



TOWN OF NORTHBOROUGH PLANNING DEPARTMENT

Town Hall Offices • 63 Main Street • Northborough, MA 01532 • 508-393-5019 • 508-393-6996 Fax

Medical Marijuana In Massachusetts Meeting Minutes October 15, 2013

Planning Board Members Present: Rick Leif, Michelle Gillespie, Leslie Harrison

Zoning Board of Appeals Members Present: Fran Bakstran, Mark Rutan, Rob Berger

Board of Selectmen Members Present: Dawn Rand, Jeff Amberson, Bill Pantazis

Others Present: Kathy Joubert, Town Planner; Fred Lonardo, Inspector of Buildings/Zoning Enforcement Officer; Jamie Terry, Health Director; Mark Leahy, Chief of Police; Attorney Kay Doyle, Kopelman & Paige; Douglas G. Ford, Planting Hope, Inc.; and Amy Poretsky

This informational meeting on medical marijuana was arranged by Kathy Joubert, Town Planner, for the Planning Board, Zoning Board of Appeals, Board of Health and Board of Selectmen.

Attorney Kay Doyle opened the meeting at 7:15pm and presented a slideshow entitled “Medical Marijuana in Massachusetts”, which is attached to these minutes.

Information in Ms. Doyle’s presentation, on which she elaborated, included the Humanitarian Medical Use of Marijuana Act (Chapter 369 of Acts of 2012) and its limitations; Department of Public Health (DPH) Regulations; the definition, authorization and registrations of Registered Marijuana Dispensaries (RMD) within the state; the amount of medical marijuana prescribed for patients; qualifying adult and minor patients; certifying physicians; the definition of, and regulations for, personal caregivers; cultivation of medical marijuana, hardship cultivation, and on-site/off-site cultivation at a Registered Marijuana Dispensary; Registered Marijuana Dispensary qualification, application process, registrations, sitings, operations, marketing, security, transportation and compliance with local law; Medical Marijuana State and Federal laws; and information on how towns could regulate medical marijuana through zoning amendments.

In addition to information from Ms. Doyle’s presentation, she responded to questions from various board members and others present, as follows:

- In Phase II, the applicant needs support from town boards, however the town does not have to show support of an application. The town cannot pass a bylaw banning medical marijuana.
- Absent a MM bylaw, the use of a Registered Marijuana Dispensary and a cultivation facility could fit under medical or agricultural use. The Attorney General has stated it cannot be considered a medical use, but that is being appealed and has not gone to court yet. If an application was filed as an agricultural use, the applicant would have to prove it was agricultural.
- A Registered Marijuana Dispensary cannot get medical marijuana from another dispensary unless there is a hardship.

- Of the 158 applicants approved in Phase I, many of the applications are for Essex County. The applicants will have to approach towns soon, and some of the non-profits are approaching towns now.
- The grow operation has to be done in an enclosed secure area and probably won't be done outside. The assumption is there would be no soil involved and would be primarily indoors. In some instances, the grow operation would be on one floor of a big warehouse and the dispensary would be on the other floor.
- Regulations regarding a Registered Marijuana Dispensary located near a home daycare center have been interpreted as allowed. It is up to the town to determine where children congregate. It's probably the logical places where children would be found. If the town does not want to put in buffer regulations, the Department of Public Health will be the primary interpreter of its regulations.
- Until the town has a medical marijuana bylaw, when applicants apply, they will tell the town where they need to go and will try to persuade the town that where they want to locate is reasonable.
- Regarding Registered Marijuana Dispensary operations, diversion means diverting the medical marijuana to those who are not authorized to use it under state law and those who don't have a registration by the state to get it.
- Individuals growing marijuana would have to show their registration card to law enforcement to prove they are growing it legally. The town would have to make rules if it wanted to require individuals cultivating medical marijuana to register with the town.
- Medical Marijuana is not considered food by the state.
- To qualify for an exempted agricultural use, agriculture must be the primary use. In Northborough, the bylaw identifies a farm as 5 acres.
- Off-site delivery to patients with a hardship cannot be prohibited.
- A bylaw will give the town control over the dispensaries, but the town will probably have little control over the delivery vehicles.

Moratoriums

Ms. Doyle stated the Town has to have rational reasons for a moratorium and a moratorium cannot last an unreasonable amount of time. The Attorney General's office has clarified their position that an 18-month moratorium is reasonable; moratoriums may not exceed December 2014; and if a town adopts a moratorium, a bylaw would need to be in place by December 2014.

