

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

S.J.C. NO. _____

APPEALS COURT NO. 2025-P-1596

NORFOLK, SS. SUPERIOR COURT DEPT.
NO. 2382CV00815

FRIENDS OF BASSING BEACH, INC. AND DOUGLAS MCLELLAN

v.

ANDREA JOY CAMPBELL, ATTORNEY GENERAL

APPLICATION OF PLAINTIFFS/APPELLANTS
FRIENDS OF BASSING BEACH, INC. AND DOUGLAS MCLELLAN
FOR DIRECT APPELLATE REVIEW

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REQUEST FOR DIRECT APPELLATE REVIEW

A town meeting in Massachusetts is a form of “pure democracy, where the citizens, as to matters within their jurisdiction, administer the affairs of the town in person.” Wood v. Town of Milton, 197 Mass. 531, 533 (1908). As Alexis de Tocqueville put it in *Democracy in America*: “Town-meetings are to liberty what primary schools are to science; they bring it within the people's reach, they teach men how to use and how to enjoy it.” Barron v. Kolenda, 491 Mass. 408, 417 (2023) (Kafker, J.), quoting 1 A. de Tocqueville, *Democracy in America* 55 (H. Reeve trans. 1862). “No small part of the capacity for honest and efficient local government manifested by the people of this Commonwealth has been due to the training of citizens in the form of the town meeting.” Barron, supra, quoting Wheelock v. Lowell, 196 Mass. 220, 227 (1907).

Under the town meeting form of government, registered voters have the right to propose legislation directly to voters, regardless of the wishes of the town's elected officials. This is similar to the right to submit ballot questions to the

voters of the Commonwealth through statewide initiatives.

When registered voters submit a "citizens' petition" for a new town bylaw, the selectmen must include it in the warrant presented to the assembled town meeting. G.L. c. 39, § 10. The approval of a bylaw at town meeting is subject only to the Attorney General's limited review of its text for consistency with state law. Town of Concord v. Att'y Gen., 336 Mass. 17, 24 (1957); G.L. c. 40, § 32.

In this case, Cohasset Town Meeting overwhelmingly approved a bylaw to regulate obstructions to navigation in Cohasset Harbor, but the Attorney General determined that the bylaw was inconsistent with state law. In response, the bylaw's sponsors, Cohasset resident Douglas McLellan ("McLellan") and local non-profit Friends of Bassing Beach, Inc. ("FOBB"), filed a certiorari action challenging the Attorney General's determination. The Superior Court judge concluded that, unlike proponents of statewide ballot initiatives, the sponsors of an approved town meeting warrant article lack standing to challenge its invalidation by the Attorney General. The Superior Court also determined that FOBB's and

McLellan's ownership of property on Cohasset Harbor did not give them standing to defend a bylaw regulating that area.

The Superior Court judge's ruling has broad implications for the long-recognized right of Massachusetts citizens to participate in the "pure democracy" of town meeting and to "administer the affairs of the town." Wood, 197 Mass. at 533. It also creates an inconsistency between the rights to judicial review of proponents of statewide initiatives and those of sponsors of local citizens' petitions, even though the same principle of direct democracy underpins both processes. Compare Buckley v. Sec'y of Com., 371 Mass. 195, 197-198 (1976).

Given the statewide implications of the Superior Court judge's decision, and that no Massachusetts appellate decisions have addressed whether a sponsor of a town meeting bylaw may challenge the Attorney General's invalidation of it, this appeal involves "questions of first impression," "novel questions of law," and issues of "such public interest that justice requires a final determination by the full Supreme Judicial Court." Mass. R. App. P. 11. Direct appellate review will promote judicial economy and

ensure that the Commonwealth's highest court rules on important issues concerning town meeting, democratic participation in government, and standing. Therefore, pursuant to Mass. R. App. P. 11, Plaintiffs respectfully request that this Court grant their application for direct appellate review.

STATEMENT OF FACTS AND PRIOR PROCEEDINGS¹

Friends of Bassing Beach, Inc. ("FOBB") is a Massachusetts non-profit corporation comprised of hundreds of Cohasset and Scituate residents and abutters of Cohasset Harbor. Its purpose is to preserve and conserve Cohasset Harbor. FOBB also owns two properties abutting Cohasset Harbor that are used

¹ Pursuant to Mass. R. App. P. 11(b)(6), a copy of the docket entries and a copy of all lower court decisions relevant to the issues on appeal, including the decision by the Appeals Court Single Justice regarding Plaintiffs' petition for interlocutory relief has been included in Plaintiffs' Addendum ("Add."). For the convenience of the Court the full set of documents included in the Plaintiffs' Addendum are (1) a true and accurate copy of the docket report from the Superior Court, (2) a true and accurate copy of the Complaint, (3) a true and accurate copy of the Citizens' Petition submitted to the Town of Cohasset by the Plaintiffs, (4) a true and accurate copy of the Superior Court judge's Memorandum and Order of Decision on Defendant Attorney General's Motion to Dismiss, and (5) a true and accurate copy of the Single Justice's (Meade, J.) denial of Plaintiffs' Petition for Interlocutory Relief.

for recreational and conservation purposes. See Add. at p. 174. See also id. at pp. 24-60. Plaintiff Douglas McLellan ("McLellan") is a registered voter of the Town of Cohasset. He also owns two parcels of property abutting Cohasset Harbor. Id.

On September 26, 2022, McLellan submitted a "Citizen Petition Warrant Article" to the Town of Cohasset ("Town" or "Cohasset"), together with more than 100 pages of supporting signatures, asking that a special town meeting be held to consider a new bylaw. Id. at pp. 61-168. The form lists McLellan as the "petitioner," meaning the "sponsor of the Article." Id. at p. 168. It designates Timothy C. Davis, the President, Treasurer, and a Director of FOBB, as the primary speaker at town meeting in support of the article. Id.

The purpose of the petition was "[t]o see if the Town will vote to amend the Town of Cohasset General Bylaws by adding a new bylaw entitled 'Navigation Bylaw.'" Id. at p. 61. The proposed Navigation Bylaw prohibited, with exceptions, "the installation of anything placed in or upon tidal waters or affixed to land thereunder" in Cohasset Harbor. Id. The Navigation Bylaw relied for its authority on Chapter

54 of the Acts of 1953 (the "Act"), which provides that "[t]he inhabitants of the town of Cohasset may, by by-laws, provide for the regulation" of "the operation of" and the "mooring and anchoring of boats, lobster cars or floats" in "Cohasset harbor and cove within the territorial limits of the commonwealth," including the areas of the harbor within the Town of Scituate. Id.

The Cohasset Special Town Meeting overwhelmingly approved the bylaw, 172-20. Id. at pp. 33, 38. The Navigation Bylaw was then submitted to the Attorney General for review pursuant to G.L. c. 40, § 32. Id. at p. 38. The Attorney General disapproved it, blocking it from going into effect and "effectively preventing Cohasset from regulating the harbor." Id. at p. 170. See also id. at pp. 38-40, 47-60.

Shortly thereafter, FOBB and McLellan filed this action in the nature of certiorari pursuant to G.L. c. 249, § 4 to set aside the Attorney General's determination. Id. at p. 25; Town of Reading v. Att'y Gen., 362 Mass. 266, 269-70 (1972) ("We hold that certiorari . . . will lie . . . to review the [Attorney General's] disapproval of the town's by-law."). On May 6, 2024, the Attorney General served a

motion to dismiss pursuant to Mass. R. Civ. P. 12(b)(1) and 12(b)(6) on the grounds that FOBB and McLellan lacked standing. Id. at pp. 25-28. The next day, the Town served a motion to intervene to defend the bylaw. Id. The Superior Court ultimately allowed the motion to intervene. Id.

On December 18, 2024, the Court allowed the Attorney General's motion to dismiss FOBB and McLellan as plaintiffs. Id. See also id. at pp. 169-172. The Court held: (1) that FOBB and McLellan's status as owners of land on Cohasset Harbor did not afford them standing; (2) that FOBB and McLellan's status as the parties who presented the citizens' petition for the bylaw "does not render them injured in a manner unlike others in the community,"; and (3) that plaintiffs' allegations that harbor congestion will increase without the bylaw was "too speculative and generalized to establish standing." Id. at pp. 169-172.

The Plaintiffs petitioned the Single Justice (Meade, J.) of the Appeals Court under G.L. c. 231, § 118 (par. 1) for interlocutory relief. Id. at p. 28-29. The Single Justice denied the petition, but noted that "nothing in this order precludes the [P]laintiffs from raising the issues advanced in their petition

from any appeal from the final judgment.” Id. at pp. 173-174.

Thereafter, the Town declined to prosecute the certiorari action challenging the Attorney General’s determination. Id. at p. 30. The Town and the Attorney General entered a stipulation dismissing all claims with prejudice and waiving all rights to appeal, allowing the Attorney General’s invalidation of the bylaw to remain in effect. Id. The Superior Court judge then entered final judgment against FOBB and McLellan, who subsequently filed their notice of appeal. Id.

Statement of the Issues of Law Raised by the Appeal

The most significant issue raised in this appeal is whether the Superior Court judge erred in determining that Plaintiffs, who were the proponents of the warrant article and owned property on the harbor, lacked standing to challenge the Attorney General’s disapproval of the navigation bylaw.²

² Plaintiffs note that is not necessarily the only issue that they intend to raise in their appeal but rather constitutes the most significant appellate issue and the reason that direct appellate review is appropriate. Should direct appellate review be allowed, Plaintiffs reserve the right to raise and brief other properly preserved appellate issues.

ARGUMENT FOR DIRECT APPELLATE REVIEW

This Appeal Raises Critical Questions About the Rights of Successful Sponsors of Warrant Articles at Town Meeting to Defend the Lawfulness of their Proposals.

Direct appellate review by this Court is appropriate when the appeal at issue involves, *inter alia*, questions of first impression, novel issues of law, and/or questions of such public interest that justice requires a final determination by the full Supreme Judicial Court. Mass. R. App. P. 11. Notably, this Court has consistently treated cases that involve democratic participation, direct democracy, and unique aspects of Massachusetts governance as being worthy of its consideration. E.g., Barron, 491 Mass. at 491 (involving speech challenges under the Declaration of Rights); Buckley, 371 Mass. at 195 (involving standing of proponents of statewide initiatives); Wood, 197 Mass. at 531 (involving review of action taken at town meeting). This case also presents an issue of first impression. While this Court has addressed a similar issue in the context of statewide initiatives, no appellate court in the Commonwealth has addressed whether the sponsor of a proposed bylaw at town meeting has standing to

challenge an unfavorable determination of its legality by the Attorney General, as do their counterparts who propose statewide ballot initiatives.

"A town meeting is a 'gathering of a town's eligible voters' to vote to matters of town business." Haven Ctr., Inc. v. Town of Bourne, 490 Mass. 364, 365 n.6 (2022), quoting Citizens Guide to Town Meetings, at 1, https://www.sec.state.ma.us/cis/cispdf/Guide_to_Town_Meetings.pdf [<https://perma.cc/ECZ4-WWT6>]. "The existence of towns, and action by the inhabitants at town meetings, are contemplated by the [Massachusetts] Constitution" and "the form of government of a town [meeting] has been described as pure democracy as distinguished from representative government." Com. v. Town of Hudson, 315 Mass. 335, 344 (1943). See also Mass. Const. Amend. arts. II, LXX, LXXXIX. The original form of town meeting, in which any resident voter may participate, began in colonial times and continues to be practiced in Cohasset. E.g., Wheelock, 196 Mass. at 227.

Under G.L. c. 39, § 10, registered voters have the right to bring citizens' petitions before town meeting. If such a petition is supported by the requisite number of signatures and is properly

presented, the Select Board is required to include a citizens' petition in the town meeting warrant. G.L. c. 39, § 10 ("The selectmen shall insert . . . in the warrant for every special town meeting all subjects the insertion of which shall be requested of them in writing by one hundred registered voters or by ten per cent of the total number of registered voters of the town whichever number is the lesser."); Crowell v. Att'y Gen., 3 Mass. App. Ct. 700, 701 (1975) (statute requires "selectmen to exercise those powers when requested to do so by the specified numbers of voters."); Walsworth v. Casassa, 219 Mass. 200, 206 (1914) (selectmen committed "misconduct" when they omitted a properly supported citizen proposal from town meeting warrant). This longstanding requirement helps to ensure that town meeting remains a "pure democracy, where the citizens, as to matters within their jurisdiction, administer the affairs of the town in person." Wood, 197 Mass. at 533.

This process is similar in both form and spirit to the statewide initiative process established by Article 48 of the Amendments to the Massachusetts Constitution. Mass. Const. Amend. art. XLVIII, Initiative, pt. 1 ("the people reserve to themselves

the popular initiative, which is the power of a specified number of voters to submit constitutional amendments and laws to the people for approval or rejection.”). Like citizen petitions at town meetings, statewide initiatives are proposed and approved directly by the people, regardless of (or in spite of) the opinions of elected legislators. Id. And like the town meeting statute, the purpose of statewide initiatives is “to give to the people of the Commonwealth a larger control and domination over legislation, to enable the people to have some say . . . with regard to the laws which shall be enacted.” Slama v. Att’y Gen., 384 Mass. 620, 623 (1981), quoting Sherman L. Whipple of Brookline, 2 Debates in the Massachusetts Constitutional Convention of 1917-1918, 39 (1918). Similar to citizen petitions approved at town meeting, statewide initiatives are subject to review by the Attorney General. Mass. Const. Amend. art. XLVIII, Initiative, pt. 2, sec. III. The main difference is that statewide initiatives are reviewed by the Attorney General before the public casts its vote, whereas a bylaw approved at town meeting is reviewed by the Attorney General after the voters approve it. See Mass. Const.

Amend. art. XLVIII, Initiative, pt. 2, sec. III; G.L. c. 39, § 10; G.L. c. 40, § 32.

This Court has long held that the first ten signatories to a statewide initiative petition have standing to challenge the Attorney General's legal determination that an initiative must be excluded from the ballot. Buckley, 371 Mass. at 197-98 (court has "considered the first ten signers of an initiative or referendum petition to be proper parties in moving through the courts to protect their petition"). In this Court's words, "only through the recognition of this right could the ultimate objectives of art. 48 be attained." Id. at 198. If statewide initiative proponents were "unable to protect their right by judicial review prior to an election, the very heart and spirit" of Art. 48 "might be abrogated." Id. Given the similar processes and principles underpinning citizen petitions at town meeting and statewide initiatives, it would seem logical that the sponsors of a citizens' petition in town meeting are likewise "proper parties in moving through the courts to protect their petition." Id.

