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A Win for Retail Chains as Wellfleet's "Formula Business" Zoning Bylaw is Ruled Invalid

BY JOSEPH RANSOM • JANUARY 15, 2016

Retail chains scored a victory in a recent Massachusetts Land Court decision, [Cumberland Farms, Inc. v. The Town Of Wellfleet, et al](#), in which the Land Court struck down a provision of Wellfleet's zoning bylaw that regulated "formula businesses." Cumberland Farms appealed a decision by the Wellfleet Zoning Board of Appeals to deny Cumberland Farms' proposed development plans to demolish two existing buildings and construct one larger building and a canopied fuel pump filling station. The Town's "formula businesses" zoning bylaw requires businesses that would like to open a store in the Town and identify themselves as having twenty-five or more similar concept store locations worldwide that are obligated to carry and display merchandise in a standardized array to obtain a special permit. The Board denied Cumberland Farms' application for relief from this bylaw.

In its appeal to the Land Court, Cumberland Farms argued that the bylaw was invalid both on its face and as applied to Cumberland Farms' proposed use of the property. Judge Keith C. Long agreed with Cumberland Farms, finding that the Town failed to provide any evidence that a store which is classified as a "formula business" uses the land differently from one that is not. Judge Long further found that the bylaw regulated land based on its owner rather than its use, which is improper and a form of economic protectionism. Wellfleet failed to offer much, if any, compelling evidence to justify its bylaw, and it will be interesting to see if other retail chains will be able to use this case as a guide for challenging similar "formula business" or similar zoning restrictions.