



THE COMMONWEALTH OF MASSACHUSETTS
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August 3, 2017

Juliette Haas, Town Clerk
Town of Egremont
PO Box 368
South Egremont, MA 01258

Re: Egremont Annual Town Meeting of May 2, 2017 - Case # 8402
Warrant Article # 25 (Zoning)
Warrant Article # 23 (General)

Dear Ms. Haas:

Article 25 – We approve Article 25, except for that portion of the moratorium period which extends through January 2019, because this extended moratorium period appears to be longer than is reasonably necessary and thus exceeds the Town’s zoning authority. We explain our decision below.¹

I. Summary of Article 25.

Article 25 proposes to amend the Town’s zoning by-laws to add a new Section 4.3.7, “Temporary Moratorium on Marijuana Retail Sale.” The new Section 4.3.7 seeks to impose a moratorium “through **January 2019, or** six months after the effective date of the Cannabis Control Commission regulations, **whichever is later.**” The stated purpose of the moratorium is:

On November 8, 2016, the voters of the Commonwealth approved a Marijuana Legalization Initiative (Question 4) law regarding recreational use of marijuana. The resultant law (new M.G.L. c. 94G, Regulation of the Use and Distribution of Marijuana Not Medically Prescribed), which allows certain personal use and possession of marijuana, took effect on December 15, 2016 and requires a Cannabis Control Commission (CCC) to issue regulations regarding the licensing of commercial activities by March 15, 2018 for eventual retail sale and licensing beginning January 2018. The legislature has revised the date for dissemination of regulations and licensing to July 2018.²

¹ In a decision issued July 21, 2017 we approved Article 23.

² We note that House 3818, signed by the Governor on July 28, 2017 and effective immediately as an emergency

Currently non-medical Marijuana is not addressed in the Zoning Bylaw. Regulations to be promulgated by the Cannabis Control Commission will provide guidance on local regulation of recreational marijuana licensing, sales, taxing, etc. The regulation of recreational marijuana raises legal, planning, and public safety issues, and the Town needs time to study and consider forthcoming Massachusetts regulations, to assess their impact on local zoning, and to propose potential amendments to the Zoning Bylaw. The Town intends to adopt a temporary moratorium on the use of land and structures in the Town for retail sale of recreational marijuana so as to allow sufficient time to address the effects of such structures and uses in the Town and to enact bylaws that are consistent with state regulations.

Further, Section 4.3.7.2 includes the following text regarding the Town’s proposed moratorium and planning process:

For the reasons set forth above and notwithstanding any other provision of the Zoning Bylaw to the contrary, the Town hereby adopts a temporary moratorium on the use of land or structures for marijuana retail sale, including dispensing, processing, cultivating and other activities related to sale, storage and distribution of marijuana. The moratorium shall be in effect through **January 2019, or** six months after the effective date of the Cannabis Control Commission regulations, **whichever is later**. During the moratorium period, the Town shall undertake a planning process to address the potential impacts of recreational marijuana in the Town, consider the Cannabis Control Commission regulations regarding Recreational Marijuana Establishments, and shall consider adopting new Zoning Bylaws in response to these new issues.

II. Analysis of Moratorium Time Period.

The Town has the authority to “impose reasonable time limitations on development, at least where those restrictions are temporary and adopted to provide controlled development while the municipality engages in comprehensive planning studies.” Sturges v. Chilmark, 380 Mass. 246, 252-253 (1980). Such a temporary moratorium is within the Town’s zoning power when the stated intent is to manage a new use, such as a recreational marijuana establishment and related uses, and there is a stated need for “study, reflection and decision on a subject matter of [some] complexity...” W.R. Grace v. Cambridge City Council, 56 Mass. App. Ct. 559, 569 (2002) (City’s temporary moratorium on building permits in two districts was within city’s authority to zone for public purposes).

law, requires the Cannabis Control Commission to issue regulations by March 15, 2018; begin accepting applications on April 1, 2018; promulgate “special regulations” for Dukes and Nantucket Counties by May 1, 2018; and begin issuing licenses no earlier than June 1, 2018.

The Town has explained that the purpose of the moratorium is to provide adequate time for the Town “to study and consider forthcoming Massachusetts regulations, to assess their impact on local zoning and to propose potential amendments to the Zoning Bylaw.” (Section 4.3.7.1, ¶ 2). Because the initial Cannabis Control Commission regulations are not required to be issued until March 15, 2018 and those regulations “will provide guidance on local regulation of recreational marijuana licensing, sales, taxing, etc.” (Section 4.3.7.1, ¶ 2) it is reasonable for the Town to adopt a moratorium for a limited period of time to study the regulations and develop zoning and other by-laws in light of the regulations. This Office has approved several such moratoria effective through December 31, 2018. A moratorium lasting through December 31, 2018 would be reasonable because that end date would provide a town six months after the March 15, 2018 initial regulations to study, propose and adopt zoning and general by-laws in light of the Act and regulations.

In this case we find that the extended portion of the moratorium, (through January 2019), may result in a delay that is longer than reasonably necessary for the Town to study the issue and make a decision. We recognize that every town’s planning needs are different, and that there is substantial uncertainty as to when the final regulations will be issued and what they will address. Even in light of these varying planning needs and uncertainties, and based on the information available to date, we believe that it is reasonable to expect a town to complete its planning process for the new use of Recreational Marijuana Establishments by December 31, 2018, six months after publication of the final regulations. Beyond that time period a moratorium on Recreational Marijuana Establishments could be viewed as unconstitutional because it is not tied to current legitimate planning needs. *See Zuckerman v. Hadley*, 442 Mass. 511, 520-521 (2004) (“Except when used to give communities breathing room for periods reasonably necessary for the purposes of growth planning generally, or resource problem solving specifically, as determined by the specific circumstances of each case, such [rate of development] zoning ordinances do not serve a permissible public purpose, and therefore unconstitutional.”) (*citing Sturges*, 380 Mass. at 257).

If the Town, in the course of a planning process of the type upheld in *Sturges* and *W.R. Grace*, determines that there is a need to extend its moratorium beyond the initial period, then the Town may wish to enact a by-law doing so, and the basis for such a by-law will be evaluated at that time. We encourage the Town to consult with Town Counsel regarding a future amendment to the moratorium, if needed, to cite any factors unique to Egremont that provide a rational basis for the extended moratorium.

To summarize, we approve the by-law amendments in Article 25, except for the text in Section 4.3.7.1, as indicated in bold and underlined below:

“The moratorium shall be in effect through **January 2019, or** six months after the effective date of the Cannabis Control Commission regulations, **whichever is later.**”³

³ We issued a similar disapproval of an extended moratorium period in Carver Case # 8326 (August 3, 2017).

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 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 approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,

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cc: Town Counsel Jeremia Pollard