



COMMONWEALTH OF MASSACHUSETTS

LAND COURT

DEPARTMENT OF THE TRIAL COURT

WORCESTER, ss.

MISCELLANEOUS CASE
NO. 18 MISC 000483 (RBF)

VALLEY GREEN GROW, INC., CHARLTON)
ORCHARDS GROUP, LLC, NATHAN R.)
BENJAMIN, JR., and CATHERINE L.)
BENJAMIN,)

Plaintiffs,)

v.)

TOWN OF CHARLTON and JOHN P.)
McGRATH, DEBORAH B. NOBLE, KAREN A.)
SPIEWAK, DAVID M. SINGER, JOSEPH J.)
SZAFAROWICZ, as are Members of the Board of)
Selectmen of the Town of Charlton,)

Defendants,)

GERARD F. RUSSELL,)

Defendant-Intervenor.)

J U D G M E N T

On September 21, 2018, Valley Green Grow, Inc. (VGG) filed its complaint, naming as defendants the Town and John P. McGrath, Deborah B. Noble, Karen A. Spiewak, David M. Singer, and Joseph J. Szafarowicz as Members of the Board of Selectmen of the Town of Charlton. On October 9, 2018, Gerard F. Russell filed his Motion to Intervene as a Defendant, and on October 15, 2018, his Amended Brief and Affidavit in support of his Motion to Intervene. On October 30, 2018, Russell filed his Amended Answer of Gerard F. Russell, and on October 31, 2018, the Town and the Board filed their Answer. On November 5, 2018, VGG filed its Opposition to Gerard Russell’s Motion to Intervene.

The court held the case management conference on November 6, 2018, where it took the Motion to Intervene under advisement and advised VGG to amend its complaint to add necessary plaintiffs. On November 8, 2018, the court issued its Order Allowing Motion of Gerard F.

Russell to Intervene as a Defendant, and VGG filed its Assented-To Motion for Leave to File First Amended Complaint to add as plaintiffs COG and the Benjamins. The court allowed the motion that same day and deemed the First Amended Complaint filed. On November 19, 2018, Russell filed his Answer to Plaintiffs' Amended Complaint and Cross-Complaint, bringing a cross-complaint against the Town. On December 17, 2018, the Town filed its Answer to Intervenor's Cross-Claim. Plaintiffs' Motion for Leave to Intervene as Defendants in Intervenor Gerard Russell's Cross Claim Under G.L. c. 240 Sec. 14A Against the Town of Charlton was filed on February 1, 2019, and allowed without hearing on February 5, 2019.

On November 16, 2018, VGG, COG, and the Benjamins (plaintiffs) filed Plaintiffs' Motion for Summary Judgment, Memorandum of Law in Support of Plaintiffs' Motion for Summary Judgment, Plaintiffs' Statement of Undisputed Material Facts in Support of Their Motion for Summary Judgment, their Appendix of Exhibits in Support of Plaintiffs' Motion for Summary Judgment, and the Affidavit of Jeffrey Goldstein in Support of Plaintiffs' Motion for Summary Judgment. On December 18, 2018, Russell filed (1) Defendant Gerard F. Russell's Opposition to Plaintiffs' Motion for Summary Judgment, (2) the Affidavit of Defendant Gerard F. Russell, (3), Notice to Attorney General Pursuant to G.L. c. 231A, § 8 and Mass.R.Civ.P. 24(d), (4) Russell's Document Appendix, (5) Defendant Russell's Response to Plaintiffs' Statement of Undisputed Material Facts in Support of His Opposition to Plaintiffs' Motion for Summary Judgment, and (6) Defendant Russell's Statement of Undisputed Material Facts In Support of His Opposition to Plaintiffs' Motion for Summary Judgment. On January 2, 2019, the plaintiffs filed (1) Plaintiffs' Reply to Defendant Russell's Opposition to Plaintiffs' Motion for Summary Judgment, (2) Plaintiffs' Response to Defendant Russell's Statement of Material Facts, and (3) Plaintiffs' Response to Brief of Amicus Curiae Michael Pill. On January 4, 2019, the court heard the Summary Judgment Motion, and took it under advisement. The court issued its Memorandum and Order Allowing Plaintiffs' Motion for Summary Judgment on March 7, 2019 (Summary Judgment Order).