Here, the Superior Court judge concluded that proponents of bylaws at town meeting do not have

standing to challenge the Attorney General's determinations, because such status "does not render them injured in a manner unlike others in the community." Add. at p. 171. The court relied on another Superior Court decision, Kaminski v. Healey, No. 1576CV00046 (Mass. Super. Ct., Apr. 5, 2016), which noted that neither the town meeting statute, G.L. c. 39, § 10, nor the Attorney General bylaw-review statute, G.L. c. 40, § 32, expressly grant such standing. However, the same is true of Article 48 of the Amendments to the Massachusetts Constitution: it does not expressly provide that statewide initiative proponents – or anyone else – may challenge the Attorney General's determinations of the lawfulness of statewide referenda. It may also be said (especially if one ignores the importance of direct democracy enshrined in Art. 48) that the proponent of a statewide ballot initiative is not "injured" in a manner unlike others in the state by the prevention of the initiative from taking effect. Yet the standing

of such statewide initiative proponents is well-established.³

This Court has repeatedly held that town meeting is vital to Massachusetts town governance. E.g., Wheelock, 196 Mass. at 227. It has also repeatedly stepped in to speak on issues of Massachusetts constitutional law and time-honored traditions of popular participation in democratic governance. E.g., Barron, 491 Mass. at 414 (“transferring” case involving speech rights under Massachusetts Declaration of Rights “on [its] own motion”). And perhaps most significantly, it has previously taken the opportunity to address the issue of standing in the context of statewide initiatives, which as discussed above are substantially similar to citizen petitions at town meeting. E.g., Buckley, 371 Mass. at 197-198.

³ It is not enough to observe that the town government may appeal from the Attorney General’s invalidation of a bylaw approved at town meeting. The very nature of the citizen’s petition is to overcome, if necessary, the inertia or opposition of Select Boards, just as ballot initiatives override the opposition of state legislators. Where the town’s elected officials did not want to see the citizen-proposed bylaw enacted in the first place, town government cannot be expected to expend legal resources to challenge the Attorney General’s disapproval of it.

In short, given the importance of town meeting, the similarities between citizen petitions at town meeting and statewide initiatives, and the scarcity of appellate law on whether the proponent of a citizen petition at town meeting has standing to challenge an adverse determination by the Attorney General, this Court's voice is needed.

Additionally, the Superior Court judge's conclusion that the Plaintiffs' landowner status was insufficient to provide them with standing is yet another issue of first impression that further supports direct appellate review. In Town of Concord v. Att'y Gen., 336 Mass. at 18, this Court evaluated a challenge to Attorney General's disapproval of a zoning bylaw amendment that had been approved at the town of Concord's special town meeting. The challengers to the Attorney General's disapproval included both the Town of Concord and a corporation that owned land impacted by the rezoning. This Court held that "as the owners of the real estate which is the subject matter of the disputed amendment, [the petitioners] [had] a special right entitling them to maintain the petition." Id. at 27. In other words,

owning land directly impacted by action undertaken at town meeting is sufficient to confer standing. Id.

As such, the Court's decision in Town of Concord made clear that private parties affected by the Attorney General's disapproval of a zoning amendment approved at town meeting have standing to challenge the disapproval. This case presents the question of whether standing is similarly held by private parties whose property abuts a geographic area regulated or otherwise impacted by bylaws approved at town meeting. This second unresolved legal question, like the standing of bylaw proponents, presents a separate but related issue of first impression that further demonstrates the suitability of this appeal for direct appellate review.

**CONCLUSION AND STATEMENT OF REASONS WHY DIRECT
APPELLATE REVIEW IS APPROPRIATE**

Direct appellate review is appropriate because the issues in this case impact Massachusetts citizens' right to participate in the "pure democracy" that is carried out through town meeting. Absent review by this Court, citizens of the Commonwealth who successfully propose a town bylaw will have no direct

recourse if the Attorney General erroneously invalidates the results of a town meeting vote.

Such a result undermines the Commonwealth's long-honored town meeting tradition and cuts at "the very heart and spirit," of democratic rights that this Court has always protected. E.g., Buckley, 371 Mass. at 198; Barron, 491 Mass. at 491. Given the number of citizens whose rights may be impacted, this case is necessarily one "of such public interest that justice requires a final determination by" this Court. Mass. R. App. P. 11(a). Accordingly, Plaintiffs respectfully request that this Court allow their application for direct appellate review.

Respectfully submitted,

*Friends of Bassing Beach, Inc. and
Douglas McLellan,*

By their Attorneys,

/s/Jeffrey J. Pyle

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CERTIFICATE OF SERVICE

I, Jeffrey J. Pyle, hereby certify that I have served a copy of the foregoing on the following by electronic mail this 20th day of January, 2026 to:

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CERTIFICATE OF COMPLIANCE
PURSUANT TO MASS. R. APP. P. 16(k)

I, Jeffrey J. Pyle, certify that the foregoing application complies with the rules of court that pertain to the filing of applications, including, but not limited to:

Mass. R. App. P. 11 (direct appellate review);
Mass. R. App. P. 16(a)(13) (addendum);
Mass. R. App. P. 16(e) (references to the record);
Mass. R. App. P. 18 (appendix to the briefs);
Mass. R. App. P. 20 (form and length of briefs, appendices, and other documents);
Mass. R. App. P. 21 (redaction).

I further certify that the foregoing application complies with the applicable length limitation in Mass. R. App. P. 11 because it is produced in the monospaced font Courier New at size 12, which is 10 characters per inch, and contains nine (9) total non-excluded pages.

/s/Jeffrey J. Pyle

Jeffrey J. Pyle

ADDENDUM

	<u>Page</u>
Superior Court Docket Report.....	24
Plaintiffs' Complaint.....	32
Citizens' Petition to the Town of Cohasset.....	61
Memorandum and Order of Decision on Defendant Attorney General's Motion to Dismiss	169
Single Justice's (Meade, J.) Denial of Plaintiffs' Petition for Interlocutory Relied.....	173

2382CV00815 Friends of Bassing Beach, Inc et al vs. Andrea Joy Campbell, Attorney General

- Case Type:
- Administrative Civil Actions
- Case Status:
- Open
- File Date
- 08/31/2023
- DCM Track:
- X - Accelerated
- Initiating Action:
- Certiorari Action, G. L. c. 249 § 4
- Status Date:
- 08/31/2023
- Case Judge:
-
- Next Event:
-

All Information Party Event Tickler Docket Disposition

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Events

<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Event Judge</u>	<u>Result</u>
06/04/2024 02:00 PM	Civil C	DED-2nd FL, CR 20 (SC)	Rule 16 Conference	Cloutier, Hon. Claudine	Rescheduled
06/12/2024 02:00 PM	Civil C	DED-2nd FL, CR 20 (SC)	Rule 16 Conference	Ham, Hon. Catherine	Held via Video/Phone
09/10/2024 02:00 PM	Civil C	DED-2nd FL, CR 20 (SC)	Motion Hearing	Ham, Hon. Catherine	Not Held
11/20/2024 02:00 PM	Civil C	DED-2nd FL, CR 20 (SC)	Motion Hearing	Tingle, Hon. Brent A	Held - Under advisement

Ticklers

<u>Tickler</u>	<u>Start Date</u>	<u>Due Date</u>	<u>Days Due</u>	<u>Completed Date</u>
Service	08/31/2023	11/29/2023	90	
Judgment	08/31/2023	08/30/2024	365	07/14/2025
Under Advisement	11/20/2024	12/20/2024	30	11/20/2024

Docket Information

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
08/31/2023	Attorney appearance On this date Edward V Colbert, III, Esq. added for Plaintiff Friends of Bassing Beach, Inc		
08/31/2023	Attorney appearance On this date Edward V Colbert, III, Esq. added for Plaintiff Douglas McLellan		
08/31/2023	Case assigned to: DCM Track X - Accelerated was added on 08/31/2023		
08/31/2023	Original civil complaint filed.	1	
08/31/2023	Civil action cover sheet filed.	2	
11/28/2023	Service Returned for Andrea Joy Campbell, Attorney General by delivering in hand to Joseph Barnes, agent and person in charge at the time of service for Andrea Joy Campbell, Attorney General on 11/27/23 at 1:23pm (efiled 11/27/23) mc	3	 

