of the legislative branch of any level of government, i.e. the power to make laws (by-laws) and the power of the purse. *Town Meeting Time*, 2nd ed, Johnson, Trustman, Wadsworth, p. 1, Krieger Publishing Company, Malabar, Florida, 1984.

Under the By-law provisions at issue, however, the Bellingham Town Meeting diverges in significant fashion from its traditional function, purporting to take on instead, an adjudicatory or quasi-adjudicatory role. This is a function for which it is, at best, ill suited.^{[FN34](#)}

[FN34](#). In [Doris Mullin & others v. Planning Board of Brewster & another, 17 Mass.App.Ct. 139, 142 \(1983\)](#) the court observed that an adjudicatory proceeding was one involving “particular persons, their business or property, and their relation to a particular transaction” [rather than a question involving] ... governmental policy.” See also [G.L. 30A, § 1A](#), the State Administrative Procedures Act. Though not directly applicable to this matter, it provides a helpful definition of “Adjudicatory proceeding” as one in which legal rights, duties or privileges of named persons are required to be determined after opportunity for a hearing.

Neither the composition nor structure of town meeting lends itself to an adjudicatory role. Nonetheless, town meeting is obliged under the Bellingham By-law to render a determination on whether a critical and complex Concept Plan passes muster. Only if two-thirds of the members vote in the affirmative, may an applicant seek the grant of a special permit,^{[FN35](#)} otherwise, the special permit option is foreclosed to the applicant. While the planning board must hold a pre-town meeting hearing on the Concept Plan, thereafter submitting a recommendation to town meeting, and while it must also report on the applicant's compliance with the enumerated Considerations, nowhere is there a requirement that town meeting accept, review or even consider those recommendations; indeed there is no requirement that it consider anything at all other than the Concept Plan itself. Wholly lacking in the By-law are prescribed standards to guide town meeting in evaluating the Concept Plan or in otherwise carrying out its Concept Plan review. Wholly lacking, as well, are procedural safeguards, or even assurances that the relevant parties will be afforded the opportunity to present their respective positions. Lacking too, is a structure that would allow for a hearing, discussion among the members, or formal deliberations on the Concept Plan prior to any vote.^{[FN36](#)}

[FN35](#). Attendance at town meeting may vary from hour to hour or may vary over shorter intervals of time.

[FN36](#). In *Yerardi's Moody Street Restaurant and Lounge, Inc. v. Selectmen of Randolph, et al.*, 19 Mass.App.Ct. 296, 303 (1985), the Court observed that “[i]n this Commonwealth the right to a hearing where government exerts power upon an individual in a matter of consequence has been related, on occasion, not to the Constitution, but to an ethic that pervades our legal system.”

See also *Milligan v. Board of Registration in Pharmacy*, 348 Mass. 491,495-496 (1965) referencing “a kind of common law ... unanchored to any constitutional or statutory provision” that assures a hearing to a party with sufficient interest at stake in governmental action directed to him.

*6 G.L. c. 40A provides for a detailed, relatively efficient and expeditious special permit process, under which notice, public hearing, final action on the application, and appeal [FN37](#) must be accomplished within prescribed statutory time periods. This Chapter 40A process is to be contrasted with the need to secure approval from a town meeting that may meet as infrequently as once or twice during the calendar year. There is but a single, statutorily mandated annual town meeting, often held in May, though it may be held anytime from February through May. [FN38](#) Thereafter, while a *special* town meeting may be convened any time of year, frequently no more than a single *special* town meeting is scheduled during any year. As a consequence, the applicant may be left with few regularly scheduled or predictable occasions during which it may present its Concept Plan to town meeting. [FN39](#) Even then, a matter will not be taken up by town meeting unless the selectmen choose to include it in the annual town meeting warrant, or ten or more registered voters of the town request in writing that it be so included. The procedure is the same for a *special* town meeting with the exception of the number of registered voters required; in that event, it is the lesser of 10% of all registered voters in the town, or one hundred registered voters. The special town meeting need not be called by the selectmen, at all, unless requested in writing by the lesser of two hundred registered voters or 20% of all registered voters in the town. [FN40](#) This cumbersome system, while perhaps adequate to fulfill town meeting's legislative role, is hardly calculated to assure a reasonably prompt hearing on an applicant's Concept Plan or upon its right to pursue a special permit application.

[FN37](#). See [G.L. c. 40A, § 9](#): Public hearing to be held within 65 days of filing application; decision to be made within 90 days of hearing; failure to act within 90 days constitutes a grant of the special permit. See too, [§§ 11 & 17](#) which provide additional, strict mandatory deadlines.

[FN38](#). See [G.L. c. 39, § 9](#).

[FN39](#). While annual town meeting is convened once a year, the meeting itself may last for several days usually during evening hours; ultimately, the length of a town meeting is dependent upon the number and nature of the warrant articles to be taken up and voted.

[FN40](#). See [G.L. c. 39, § 10](#). Note that § 12 may be triggered where selectmen unreasonably refuse to call a town meeting.

Lastly, defendant has raised the issue regarding the Town's ability to approve major residential developments in the event the court were to grant plaintiff's motion thereby invalidating sections of the By-law. In this regard, § 1900 of the By-laws, captioned *Separability* expressly provides that “[t]he invalidity of any section or provision of this Bylaw shall not invalidate any other Section or provision thereof.” I am satisfied that by invalidating the offending provisions, there will remain a reasonable, workable zoning scheme that allows for major residential developments by special permit. Even if that were not the case however, where, as here, provisions of art. 89 have been implicated, the offending sections should be invalidated nonetheless, and the Town encouraged to amend its zoning by-law without delay.

V. Conclusions

While I conclude that the Bellingham Town Meeting is not itself a de facto special permit granting authority, as argued by the plaintiff,^{FN41} it nonetheless, has the ability to effectively wield *veto* authority over the grant of a special permit should it elect not to approve the Concept Plan. Acting in this gatekeeper capacity, town meeting can play a pivotal role in determining whether or not a special permit will issue. This is a function that is neither contemplated nor permitted under G.L. c. 40A.

[FN41](#). That is because the By-law has been carefully drawn to vest actual permit granting authority in the planning board where the grant of a permit is made subject to the criteria specified in § 1500. *Special Permits*, of the By-law.

*7 The sections of the Town of Bellingham Zoning By-Law at issue which establish town meeting Concept Plan approval, are therefore inconsistent with the general statutory scheme of G.L. c. 40A and with the special permit process set out therein. It follows then that § 4451 and §§ 3400 through 3433, inclusive, of the said By-law are violative of both § 6 of art. 89, the Home Rule amendment, and [§ 13 of G.L. c. 43B](#), the Home Rule Procedures Act, and are therefore void.

The plaintiff is entitled to allowance of its motion for summary judgment.

Judgment accordingly.

Mass.Land Ct.,2007.

Wright v. Town of Bellingham

Not Reported in N.E.2d, 2007 WL 1884657 (Mass.Land Ct.)