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Marijuana entrepreneurs see favorable precedent in Worcester court ruling

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Cannabis developers are applauding a Worcester land court decision, saying the ruling will make it harder for towns to reverse course once they've allowed marijuana companies to open.

The decision, rendered by Judge Robert Foster on March 7, rescinded a bylaw in the Central Massachusetts town of Charlton that would have banned all non-medical cannabis use in the town. The town had previously passed a zoning bylaw allowing recreational cannabis, according to the decision, but residents subsequently tried to outlaw them after a business had begun planning a cultivation facility there.

The decision is not only a win for Valley Green Grow, the company behind Charlton's 1 million-square-foot cannabis development, but for marijuana entrepreneurs throughout the state.

"We've heard from others in the cannabis industry that they are pleased, and that they are facing similar conundrums in other communities," said attorney Michael Rosen, who is representing Valley Green Grow.

The case is one of three ongoing lawsuits regarding the project, and Rosen said the judge's comments show promise for the remaining suits. Worcester Land Court is also considering a complaint filed against the project that questions whether cannabis businesses are allowed under the town's greenhouse zoning bylaws. And Valley Green Grow has also appealed a Planning Board decision to deny a site plan for the site, and will likely appeal a recent Planning Board decision to deny a subdivision plan.

"The fact that (Judge) Foster rather quickly and exhaustively rendered the key facts and rendered a strong decision on our behalf gives me a good comfort level that there won't be any nonsense on the other cases," Rosen he said.

Attorney Francis Fennessey, who is representing neighbor and project opposer Gerard Russell, said he plans to ask the court to reconsider its decision, saying that the ruling is too broad in knocking down a ban on both cultivation and retail facilities.



Valley Green Grow has proposed a massive cannabis project in Charlton that is moving forward despite road blocks.

While the project still faces many hurdles, Thursday's decision could apply to cannabis developments even outside of Charlton. Brewster and Borne have also banned cannabis through a general bylaw after passing zoning allowing cannabis businesses, and this case likely sets a precedent to knock down those bans as well.

"Until this decision came out, this was a problem likely to repeat itself," said Shawn McCormack, an attorney with Davis Malm's Cannabis Law Practice, who has been following but is not involved in the Charlton case.

The decision also makes it clear that if town officials have approved a cannabis project and have passed zoning bylaws allowing it – as has occurred in Charlton – residents and future officials would be hard-pressed to reverse course. That's notable, McCormack said, as often there's only a groundswell of opposition after zoning has been passed and a marijuana business has proposed an actual facility.

While towns can amend zoning regulations, applicants can institute zoning freezes or be grandfathered in under old zoning. Towns will also face a higher hurdle if they wish to augment zoning laws, as such changes require two-thirds of a vote at town meeting, whereas general bylaws only require a simple majority vote, McCormack said.

"This decision makes clear that for a town that chooses to use zoning, they are going to be stuck using zoning," McCormack said. "For towns that haven't acted yet, that's the import of this decision."

The decision is also a telling look at how the courts will interpret state land use laws as they pertain to cannabis, viewing them as equal to other types of real estate developments rather than subjecting them to stricter oversight.

"Anytime a law is changed or there are new laws, like the cannabis laws, you have to wonder, are there other types of laws that can upset your right to build and develop real estate?" Valley Green Grow's Rosen said. "It's a good sense of the judge's impression of the case. If the judge had any inclination to want to hold cannabis companies to a different standard or have stricter scrutiny (he would have decided differently)."

The project is Valley Green Grow's second attempt at building the \$100 million cannabis development, described as one of the country's largest marijuana greenhouses. In 2017, North Andover officials voted against a zoning board change to allow the project to move forward.

In Charlton, the project would feature an 860,000-square-foot greenhouse, a 130,000-square-foot processing facility, and a 10,000-square-foot electricity building. It's also expected to create 300 jobs.