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
02/02/2024	Defendant Andrea Joy Campbell, Attorney General's Notice of appearance of Vanessa A. Arslanian (efiled 2/2/24) mc	4	 Image
02/02/2024	Defendant Andrea Joy Campbell, Attorney General's Notice of intent to file the Administrative Record as Answer in accordance with Superior Court Standing Order 1-96 (efiled 2/2/24) mc	5	 Image
02/02/2024	Attorney appearance On this date Vanessa Azniv Arslanian, Esq. added as Attorney for the Commonwealth for Defendant Andrea Joy Campbell, Attorney General		
03/04/2024	Administrative record filed: Applies To: Arslanian, Esq., Vanessa Azniv (Attorney) on behalf of Andrea Joy Campbell, Attorney General (Defendant) (rec'd 2/26/2024)	6	 Image
03/20/2024	Defendant Andrea Joy Campbell, Attorney General's Joint Motion to Extend Deadlines Set by Superior Court Standing Order 1-96 (E-Filed 03/15/2024) mk	7	 Image
03/21/2024	Endorsement on Motion to extend deadline set by Superior Court Standing Order 1-96. (#7.0): ALLOWED -IN-PART. The deadlines set forth in pages 1-3 will be adopted. The matter will be scheduled for a Rule 16 Conference in early June to discuss establishing additional deadlines and an appropriate Tracking Order. (dated 3/20/2024) ns ni Judge: Cloutier, Hon. Claudine		 Image
05/07/2024	Plaintiffs Friends of Bassing Beach, Inc, Andrea Joy Campbell, Attorney General's Joint Motion to extend tracking deadline(s) 06/04/2024 02:00 PM Rule 16 Conference (E-Filed 04/29/2024) mk	9	 Image
05/08/2024	Endorsement on Motion to extend deadlines set by the Superior Court Standing Order 1-96 by 14 days. (#9.0): ALLOWED (dated 5/8/2024) ns ni Judge: Ham, Hon. Catherine		 Image
05/14/2024	Defendant Andrea Joy Campbell, Attorney General's Notice of Rule 9E Service of her Motion to Dismiss served on May 6, 2024 pursuant to Rule 9A (e-Filed 5/6/2024) dg	10	 Image
05/16/2024	Defendant's Notice of intent to file motion to Dismiss for Lack of Subject- Matter Jurisdiction and Failure to State a Claim (rec'd 5/6/24) Applies To: Arslanian, Esq., Vanessa Azniv (Attorney) on behalf of Andrea Joy Campbell, Attorney General (Defendant)	11	 Image
05/20/2024	Plaintiffs Friends of Bassing Beach, Inc, Douglas McLellan's Motion to (Unopposed) Extend Time to Respond to Motion to Dismiss and Serve Motion to Supplement Record (E-Filed 05/13/2024) mk	12	 Image
05/22/2024	Endorsement on Motion to extend time to respond to Motion to dismiss and serve Motion to supplement record. (#12.0): ALLOWED (dated 5/22/2024) ns ni Judge: Ham, Hon. Catherine		 Image
05/22/2024	Defendant Andrea Joy Campbell, Attorney General's Motion to extend time for filing deadline to oppose Cohasset's Motion to Intervene Partially Assented to with Rule 9C certification (e-filed 5/10/24)	13	 Image
05/29/2024	Endorsement on Motion to extend the deadline to oppose Cohasset's Motion to intervene. (#13.0): This was received to me today on 5/23/2024. This Motion is ALLOWED (dated 5/23/2024) ns ni Judge: Ham, Hon. Catherine		 Image
05/29/2024	Event Result:: Rule 16 Conference scheduled on: 06/04/2024 02:00 PM Has been: Rescheduled For the following reason: By Court prior to date Hon. Claudine Cloutier, Presiding		
06/06/2024	Plaintiff, Defendant Friends of Bassing Beach, Inc, Douglas McLellan, Andrea Joy Campbell, Attorney General's Joint Motion to Extend Time to Respond to Motion to Dismiss and Motion to Supplement the Administrative Record (e-Filed 5/31/2024) dg	15	 Image
06/12/2024	Event Result:: Rule 16 Conference scheduled on: 06/12/2024 02:00 PM Has been: Held via Video/Phone Hon. Catherine Ham, Presiding		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
06/13/2024	Defendant Town of Cohasset's Certificate of Service (e-Filed 6/13/2024) dg	19	 Image
06/17/2024	Endorsement on Motion to extend time for filing opposition to Cohasset's Motion to Intervene (#13.0): Other action taken All 3 motions (mot. to dismiss; motion to intervene; motion to supplement admin record) all to be heard on 9/10/24 (Ham, J)(dated; 6/12/24) ns pl		 Image
06/17/2024	Endorsement on Motion to extend time to respond to motion to dismiss and motion to supplement the administrative record (#15.0): ALLOWED as discussed today, AG's requests for extensions are allowed. All 3 motions(Mot to dismiss, motion to supplement admin record, Cohasset's motion to intervene) all scheduled for 9/10/24 (Ham, J)(dated; 6/12/24) ns pl Judge: Ham, Hon. Catherine		 Image
06/17/2024	ORDER: SCHEDULING ORDER; After a Rule 16 Conference and notwithstanding the Tracking Order in this case, it is ORDERED THAT: Motion to Dismiss; Cohasset's Motion to Intervene and Motion to Supplement Admin Record all to be heard on 9/10/24 (Ham, J)(dated; 6/12/24) certified copy sent pl Judge: Ham, Hon. Catherine	17	 Image
06/20/2024	Attorney appearance On this date Carolyn M Murray, Esq. added for Other interested party Town of Cohasset		
06/20/2024	Other Interested Party Town of Cohasset's Assented to Motion to intervene (Partially) and Certificate of Compliance with Superior Court Rule 9C (E-Filed 06/13/2024) mk	18	 Image
06/20/2024	Opposition to (P#18.0) Motion to Intervene -- filed by Andrea Joy Campbell, Attorney General (E-Filed 06/13/2024) mk	18.1	 Image
06/20/2024	Reply/Sur-reply	18.2	 Image
06/20/2024	Other Interested Party Town of Cohasset's Notice of Filing (E-Filed 06/13/2024) mk	18.3	 Image
06/20/2024	Other Interested Party Town of Cohasset's Submission of List of Documents (E-Filed 06/13/2024) mk	18.4	 Image
06/20/2024	Affidavit of Compliance Superior Court Rule 9A (E-Filed 06/13/2024) mk	18.5	 Image
06/24/2024	Defendant Andrea Joy Campbell, Attorney General's Motion to dismiss all counts (e-Filed 6/17/2024) dg	19	 Image
06/24/2024	Andrea Joy Campbell, Attorney General's Memorandum in support of it's Motion to Dismiss for Lack of subject-matter Jurisdiction and for failure to state a claim. (e-Filed 6/17/2024) dg	19.1	 Image
06/24/2024	Opposition to Defendant Andrea Joy Campbell, Attorney General's Motion to Dismiss--OPPOSITION filed by Friends of Bassing Beach, Inc(e-Filed 6/17/2024) dg	19.2	 Image
06/24/2024	Defendant Andrea Joy Campbell, Attorney General's Reply in support of her Motion to Dismiss (e-Filed 6/24/2024) dg	19.3	 Image
06/24/2024	Rule 9A notice of filing Applies To: Arslanian, Esq., Vanessa Azniv (Attorney) on behalf of Andrea Joy Campbell, Attorney General (Defendant)	19.4	 Image
07/12/2024	Plaintiffs Friends of Bassing Beach, Inc, Douglas McLellan's Motion to Supplement Administrative Record (e-filed; rec'd 7/11/2024)	20	 Image
07/12/2024	Friends of Bassing Beach, Inc, Douglas McLellan's Memorandum in support of Motion to Supplement Administrative Record (e-filed; rec'd 7/11/2024)	20.1	 Image
07/12/2024	Opposition to P#20.0 Plaintiffs' Motion to Supplement Administrative Record ---- OPPOSITION filed by Andrea Joy Campbell, Attorney General (PARTIAL Opposition) (e-filed; rec'd 7/11/2024)	20.2	 Image
07/12/2024	Reply/Sur-reply Plaintiffs' Reply to Attorney General's Partial Opposition to Motion to Supplement the Administrative Record (e-filed; rec'd 7/11/2024)	20.3	 Image
07/12/2024	Plaintiffs Friends of Bassing Beach, Inc, Douglas McLellan's Certificate of Compliance with Rule 9C (e-filed; rec'd 7/11/2024)	20.4	 Image
07/12/2024	Plaintiffs Friends of Bassing Beach, Inc, Douglas McLellan's Notice of Filing (e-filed; rec'd 7/11/2024)	20.5	 Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
09/04/2024	Defendant Andrea Joy Campbell, Attorney General's Assented to Motion to file a supplement to the Administrative Record (rec'd 9/3/24)	22	 Image
09/04/2024	Defendant Andrea Joy Campbell, Attorney General's Assented to Motion to file a supplement to the Administrative Record (e-Filed 9/3/2024, duplicate of p. 22) dg	23	 Image
09/10/2024	Event Result:: Motion Hearing scheduled on: 09/10/2024 02:00 PM Has been: Not Held For the following reason: Court Order Hon. Joseph Leighton, Presiding		
09/19/2024	Attorney appearance On this date Devan C Braun, Esq. added for Other interested party Town of Cohasset		
09/19/2024	Other Interested Party Town of Cohasset's Statement in regards to citizen's petition (E-filed 9/18/2024)	24	 Image
11/20/2024	Matter taken under advisement: Motion Hearing scheduled on: 11/20/2024 02:00 PM Has been: Held - Under advisement Hon. Brent A Tingle, Presiding		
11/27/2024	Endorsement on Motion to dismiss for lack of subject-matter jurisdiction and for failure to state a claim. (#19.0): Other action taken Where the Town of Cohasset Motion to intervene has been allowed by this Court, the standing issues raised herein will likely be mooted if the original Plaintiffs. Friends of Bassing Beach, Inc and Douglas McLellan elect to dismiss their claims and have the Town of Cohasset prosecute this action in their stead. Counsel for the plaintiffs is to advise the Court and defense counsel on or before 12/4/2024 whether they intend to dismiss their claims and allow the Town to proceed as the party in interest. If the Plaintiffs elect to remain parties to this case, then the Court will decide this Motion. (dated 11/20/2024) ns ni		 Image
11/27/2024	Endorsement on Motion to file supplement to the Administrative Record. (#22.0): ALLOWED by agreement. (dated 11/20/2024) ns ni		 Image
11/27/2024	Endorsement on Motion to intervene After hearing, this Motion is (#18.0): ALLOWED in the exercise of my discretion under Mass. R. Civ. P. 24(b). See Reilly v. Town of Hopedale, 102 Mass. App. Ct. 367, 383 (2023). Given the posture of this case I find that allowing the Town of Cohasset to intervene will not prejudice existing parties to this case. (dated 11/20/2024) ns ni		 Image
11/27/2024	Endorsement on Motion to supplement Administrative Record. (#20.0): ALLOWED -IN-PART. See endorsement on Paper 20.1. (dated 11/20/2024) ns ni		 Image
11/27/2024	Endorsement on Memorandum in support of Motion to supplement Administrative Record.---After hearing this Motion is (#20.2): ALLOWED -IN-PART as follows. The documents attached to as exhibits 1-3 are hereby made part of the Administrative Record pursuant to Superior Court Standing Order 1-96. The Administrative Record is further amended to include communications regarding the By-Law at issue between the Attorney General and State Agencies as assented to by the defendant. The Motion is DENIED as to drafts of the A.G's decisioning and communications which reflect State Agency comments on said drafts of the A.G.'s decision for the reasons set forth at pages 9-10 of the defendants Memo of Law in opposition to this Motion. (dated 11/20/2024) ns ni Judge: Tingle, Hon. Brent A		 Image
12/18/2024	MEMORANDUM & ORDER: OF DECISION ON DEFENDANT ATTORNEY GENERAL'S MOTION TO DISMISS (PAPER NO. 19) (Tingle, J)(dated; 13/18/24) certified copy sent pl Judge: Tingle, Hon. Brent A	26	 Image
12/24/2024	Plaintiff Friends of Bassing Beach, Inc, Douglas McLellan's Notice of Withdrawal of Appearance of Edward V. Colbert, III, Esq. (e-Filed 12/20/2024) dg		 Image
12/27/2024	Notice of Appearance of Jeffrey J. Pyle, Esq. on behalf of Friends of Bassing Beach Inc. and Douglas McLellan. (e-Filed) dg		 Image
01/07/2025	Plaintiff-Intervenor Town of Cohasset's Assented to Motion to enlarge the time to file it's Motion for Judgment on the Pleadings from January 17, 2025 until March 17, 2025 (e-Filed) dg	27	 Image
01/10/2025	Endorsement on Motion to enlarge time to file Motion for Judgment on the Pleadings. (#27.0): Motion is ALLOWED (dated 1/8/2025) ns ni		 Image
01/13/2025	Plaintiff Friends of Bassing Beach, Inc's Petition of interlocutory appeal	28	 Image
01/13/2025	Notice of docket entry received from Appeals Court Appeals No. 2025-J-0014 Please take note that on January 9, 2025, the following entry was made on the docket of the above-	29	 Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	referenced case: ORDER: A response to the petition is requested and due on or before 1/16/25. (Englander, J.) Notice/attest (received 1/8/2025)		
02/14/2025	Notice of docket entry received from Appeals Court Please take note that on February 3, 2025, the following entry was made on the docket of the above-referenced case: ORDER (RE #1): Plaintiffs Friends of Bassing Beach, Inc. (FOBB) and Douglas McLellan filed a petition pursuant to G.L. c. 231, s. 118 (par. 1), seeking review of an order entered 12/18/24 after a hearing in the Norfolk Superior Court. At issue in the underlying action for certiorari review pursuant to G.L. c. 49, s. 4, is the Attorney General's disapproval of a bylaw enacted by the town of Cohasset and affecting activities in Cohasset Harbor. The challenged order allowed the defendant Attorney General's motion to dismiss FOBB and McLellan as plaintiffs due to lack of subject matter jurisdiction. The court ruled that the plaintiffs lacked standing to bring this action and failed to state a claim pursuant to Mass. R. Civ. P. 12(b)(1) and 12(b)(6) because their alleged injuries do not establish standing. Prior to issuing its ruling, the court allowed the town of Cohasset's motion to intervene. As relief, the plaintiff petitioners request that the order be vacated or that they be granted leave to appeal to a panel. Plaintiff FOBB is a nonprofit entity consisting of residents of Cohasset and nearby towns focused on harbor conservation, recreation, and education. Both FOBB and McLellan each own land abutting the harbor, and use that land for recreation and conservation. The plaintiffs and other residents proposed the bylaw adopted by the town of Cohasset. The bylaw prohibits aquaculture activities in the entirety of Cohasset Harbor, a use the neighboring town of Scituate allows and which the proponents argued affected navigation in the harbor. A single justice's authority to overrule an interlocutory order of a trial court should "be exercised in a stinting manner with suitable respect for the principle that the exercise of judicial discretion circumscribes the scope of available relief." <i>Edwin Sage Co. v. Foley</i>, 12 Mass. App. Ct. 20, 25 (1981). The standard of review employed by the single justice is whether the trial court judge committed an error of law or an abuse of discretion in entering the order that is the subject of the petition. See <i>Jet Line Servs., Inc. v. Bd. of Selectmen of Stoughton</i>, 25 Mass. App. Ct. 645, 646 (1988). After review of the petition and accompanying documents, including the relevant documents filed in the Superior Court, and the Attorney General's response, I discern no abuse of discretion or clear error of law warranting the single justice vacating the order. Moreover, the petition does not present the requisite extraordinary or exceptional issues that would merit granting the plaintiffs' alternative request for leave to take an interlocutory appeal from the order. See <i>Long v. Wickett</i>, 50 Mass. App. Ct. 380, 387-389 (2000) (discussing "the appellate courts' traditional abhorrence of piecemeal appellate review"). Accordingly, all relief requested in the petition is denied. Notably, the town of Cohasset, which adopted the bylaw and sent it to the Attorney General for approval pursuant to G.L. c. 40, s. 32, remains an intervener in this matter and, according to the Superior Court docket, is prosecuting a motion for judgment on the pleadings. In any event, nothing in this order precludes the plaintiffs from raising the issues advanced in their petition in any appeal from the final judgment. (Meade, J.). *Notice/Attest/Tingle, J. (email received 2/3/2025)	30	 Image
03/12/2025	Plaintiff, Defendant Friends of Bassing Beach, Inc, Douglas McLellan, Andrea Joy Campbell, Attorney General, Town of Cohasset's Joint Motion to extend time to file Motion and Cross-Motions for Judgment on the Pleadings from March 17, 2025 to April 17, 2025. (e-Filed) dg	31	 Image
03/12/2025	Plaintiff, Defendant Andrea Joy Campbell, Attorney General, Town of Cohasset's Motion for Leave to file Re-Formatted Second Supplement to the Administrative Record (e-Filed) dg	32	 Image
03/18/2025	Endorsement on Motion to enlarge time to file Motion and Cross-Motion for Judgment on the Pleadings. (#31.0): The Motion is ALLOWED (dated 3/14/2025) ns ni		 Image
03/18/2025	Endorsement on Motion to (#32.0): file reformatted second supplement to the Administrative Record--The Motion is ALLOWED (dated 3/14/2025) ns ni Judge: Sisitsky, Hon. Adam		 Image
04/14/2025	Plaintiff-Intervenor Town of Cohasset's Joint Motion to Enlarge Time to File Motion and Cross-Motion for Judgment on the Pleadings (E-Filed 04/11/2025)mk	33	 Image
04/15/2025	Endorsement on Motion to extend time for filing motion and cross motion for judgment on the pleadings (#33.0): ALLOWED Per Standing Order 1-96 and Superior Ct Rule 9A: Plaintiff-Intervenor's Motion for Judgment on the Pleadings to be served on Defendant Attorney General's Office by 5/16/25 and Defendant's Opposition and Cross Motion for Judgment on the Pleadings(if any) to be served on Plaintiff-Intervenor by 6/17/25. The Rule 12(c) motion package to be filed with the Court by 6/27/25.(Doolin, J)(dated; 4/15/25) ns pl Judge: Doolin, Hon. Michael		 Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
05/22/2025	Plaintiff-Intervenor Town of Cohasset's Joint Motion to Enlarge Time to File Motion and Cross-Motion for Judgment on the Pleadings (E-Filed 05/15/2025)mk	34	 Image
05/29/2025	Endorsement on Motion to enlarge time to file Motion and Cross-Motions for Judgment on the Pleadings. (#34.0): ALLOWED (dated 5/27/2025) ns ni Judge: Doolin, Hon. Michael		 Image
07/14/2025	Party(s) file Stipulation of Dismissal that all claims asserted by the Intervenor Plaintiff Town of Cohasset, including but not limited to the claims set forth in Count I of the Complaint be Dismissed with prejudice and without costs, interest or attorneys' fees to any party. The Town waives any and all rights to Appeal. (e-Filed 7/11/2025) dg Applies To: Andrea Joy Campbell, Attorney General (Defendant); Town of Cohasset (Plaintiff-Intervenor)	35	 Image
08/11/2025	JUDGMENT on Defendants, Andrea Joy Campbell, Attorney General 12(b) motion to dismiss against Plaintiff(s) Friends of Bassing Beach, Inc, Douglas McLellan. It is ORDERED and ADJUDGED: —After a hearing before the Court, the Honorable Brent Tingle presiding and the Court having ALLOWED Defendant Andrew Joy Campbell, Attorney General's Motion to Dismiss. Wherefore it is ORDERED and ADJUDGED that the Complaint of the Plaintiff Friends of Bassing Beach and Douglas McLellan is DISMISSED against the Defendant Andrea Joy Campbell, Attorney General.	36	 Image
08/12/2025	Notice of appeal filed. Notice of Appeal Filed by Friends of Bassing Beach, Inc and Douglas McLennan on behalf of the Memorandum of Decision and Order on Defendant Attorney Generals Motion to Dismiss dated December 18, 2024 (Paper No. 26) and from the Judgment on Motion to Dismiss entered in this action on August 11, 2025 Applies To: Friends of Bassing Beach, Inc (Plaintiff)	37	 Image
08/18/2025	Attorney appearance On this date Preston F Bruno, Esq. added for Defendant Andrea Joy Campbell, Attorney General		
08/18/2025	Attorney appearance electronically filed of Bruno, Esq., Preston F (Attorney) on behalf of Andrea Joy Campbell, Attorney General (Defendant)(E-Filed 08/14/2025)		 Image
08/20/2025	Attorney appearance On this date Vanessa Azniv Arslanian, Esq. dismissed/withdrawn as Attorney for the Commonwealth for Defendant Andrea Joy Campbell, Attorney General		
08/20/2025	Attorney withdrawal of appearance electronically filed for Vanessa Azniv Arslanian, Esq. (E-filed 8/18/2025) Applies To: Arslanian, Esq., Vanessa Azniv (Attorney) on behalf of Andrea Joy Campbell, Attorney General (Defendant)		 Image
08/21/2025	Notice of appeal filed sent to: Applies To: Murray, Esq., Carolyn M (Attorney) on behalf of Town of Cohasset (Plaintiff-Intervenor); Pyle, Esq., Jeffrey Jackson (Attorney) on behalf of Friends of Bassing Beach, Inc (Plaintiff); Bruno, Esq., Preston F (Attorney) on behalf of Andrea Joy Campbell, Attorney General (Defendant); Braun, Esq., Devan C (Attorney) on behalf of Town of Cohasset (Plaintiff-Intervenor)	38	 Image
09/03/2025	Plaintiff, Appellant Friends of Bassing Beach, Inc, Douglas McLellan's Notice of intention that they do not intend to order the Transcript of Proceedings in this case. (e-Filed) dg	39	 Image
09/25/2025	Defendant Andrea Joy Campbell, Attorney General's Notice of Transcript Requests (E-Filed 09/17/2025)mk Under Massachusetts Rule of Appellate Procedure 8(b)(1)(A), Defendant-Appellee Attorney General Andrea Joy Campbell ("Defendant-Appellee") certifies that Defendant-Appellee has ordered the two transcripts that Defendant-Appellee believes to be relevant to the appeal noticed by Plaintiff-Appellants Friends of Bassing Beach, Inc. and Douglas McLellan ("Plaintiff-Appellants")-on August 12, 2025-for proceedings on June 12, 2024 and November 20, 2024. The transcript order form is attached as Exhibit A.1	40	 Image
10/20/2025	Defendant Andrea Joy Campbell, Attorney General's Notice of (Second) Transcripts Requests(E-Filed 10/15/2025)mk	41	 Image
12/17/2025	Transcript received: 3 Transcripts received. 1 Transcript for June 12,2024 hearing in Courtroom 20 (rec'd via email 10/14/2025) 1 Transcript for September 10,2024 in Courtroom 20(rec'd via email 11/14/2025) 1 Transcript for November 20, 2024 hearing in Courtroom 20(rec'd via email 10/14/2025)		