Ms. Doyle stated to regulate medical marijuana through Zoning Bylaws, it could be as an existing use, or by an overlay district, and could have protection under an agricultural exemption. To regulate through the Board of Health, regulations could be adopted at a regular meeting. In both cases, boards need to watch for potential conflicts with state law.

Ms. Joubert, Mr. Lonardo and Ms. Terry noted they have been contacted by a realtor who is representing a client.

Douglas Ford, Planting Hope, Inc. identified himself as the person who contacted Ms. Joubert, Mr. Lonardo and Ms. Terry. He submitted a letter for the information of those present, which is attached to these minutes.

A discussion was held by those present regarding how they should proceed between now and 2014 Town Meeting. It was suggested they could start working on a bylaw, draft an article for a moratorium and have both on 2014 Town Meeting warrant. If the bylaw wasn't ready for 2014 Town Meeting, they could go ahead with the moratorium and hold a special town meeting in November 2014 for the zoning article.

Ms. Doyle responded to questions from those present, stating no applicants can operate until January 2014. If an application came before a board prior to a moratorium or bylaw, the applicant would have to show how the plans conform with current zoning. For a proposed cultivation site, an applicant may make a case that the site has an agricultural exemption. If a building permit was issued prior to notice of a zoning bylaw amendment, the site may be under the exemption of a pre-existing, nonconforming lot. If an applicant was approved as a registered dispensary and filed with the town, but something fell through and the site was no longer available, the applicant would have to start over again, explain the circumstances to the Department of Public Health, and would probably not get re-registered the first time around.

Ms. Doyle noted the Phase I approved applicants were announced two weeks ago, and they will probably be approaching towns soon. Applicants have until November 21st to file their Phase II applications.

The meeting adjourned at 9pm.

Respectfully submitted,

Debbie Grampietro
Board Secretary

Medical Marijuana in Massachusetts

Kay Doyle, Esq.

Kopelman and Paige, P.C.

Chapter 369 of Acts of 2012

The Humanitarian Medical Use of Marijuana Act,
G.L. c.94C, Appendix,
§1-1 to §1-17

- Voted November 6, 2012
- Effective January 1, 2013

The Act: Limits

- Cannot operate a motor vehicle, boat, or aircraft while under the influence of marijuana.
- Does not require health insurance reimbursement
- Does not require all physicians to authorize use of marijuana
- Does not require accommodation of on-site medical use of marijuana in any place of employment, school bus or on school grounds, in any youth center, in any correctional facility, or of smoking medical marijuana in any public place.
- Does not supersede Massachusetts law prohibiting the possession, cultivation, transport, distribution, or sale of marijuana for nonmedical purposes.
- Does not require the violation of federal law or purport to give immunity under federal law.
- Does not prevent federal enforcement of federal law.

G.L. c. 94C App. § 1-7

DPH REGULATIONS

- Approved by the Public Health Council
May 8, 2013 after public comment period
- Went into effect May 24, 2013

Medical Marijuana Treatment Centers (Act) or Registered Marijuana Dispensary (Regs.)

A not-for-profit entity, as defined by Massachusetts law only, registered under this law, that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies or educational materials to qualifying patients or their personal caregivers.

RMDs

- In 2013, DPH is authorized to issue up to 35 registrations for nonprofit RMDs
- There must be 1 RMD per county
- No more than 5 RMDs in 1 county
- More than 35 registrations may be permitted in future years if DPH determines 35 is insufficient to meet needs

60 DAY SUPPLY

- Definition: amount of marijuana a patient would reasonably be expected to need over a period of 60 days for his/her personal medical use.
- Presumed to be 10 oz. (Current street value, depending on the strain, in this area = \$2,500-\$4,000)
- Certifying Physician may recommend **MORE** than 10 oz. for 60-day supply with documentation of rationale for greater amount

QUALIFYING PATIENT: ADULT

Adults diagnosed by certifying physician with debilitating medical condition:

Debilitating Medical Condition:
cancer, glaucoma, HIV, AIDS, hepatitis C, ALS, Crohn's disease, Parkinson's disease, MS, and other debilitating conditions as determined by a certifying physician.

