

## SJC Affirms Authority of Towns and Cities to Regulate Use of Land for Private Aircraft

We are pleased to announce that KP Law Attorney Jackie Cowin has secured a ruling with important ramifications for cities and towns throughout the Commonwealth. The Supreme Judicial Court (“SJC”) ruled on January 8, 2018 that cities and towns have authority, under their zoning powers, to regulate the use of land for the landing of non-commercial private aircraft, and that such regulation does not require state approval.

In the case of Roma, III, Ltd. v. Board of Appeals of Rockport, SJC No, 12278 (January 8, 2018), found at <https://www.mass.gov/files/documents/2018/01/08/12278.pdf>, the SJC addressed interpretation of the Fifth Paragraph of G.L. c.90, §39B (“Section 39B”). The statutory language at issue provides that municipal regulation of “the use and operation of aircraft” must be approved by the Massachusetts Division of Aeronautics in order to take effect. In 2016, the Massachusetts Appeals Court, in Hanlon v. Town of Sheffield, 89 Mass. App. Ct. 392 (2016), held that Section 39B requires any local regulation of the use of land for the landing of private aircraft to first be approved by the Aeronautics Division. Under Hanlon, therefore, a zoning bylaw that regulated or prohibited the *use of land* for such activities would not be valid unless first approved by the Aeronautics Division. Given that the Aeronautics Division had stated that it would not approve any local law that interfered with the “promotion of flying”, the Hanlon decision considerably restricted local authority in an area which, up until that point, had generally been considered to fall within municipal zoning powers. Hanlon was not appealed to the SJC, and thus represented the law on that issue.

Rockport’s Zoning Bylaw, like many municipal zoning bylaws and ordinances, is what is known as a “prohibitive” bylaw, in that any use not expressly allowed by the Bylaw is prohibited. The plaintiff in the Roma case argued before the Land Court that the Zoning Bylaw was invalid, to the extent it prohibited private aircraft landing areas, because it had not been approved by the Aeronautics Division. The Land Court Judge agreed and held Rockport’s prohibition on private landing areas to be invalid, although the judge stated further that he was “constrained” to do so by the Hanlon decision. Attorney Cowin sought Direct Appellate Review of the Land Court decision on behalf of the Town, which review was granted by the SJC. In the meantime, another town’s prohibition on private landing areas in its Zoning Bylaw was held invalid by the Land Court, based on the Hanlon ruling.

In its decision, the SJC agreed with the argument presented by Attorney Cowin, that nothing in Section 39B or related statutes indicates that the Legislature intended to preempt the traditional zoning and Home Rule powers of cities and towns to regulate the *use of land* for the takeoff and landing of private aircraft. Citing to the case of Sturges v. Chilmark, 380 Mass. 246, 253 (1980), the Court noted that a municipality has broad authority to “enact zoning provisions to deal with a variety of matters, including fire safety; density of population and intensity of use; the adequate provision of water, water supply, and sewerage; the conservation of natural resources; and the prevention of pollution of the environment.” Thus, the SJC also agreed that depriving cities and towns of such authority would undermine the interest served by zoning in protecting areas and residents from the “deleterious consequences” of activities that are not suited to particular locations.

Based upon these determinations as well as others, the SJC held that Section 39B does not require the Division of Aeronautics to approve local zoning laws that regulate or prohibit the use of land as “non-commercial private restricted landing areas”. In summary, cities and towns may regulate such uses of land through their zoning bylaws and ordinances in the same manner as other uses.

Please contact Attorney Jackie Cowin ([jcowin@k-plaw.com](mailto:jcowin@k-plaw.com)) with any further questions on this important case and its implications for local regulation of private aircraft.

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