<u>Docket Date</u>	<i>Docket Text</i>	<u>File Ref Nbr.</u>	<i>Image Avail.</i>
12/17/2025	Notice of assembly of record sent to Counsel Applies To: Murray, Esq., Carolyn M (Attorney) on behalf of Town of Cohasset (Plaintiff-Intervenor); Pyle, Esq., Jeffrey Jackson (Attorney) on behalf of Friends of Bassing Beach, Inc (Plaintiff); Bruno, Esq., Preston F (Attorney) on behalf of Andrea Joy Campbell, Attorney General (Defendant)	42	
12/17/2025	Notice to Clerk of the Appeals Court of Assembly of Record	43	
12/17/2025	Appeal: Statement of the Case on Appeal (Cover Sheet).	44	
Case Disposition			
<u>Disposition</u>	<u>Date</u>	<u>Case Judge</u>	
Disposed by Court Finding	08/11/2025		

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT
CIVIL ACTION NO. 2382cv00815

FRIENDS OF BASSING BEACH, INC., and
DOUGLAS McLELLAN

Plaintiffs,

v.

ANDREA JOY CAMPBELL, ATTORNEY
GENERAL

Defendant.

RECEIVED & FILED
2023 AUG 31 PM 3:47
CLERK OF THE COURT'S
NORFOLK COUNTY

COMPLAINT

The plaintiffs, Friends of Bassing Beach, Inc. (“FOBB”) and Douglas McLellan, bring this action in the nature of certiorari pursuant to G.L. c. 249, § 4, against Andrea Joy Campbell, in her capacity as Attorney General, following the disapproval by the Attorney General of Cohasset’s “Navigation Bylaw” on July 3, 2023 (See Navigation Bylaw, Exhibit A). The Navigation Bylaw regulates Cohasset Harbor, pursuant to its enabling act adopted by the Legislature as Chapter 54 of the Massachusetts Acts of 1953 which granted Cohasset the authority to regulate Cohasset Harbor (hereinafter “1953 Act”) (See 1953 Act, Exhibit B).

FOBB is a tax-exempt organization comprised of hundreds of Cohasset and Scituate residents and abutters of Cohasset Harbor who are focused on the preservation and conservation of Cohasset Harbor, its natural habitat, and its recreational and educational purposes. FOBB presented the Navigation Bylaw as a Citizens’ Petition to a

Special Town Meeting in Cohasset, Massachusetts, on December 12, 2022, and it was approved overwhelmingly by town voters. The Navigation Bylaw was then submitted for approval to the Office of the Attorney General, as required by G.L. c. 40, § 32, and the Attorney General improperly disapproved the bylaw. The Attorney General's disapproval of the bylaw prevented Cohasset from effectively regulating Cohasset Harbor, which it has done for over 70 years both prior to and pursuant to the 1953 Act, and caused direct harm to FOBB and its members including abutters to Cohasset Harbor (See July 3, 2023 Letter of Attorney General, Exhibit C).

This action seeks judicial review of the Attorney General's improper disapproval of the Navigation Bylaw, pursuant to G.L. c. 249, § 4. *Reading v. Attorney General*, 362 Mass. 266, 269-270 (1972).

PARTIES

1. The plaintiff, Friends of Bassing Beach, Inc. ("FOBB"), is a Massachusetts 501(c)(3) non-profit corporation that is located in Cohasset, Norfolk County, Massachusetts. FOBB has standing to bring this Complaint because it is comprised of many residents of Cohasset and surrounding towns, including abutters to Cohasset Harbor, who presented the Citizen's Petition to the Cohasset Town Meeting which adopted the Navigation Bylaw, and are directly impacted and harmed by the Attorney General's action in disapproving the bylaw. FOBB is also the owner of two parcels of property abutting Cohasset Harbor, one along the south shore of Cohasset Harbor at Bassing Beach and the other along the east shore of Cohasset Harbor in an area known as the Glades.

2. The plaintiff, Douglas McLellan is an owner of two parcels of property abutting Cohasset Harbor, located along the shore at Bassing Beach and the east shore near the Glades.

3. FOBB and the McLellan parcels comprise salt marsh, barrier beach and intertidal flats extending seaward to the low water line, converging toward the center of Cohasset Harbor where the commercial aquaculture site is located. The commercial aquaculture site is immediately seaward of the low water line. Members of FOBB, along with the McLellan and the general public, use these private properties and abutting Commonwealth flats and waters contiguously above and below the low water line as a single undivided recreation and conservation resource. During the permitting process for aquaculture project, neither FOBB nor McLellan were provided legal notices as abutters as required by local and state law.

4. The defendant, Andrea Joy Campbell, is the duly elected Attorney General of the Commonwealth of Massachusetts with an office at One Ashburton Place, Boston, Suffolk County, Massachusetts.

JURISDICTION AND VENUE

5. The Superior Court has subject matter jurisdiction pursuant to G.L. c. 249 § 4.

6. Venue is appropriate in Norfolk County pursuant to G.L. c. 223, § 1.

FACTS

7. In 1953, the Massachusetts Legislature adopted Chapter 54 of the Massachusetts Acts of 1953 which granted Cohasset the authority to regulate Cohasset Harbor (hereinafter "1953 Act") (See 1953 Act, Exhibit B).

8. When it adopted the 1953 Act, the Legislature clearly granted Cohasset full authority to regulate all of Cohasset Harbor. The 1953 Act includes two substantive sections, Section 1 (referred to as the “Landings Section”) and Section 2 (referred to as the “Cohasset Harbor Section”). The Landings Section grants Cohasset broad jurisdiction of all “common and town landings” located solely within Cohasset. Section 1 provides as follows:

“Section 1. The inhabitants of the town of Cohasset shall have jurisdiction over *all common and town landings therein*, with power to govern, control and regulate them, and may make such by-laws and adopt such rules and regulations not inconsistent with the laws of the commonwealth as they shall deem proper to carry into effect the provisions of this act. The selectmen of said town shall have the immediate custody of such landings and the duty of enforcing such by laws, rules and regulations as shall be made or adopted by the town, under this section.” (emphasis added.)

Unlike the limitations in Section 1, the Cohasset Harbor Section grants Cohasset broad jurisdiction of Cohasset Harbor and Cohasset Cove, without reference to town boundary lines, and expressly extends such authority to the full “territorial limits of the commonwealth.” Thus, Section 2 grants Cohasset jurisdiction over all of Cohasset Harbor, which includes the authority to regulate activities in Cohasset Harbor and Cohasset Cove, irrespective of town boundary lines, to, among other things, protect the public, avoid injury to the neighborhood or property, and lessen congestion therein. Section 2 provides as follows:

“Section 2. The inhabitants of the town of Cohasset may, by by-laws, provide for the regulation and enforcement of rules and regulations for the operation of and limiting the speed of motor boats in *Cohasset harbor and cove within the territorial limits of the commonwealth*, and *of the mooring and anchoring of boats, lobster car or floats therein, to the end that such motor boats shall not be operated in a manner which endangers the safety of the public or is detrimental or injurious to the neighborhood or to the value of property therein, and the congestion of said harbor and cove is lessened*. The provisions of this section

shall be enforced by the harbor master, assistant harbor master and police officers authorized to make arrests (emphasis added).

9. The Legislature made clear that unlike Section 1 (the Landings Section), Section 2 (Cohasset Harbor Section), is not limited to the waters located only on the Cohasset side of the border. Instead, the Legislature granted Cohasset authority to regulate the waters that are (1) within Cohasset Harbor and Cohasset Cove, and (2) within the territorial limits of the Commonwealth. There is no reference to Cohasset's town boundary.

10. The 1953 Act does not define Cohasset Harbor, because Cohasset Harbor was already a well-defined body of water known to the Legislature that lies within an imaginary line that runs from Strawberry Point off the coast of Scituate to Quarry Point off the coast of Cohasset.

11. Maps and navigational charts extant at the time the 1953 Act became law, including those of the federal and state government, clearly depict Cohasset Harbor to include waters that lie on the Scituate side of the border. Examples include:

- A Navigation Chart created in 1948 as part of the US Coast and Geodetic Survey;
- The 1853 US Coast Survey for the proposed site for Minot Light; and
- A modern Navigation Chart created by the National Oceanic and Atmospheric Administration ("NOAA").¹

12. Deed descriptions to real property abutting Cohasset Harbor to the east also make clear that such property is bounded westerly by Cohasset Harbor, which is in Scituate not Cohasset.

¹ Maps and other documents referenced in this Complaint will be part of the record of exhibits in this matter, and therefore are not all attached to the Complaint. Upon request of the Court, all such documents referenced herein shall be made immediately available to the Court.

13. The Commonwealth's Division of Marine Fisheries ("DMF") has also consistently defined and continues to define Cohasset Harbor to include the waters within Scituate's boundary. See 322 CMR 4.02(2)(b)(2) (defining Cohasset Harbor as "inside an imaginary straight line drawn from northernmost point of Strawberry Point to easternmost point of Quarry Point").

14. Both before and since the adoption of the 1953 Act, Cohasset has without interruption been the custodian, conservator, and protector of Cohasset Harbor, including the portions within the boundary of Scituate. Cohasset hires staff, maintains boats and boat ramps, and protects the harbor's maintenance and safety barrier. Cohasset has spent significant funds to dredge Cohasset Harbor to provide safe boating, and its Harbormaster regulates and polices the harbor, issues moorings, charges fees and issues fines. Cohasset also collects boat excise taxes pursuant to G.L. c. 60B, § 2(f) for boats moored on both the Cohasset and Scituate sides of the border.

15. In or about 2022, Scituate through its Shell Fish Advisory Committee received a request from a former member of its committee and others for permits to conduct aquaculture activities in Cohasset Harbor. Despite having no presence in Cohasset Harbor for well over 70 years since at least the adoption of the 1953 Act, Scituate determined to proceed with issuing licenses to permit a commercial aquaculture project on the Scituate side of the border in Cohasset Harbor.

16. Through the efforts of FOBB and hundreds of concerned Cohasset and Scituate residents, a Citizen's Petition placed the Navigation Bylaw for consideration at a Special Town Meeting held by Cohasset on December 12, 2022. The Navigation Bylaw was written to carry out the objectives and under the authority of the 1953 Act. It contains

language that would, among other things, prohibit aquaculture activities including Scituate's aquaculture project in Cohasset Harbor. The Navigation Bylaw passed by a resounding majority vote of 172 to 20. Residents of Cohasset who supported the Navigation Bylaw at the Special Town Meeting were fully informed of its content and of its principal intent to prohibit installation of fixtures in Cohasset Harbor that will interfere with the free navigation of these waters, including Scituate's proposed commercial aquaculture project. Specifically, the informed citizens at the Special Town Meeting know and understand Cohasset Harbor to refer to all of the waters of Cohasset Harbor, not just those that lie on the Cohasset side of the border.

17. Following the passage of the Navigation Bylaw, Cohasset submitted the bylaw to the Attorney General for approval pursuant to G.L. c. 40, § 32.

18. The Attorney General received written submissions in support of the bylaw, including from FOBB, and written submissions objecting to the bylaw from Scituate. Additionally, the Attorney General received written submissions from state environmental agencies, namely the Executive Office of Energy and Environmental Affairs ("EEA") and the Department of Environmental Protection ("DEP"), which conflicted with one another as to whether Cohasset has authority under the 1953 Act to adopt the Navigation Bylaw. While the EEA opined that Cohasset did not have such authority, the DEP, which is the primary state agency in charge of protecting coastal waterways and tidelands under the "public trust doctrine", opined that Cohasset does have authority to adopt the Navigation Bylaw under the 1953 Act and Mass. Gen. Laws Chapter 91.

19. After extending its period for review and approval under G.L. c. 40, § 32, the Attorney General chose to follow the opinion of EEA, rather than DEP, and opined that the 1953 Act does not grant jurisdiction to Cohasset to regulate Cohasset Harbor on the Scituate side of the border. As a result, the Attorney General further opined that the Navigation Bylaw violates certain state statutes authorizing municipalities to regulate Commonwealth waters within their territorial limits. In making this determination, the Attorney General:

- Ignored case law which requires her to presume that the Navigation Bylaw is valid. *See Amherst v. Attorney General*, 398 Mass. 793, 795-6 (1986) (presumption exists in favor of validity of a by-law, and Attorney General must approve by-law under her limited review absent an inconsistency between the by-law and the Constitution or laws of the Commonwealth); *Bloom v. Worcester*, 363 Mass. 136, 154 (1973) (when reviewing for inconsistency between local regulation and state statutes, considerable latitude is given to municipalities and sharp contrast must exist in order to invalidate local regulation).
- Effectively overrode the Legislature and rewrote the 1953 Act by replacing the words “within the territorial limits of the commonwealth” which are clearly set forth in the 1953 Act with the Attorney General’s own words “within the territorial limits of the Town of Cohasset.”
- Opined that the 1953 Act does not grant jurisdiction to Cohasset over the Scituate side of the border – despite the Legislature’s clear knowledge of the boundaries of Cohasset Harbor which included the Scituate side of the border as depicted in governmental navigation maps (including maps incorporated by the Legislature into the Mass. General Laws);
- Opined that the Home Rule Amendment in the Massachusetts Constitution required the 1953 Act to include more explicit authorization for Cohasset to regulate beyond its borders. This is despite the fact the Home Rule Amendment did not even exist in 1953, when the Legislature granted Cohasset jurisdiction to Cohasset Harbor under the 1953 Act which clearly included waters on the Scituate side of the border.
- Did not even acknowledge the undisputable fact that Cohasset has maintained jurisdiction over Cohasset Harbor, including on the Scituate side of the border, since before and after the 1953 Act and including to this day. Even Scituate, who opposed approval of the bylaw, readily admitted to the Attorney General that it

has not exercised jurisdiction over the waters in Cohasset Harbor on the Scituate side of the border.