The Plaintiffs' Motion for Summary Judgment on Cross-Claim Pursuant to G.L. c. 240, § 14A, Memorandum of Law in Support of Plaintiffs' Motion for Summary Judgment on Cross-Claim Pursuant to G.L. c. 240, § 14A, Plaintiffs' Statement of undisputed material Facts in Support of their Motion for Summary Judgment, Affidavit of Nathan R. Benjamin, Jr. in Support of Plaintiffs' Motion for Summary Judgment, and Plaintiffs' Appendix and Affidavit of Counsel in Support of their Motion for Summary Judgment were filed on May 8, 2019. Gerard F. Russell's Opposition to Plaintiffs' Motion for Summary Judgment and Cross Motion for Summary Judgment on his Cross-Claim under MRCP Rule 56, Gerard F. Russell's Brief in Support of his Opposition to Plaintiffs' Motion for Summary Judgment and his Cross Motion for Summary Judgment on his Cross-Claim, Gerard F. Russell's Statement of Undisputed Facts in Support of his Motion for Summary Judgment, Russell's Response to Plaintiffs' Statement of Undisputed Material Facts in Support of their Opposition and Motion for Summary Judgment, and Russell's Appendix and Affidavit of Counsel in Support of his Motion for Summary Judgment were filed on June 13, 2019. The Plaintiffs' Reply in Support of their Motion for Summary Judgment on Cross-Claim Pursuant to G.L. c. 240, § 14A, Planning Board's Motion for Summary Judgment, Planning Board's Memorandum in Support of Motion for Summary Judgment, and Defendant Town of Charlton's Opposition to Gerald Russell's "Cross Motion for Summary Judgment on his Counter-Claim" were filed on June 17, 2019. The court heard the

motions for summary judgment on June 19, 2019, and took the matter under advisement. In a Memorandum and Order of even date, the court (Foster, J.) has allowed the Plaintiffs' Motion for Summary Judgment on Cross-Claim Pursuant to G.L. c. 240, § 14A and denied Gerard F. Russell's Motion for Summary Judgment.

In accordance with the court's Summary Judgment Order issued on March 7, 2019, and the Memorandum and Order issued today, it is


ORDERED, ADJUDGED, and DECLARED that Warrant Article 2, passed at the August 1, 2018 special town meeting of the Town of Charlton (Town), is beyond the scope of the Town's power and authority, and is invalid and of no force or effect. It is further

ORDERED, ADJUDGED, and DECLARED that by virtue of filing a preliminary subdivision plan on April 25, 2018, in connection with its proposed development (the project) of properties located at 44 Old Worcester Road and 7 L Turner Road in Charlton, Massachusetts (collectively the site), VGG's project is subject to the provisions of the Charlton Zoning Bylaw (Bylaw) in effect as of that date.

ORDERED, ADJUDGED, and DECLARED that the project at the site as proposed by VGG is an indoor commercial horticulture/floriculture establishment (e.g. greenhouse) use allowed by right under the Bylaw in the zoning district or districts in which the site lies. It is further

ORDERED, ADJUDGED, and DECLARED that VGG's proposed post-harvest processing activities and the proposed cogeneration facility are lawful accessory uses to the proposed indoor commercial horticulture/floriculture establishment (e.g. greenhouse) use of the site. It is further

ORDERED, ADJUDGED, and DECLARED that a copy of this Judgment may be recorded in the Worcester County Registry of Deeds and marginally referenced on all relevant documents.

 By the Court (Foster, J.).

Attest:

Dated: August 14, 2019.

Deborah J. Patterson, Recorder

A TRUE COPY
ATTEST:


RECORDER