

From: Jeffrey Bagg [<mailto:jbagg@cmrpc.org>]

Sent: Thursday, November 16, 2017 2:23 PM

To: dlakeman@mma.org; Town Manager

Subject: [External] Central Mass Regional Planning Commission - moratorium questions and concerns

Dear David and Julie,

It was my pleasure to be part of your panel discussion last week at the STAM meeting in Sturbridge. I consider these prime opportunities to continue to learn about the evolving process as much as sharing my own ideas, and, share issues raised by the 39 member communities in Central Mass.

The primary issue of concern that we believe must be addressed more clearly – and as soon as possible – are the questions about the validity of temporary moratoriums. Expressed another way, it is critical for the CCC to consider and identify how they will treat a temporary moratorium as it relates to a license applications received on April 1, 2018. If not before, this must be addressed in the draft regulations.

I have participated in several panel discussions with the Director of the Municipal Law Unit, Margaret Hurley. I have a great respect for her and her willingness to be out talking to communities about the process and answering questions. This is invaluable and is filling a void that needs to be filled by the CCC moving forward. In fact, she and I have spoken and shared information several times in a collaborative way and I have shared the concerns from our communities with her about the cautions with regard to moratoriums. She recommended that I share these concerns with MMA and the CAB.

During an MMA event on October 3, along with at other events (from my understanding), and most recently at a joint meeting of the Grafton Board of Selectman and Planning Board, she continues to express caution with regard to moratoriums (<http://grafton.cablecast.tv/Cablecast/public-site/index.html#/show/2906?channel=2>). Specifically, the caution has been refined to identify that a moratorium is not a guarantee that the CCC will reject, deny, or even delay a license application. Based on apparent signals from the industry, potential challenges may especially be the case in “yes” communities that have an existing registered medical facility in so much as the CCC may actually be forced to ignore the moratorium based on the interpretation (from the industry) that the moratorium is effectively a ban and that in “yes” communities (even more specifically “yes” communities with a registered RMD) they will have not followed the ballot and bylaw opt out process. We believe that the CCC may have an opportunity to clarify through the regulations that moratoriums are not a ban – and are only a delay – and create a process through the regulations whereby applications received in communities with a moratorium are not rejected, rather they are delayed. In most cases, the delay to an applicant would be approximately eight months; those eight months will be invaluable to communities to create zoning to allow the use or decide as a community to ban them.

While this gets down to some granular questions and scenarios, the overarching message being sent is that a moratorium is not a guarantee and that if a community wants to be sure they are protected they should either pursue a full ban or create regulations prior to April 1, 2018. This message will likely not be ignored, rather, it could have a significant ripple effect amongst municipal officials. We have been hesitant to begin sharing this because, while it is coming from a reputable source, and, for the right reasons, it is not written or published anywhere and I’m hesitant to have CMRPC be the first to begin putting it in writing and bringing it to a broader audience without knowing MMA’s or the CAB’s position.

The final concern with these questions about moratoriums is that the AG's office is advising that in order for either a ban or regulations to be "in effect" on April 1st, the actions must be taken by February (which is extremely liberal providing the AG's office only 30 days to review and approve a bylaw where the law allows the AG 90 days). Therefore, to create a coherent zoning bylaw, hold the necessary public hearings, organize a special town meeting, and conduct important public outreach leaves only December and January. While some towns, such as Grafton and Amherst who have sufficient planning staff may do this, countless other towns will not be able to respond in time.

In terms of technical assistance, most RPA's were planning to use DLTA funds typically available in January or February to fund our continued assistance in preparing models and best practices in the winter and early spring in preparation for most towns' spring town meetings. If a domino effect of communities doubling back to override moratoriums occurs, it will be difficult for us to provide useful assistance to communities during December and January without funding. The latter issue pales in comparison to what communities may face when they realize that the temporary moratorium may not offer the time originally envisioned to thoughtfully work through the issues and create options to allow certain uses. The fear is, if pressed, communities may need to act fast to determine an alternate course and expend money to hold a special town meeting.

It may come to that, but the issue should be clarified as soon as possible through the CAB and/or CCC. I'm attaching our agencies letter submitted to the CCC as part of their listening tour.

Please let me know if you have any questions or if I can assist in any way.

Thanks,

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Warm Regards,
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