

LAW OFFICE OF BRIAN R. COREY, JR.

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October 14, 2020

Mr. James Whitin, Chairman
Westport Planning Board
816 Main Road
Westport, Massachusetts 02790

RECEIVED
October 15, 2020
WESTPORT
PLANNING BOARD

Re: Coastal Healing, Inc.

Mr. Chairman:

This office represents Coastal Healing, Inc. who is currently before your board with an application for Site Plan Review, and a Special Permit for a Adult Use Marijuana facility. As you are aware, the applications are complete and final comments from your review engineer issued as well as my clients responses.

I have reviewed the remaining comments from your consultant engineer as well as my client's responses and anticipate a positive vote on both applications at the next hearing. However, I am concerned that certain comments you received at the hearing regarding the "Marijuana Zoning Bylaw" meeting may have provided this board with incorrect information. The applications before you are separate and apart from any controversy regarding the passage of Articles 3 and 4 at the Special Town Meeting and should not be affected by the vote that was taken.

The adoption of Articles 3 and 4 as General Bylaws for the Town of Westport are in direct opposition to the Zoning Bylaws adopted by the Town in February, 2020. As such the courts have ruled in numerous occasions that a General Bylaw that purports to obviate or change the duly adopted Zoning Bylaw is null and void.

This principle was recently affirmed by the Land Court of Massachusetts in *Valley Green Grow, Inc., et al... v. The Members of the Board of Selectmen of the Town of Charlton*, et. al. Misc. Case 18-000483 (Charlton Case) March 7, 2019. In this case a group of residents unhappy with a zoning amendment that was approved by Town Meeting a few months before brought forth two Warrant Articles for consideration for Town vote. The First, Article 1, sought to rescind the Zoning Bylaw that had been recently passed allowing marijuana uses pursuant to G.L. 94G. Warrant Article 2 sought to adopt a General Bylaw that would ban all non-medical cannabis uses within the Town. Article 1 did not receive the necessary 2/3 vote and did not carry leaving the prior adopted bylaws intact. Article 2 did pass by a simple majority. Subsequent to this vote the plaintiffs instituted suit seeking a declaration under G.L. c. 240§ 14A. and G.L. c.231A §§, that Warrant Article 2 is invalid.

The Land Court astutely applied the long-standing principles found in *Rayco Inv. Corp v. Board of Selectmen of Raynham*, 368 Mass. 385 (1975); *Lovequist v. Conservation Commission of Dennis*, 379 Mass. 7 (1979); and *Spenlinhauer v. Town of Barnstable*, 80 Mass. App. Ct. 134 (2011). These cases provide the necessary principles for determining whether a General Bylaw impermissibly intrudes upon subject matter that is regulated by a Zoning Bylaw or should be regulated by a Zoning Bylaw. According to the Court in the *Charlton Case*, the first step is to “examine the subject matter of the challenged general bylaw”. The court states that a General Bylaw may only regulate a subject if there is no history in the municipality of the subject being treated under zoning. In Westport, the first moratoriums enacted by the Town and subsequent marijuana bylaws were enacted under Zoning. Therefore, according to *Spenlinhauer*, 80 Mass. App. Ct. at 139-140, a municipality that has acted like Westport in regulation may only regulate that issue through the Zoning Bylaws. A General Bylaw may be adopted in support of the adopted Zoning Bylaw but may not contradict or restrict the Zoning Bylaw *Lovequist*, 379 Mass. at 13-14.

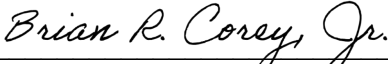
The court explained that the reason for this is that Zoning Bylaws have “different stricter requirements for enactment than General Bylaws” *Rayco*, 368, Mass at 394. Pursuant to G.L. 40a § 5, Zoning Bylaw amendments must pass a stringent 2/3 vote to carry, opposed to the majority vote for the adoption or amendment of a General Bylaw. This requirement recognizes the reliance on zoning regulations by landowners and the effect it would have on landowners if said rules were easily modified. By adopting Articles 3 and 4 at the Special Town Meeting on October 3, 2020, the Town effectively nullified the stricter 2/3 vote requirement of G.L. c. 40a § 5. Therefore, these changes to the bylaws are invalid as a matter of law.

Some members of the community as well as a minority of your Board, urged the Planning Board this past Tuesday to issue a moratorium on all applications in light of what they saw as a “conflict” between the General and Zoning Bylaws. These community members told the Board General Bylaw was in fact valid and binding upon the Town. In fact, the only matter binding upon the Town of Westport are the principles and decision issued in the Charlton Case and the existing valid General Bylaws adopted in February, 2020.

On behalf my client Coastal Healing, Inc., I urge your board to seek the advice of legal counsel prior to the October 20, 2020 hearing on this matter. It is imperative that my client reach a conclusion to their application process on that date and secure the approvals necessary for the Select Board to issue the Host Community Agreement for their facility. If the Town Planner or any Member has any questions outside of the review covered by S.W. Cole, I would appreciate it if they were forwarded to me by October 18, 2020.

Thank you for your careful consideration of this correspondence. Please feel free to contact me or have your representative or legal counsel do so with any comments or questions regarding this correspondence or the two outstanding applications. As always I look forward to working cooperatively with your board in reaching a successful conclusion of the matters before you.

Very truly yours,
LAW OFFICE OF BRIAN R. COREY, JR.



Brian R. Corey, Jr., Esquire