20. For these reasons, and all others stated in its letter of July 3, 2023 disapproving the Navigation Bylaw, the Attorney General committed errors of law that must be quashed and overturned by this Court.

COUNT I
ACTION IN NATURE OF CERTIORARI
(G.L. c. 249, § 4)

21. FOBB hereby incorporates by reference all of the factual allegations in the preceding paragraphs as if fully set forth herein.

22. As set forth above, the defendant Attorney General committed errors of law by improperly disapproving the Navigation Bylaw.

23. As a result, FOBB has suffered direct harm and seeks judicial review and reversal of the Attorney General's action.

WHEREFORE, the Plaintiff requests that this Honorable Court:

1. Quash the action of the Attorney General in disapproving the Navigation Bylaw on July 3, 2023;
2. Order the Attorney General to approve the Navigation Bylaw; and,
3. Award the Plaintiff such other and further relief as is fair and just.

FRIENDS OF BASSING BEACH, INC.

By its Attorneys,



Edward V. Colbert III (BBO # 566187)

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EXHIBIT A

Navigation Bylaw

1. Jurisdiction. Pursuant to Chapter 54 of the Acts of 1953, the Town of Cohasset has the authority to enact this Bylaw to provide for regulation and enforcement of rules and regulations for the operation of motor boats in Cohasset harbor and cove within the territorial limits of the Commonwealth, and of the mooring and anchoring of boats, lobster cars or floats therein.

2. Powers and duties. Pursuant to Chapter 54 of the Acts of 1953, the Harbormaster, Assistant Harbormaster and police officers of the Town of Cohasset shall enforce this Bylaw.

3. Purpose; applicability. A. It is the intent of this Bylaw to protect and promote safe and unobstructed navigation for motor boats and other watercraft such that operation thereof shall not (i) endanger the safety of the public, (ii) cause detriment or injury to the natural resource, (iii) injure persons or property or the environment, or (iv) increase congestion of said harbor and cove. B. It is also the intent of this Bylaw to protect and promote public availability and use of a valuable conservation and recreation resource. C. This Bylaw shall apply to the tidal waters and land thereunder of Cohasset harbor and cove within the territorial limits of the Commonwealth, as said harbor and cove appear on the US Coast and Geodetic Survey chart 246 dated March 1948 (25th edition) then in effect upon enactment of Chapter 54 of the Acts of 1953 (the "Regulated Area"). D. The Bylaw requirements promulgated herein are in addition to the requirements of state and federal law, and with the exception thereof shall apply notwithstanding any other rules or regulations with provisions to the contrary.

4. Use requirements. Interference with navigation, safety and recreation. A. Preamble. The Regulated area has been used historically for many varieties of fishing, fowling and navigation and as well as conservation, recreation, education and research. The Regulated Area is further environmentally sensitive and must be protected given the critical role of eel grass, barrier beaches and salt marsh in protecting against sea level rise and climate change pursuant to Executive Orders 181 and 569. The unique features of the channel and flats severely reduce navigable waters at low tide, further requiring all navigable waters remain unobstructed to avoid further congestion. B. To protect and promote safe and unobstructed navigation for motor boats and other watercraft as well as conservation and recreation throughout the Regulated Area, the installation of anything placed in or upon tidal waters or affixed to land thereunder shall be prohibited in the Regulated Area. Additionally, in that portion of the Regulated Area located north and east of the breakwater, persons may not anchor, beach or run aground any boat for the purpose of engaging in commercial activity. Exemptions below are not subject to these regulations.

5. Exemptions within Regulated Area. A. Moorings located south of the breakwater assigned by the Harbormaster pursuant to G.L. c. 91 for use by boats, lobster cars and floats. B. Piers and floating docks directly attached to piers that extend seaward from above the high water line. C. U.S. Government navigational marks. D. Navigational marks installed by the Cohasset Harbormaster provided said marks do not impede or deter navigation on any tide for any reason other than natural hazard or swimming. E. Lobster pots or traps and their buoys. F. Intraday marks or buoys for recreational activities such as skin diving or sailing, provided said marks are removed the same day.

6. Waiver. A. Any person may request a waiver of the provisions of this Bylaw upon the filing of a Request for Waiver with the Town of Cohasset Harbormaster and Select Board. Waivers will only be granted in unusual circumstances and upon a finding by the Select Board, after said board consults with the Cohasset Harbormaster, that the requested installation will not impede or deter navigation or effect the recreation or conservation of the Regulated Area. B. Any Request for a Waiver must be in writing and the Select Board shall consider said request at a public meeting within 30 days of the filing of the Request for a Waiver. Any decision by the Select Board will be made within 30 days of the meeting or continued meeting.

7. Violations and penalties. A. Violations of any of the sections of this Bylaw shall be punished by a fine of not less than \$100 and not more than \$200 per violation in accordance with General Bylaw, Article I, Section 1-6. Each day of violation may constitute a separate offense. Each point of contact, connection, attachment, anchoring or mooring upon the land under tidal waters in violation of this Bylaw may constitute a separate offense. B. Obstructions. Obstructions caused by unpermitted installations in the Regulated Area shall be subject to removal by the Harbormaster without notice. Obstructions removed and stored by the Harbormaster shall be at the expense of the owner, said expenses shall include all costs and labor.

8. Enactment. Enactment of this Bylaw is in compliance with Section 2A of Chapter 54 of the Acts of 1953 and pursuant to G.L. c. 88, § 19, a copy of this Bylaw was published at least once prior to enactment. This Bylaw shall be applicable upon the vote of Town Meeting.

9. Severability. If any section, paragraph or part of this Bylaw is for any reason declared invalid or unconstitutional by any court, every other section, paragraph, and part shall continue in full force.

EXHIBIT B

Chap. 54 AN ACT FOR THE REGULATION OF THE COMMON AND TOWN
LANDING PLACES IN THE TOWN OF COHASSET AND OF
COHASSET HARBOR.

Be it enacted, etc., as follows:

SECTION 1. The inhabitants of the town of Cohasset shall have jurisdiction over all common and town landings therein, with power to govern, control and regulate them, and may make such by-laws and adopt such rules and regulations not inconsistent with the laws of the commonwealth as they shall deem proper to carry into effect the provisions of this act. The selectmen of said town shall have the immediate custody of said landings and the duty of enforcing such by-laws, rules and regulations as shall be made or adopted by the town, under this section.

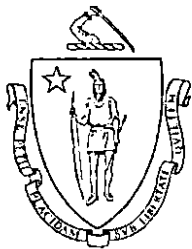
SECTION 2. The inhabitants of the town of Cohasset may, by by-laws, provide for the regulation and enforcement of rules and regulations for the operation of and limiting the speed of motor boats in Cohasset harbor and cove within the territorial limits of the commonwealth, and of the mooring and anchoring of boats, lobster cars or floats therein, to the end that such motor boats shall not be operated in a manner which endangers the safety of the public or is detrimental or injurious to the neighborhood or to the value of property therein, and the congestion of said harbor and cove is lessened. The provisions of this section shall be enforced by the harbor master, assistant harbor master and police officers authorized to make arrests.

SECTION 2A. Section nineteen of chapter eighty-eight of the General Laws relative to publication and penalties shall apply to such by-laws, rules and regulations made and adopted under the provisions of this chapter.

SECTION 3. This act shall take effect upon its passage.

Approved February 17, 1953.

EXHIBIT C



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

CENTRAL MASSACHUSETTS DIVISION
10 MECHANIC STREET, SUITE 301
WORCESTER, MA 01608

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

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July 3, 2023

Elisabeth Legge, Town Clerk
Town of Cohasset
41 Highland Avenue
Cohasset, MA 02025

Re: Cohasset Special Town Meeting of December 12, 2022 -- Case #10849
Warrant Articles # 7, 10 and 15 (General) ¹

Dear Ms. Legge:

Article 15 - Under Article 15 the Town of Cohasset, by citizen petition, adopted a by-law to regulate certain activity in "Cohasset harbor and cove within the territorial limits of the Commonwealth" ("Regulated Area"). The petitioners and Town agree that the Regulated Area includes a portion of the territorial limits of the Town of Scituate.² Seemingly recognizing that neither the Home Rule Amendment (Mass. Const. amend. art. 2) nor G.L. c. 40, § 21 authorize a town to regulate beyond its borders, Beard v. Town of Salisbury, 378 Mass. 435, 441 (1979), the by-law recites as its sole authorizing provision a 1953 special act, Chapter 54 of the Acts of 1953 (Act). As explained below, we determine that the by-law adopted under Article 15 is invalid because the Town was not authorized by the Legislature to adopt it. Greater Bos. Real Est. Bd. v. City of Bos., 397 Mass. 870, 876-77 (1986) (when by-law is adopted without express authority from Legislature and is outside scope of municipal authority granted by Home Rule Amendment, by-law is valid only if necessary to effectuate legislative intent embodied in statute relied on as source of municipal power.) The 1953 Act does not expressly or impliedly authorize Cohasset to regulate beyond the borders of Cohasset, or to regulate "the installation of anything placed in or upon tidal waters or affixed thereunder" § 169-4(B), as the by-law attempts to do. Neither is it necessary to regulate in this manner to accomplish the stated authority and objectives in the Act.

As additional grounds for our disapproval of the by-law, we determine that it is preempted

¹ In a decision issued on March 20, 2023, we approved Articles 7 and 10. On March 10, 2023, by agreement with Town Counsel pursuant to G.L. c. 40, § 32, we extended the deadline for our review of Article 15 until July 4, 2023.

² See, e.g., February 14, 2023 letter from Cohasset to AGO, p. 2 ("The Regulated Area encompasses waters of the Commonwealth within the municipal boundary of the Town of Scituate.")

by G.L. c. 90B, § 15 and G.L. c. 91, § 10A, which grant municipalities the power to manage waters within their respective boundaries (but not beyond those boundaries). In addition, the by-law is preempted by G.L. c. 130, § 57, which grants all towns (including Scituate), the authority to issue licenses for shellfish aquaculture, with the approval of and subject to regulations by the Director of Department of Fisheries and Wildlife, within waters under each town's jurisdiction.

In addition, Section 7 of the by-law (violations and penalties) conflicts with the penalty provisions of G.L. c. 88, § 19 (incorporated into the Act) which limit fines for violations of any by-laws adopted pursuant to the Act to \$20.00. Finally, the by-law's stated effective date ("[t]his Bylaw shall be applicable upon the vote of Town Meeting") (§ 169-8) conflicts with G.L. c. 40, § 32.³

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 the by-law. The Attorney General's limited standard of review requires her to approve or disapprove by-laws based solely on their consistency with state law, not on any policy views she may have on the subject matter or wisdom of the by-law. Amherst v. Attorney General, 398 Mass. 793, 795-96, 798-99 (1986). We also recognize that, in their submissions to this Office during our review, the petitioners, the Town of Cohasset, and the Town of Scituate take conflicting positions on certain factual issues. It is not necessary to resolve these disputed factual issues in this determination because the scope of our by-law review rests solely on the by-law's conflicts with state law. Id.⁴

In this decision, we discuss the Attorney General's limited standard of review of town by-laws under G.L. c. 40, § 32; summarize the by-law and the Act; and explain why, even under that limited power of disapproval, we must disapprove the by-law because it is not authorized by the Act and conflicts with state law.

³ Because we find the by-law lacks validity in that it was not expressly or impliedly authorized by the Act, there is no text that is severable from the remainder (despite the by-law's severability clause in § 169-9) such that we could disapprove just a portion of the by-law and save the remainder. See, e.g., Showtime Entertainment, LLC v. Town of Mendon, 885 F.Supp.2d 479 (2012) (by-law's severability clause not sufficient to save by-law, and problematic text not severable from remainder of by-law, where text was operative language in by-law and by-law did not make sense without it).

⁴ During our review of Article 15 we received letters from several interested parties, including the Town's Selectboard and Town Counsels Carolyn Murray and Amy Kwesell, on behalf of the Town; Attorneys Scott Harshbarger, Edward Colbert, III, and Marion Sullivan on behalf of the Friends of Bassing Beach (the petitioners); Attorney Robert W. Galvin on behalf of the Town of Scituate; and Francis G. Basler, County Administrator, on behalf of the Plymouth County Commissioners. We appreciate these letters as they have aided us in our review of Article 15.

We also received numerous communications from various citizens urging our approval of the by-law. We appreciate this input and recognize the importance of the proposed by-law to the Town and its residents. We emphasize that our decision rests solely on the legal determinations explained in this letter and not any determination of disputed factual issues raised by any of the submissions.

I. Attorney General's Standard of Review

Our review of Article 15 is governed by G.L. c. 40, § 32. Pursuant to 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.”) To disapprove a by-law (or any portion thereof), the Attorney General must cite to an inconsistency between the by-law and the state Constitution or laws. Id. at 796. This is because a municipality has no power to adopt a by-law that is “inconsistent with the constitution or laws enacted by the [Legislature].” Home Rule Amendment, Mass. Const. amend. art. 2, § 6 (“HRA”).

II. Summary of By-law

The by-law adopted under Article 15 seeks to do two things. First, it prohibits “the installation of anything placed in or upon tidal waters or affixed thereunder” in the Regulated Area, § 169-4(B), which it defines as “the tidal waters and land thereunder of Cohasset harbor and cove within the territorial limits of the Commonwealth, as said harbor and cove appear on the US Coast and Geodetic Survey chart 246 dated March 1948 (25th edition) then in effect upon enactment of Chapter 54 of the Acts of 1953.” § 169-3(C).⁵

Second, the by-law dictates that “in that portion of the Regulated Area located north and east of the breakwater, persons may not anchor, beach or run aground any boat for the purpose of engaging in commercial activity.” § 169-4(B). This provision appears to apply exclusively to Scituate territory, including land near or on Bassing Beach.^{6, 7}

⁵ The Town’s by-law filing reflects (and Town Counsel has confirmed) that the “US Coast and Geodetic Survey chart 246 dated March 1948 (25th edition)” was not included in the town meeting warrant or provided to the voters at the time of the town meeting vote (although Town Counsel informs us that the citizens petitioners brought a very large printout of the 1948 chart to the Select Board hearing/public forum prior to town meeting). We recognize that this is a general by-law, not a zoning by-law, and thus the zoning by-law notice provisions of G.L. c. 40A, § 5 do not apply. For a general by-law, G.L. c. 39, § 10 requires only that “the subjects to be acted upon must be sufficiently stated in the warrant to apprise voters of the nature of the matters with which the meetings authorized to deal.” Johnson v. Town of Framingham, 354 Mass. 750, 753 (1968) (citations and internal quotations omitted). However, the by-law’s definition of “Regulated Area” defines the area by reference to the map and, without the map, the voters lacked full knowledge of the scope of the Regulated Area. Nothing in the text of the by-law or the town meeting warrant states that the Regulated Area includes waters outside the territorial limits of Cohasset. Although not grounds for our disapproval of the by-law, we emphasize that, without the map, Cohasset town meeting voters were not fully informed that they were voting to regulate not just Cohasset territory but Scituate’s too.

