



TOWN CLERK

TOWN OF ACTON
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May 7, 2013

MIDDLESEX, SS:

ON THE ABOVE DATE, I POSTED ATTESTED COPIES OF THE AMENDMENT TO THE ZONING BYLAWS ARTICLE 28, 41, 42, 43, 44, AND 45 WHICH PASSED AT THE ANNUAL TOWN MEETING THAT CONVENED ON APRIL 1, 2013. THE ARTICLES MENTIONED FOR THE ZONING BYLAW WERE APPROVED BY THE ATTORNEY GENERAL, MARTHA COAKLEY ON MAY 2, 2013 AND IS POSTED AT THE FOLLOWING PLACES IN THE TOWN OF ACTON:

NAGOG WOODS POST OFFICE, TOWN HALL, WEST ACTON POST OFFICE, CENTER POST OFFICE, PUBLIC SAFETY FACILITY, CENTER LIBRARY AND TOWN WEB PAGE.

CONSTABLE

CLAIMS OF INVALIDITY BY REASON OF ANY DEFECT IN THE PROCEDURE OF ADOPTION OR AMENDMENTS OF THESE BYLAWS MAY ONLY BE MADE WITHIN NINETY DAYS (90) PER CHAPTER 40, SECTION 32, OF THE GENERAL LAWS OF THE COMMONWEALTH.

EVA K. SZKARADEK
TOWN CLERK



MARTHA COAKLEY
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS OFFICE OF THE ATTORNEY GENERAL

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May 2, 2013

Ms. Eva K. Szkaradek, Town Clerk
Town of Acton
472 Main Street
Acton, MA 01720

RE: Acton Annual Town Meeting of April 1, 2013 ----- Case # 6644
Warrant Articles 28, 41, 42, 43, 44, 45, and 46 (Zoning)
Warrant Articles 29 and 39 (General)

Dear Ms. Szkaradek:

Articles 28, 41, 42, 43, 44, and 45 - We approve the amendments to the Town by-laws adopted under these Articles on the warrant for the Acton Annual Town Meeting that convened on April 1, 2013. Our comments on Article 43 are provided below.

Articles 29, 39, and 46 - We have retained the amendments adopted under these Articles for further review. We will act on them on or before our deadline of July 15, 2013.

Article 43 - The amendments adopted under Article 43 amend the Town's zoning by-laws by adding a new Section 3.11, "Temporary Moratorium on Medical Marijuana Uses."

The new Section 3.11 institutes a temporary moratorium on medical marijuana treatment centers (as defined in Section 3.11.1) as either a principal or accessory use in all zoning districts in the Town through July 1, 2014. The stated purpose of the temporary moratorium as provided in Section 3.11.2 is as follows:

The purpose of the temporary moratorium is to give the Town of Acton sufficient time after the promulgation of DPH regulations to evaluate the potential land use impacts of Medical Marijuana Treatment Centers as such term is defined under the Medical Marijuana Law, and, if necessary and appropriate, to prepare and adopt zoning standards for Medical Marijuana Treatment Centers.

We approve this temporary moratorium because it is consistent with the Town's 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 clearly within the Town's zoning power when the stated intent is to

manage a new use, such as medical marijuana treatment centers, 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.) The time limit Acton has selected for its temporary moratorium (through July 1, 2014) appears to be reasonable in these circumstances, where the final Department of Public Health regulations have not yet been issued. The moratorium is limited in time period and scope (to medical marijuana treatment centers as a principal or accessory use), and thus does not present the problem of a rate-of-development bylaw of unlimited duration which the Zuckerman court determined was unconstitutional. Zuckerman v. Hadley, 442 Mass. 511, 512 (2004) (“[A]bsent exceptional circumstances not present here, restrictions of unlimited duration on a municipality’s rate of development are in derogation of the general welfare and thus are unconstitutional.”)

Because we find the amendments adopted under Article 43 are clearly within the Town’s zoning power, and otherwise do not conflict with the laws or Constitution of the Commonwealth, (see Bloom v. Worcester, 363 Mass. 136, 154 (1973)), we approve them.

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,

Kelli E. Gunagan

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cc: Town Counsel Stephen D. Anderson (via electronic email)