

# Land Court strikes down town meeting vote on Charlton marijuana facility

By Kris Olson

kolson@lawyersweekly.com

A vote taken at Charlton's annual town meeting in May 2018 attempting to halt the conversion of a farm to a million-square-foot indoor marijuana growing and processing facility was an improper attempt to exercise its zoning power through a general bylaw and is "invalid and of no force and effect," a Land Court judge has ruled.

As previously reported in Lawyers Weekly, the parties had made their arguments to Judge Robert B. Foster on Jan. 4.

Attorneys for the developer Valley Green Grow feared that, if Foster had allowed a general bylaw to trump Charlton's previously approved zoning bylaw, it would place at risk the investments in cannabis businesses across the state, leaving them vulnerable to challenges by residents able to muster enough support to get a majority vote at a Town Meeting to undo long-laid plans.

But Foster has now quelled those fears.

"Faced with the question put

before it under c. 94G of how to regulate recreational marijuana use, the Town could have chosen to adopt a general bylaw," Foster wrote in his March 8 decision. "Instead, it chose to enact a zoning bylaw amendment, Warrant Article 27, which regulated marijuana use through the traditional mechanisms of zoning, namely use districts and special permits. Having permitted marijuana use through its zoning bylaw, Charlton could only change or bar that use by amending the zoning bylaw. It could not do what it did here — bar the previously allowed zoning use by Warrant Article 2, a general bylaw."

One of the developer's attorneys, Michael D. Rosen of Ruberto, Israel & Weiner, said he and his client were pleased with the court's ruling.

"While we still have work to do, we believe that the court clearly and correctly understood the issues and rendered a decision that comports with Massachusetts law," Rosen said. "For all land use developers, this decision reaffirms the sanctity of 40A, the

Zoning Enabling Act. Communities should not be permitted to undo with a general bylaw something that was already being regulated by a zoning bylaw."

Charlton's general bylaw still would have needed to have been approved by a majority in a town-wide vote, which had been scheduled for May. Foster's decision obviates the need for that vote.

Valley Green Grow still must also appeal a controversial adverse vote taken by the Charlton Planning Board on Jan. 2, denying its site plan approval. The board appeared to have taken that vote in defiance of the advice of its own legal counsel, according to press reports.

The 21-page decision is Valley Green Grow, Inc., et al. v. Town of Charlton, et al., Lawyers Weekly No. 14-016-19. The full text of the ruling can be found [here](#).

