

M.G.L. Chapter 40A Zoning, Agriculture & Alternative Energy

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Putting Wind to Work in a Changing Climate
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Presentation Summary

- Preface & Qualifiers.
- Provide a “101” on 40A/3, 1st paragraph.
- Present some possible wind project scenarios.
- Concluding remarks.

Preface & Qualifiers

- Intend to present this with a community spirit, hoping to educate attendees and enlighten communities about Chapter 40A/3 possibilities and limitations and MDAR's appreciation for the ambiguities 40A/3 presents.
- MDAR considers wind turbines and other renewable technologies to be agricultural structures when used for the primary purpose of commercial agriculture. We have written letters of support in this regard, and are open to working with communities and farms considering various applications of Chapter 40A/3 that meets that intent.

Preface & Qualifiers

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- MDAR recognizes the Section's difficult read – MDAR has written its own paper on this, the handout - “Variations on a Theme of 40A,3”, by Bill Gillmeister, Ph.D., MDAR Agricultural Economist, and Bob Ritchie, MDAR General Counsel, intending to clarify 40A/3.

40A/3 “101”

Relevant Topics

- MGL Chapter 40A - Zoning
- MGL Chapter 40A Section 3, 1st paragraph – Agricultural Exemptions
- MGL Chapter 128 Agriculture
- MGL Chapter 128 Section 1A – Definitions

MGL Chapter 40A Zoning

- MGL Chapter 40A Zoning: Zoning is among a city's or town's constitutional powers. Chapter 40A is a state statute that establishes broad parameters on how a city or town may use those powers including limitations. It also prescribes in some matters a uniform way of doing things.

Chapter 40A Section 3

- Chapter 40A: Section 3. Subjects which zoning may not regulate; exemptions; public hearings; temporary manufactured home residences.
- Chapter 40A: Section 3. first paragraph – limited statutory exemption of agricultural uses and structures from local zoning laws.

Chapter 40A Section 3

Agricultural Tests To Be Eligible Under the First Paragraph

- Size – if (1) a parcel is 5 acres or more, or (2) is under 5 acres but in an area “zoned for” agriculture, it is eligible.
- Use – primarily needs to be an agricultural use as defined by MGL 128/1A.

Chapter 40A Section 3

Agricultural Exemptions

- If Agricultural Tests are passed then two (2) categories of exemptions are provided:
- 1. For the use of land for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture,...
- 2. For the use, expansion, reconstruction or construction of structures thereon for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture,...

Chapter 40A Section 3

Agricultural Exemptions

- Protection language for both the Community and the Farm:
- ...nor shall any such ordinance or by-law prohibit, **unreasonably regulate**, or require a special permit...

Chapter 40A Section 3

First Paragraph

- Must still comply with state building code.
- Must still comply with floodplains and wetlands regulations.
- Provides for a definition for agriculture using MGL Chapter 128, Section 1A.

Various Wind Turbine Scenarios Using MGL 40A/3 for Agriculture

- Scenarios are presented intending to demonstrate real world examples of farms, schools and communities and 40A/3 applicability.
- Net Metering.
- MDAR recognizes the ambiguity the not-so-straightforward scenarios present to the community and farm.

Various Wind Turbine Scenarios Using MGL 40A/3 for Agriculture

- Single Farm
- Multiple Farms
- Multiple Farms & Schools

Various Wind Turbine Scenarios Using MGL 40A/3 for Agriculture

- Scenario 1: Single Farm.
- Wind Turbine (s) sized and sited to primarily serve the farm it is sited on. Generally, any excess generation due to sizing limitations, seasonal and annual variations, or future growth considerations falls within 150% of annual farm consumption.
- Given the site meets the agricultural requirements needed to be eligible for 40A/3, the wind turbine (s) can be considered a structure for the primary purpose of agriculture and not be prohibited, unreasonably regulated or require a special permit due to zoning ordinances or by-laws.

Various Wind Turbine Scenarios Using MGL 40A/3 for Agriculture

- Scenario 2: Multiple Farms.
- Wind Turbine (s) sited on one or more farms and sized to primarily serve both the farm it is sited on and farms external to the site. Generally, any excess generation due to sizing limitations, seasonal and annual variations, or future growth considerations falls within 150% of total annual farms' consumption.
- Given the wind turbine farm sites and the external farm sites meet the agricultural requirements needed to be eligible for 40A/3, the wind turbine (s) can be considered a structure for the primary purpose of agriculture and not be prohibited, unreasonably regulated or require a special permit due to zoning ordinances or by-laws.

Various Wind Turbine Scenarios Using MGL 40A/3 for Agriculture

- Scenario 3: Multiple Farms & Schools Buildings.
- Wind Turbine (s) sited on one or more farms and sized to primarily serve both the farm it is sited on and farms & school buildings external to the site. The farms & schools also have a farm-to-schools program. Generally, any excess generation due to sizing limitations, seasonal and annual variations, or future growth considerations falls within 150% of total end user consumption.
- Even given the wind turbine farm site and the external farm sites meet the agricultural requirements needed to be eligible for 40A/3, and the fact that the farms and schools have an agricultural relationship, it appears 40A/3 would require amending for this scenario to be considered exempt.

Chapter 40A/3

- Parallel Paths or Options?

Green Communities Program (GCP)

- Though GCP does not create new zoning regulations, it provides for “as-of-right” siting requirements that can bring community and farms together.
- The “as-of-right” siting can include public and private lands, including farms.
- Provides a parallel or an option to MGL 40A/3 that can still include farms, maintaining community agriculture.

Concluding Remarks

- Hope you have learned something re 40A/3.
- Hope you are less confused??!!!???
- Hope you recognize 40A/3 in the context of farms and communities working together.