

Connery Associates

Memorandum

To: Chatham Planning Board

Fr: John Connery

Re: Exempted Uses

April 12, 2005

Per the request of the Planning Board at the meeting of April 5, 2005 I have prepared a memo outlining the use exemptions, (uses that cannot be prohibited by local action), that are enumerated in Chapter 40A of the Massachusetts General Laws (40A)

In general terms limits on local zoning power are set forth in MGL 40A. The following is a list of said uses with a general description.

Agricultural Uses 40A Section 3. All agricultural, horticultural, floricultural, viniculture uses as long as said uses are the primary economic and land use activity of the property.

Section 3 clearly indicates that the exemption is limited to uses of five acres or more, thus towns can regulate said uses that are on sites less than five acres.

Aquaculture is not specifically listed. However, the court in *Tisbury vs. Martha's Vineyard Commission* stated that the exemption should be interpreted broadly and in the particular instance stated that dog breeding is an exempted use.

Flood Plain and Wetland Regulations 40A Section 3. States that no zoning ordinance or bylaw shall exempt land from floodplain or wetland regulations established pursuant to general law.

Interior Area of a Single family Residential Building. Section 3 states "that no zoning ordinance or bylaw shall regulate or restrict the interior area of a single family building.

Religious Uses 40A Section 3 states that no ordinance or bylaw shall prohibit the use of land for religious purposes ...provided that such land or structures may be subject to

reasonable regulations concerning bulk and height of structures and determining yard sizes, lot area, setbacks , open space, parking and building coverage requirements.

Educational Uses 40A Section 3. States that no ordinance or bylaw shall prohibit, regulate or restrict the use of land or structures for...educational purposes on land owned or leased by the Commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or a non profit educational corporation provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements.

Public Service Corporations 40A Section 3. Lands or structures used by public service corporations may be exempted in particular respects from local zoning, if the corporation petitions the Massachusetts Department of Public Utilities, and after a public hearing, the department determines the use is reasonably necessary for the convenience or welfare of the public.

Child Care Facilities 40A Section 3. Child care facilities defined as uses, consistent with MGL 28A chapter 9, (not more than six children) are exempt from local zoning, but reasonable dimensional criteria may apply.

Discrimination Against Disabled Persons 40A Section 3. Zoning regulations (and health and safety regulations) shall not discriminate against uses of land by disabled persons.

Family Day Care 40A Section 3. Is an allowable use unless the community specifically prohibits or regulates said use. (More than 6 children).

Temporary Mobile Homes 40A Section 3. Said homes shall not be prohibited if the home as been destroyed by fire or other natural causes.

Handicapped Access Ramps 40A Section 3. Dimensional requirements may not be used to prohibit or limit handicapped access ramps.

Solar Energy Systems 40A Section 3. “no zoning ordinance or bylaw shall prohibit or unreasonably regulate.... except where necessary to protect the public health, safety or welfare.”

Antenna Structures 40A Section 3. Said use cannot be prohibited but it can be reasonably regulated. Said uses must be licensed by appropriate state and federal agencies.

Solid and Hazardous Waste Facilities 40A Section 9. Hazardous Waste Facilities can be constructed in land zoned for industrial use, however, licensing issues must be met. Solid waste facilities also enjoy the exemption in industrial zoned areas but can be reasonably regulated in regard to dimensional issues.

Federal and state Government. Federal and state uses are immune from local zoning. The immunity is not statutory but developed from case law and in the federal case rests on the doctrine of federal supremacy. State exemption has been traditionally applied to “essential government functions” Political subdivisions of the state have also been granted immunity in various court decisions, e.g., Turnpike authority, MassPort etc.

Municipal Government. Cities or Towns must comply with any provision of the local zoning regulation applicable to it. However, a community may provide an exemption for municipal uses, in some or all districts.