QUALIFYING PATIENT: MINOR

Minors diagnosed by 2 certifying physicians (one who is a board certified pediatrician or pediatric sub-specialist) with debilitating life-limiting illness:

Life-limiting illness: debilitating medical condition that does not respond to curative treatments, where reasonable estimates of prognosis suggest death may occur within two years.

or without a life-limiting illness if it is determined that the benefits of medical marijuana outweigh the risks for the patient.

CERTIFYING PHYSICIAN

- Must be MA Licensed
- Must have at least one established place of practice in MA
- Must hold a MA Controlled Substance Registration from DPH
- Must comply with continuing education requirements re: marijuana
- Must have bona fide relationship with patient
- Must have clinical visit with patient (no less than one visit a year)
- May not have direct or indirect financial interest in RMD
- **May not examine or counsel a patient at an RMD**

PERSONAL CAREGIVERS

- Definition: a person, registered by the DPH, who is at least 21 years old, who has agreed to assist with a registered qualifying patient's medical use of marijuana, and is not the patient's certifying physician.
- May not serve as caregiver for more than 1 qualifying patient at a time, except if an employee of a hospice provider, nursing facility or medical facility caring for patient of such facility, visiting nurse, or immediate family member of more than one registered qualifying patient
 - Employees of hospice, nursing facility or medical facility may not cultivate marijuana for patient.
 - Immediate family member = spouse, parent, child, grandparent, grandchild, sibling, including in-laws.

PERSONAL CAREGIVERS

- Patient may designate up to 2 caregivers, **but** if the patient has been granted a hardship cultivation registration, the personal caregivers may cultivate marijuana for the patient at only one location which is subject to inspection
- May not receive payment for caregiving services, except if employee of hospice provider, nursing facility, medical facility, or a visiting nurse, personal care attendant or home health aide, but any compensation must not be beyond regular wages

Hardship Cultivation

- If a “qualifying patient’s” access to a RMD is limited by:
 - Verified financial hardship
 - A physical incapacity to access reasonable transportation
 - Lack of a treatment center within a reasonable distance of the patient’s residence
- Patient or Personal Caregiver will be registered by DPH to grow equivalent of 60 day supply (10 ozs or otherwise)

Hardship Cultivation

- Until DPH enacted its regulations, the written recommendation of a qualifying patient's physician was sufficient to constitute a limited cultivation registration.
- The existing recommendation will continue to be valid until January 1, 2014, by which time all hardship cultivators must apply for hardship cultivation registration.

RMDs

CULTIVATION

- Cultivation may occur on-site or at one remote location
- A cultivation location may cultivate marijuana for ONLY that RMD and up to 2 additional RMDs operated by the same non-profit corporation
- RMDs can acquire or distribute marijuana to each other when:
 - Emergency situation occurs (crop loss, vandalism, theft or other DPH approved situation)
 - Specific patient's needs cannot be met by the RMD as documented by the RMD
 - Does not exceed cap of 30% of RMD's annual total inventory

RMDs

Phase I: QUALIFICATIONS

- No more than 3 RMDs may be owned/controlled indirectly/directly by the same entity or executive
- One executive must register with DCJIS as an organizational user of iCORI
- Must be incorporated as non-profit in MA
- Must have \$500K in available resources
- No officers, board members, directors or prospective employees or volunteers may have conviction for felony drug offense or similar violation in US, military, territorial, or tribal land & ALL must be registered as dispensary agents
- Must sell vaporizers
- Must have financial hardship program

RMD Application

Phase II

- Phase II – Application: further information required, such as:
 - County city or town in which the proposed RMD would be sited, and if known, the physical address of the proposed RMD
 - Demonstration of property interest in subject property (legal title, option to purchase, lease, legally enforceable agreement to lease conditioned on registration, or other binding permission to use premises)
 - Demonstration of ADA compliance
 - Demonstration of compliance with local codes/ordinances/bylaws for dispensing and cultivation property + demonstration of support or non-opposition furnished by local municipality

RMD Applications

- Phase I Applications were submitted on August 22, 2013
- Results of Phase I Applications were announced on September 23, 2013
 - 158 out 181 applicants approved to proceed to Phase II
- Phase II Applications must be filed on November 21, 2013
- Anticipated Announcement regarding registrations scheduled for January 31, 2014