⁶ See <https://goo.gl/maps/xW9p4738b5Inzi3p9>.

⁷ Counsel for Scituate contends that the by-law was motivated by a desire to prohibit Scituate from

These restrictions were put in place with the intent “to protect and promote safe and unobstructed navigation for motorboats and other watercraft such that operation thereof shall not (i) endanger the safety of the public, (ii) cause detriment or injury to the natural resource, (iii) injure persons or property or the environment, or (iv) increase congestion of said harbor and cove.” Art. 15, § 169-3(A). “It is also the intent of this Bylaw to protect and promote public availability and use of a valuable conservation and recreation resource.” § 169-3(B).

The by-law contains certain exemptions (§ 169-5(A) - § 169-5(F)) and allows for waivers from its provisions to be granted by the Cohasset Selectboard only in “unusual circumstances” after a finding that “the requested installation will not impede or deter navigation or effect the recreation or conservation of the Regulated Area.” § 169-6(A).

The by-law imposes fines of “not less than \$100 and not more than \$200” for violations pursuant to the Town’s General By-laws, Article I, Section 1-6.” § 169-7(A). Further, “[e]ach point of contact, connection, attachment, anchoring or mooring upon the land under tidal waters in violation of this Bylaw may constitute a separate offense.” § 169-7(A). Any obstructions caused by unpermitted installations in the Regulated Area “shall be subject to removal by the [Cohasset] Harbormaster without notice,” and the costs of removal and storage of such obstructions will include “all costs and labor” and will be charged to the owner. § 169-7(B)

The by-law states that its requirements “are in addition to the requirements of state and federal law, and with the exception thereof shall apply notwithstanding any other rules or regulations with provisions to the contrary.” § 169-3(D). The by-law states it will be “applicable upon the vote of Town Meeting” (§ 169-8).

III. The Act

The Town claims authority for its proposed by-law under the Act, which authorizes the Town to adopt by-laws regulating “the *operation* of and limiting the *speed* of *motor boats* in Cohasset harbor and cove . . . and of the *mooring* and *anchoring* of *boats*, *lobster cars* or *floats* therein.” (emphasis added). The Act directs such by-laws be tailored towards the following objectives: (1) ensuring that “such motor boats shall not be operated in a manner” that (a) “endangers the safety of the public” or (b) “is detrimental or injurious to the neighborhood or to the value of property therein,” and (2) “the congestion of said harbor and cove is lessened.” The Act also gives the Town power to adopt by-laws regulating all town and common landings. The entire text of the Act is reproduced below (and attached as Exhibit A):

Chapter 54 of the Acts of 1953: **An Act for the Regulation of the Common and Town Landing Places in the Town of Cohasset and of Cohasset Harbor:**

pursuing any type of commercial shell fishing program in Scituate waters. The petitioners’ motive in proposing the by-law and Town Meeting’s motive for adopting the by-law are beyond the scope of our review and therefore immaterial to our determination. See Durand v. IDC Bellingham, LLC, 440 Mass. 45, 51 (2003) (analysis of by-law’s validity “is not affected by consideration of the various possible motives that may have inspired legislative action.”)

Be it enacted... as follows:

SECTION 1. The inhabitants of the town of Cohasset shall have jurisdiction over all common and town landings therein, with power to govern, control and regulate them, and may make such by-laws and adopt such rules and regulations not inconsistent with the laws of the commonwealth as they shall deem proper to carry into effect the provisions of this act. The selectmen of said town shall have the immediate custody of said landings and the duty of enforcing such by-laws, rules or regulations as shall be made or adopted by the town, under this section.

SECTION 2. The inhabitants of the town of Cohasset may, by by-laws, provide for the regulation and enforcement of rules and regulations for the operation of and limiting the speed of motor boats in Cohasset harbor and cove within the territorial limits of the commonwealth, and of the mooring and anchoring of boats, lobster cars or floats therein, to the end that such motor boats shall not be operated in a manner which endangers the safety of the public or is detrimental or injurious to the neighborhood or to the value of property therein, and the congestion of said harbor and cove is lessened. The provisions of this section shall be enforced by the harbor master, assistant harbor master and police officers authorized to make arrests.

SECTION 2A. Section nineteen of chapter eighty-eight of the General Laws relative to publication and penalties shall apply to such by-laws, rules and regulations made and adopted under the provisions of this chapter.

SECTION 3. This act shall take effect upon its passage.

Section 2A of the Act states that the "publication and penalties" provisions of G.L. c. 88, § 19 will apply to any by-laws adopted pursuant to the Act. Last amended in 1945, G.L. c. 88, § 19 states (with emphasis added):

Section 19: Use of common landing places

Section 19. The city council of a city and the selectmen of a town may make rules and regulations concerning the use of a common landing place laid out under this chapter; provided, that no such rule or regulation shall be effective unless it shall have been published in one or more newspapers, *if there be any published in the city or town in which the public landing is located, otherwise in one or more newspapers published in the county in which the city or town is situated.* Any person convicted of a violation of any such rule or regulation shall be punished by a fine of not more than twenty dollars.

The legislation was filed at the beginning of the 1953 legislative session as H.1300, *An Act for the regulation of the common and town landing places in the town of Cohasset and of Cohasset harbor.* According to its caption, the bill was filed by state Representative Hurwitz of Cohasset as a petition of Helen Scripture and the other selectmen of the Town of Cohasset, "for legislation to regulate the common and town landing places in the town of Cohasset." No floor remarks are recorded in any of the available legislative materials. It does not appear that the legislation was

subject to debate. At some point in the process, the bill was amended by adding the words, “within the territorial limits of the commonwealth,” to the phrase, “within Cohasset harbor and cove.” From the record, it appears that the Act passed both chambers on voice votes.

A review of the Massachusetts General Laws and the Acts and Resolves from 1954 to the present reveals no subsequent references to the Act, or to Cohasset’s authority under the Act. We found no court decisions or other AGO decisions construing the Act.

IV. The Town’s Ability to Regulate in the Regulated Area is Dependent on the 1953 Act

The Town and the petitioners recognize that but for the 1953 Act the Town has no power to regulate in the Regulated Area as the by-law defines it. This is because the Regulated Area extends beyond the territorial limits of Cohasset, and the Town ordinarily has no power to regulate anything outside its territorial limits. Beard v. Town of Salisbury, 378 Mass. 435, 441 (1979) (“Although the Home Rule Amendment confers broad powers on municipal governments, it does not appear to be so expansive as to permit local ordinances or by-laws that, as here, regulate outside a municipality’s geographic limits.”) (internal citations omitted). See also G.L. c. 40, § 21 (authorizing towns to adopt by-laws on various topics “which shall be binding upon all inhabitants thereof and all persons *within their limits*”) (emphasis supplied). Cohasset, like all towns, has authority under the HRA and various statutes to adopt local by-laws regulating the use of waterways within the territorial limits of the Town. See, e.g., Mad Maxine’s Watersports, Inc. v. Harbormaster of Provincetown, 67 Mass. App. Ct. 804, 811 (2006) (affirming town’s authority to restrict the use of personal watercraft in Provincetown Harbor within the town’s territorial limits). General Laws Chapter 90B, Sections 11 and 15 authorize towns to regulate activities or vessels on town waters, so long as the local regulation does not conflict with the provisions of G.L. c. 90B and the by-law is approved by the Director of Office of Law Enforcement (OLE) within the Executive Office of Energy and Environmental Affairs (EOEEA). This Office has approved many such by-laws that regulate activities or vessels within town waters (with a reminder to the town that the by-law will also need separate approval by OLE.)⁸

Here, however, the by-law attempts to regulate outside the boundaries of the Town, and thus requires some other legislative authority to do so. The by-law cites the Act as its sole authorizing provision. The by-law’s validity therefore hinges on whether the Act authorizes the Town to adopt the by-law.

V. Scope of Town’s Authority Under the Act

When, as here, a town adopts a by-law not authorized by the HRA or other express authorization by the Legislature, the by-law is “valid only if it is necessary to effectuate the legislative intent embodied in the statute relied on as the source of municipal power.” Greater Bos. Real Est. Bd. v. City of Bos., 397 Mass. 870, 876–77 (1986) (recognizing that “powers provided by necessary implication must be essential and not merely convenient to the implementation of express powers conferred by statute.”). As the court in Greater Bos. Real Est. Bd. recognized, if a

⁸ See, e.g., Chatham Case # 10646A (Article 43) issued December 9, 2022 (by-law pending OLE approval).

by-law is not authorized by the HRA the deferential scope of review of HRA, § 6 is not applicable:

As we recognized in Church v. Boston, 370 Mass. 598, 601 (1976), “where we are dealing with a subject as to which no local action may be taken without explicit legislative authorization, the scope of that permissible local action is not determined broadly under § 6 of the Home Rule Amendment.... The situation ... is analogous to that existing prior to the Home Rule Amendment where a municipality had ‘only those powers which are expressly conferred by statute or necessarily implied from those expressly conferred or from undoubted municipal rights or privileges.’ Atherton v. Selectmen of Bourne, 337 Mass. 250, 255-256 (1958).”

Greater Bos. Real Est. Bd. v. City of Bos., 397 Mass. 870, 77 (1986).

Under this analysis, and as explained below, we determine that the Act does not expressly or impliedly authorize Cohasset to regulate beyond the borders of Cohasset, or to regulate “the installation of anything placed in or upon tidal waters or affixed thereunder” § 169-4(B), as the by-law attempts to do. Moreover, the by-law’s attempt to regulate activities outside the territorial limits of Cohasset and subject matter not listed in the Act is not “necessary to effectuate the [Act’s] legislative intent.” Greater Bos. Real Est. Bd., 397 Mass. at 876–77.

V. The Act Does Not Expressly Authorize Cohasset to Regulate Beyond its Borders or Regulate the Installation of “Anything Placed in or Upon the Tidal Waters or Affixed Thereunder”

It is beyond dispute that here the text of the Act does not expressly grant the Town authority to regulate activities outside the territorial limits of the Town or regulate “anything placed in or upon the tidal waters or affixed thereunder.” In relevant part, the Act authorizes the Town to adopt by-laws regulating “the speed of motor boats in Cohasset harbor and cove within the territorial limits of the commonwealth,” and by-laws regulating “the mooring and anchoring of boats, lobster cars⁹ or floats therein.” Act, Section 2. Simply put, the Act does not state that Cohasset has the authority to regulate outside its territorial limits, or the authority to regulate “anything placed in or upon the tidal waters or affixed thereunder.”

Town Counsel and counsel for petitioners contend that the Act expressly authorizes Cohasset to regulate beyond the borders of Cohasset because Section 2 of the Act grants to Cohasset the power to regulate “in Cohasset harbor and cove within the territorial limits of the commonwealth” regardless of town borders. See, e.g., petitioners’ letter at p. 6 (“The drafters plainly and clearly established the territorial limits of Section 2 with reference to all of the waters in Cohasset Harbor that flow within the territorial limits of the Commonwealth of Massachusetts, irrespective of which side of the border those waters may sit.”)

We do not agree that the Act’s reference to “Cohasset harbor and cove within the territorial

⁹ A lobster car is defined by the Merriam-Webster online dictionary as “a slatted container in which live lobsters are kept under water awaiting sale or transportation.” Lobster Car, Merriam-Webster, <https://www.merriam-webster.com/dictionary/lobster%20car> (last visited June 29, 2023).

limits of the commonwealth” qualifies as an express delegation of authority. To determine whether a statute includes an express delegation of authority, courts first look to the plain words of the statute. See, e.g. Alliance to Protect Nantucket Sound, Inc. v. Energy Facilities Siting Bd., 457 Mass. 663, 678 (2010) (“We read the quoted provision in § 69K as an express legislative directive to the siting board to stand in the shoes of any and all State and local agencies with permitting authority over a proposed ‘facility’”); Tri-Nel Mgmt., Inc. v. Bd. of Health of Barnstable, 433 Mass. 217, 220 (2001) (“Through the plain language of G.L. c. 111, § 31, the Legislature has delegated boards of health the power to adopt reasonable health regulations.”); Church v. City of Bos., 370 Mass. 598, 601 (1976) (“[T]he plaintiffs are aided little by the requirement of clear authorization for local action because clearly local action is authorized here” where the statute states “said city may by ordinance control the rent for the use or occupancy of housing accommodations in structures having three or more dwelling units.”) Here the plain words of the Act include no express delegation of power to Cohasset to regulate beyond its territory or to regulate all the activities the by-law seeks to regulate.

Moreover, the Legislature’s use of the term “within the territorial limits of the commonwealth” in the Act does not support the petitioners’ argument. Petitioners contend that “the legislature specifically added the words ‘within the territorial limits of the commonwealth’ by way of an amendment to the initial Act (House No. 1300), thereby demonstrating its intention to include all of the Commonwealth’s waters in Cohasset Harbor in the Act.” During our review, we received a communication from the Deputy General Counsel of the Executive Office of Energy and Environmental Affairs (EOEEA letter) who explains the effect of the phrase “within the territorial limits of the commonwealth” in the Act:

The term “within the territorial limits of the commonwealth” is best read to refer to the *seaward* limit of state waters and not to the lateral extent of Cohasset’s control, because Massachusetts territory ended at the harbor mouth at the time Chapter 54 was enacted. In 1947, the Supreme Court held in *U.S. v. California* that waters of the marginal sea – seaward of the states’ internal waters – are held by the federal government. 332 U.S. 19 (1947). Congress conveyed ownership of the territorial sea to the states by enacting the Submerged Lands Act in May 1953. 43 U.S.C. § 1311. The Submerged Lands Act, however, was not enacted until 3 months *after* Massachusetts enacted Chapter 54 of the Acts of 1953. Thus, at the time Chapter 54 was enacted, the territorial limit of Massachusetts was the closing line at the mouth of Cohasset harbor.

