Michael Palmer, Town Clerk
Town of Falmouth
59 Town Hall Square.
Falmouth, MA 02540

RE: Falmouth Annual Town Meeting of April 2, 2012 – Case # 6254
Warrant Articles # 7, 9 (Zoning)
Warrant Articles # 15, 31, 35, and 36

Dear Mr. Palmer:

Article 9 – We approve the amendments to the Falmouth by-laws adopted under Article 9, and the map related to Article 9, on the warrant for the Annual Town Meeting that first convened on April 2, 2012. We will return the approved map to you by regular mail.

The amendments adopted under Article 9 amended the Town’s Zoning By-Law and Zoning Map by changing the district designation of the land at 740 Thomas B. Landers Road, Falmouth Assessors Map 15, Section 04, Parcel 14, Lot 00, from Agricultural AA to Light Industrial C.

I. Attorney General’s Standard of Review; Town’s Zoning Authority; and the “Uniformity Principle”.

During our review of the amendments adopted under Article 9 we have received various communications urging our disapproval or approval of the amendments. We appreciate all of this input, and these communications have aided our review. Pursuant to G.L. c. 40, § 32, the Attorney General has a limited power of disapproval with every “presumption made in favor of the validity of municipal by-laws.” Amherst v. Attorney General, 398 Mass. 793, 796 (1986). In order to disapprove any portion of a proposed by-law, the Attorney General must cite an inconsistency between the by-law adopted by the Town and the Constitution or laws of the Commonwealth. Amherst, 398 Mass. at 796. The Attorney General’s limited standard of review requires her to approve or disapprove by-laws based solely on their consistency with state and federal law, not on any policy views she may have on the subject matter or wisdom of the by-law. Amherst, 398 Mass. at 795-96, 798-99.
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). Because the adoption of a zoning by-law by the voters at Town Meeting is both the exercise of the Town’s police power and a legislative act, the vote carries a "strong presumption of validity." Id. at 51. "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)). A zoning by-law must be approved unless "the zoning regulation is arbitrary and unreasonable, or substantially unrelated to the public health, safety, morals, or general welfare." Johnson v. Town of Edgartown, 425 Mass. 117, 121 (1997).

We are aware of the concern expressed by the opponents that the amendments adopted under Article 9 violate the “uniformity principle” reflected in G.L. c. 40A, § 4, alleging that the amendments single out a parcel for different treatment and fails to treat like properties in a uniform manner. General Laws Chapter 40A, Section 4, requires, “Any zoning ordinance or by-law which divides cities and towns into districts shall be uniform within the district for each class or kind of structures or uses permitted.” “The uniformity requirement is based upon principles of equal treatment. . . .” SCIT, Inc v. Planning Board of Braintree, 19 Mass. App. Ct. 101, 107 (1984). In evaluating whether different treatment violates the uniformity principle, “[p]rimary attention is . . . focused on the reasonableness of such classification.” Williams, American Land Planning Law 32:1 (Rev. ed. 2003). “[A] classification as the means for attaining a permissible end is not to be declared invalid ‘if any state of facts reasonably can be conceived that would sustain it.’” Caires v. Building Comm’r of Hingham, 323 Mass. 589, 596-97 (1949) (quoting Rast v. Van Deman & Lewis Co., 240 U.S. 342, 357 (1916)).

The Town can vote to treat a certain parcel within the Town differently from other parcels so long as the Town does so for a legitimate zoning purpose. Spot zoning only exists when 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.” National Amusements, Inc. v. Boston, 29 Mass. App. Ct. 305, 312 (1990), citing Shapiro v. Cambridge, 340 Mass. 652, 659 (1960). Based upon the documents submitted to us by the Town pursuant to G.L. c. 40, § 32, we cannot conclude that the Town’s vote lacks a legitimate planning purpose, or is “arbitrary and unreasonable, or substantially unrelated to the public health, safety, morals, or general welfare.” Johnson v. Town of Edgartown, 425 Mass. 117, 121 (1997). On the contrary, the documents submitted by the Town reflect that that the Planning Board held a hearing on January 31, 2012 to determine whether to recommend inclusion of the parcel in the Light Industrial C District; that the Planning Board recommended inclusion of the parcel in the Light Industrial C District on the basis that it was appropriate and consistent with the stated goal of the Local Comprehensive Plan to extend light industrial zoning to increase areas for contractors and light industry; and that, as part of its recommendation for adoption of Article 9, the Planning Board stated that it is working with other property owners in the Thomas B. Flanders Road area to extend the Light Industrial C District to additional parcels. Based upon the materials submitted to us by the Town, it appears on this record that the amendments adopted under Article 9 can be viewed as furthering the public
welfare as part of a legitimate planning process.

Because the reasonableness of the Town’s vote is ‘fairly debatable, the judgment of the local legislative body responsible for the enactment must be sustained.’” Durand v. IDC Bellingham, LLC, 440 Mass. 45, 51 (2003) (quoting Crall v. City of Leominster, 362 Mass. 95, 101 (1972)).

**Articles 7, 31, 35 and 36** – We remind the Town that in a decision dated July 17, 2012 we approved these Articles.

**Article 15** – We remind the Town that in a decision dated July 23, 2012 we approved this Article.

**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,

MARTHA COAKLEY
ATTORNEY GENERAL

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**ce:** Town Counsel Frank K. Duffy (via electronic mail)