RMD Application

Phase II

- Proposed timeline for achieving operation of the RMD and evidence that the RMD will be ready to operate within said timeline
- Info re: owners, officers, board members, employees, owners of property interest in subject property, creditors
- Detailed floor plan of dispensing location and (if applicable) cultivation location
- Business plan, operation plan, list of products
- Operational plan for cultivation
- Analysis of projected patient population needs in service area
- Demonstration of suitability to run an RMD

RMD Application Phase II

Action on Phase II submissions

- DPH may conduct a site visit
- Phase II applications will be scored by selection committee and for purposes of ranking DPH may take into account:
 - geographical distribution of RMDs (convenience for residents, avoidance of clustering of RMDs)
 - local support for application
 - presence of home delivery system and other methods to ensure patient access

RMD Registration

- Registration cannot be transferred or assigned without DPH approval
- Registration is null and void if RMD ceases to operate or relocates without DPH permission
- Operations may only occur at the address registered and one grow site, as applicable
- Registration expires one year after date of issuance (can be renewed)

RMD Siting

- If no local requirements exist, a RMD shall not be sited within a radius of five hundred feet of a school, daycare center, or any facility in which children commonly congregate.
- 500 foot distance is measured in a straight line from the nearest point of the facility in question to the nearest point of the proposed RMD.

RMD Operations

LENGTHY list of operation requirements are set forth in 105 CMR 725.105, including:

- Security measures that comply with DPH Regulations
- Storage of marijuana that complies with DPH Regulations
- Accurate record-keeping/inventory protocols: Seed to Sale tracking
- Cultivation requirements
- Quality Control/Testing
- Plan for confidential information handling
- Price lists: market rate & hardship rate
- Patient education
- Non-organic pesticide ban
- Soil must comply with U.S. Agency for Toxic Substances and Disease Registry's Environmental Media Evaluation Guidelines for residential soil levels

RMD Operations

- All marijuana must be processed in a safe and sanitary manner according to DPH regs
- Diversion avoidance measures
- Marijuana-infused products must be prepared in compliance with DPH regulations
 - Are not considered “FOOD” for the purposes of regulation
- Waste Disposal in compliance with applicable state and local statutes, bylaws, ordinances

RMD Operations

- Dispensing requirements (must produce registration card & ID)
- Interpreter must be made available
- Option to refuse service
- Dispensary agents must receive DPH training
- Record-keeping: RMD records must be available for inspection by DPH (no provision for inspection by local law enforcement)

RMD Operations Marketing

- Product Packaging & Labeling requirements
 - MIPs shall not bear a reasonable resemblance to commercially available candy
 - Prohibition against using medical symbols, images of marijuana, related paraphernalia or slang
- Limits on external signage
 - May only be illuminated 30 mins before sundown until closing
 - Neon signage prohibited
 - May not display advertisements for marijuana or brand name
- Limits on advertising materials re: content

RMD Operations Prohibitions

- RMD may not sell any products other than MJ and products that facilitate the use of MJ for medical purposes
- Prohibition against acquiring MJ except through own cultivation
- Prohibition against MJ distribution for non-med purposes
- Prohibition against give-aways of samples
- Prohibition against sale by internet or mail order
- Consumption of MJ on the RMD premises is prohibited BUT RMDs may administer MJ for the purposes of teaching use of vaporizers, or demonstration of use of other products as necessary
- RMDs must have liability insurance coverage or maintain an escrow account

RMD Operations Security

- DPH representatives and emergency responders in the course of responding to an emergency shall have access to a RMD or RMD vehicle
- This regulation does not prohibit access to authorized law enforcement personnel or local public health, inspectional services, or other permit-granting agents acting within their lawful jurisdiction

RMD Operations Security

- RMDs must implement sufficient security measures to deter and prevent unauthorized entrance
- Limit access to RMDs
- Prevent people lingering in area
- Comply with disposal protocol for excess inventory
- Establish limited access areas
- Locked storage of product
- Outside perimeter must be sufficiently lit to facilitate surveillance
- Ensure that trees, bushes and other foliage outside RMD does not allow person(s) to conceal themselves from sight
- Develop emergency protocol
- Comply with all local requirements regarding siting
- Security Alarm Systems required, including duress alarm/panic alarm/ hold-up alarm connected to local law enforcement