Thus, rather than expanding the lateral scope of Cohasset’s regulatory authority, the addition of the phrase “within the territorial limits of the commonwealth” in the Act imposes a limit on Cohasset’s authority to the seaward limit of state waters. In any event, we agree with the EOEEA that the phrase “within the territorial limits of the commonwealth” does not qualify as an express grant of authority to Cohasset to regulate beyond its town boundaries.

VI. The Act Does Not Impliedly Authorize the Town to Regulate Outside its Borders or With the Broad Scope Indicated in the By-law.

A. The Act Does Not Imply a Right to Regulate Beyond Cohasset Borders.

We also cannot conclude that the extension of the Town's regulatory authority beyond town borders is necessarily implied in or incident to the powers expressly granted in the Act. Indeed, it is difficult to imagine any scenario where the express power to regulate *inside* town borders implies a grant of power to regulate *outside* town borders, and this is not the case here.

First, the Act was adopted by way of the petition for special act process granted in Section 8 of the HRA:

Section 8. Powers of the General Court. - The general court shall have the power to act in relation to cities and towns, but only by 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, and by special laws enacted (1) on petition filed or approved by the voters of a city or town, or the mayor and city council, or other legislative body, of a city, or the town meeting of a town, *with respect to a law relating to that city or town.*

HRA, art. 89, § 8 (emphasis supplied). The special act petition process is intended to provide a city or town the right to petition the Legislature for a "special law" that applies to that one city or town. *Id.* That is what Cohasset did here by petition of the selectmen of the Town of Cohasset, through a bill filed by state Representative Hurwitz of Cohasset, "An Act for the regulation of the common and town landing places in the town of Cohasset and of Cohasset harbor." Reading the Act as a whole, its provisions are tailored to address only matters local to Cohasset. Section 1 of the Act gives to "the inhabitants of the Town of Cohasset" jurisdiction over all common and town landings therein." Act, Section 1. The Act's Section 2 states the purpose of authorizing Cohasset to regulate "the operation and speed of motor boats in Cohasset harbor and cove within the territorial limits of the Commonwealth," and regulate the "mooring and anchoring of boats, lobster cars and floats therein" as follows:

to the end that such motor boats shall not be operated in a manner which endangers the safety of the public or is detrimental or injurious to the neighborhood or to the value of property therein, and the congestion of said harbor and cove is lessened.

The words "neighborhood" and "property" can reasonably be understood to mean those neighborhoods and properties in Cohasset.

That the Act was intended to apply only to matters local to Cohasset is also reflected in the publication provisions incorporated into the Act. The Act incorporates the "publication and penalties" provisions of G.L. c. 88, § 19 which require the publication of rules and regulations in a town-circulated newspaper or, if none is available, a county-circulated newspaper:

no such rule or regulation shall be effective unless it shall have been published in one or more newspapers, *if there be any published in the city or town in which the public landing is located, otherwise in one or more newspapers published in the county in which the city or town is situated.*

G.L. c. 88, § 19 (emphasis supplied). There is no provision in the Act for publication of any by-

law to other towns. Importantly, Cohasset and Scituate are not in the same county; Cohasset is in Norfolk County and Scituate is in Plymouth County. It is reasonable to assume that, if the Legislature intended to authorize Cohasset to adopt by-laws binding upon activities in other communities, it would have been explicit in that unusual grant of authority and require notice to those other communities. The Legislature “does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes.” Whitman v. American Trucking Associations, 531 U.S. 457, 468 (2001).

Town Counsel and counsel for the petitioners contend that the Act impliedly grants Cohasset the authority to regulate outside its borders because, they contend, at the time the Act was adopted in 1953, it was commonly understood the “Cohasset harbor and cove” extended beyond the territorial limits of Cohasset. They point to several maps to buttress this argument, including the “US Coast and Geodetic Survey chart 246 dated March 1948 (25th edition) then in effect upon enactment of Chapter 54 of the Acts of 1953” to which the by-law refers. But the Act itself does not refer to any map and we are unable to conclude that the mere existence of certain maps that may label “Cohasset Harbor” in a way that includes Scituate territory is sufficient to establish a legislative intent to grant Cohasset the authority to regulate beyond its borders. We acknowledge the rule of statutory construction that “[w]here a word is not defined in a statute, [courts] give the word its usual and accepted meaning, so long as those meanings are consistent with the statutory purpose.” Seideman v. Newton, 452 Mass. 472, 477-478 (2008), and cases cited. Here, even if we assume the term “Cohasset harbor and cove” was commonly understood to mean territory outside the border of Cohasset, grafting this expansive definition onto the Act would be inconsistent with the Act’s statutory purpose.¹⁰

To conclude that the Act impliedly granted to Cohasset the right to regulate outside the town borders would be to ignore: (i) the “special” nature of the special legislation; (ii) the stated purpose of the Act; and (iii) the publication provisions incorporated into the Act. There is no legal authority for doing so.

B. The Act Does Not Impliedly Authorize Cohasset to Prohibit All Things Placed in or Upon Tidal Waters.

¹⁰ While the Town’s own prior by-law definition of “Cohasset Harbor” does not bind how we ought to interpret the use of the same term in a preceding act passed by the Legislature, it is instructive to note that, immediately after the 1953 Act, the Town adopted “Harbor Regulations” in Article 49 which expressly reference the 1953 Act and define the term “Harbor” as :

All that body of water *in Cohasset* lying inside a line projected across the channel in a straight line from White Head Dolphin at Long’s Point to White Rock and by the same course and shall not include the channel extending seaward beyond that point.

Article 49 (emphasis supplied). It seems unlikely based on this roughly contemporaneous text that the Cohasset Town Meeting understood the Act to grant the Town powers to regulate beyond its borders.

Further, it is not reasonable to conclude that the Act impliedly granted Cohasset the power to regulate “anything placed in or upon the tidal waters or affixed thereunder.” By-law, § 169-4(B). The Act expressly grants Cohasset only the power to regulate “the operation and speed of motor boats in Cohasset harbor and cove within the territorial limits of the Commonwealth,” and regulate the “mooring and anchoring of boats, lobster cars and floats therein.” It cannot reasonably be construed that this grant of power brings with it the power to prohibit all things “placed in or upon the tidal waters or affixed thereunder.” Cf. Bd. of Appeals of Hanover v. Hous. Appeals Comm. in Dep’t of Cmty. Affs., 363 Mass. 339, 354 (1973) (Though reference in G.L.c. 40, § 20 to “requirements and regulations” is somewhat ambiguous, Legislature’s clear purpose was to include local zoning by-laws and ordinances.”)

VII. The Ability to Regulate Outside Cohasset Borders, and to Prohibit All Things in Tidal Waters, Is Not Necessary to Achieve the Express Powers Granted in the Act

Neither can it be said that the by-law is necessary to achieve the purpose of the Act. See Greater Bos. Real Est. Bd. v. City of Bos., 397 Mass. 870, 876–77 (1986) (when by-law is adopted without express authority from Legislature and is outside scope of municipal authority granted by HRA, by-law is valid only if necessary to effectuate legislative intent embodied in statute relied on as source of municipal power.) As explained above, the Act is focused primarily with reducing congestion in the harbor and cove by allowing Cohasset to regulate the operation and speed of motorboats and regulate the mooring and anchoring of boats, lobster cars and floats. There is nothing to indicate that, to achieve these stated objectives, Cohasset must have the power to regulate outside the boundaries of the Town or prohibit any thing “placed in or upon the tidal waters or affixed thereunder,” By-law, § 169-4(B). See Greater Boston Real Estate Bd. v. Boston, 397 Mass. 870, 878 (1986) (ordinance invalid where it had only “minimal” logical connection to preserving rental housing stock); Cf. Flynn v. City of Cambridge, 383 Mass. 152, 159 (1981) (upholding ordinance regulating removal of rental housing from market because “the power to control removals from the rental housing market is essential to the operation of [the authorizing legislation], and is therefore conferred by implication in the rent control statute”).

VIII. Because the Regulated Area Includes Area Outside the Municipal Territory of Cohasset the By-law Conflicts with and is Preempted by G.L. c. 90B, § 15 and G.L. c. 91, § 10A

As noted earlier, the Attorney General must disapprove a by-law if it conflicts with state law. Amherst, 398 Mass. at 796. Municipalities have “considerable latitude” in legislating, and so there must be a “sharp conflict” with state law before a local enactment may be disapproved. Bloom, 363 Mass. at 154. “The legislative intent to preclude local action must be clear.” Id. at 155.

“This intent can be either express or inferred.” St. George Greek Orthodox Cathedral of Western Massachusetts, Inc. v. Fire Dept. of Springfield, 462 Mass. 120, 125-26 (2012). Local action is precluded in essentially three instances, paralleling the three categories of federal preemption: (1) where the “Legislature has made an explicit indication of its intention in this respect”; (2) where “the State legislative purpose can[not] be achieved in the face of a local by-

law on the same subject”; or (3) where “legislation on a subject is so comprehensive that an inference would be justified that the Legislature intended to preempt the field.” Wendell v. Attorney General, 394 Mass. 518, 524 (1985). “The existence of legislation on a subject, however, is not necessarily a bar to the enactment of local ordinances and by-laws exercising powers or functions with respect to the same subject[, if] the State legislative purpose can be achieved in the face of a local ordinance or by-law on the same subject[.]” Bloom, 363 Mass. at 156; *see* Wendell, 394 Mass. at 527-28 (“It is not the comprehensiveness of legislation alone that makes local regulation inconsistent with a statute. . . . The question . . . is whether the local enactment will clearly frustrate a statutory purpose.”).

We agree with the conclusion of the Deputy General Counsel of EOEEA that the by-law’s attempt to regulate outside the bounds of Cohasset poses an “irreconcilable conflict with general laws empowering each municipality to manage waters within its boundaries.” EOEEA letter, April 12, 2023, pp. 2-3. Specifically, G.L. c. 90B, § 15 authorizes municipalities to regulate vessels on waters within the city or town (and authorizes joint regulation of waters lying in more than one municipality); and G.L. c. 91, § 10A authorizes municipal harbormasters to authorize temporary mooring of floats or rafts held by anchors or bottom moorings “within the territorial jurisdiction of such city or town.” As EOEEA concludes, “each of these sections is intended to, and does, provide each municipality with authority to regulate the use of waters lying within its jurisdiction.” EOEEA letter, p. 3.

If a town is allowed to regulate the waters outside town boundaries, there could be conflicting results where one town allows an activity in an area within its town boundary and the other town prohibits the same activity in the same location. Courts have pointed to such potentially conflicting regulatory results to determine that local by-laws are preempted by state statutes. In Wendell v. Attorney General, 394 Mass. 518 (1985), the statute established a “pesticide board” within the state Department of Food and Agriculture and empowered a subcommittee of the board to “register” a pesticide for general or restricted use if the subcommittee found that the pesticide met specific statutory criteria. *Id.* at 526, 528-29. In the face of this scheme, “[t]he Wendell by-law contemplate[d] the possibility of local imposition of conditions on the use of a pesticide beyond those established on a Statewide basis under the act.” *Id.* at 528. The court held that “[a]n additional layer of regulation at the local level, in effect second-guessing the subcommittee, would prevent the achievement of the identifiable statutory purpose of having a centralized, Statewide determination [and] . . . frustrate the purpose of the act.” Wendell, 394 Mass. at 529. *See also* St. George Greek Orthodox Cathedral of Western Massachusetts, Inc. v. Fire Department of Springfield, 462 Mass. 120, 125-126 (2012) (Springfield fire box ordinance preempted because it created “an additional layer of regulation imposing requirements beyond those contemplated by the [state board].”)

The same principles apply here. The purpose of G.L. c. 90B, § 15 and G.L. c. 91, § 10A is to authorize municipalities to manage activities within their borders under the conditions stated in each statute. Where the Legislature has specifically authorized municipalities to regulate the waters within their respective borders so long as the statutory requirements are met, a by-law from one town that adds an additional layer of regulation to the waters of another town, with potentially conflicting results, cannot stand. St. George, 462 Mass. at 125-126.

**IX. The By-law Impermissibly Interferes with Scituate's Legislatively
Granted Authority to Issue Shellfish Licenses Within Its Borders**

We are also persuaded by EOEEA's conclusion that the by-law impermissibly interferes with Scituate's authority, granted by G.L. c. 130, § 57, to issue licenses for shellfish aquaculture, with the approval of and subject to regulations by the Director of Department of Fisheries and Wildlife, within waters under its jurisdiction. EOEEA letter, p. 4. This legislative authorization includes licenses for the "plac[ing] [of] shellfish in or under protective devices affixed directly to the tidal flats or land under coastal waters, such as boxes, trays, pens, bags, or nets" and "grow[ing] shellfish by means of racks, rafts or floats." G.L. c. 130, § 57. Section 169-4(B) of the by-law seeks to prohibit "the installation of anything placed in or upon tidal waters or affixed to land thereunder" and the use of vessels for commercial purposes. As applied to Scituate waters, the by-law could interfere with shellfish aquaculture activities validly permitted by Scituate, with the approval of the Director, and thus presents a direct conflict with G.L. c. 130, § 57.

**X. The Penalty and Effective Date Provisions of the By-law Also Conflict with
State Law**

In addition to the conflicts with state law detailed thus far, the penalty and effective date provisions of the by-law also conflict with other provisions of state law, as explained below.

A. The Penalties Conflict with the Allowable Penalties Incorporated into the Act.

Section 7 of the by-law (violations and penalties) imposes fines of "not less than \$100 and not more than \$200 for violations pursuant to the Town's General By-laws, Article I, Section 1-6." § 169-7(A). Further, "[e]ach point of contact, connection, attachment, anchoring or mooring upon the land under tidal waters in violation of this Bylaw may constitute a separate offense." § 169-7(A). Any obstructions caused by unpermitted installations in the Regulated Area "shall be subject to removal by the Harbormaster without notice," and the costs of removal and storage of such obstructions will include "all costs and labor" and will be charged to the owner. § 169-7(B)

All these penalty provisions conflict with the allowable penalties referenced in the Act. The Act states that "[G.L. c. 88, § 19] relative to publication and penalties shall apply to such by-laws, rules and regulations made and adopted under the provisions of this chapter." Act, Section 2A. G.L. c. 88, § 19 (incorporated into the Act) limits fines for violations of any by-laws to \$20.00: "Any person convicted of a violation of any such rule or regulation shall be punished by a fine of not more than twenty dollars." G.L. c. 88, § 19 does not provide for fines "not less than \$100 and not more than \$200," or the seizure of equipment and additional costs of removal and storage.

**B. The By-Law Also Conflicts with State Law Insofar as It Purports to Make the
By-law "Effective Immediately."**

Finally, the by-law's stated effective date ("This Bylaw shall be applicable upon the vote of Town Meeting") conflicts with the effective date provisions of G.L. c. 40, § 32. Under G.L. c. 40, § 32, a by-law must first be approved by the Attorney General, and then must be posted or published, before it goes into effect:

Before a by-law or an amendment thereto takes effect it shall also be published in a town bulletin or pamphlet, copies of which shall be posted in at least five public places in the town; and if the town is divided into precincts, copies shall be posted in one or more public places in each precinct of the town; or instead of such publishing in a town bulletin or pamphlet and such posting, copies thereof may be published at least twice at least one week apart in a newspaper of general circulation in the town.

XI. Conclusion

We conclude that the by-law adopted under Article 15 is invalid because the Town was not authorized by the Legislature to enact it. The cited authorizing provision for the by-law, Chapter 54 of the Acts of 1953, does not expressly or impliedly empower Cohasset to regulate beyond the Town's borders, or with the broad scope attempted in the by-law. In addition, the by-law is preempted by G.L. c. 90B, § 15 and G.L. c. 91, § 10A, and conflicts with Scituate's legislatively granted authority to issue shellfish licenses within its borders pursuant to G.L. c. 130, § 57. On these grounds we disapprove the by-law adopted under Article 15.

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,
ANDREA JOY CAMPBELL
ATTORNEY GENERAL

Margaret J. Hurley

by: Margaret J. Hurley, Assistant Attorney General
Director, Municipal Law Unit
Chief, Central Massachusetts Office
Office of the Attorney General
Ten Mechanic Street, Suite 301
Worcester, MA 01608
508-792-7600 x 4402

cc: Town Counsels Carolyn M. Murray and Amy Kwesell

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COHASSET TOWN MEETING - CITIZEN'S PETITION

Purpose: To see if the Town will vote to amend the Town of Cohasset General Bylaws
by adding a new bylaw entitled "Navigation Bylaw" as follows, or take any
any action related hereto. The proposed bylaw has no known direct cost.

Proposed Article: Navigation Bylaw (see page 2 on reverse or attached)

DATE and TIME
received
9-26-22
3pm

SIGNERS' STATEMENT We are qualified voters of the Commonwealth of Massachusetts and of the Town of Cohasset.

INSTRUCTIONS TO SIGNERS: Please sign legibly. Please print name on line below signature.

Your signature should be written as substantially as registered. If you are prevented, by physical disability, from writing you may authorize some person to write your name and residence in your presence.

	C h e c k	Signatures to be made in person with name substantially as registered (except in case of physical disability as noted above)	Now Registered At (Street and Number)	F R E E C
1		Barbara Henderson	430 S. MAIN #2	
2		BARBARA HENDERSON		
3		Wendy Allen	430 S. Main St #2	
4		Wendy A. Henderson		
5		Wendy A. Lynch	430 S. Main St #4	
6		MARGARET LYNCH		
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WARNING - criminal penalty for unlawfully signing, altering, defacing, mutilating, destroying or suppressing this petition paper: fine of up to \$1,000 or imprisonment for up to one year.

Instructions to Registrars

Check One ☒ against the name of qualified voter to be certified. For names not certified, use the codes opposite.

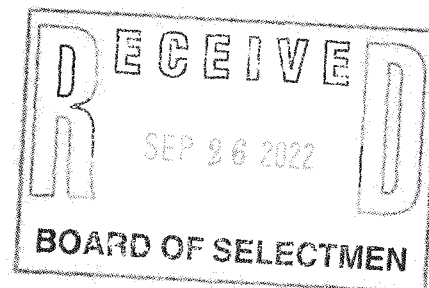
N no such registered voter at that address.
S unable to identify signature or address as that of voter because of form of signature or address, or illegible.
W wrong district or community.
T already signed this petition.

CERTIFICATION SIGNATURE: Three
We certify that (Three) signatures checked thus
✓ are names of voters of the Town of Cohasset and are qualified to sign this petition.

(at least three Registrars must agree to sign or stamp below)

Registrars of Voters of the Town of Cohasset

Terence P. O'Mara
John G. Grogan
Elisabeth Legge



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NORFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 2382-00815

FRIENDS OF BASSING BEACH, INC. & others¹

vs.

ATTORNEY GENERAL

**MEMORANDUM OF DECISION AND ORDER ON DEFENDANT
ATTORNEY GENERAL'S MOTION TO DISMISS (PAPER NO. 19)**

In this action in the nature of certiorari pursuant to G. L. c. 249, § 4, the plaintiffs seek review of the Attorney General's decision disapproving a bylaw adopted by the Town of Cohasset that regulates activity in Cohasset Harbor. Before the court is the Attorney General's motion to dismiss the claims of plaintiffs Friends of Bassing Beach, Inc. (FOBB) and Douglas McLellan pursuant to Mass. R. Civ. P. 12 (b) (1) and (6) (Paper No. 19.0).² For the foregoing reasons, the motion is **ALLOWED**.

BACKGROUND

FOBB is a non-profit organization of residents of Cohasset and nearby towns focused on conservation of the harbor and its recreational and educational purposes. FOBB and McLellan each own land abutting the harbor. FOBB's members, McLellan, and the general public use their land and the abutting flats and waters as a recreation and conservation resource.

Cohasset has regulated the harbor for over seventy years. In 2022, the town of Scituate began issuing licenses permitting a commercial aquaculture project in part of the harbor within Scituate's territorial boundaries, which, the plaintiffs allege, will interfere with navigation. In

¹ Douglas McLellan and Town of Cohasset, intervenor

² The instant motion does not concern the claim of the Town of Cohasset, which recently intervened as a plaintiff.

response, FOBB and a group of residents proposed a bylaw prohibiting aquaculture activities in the harbor, including the Scituate aquaculture project, citing Cohasset's regulatory authority over the harbor under Chapter 54 of the Acts of 1953. Cohasset adopted the bylaw and submitted it to the Attorney General for approval pursuant to G. L. c. 40, § 32.

The Attorney General disapproved the bylaw, effectively preventing Cohasset from regulating the harbor. FOBB and McLellan subsequently brought this case for certiorari review of the Attorney General's decision.

DISCUSSION

When ruling on a motion to dismiss under Rule 12 (b) (1) for lack of subject matter jurisdiction, the court must accept as true the factual allegations in the complaint and draw any reasonable inferences in the plaintiffs' favor. See *Ginther v. Commissioner of Ins.*, 427 Mass. 319, 322 (1998). The court's review may include affidavits and other matters outside the complaint. See *id.* at 322 n.6. Applying this standard, the court concludes that it lacks jurisdiction over FOBB's and McLellan's claims.

A plaintiff seeking certiorari review must have standing for the court to have subject matter jurisdiction. See *City of Revere v. Massachusetts Gaming Comm'n*, 476 Mass. 591, 607 (2017). In this context, "[a] party has standing when it can allege an injury within the area of concern of the statute or regulatory scheme under which the injurious action has occurred" (citations and quotations omitted). *Id.* The injury must be "different in nature or magnitude from that of the general public" *Friedman v. Conservation Comm'n of Edgartown*, 62 Mass. App. Ct. 539, 543 (2004). The plaintiff may not "rest[] on speculation[.]" *Higby/Fulton Vineyard, LLC v. Board of Health of Tisbury*, 70 Mass. App. Ct. 848, 851 (2007), and "must put forth credible evidence to substantiate his [or her] allegations" (citation and quotations omitted).

Perisho v. Board of Health of Stow, 103 Mass. App. Ct. 593, 597-598 (2023).

FOBB and McLellan contend that they are injured by the disapproval because (1) they own property abutting the harbor, (2) they were proponents of the bylaw, and (3) the decision will increase harbor congestion that will interfere with recreation, decrease property values, and harm the natural resource. These alleged injuries do not establish standing.

First, abutter status is, in itself, insufficient to confer standing for purposes of certiorari review. See *Higby/Fulton Vineyard, LLC*, 70 Mass. App. Ct. at 850 (on certiorari review, “the plaintiff’s status as a direct abutter does not create a rebuttable presumption of standing”); *Friedman*, 62 Mass. App. Ct. at 541, 543-545 (abutters lacked standing to bring claim for certiorari review “solely by virtue of their assumed status as abutters”).

Second, FOBB’s and McLellan’s status as proponents of the bylaw does not render them injured in a manner unlike others in the community. See *Kaminski v. Attorney General*, 1576CV00046, slip op. at 4 (Mass. Super. April 5, 2016) (Agostini, J.) (proponents of bylaw amendment lacked standing to challenge Attorney General’s disapproval of bylaw).

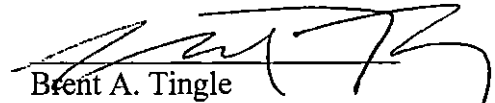
Lastly, FOBB’s and McLellan’s claim that the decision will cause harbor congestion that will harm recreation, property values, and the harbor itself is too speculative and generalized to establish standing. Their “factual assertions about such harm were raised in a conclusory fashion, and [were unsupported by] expert evidence, technical analysis, or particular facts in the record that establish [the purported risks]” (quotations omitted). *Hickey v. Conservation Comm’n of Dennis*, 93 Mass. App. Ct. 655, 658 (2018).

Therefore, FOBB and McLellan lack standing.³

³ Even if they had standing, their claims would not survive under the Rule 12 (b) (6) standard because the complaint fails to plausibly allege that they suffered “a substantial injury or injustice arising from the proceeding under review” as is required to obtain certiorari review. See *Indeck v. Clients’ Sec. Bd.*, 450 Mass. 379, 385 (2008).

ORDER

For the foregoing reasons, it is hereby **ORDERED** that Defendant Attorney General's Motion to Dismiss for Lack of Subject Matter Jurisdiction and for Failure to State a Claim is **ALLOWED**.


Brent A. Tingle
Justice of the Superior Court

Dated: December 18, 2024

Nicole Y Innocent

From: Norfolk Superior Court Appeals
Sent: Wednesday, February 5, 2025 9:07 AM
To: Nicole Y Innocent
Subject: Fw: 2025-J-0014 - Notice of Docket Entry

Follow Up Flag: Follow up
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From: Appeals Court Clerk's Office <AppealsCtClerk@appct.state.ma.us>
Sent: Monday, February 3, 2025 4:00 PM
To: Norfolk Superior Court Appeals <norfolksuperiorcourtappeals@jud.state.ma.us>
Subject: 2025-J-0014 - Notice of Docket Entry

-COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT CLERK'S OFFICE

February 3, 2025

RE: No. 2025-J-0014
 Lower Ct. No.: 2382CV00815

FRIENDS OF BASSING BEACH, INC. & another
 vs.
 ATTORNEY GENERAL

NOTICE OF DOCKET ENTRY

Please take note that on February 3, 2025, the following entry was made on the docket of the above-referenced case:

ORDER (RE #1): Plaintiffs Friends of Bassing Beach, Inc. (FOBB) and Douglas McLellan filed a petition pursuant to G.L. c. 231, s. 118 (par. 1), seeking review of an order entered 12/18/24 after a hearing in the Norfolk Superior Court. At issue in the underlying action for certiorari review pursuant to G.L. c. 49, s. 4, is the Attorney General's disapproval of a bylaw enacted by the town of Cohasset and affecting activities in Cohasset Harbor. The challenged order allowed the defendant Attorney General's motion to dismiss FOBB and McLellan as plaintiffs due to lack of subject matter jurisdiction. The court ruled that the plaintiffs lacked standing to bring this action and failed to state a claim pursuant to Mass. R. Civ. P. 12(b)(1) and 12(b)(6) because their alleged injuries do not establish standing. Prior to issuing its ruling, the court allowed the town of Cohasset's motion to intervene. As relief, the plaintiff petitioners request that the order be vacated or that they be granted leave to appeal to a panel.

Plaintiff FOBB is a nonprofit entity consisting of residents of Cohasset and nearby towns focused on harbor conservation, recreation, and education. Both FOBB and McLellan each own land abutting the harbor, and use that land for recreation and conservation. The plaintiffs and other residents proposed the bylaw adopted by the town of Cohasset. The bylaw prohibits aquaculture activities in the entirety of Cohasset Harbor, a use the neighboring town of Scituate allows and which the proponents argued affected navigation in the harbor.

A single justice's authority to overrule an interlocutory order of a trial court should "be exercised in a stinting manner with suitable respect for the principle that the exercise of judicial discretion circumscribes the scope of available relief." *Edwin Sage Co. v. Foley*, 12 Mass. App. Ct. 20, 25 (1981). The standard of review employed by the single justice is whether the trial court judge committed an error of law or an abuse of discretion in entering the order that is the subject of the petition. See *Jet Line Servs., Inc. v. Bd. of Selectmen of Stoughton*, 25 Mass. App. Ct. 645, 646 (1988).

After review of the petition and accompanying documents, including the relevant documents filed in the Superior Court, and the Attorney General's response, I discern no abuse of discretion or clear error of law warranting the single justice vacating the order. Moreover, the petition does not present the requisite extraordinary or exceptional issues that would merit granting the plaintiffs' alternative request for leave to take an interlocutory appeal from the order. See *Long v. Wickett*, 50 Mass. App. Ct. 380, 387-389 (2000) (discussing "the appellate courts' traditional abhorrence of piecemeal appellate review"). Accordingly, all relief requested in the petition is denied.

Notably, the town of Cohasset, which adopted the bylaw and sent it to the Attorney General for approval pursuant to G.L. c. 40, s. 32, remains an intervener in this matter and, according to the Superior Court docket, is prosecuting a motion for judgment on the pleadings. In any event, nothing in this order precludes the plaintiffs from raising the issues advanced in their petition in any appeal from the final judgment. (Meade, J.). *Notice/Attest/Tingle, J.

REGISTRATION FOR ELECTRONIC FILING. Every attorney with an appeal pending in the Appeals Court must have an account with eFileMA.com. Registration with eFileMA.com constitutes consent to receive electronic notification from the Appeals Court and e-service of documents. Self-represented litigants are encouraged, but not required, to register for electronic filing.

ELECTRONIC FILING. Attorneys must e-file all non-impounded documents. Impounded documents and submissions by self-represented litigants may be e-filed. No paper original or copy of any e-filed document is required. Additional information is located on our Electronic Filing page: <http://www.mass.gov/courts/court-info/appealscourt/efiling-appeals-faq-gen.html>

FILING OF CONFIDENTIAL OR IMPOUNDED INFORMATION. Any document containing confidential or impounded material must be filed in compliance with Mass. R. App. P. 16(d), 16(m), 18(a)(1)(A)(iv), 18(d), and 21.

Very truly yours,

The Clerk's Office

Dated: February 3, 2025

To:

Jeffrey J. Pyle, Esquire
Vanessa Azniv Arslanian, Assistant Attorney General
Devan C. Braun, Esquire
Carolyn M. Murray, Esquire
Norfolk Superior Court Dept.

If you have any questions, or wish to communicate with the Clerk's Office about this case, please contact the Clerk's Office at 617-921-4443. Thank you.