RMD Operations Transportation

- Only dispensary agent can transport—each vehicle must have 2 agents
- MMJ must be inventoried—discrepancies must be reported to DPH and local law enforcement w/in 24 hrs
- Shipping manifests must be maintained for 1 yr
- MMJ and MIPs must be transported in secure, locked compartment not visible from outside and vehicle may not have any markings indicating MMJ
- Vehicle may not make stops except for home delivery
- Vehicle must have GPS that can be monitored by the RMD during transport

RMD Operations Diversion

- Must be reported to LEOs and DPH within 24 hrs
- Detailed incident report to DPH within 10 days
- Documentation shall be kept by RMD for 1 yr and made available to DPH and LEOs upon request
- Annual security audit required and report submitted to DPH

RMD Operations

Compliance with Local Law

- RMDs required to comply with all local rules, regs, ordinances & bylaws
- Nothing in regulations to “prohibit appropriate, lawful local oversight and regulation, including fee requirements that does not conflict or interfere with the operation of [the regulations]”

Hardship Cultivation

- Hardship cultivation registration good for 1 yr and must be renewed annually;
- Cultivation may only occur at one location which is approved by DPH;
- May cultivate a limited number of plants sufficient to maintain a 60-day supply;
- DPH may inspect the cultivation site at any time;
- Patients with a hardship cultivation registration are prohibited from purchasing marijuana from a RMD (exception for seeds);
- Cultivation and storage of marijuana must be in an enclosed, locked facility, not visible from street or public areas;
- Enclosed locked area means a closet, room, greenhouse, or other indoor or outdoor area equipped with locks or other security devices accessible only to patients or caregivers.

State v. Federal Law

- Marijuana is classified as a Schedule I controlled substance under the [Controlled Substances Act \(CSA\)](#).
- As a Schedule I drug, marijuana is classified under the following criteria:
 - A. The drug has a high potential for abuse.
 - B. The drug has no currently accepted medical use in treatment in the United States.
 - C. There is a lack of accepted safety for use of the drug under medical supervision.

--White House Office of National Drug Policy

State v. Federal Law

- 2009 Ogden Memorandum: Department of Justice stated that federal resources should not be used to prosecute operations in compliance with state law.
- 2011 Cole Memorandum “clarified” the position to state that federal resources should not be used for enforcement against individuals with serious illnesses (or their caregivers) who use marijuana as part of a recommended treatment regimen consistent with applicable state law.

State v. Federal Law

- 2013 Cole Memorandum re-clarified the position to provide guidance to regional U.S. attorneys that enforcement against state-authorized RMDs should prioritize situations in which:
 - ❖ Marijuana is being distributed to minors;
 - ❖ Profits are flowing to criminal enterprises;
 - ❖ Marijuana is being diverted to other states where not legal;
 - ❖ State-authorized marijuana activity is being used as a cover for the trafficking of other drugs;
 - ❖ Violence and/or use of firearms is involved;
 - ❖ There are connections to drugged driving;
 - ❖ Marijuana is being grown on public lands; or
 - ❖ Marijuana is being possessed or used on federal property.

State v. Federal Law

Why doesn't the federal prohibition against marijuana preempt state laws authorizing medical or other use of marijuana?

- There needs to be a “positive conflict” between the state and federal law such that the two “cannot consistently stand together.”
- State and federal courts have ruled that a state-created exemption from state prosecution does not create a positive conflict with federal law.

**What should
municipalities do to
plan for medical
marijuana related
uses?**

Study It

- A temporary moratorium temporarily prohibits the use of land or structures for RMDs.
- Municipalities must establish a rational basis for the moratoria (e.g., impact on local law enforcement and public safety needs).
- Duration of the moratorium must have a rational relationship to the proposed planning process.

Study It

- Use the time to undertake a study of the secondary effects of medical marijuana related uses;
- Take the necessary steps to develop and present a proposed bylaw or ordinance to the legislative body to address the issues identified in the study.

Moratorium Upheld by the AG

- On 3/13/13, the Attorney General approved the bylaw adopted by the Town of Burlington establishing a temporary moratorium, ending on June 30, 2014, on the use of land or structures for RMDs.
- In approving the bylaw, the Attorney General found the approximately 18-month moratorium was a reasonable exercise of the Town's zoning power because it allowed the Town to manage a new use and take time for study, reflection and decision on a complex subject matter.

AG Puts Limits On Moratoria

- On September 12, 2013, the AG ruled that a two-year ban (lasting through June 30, 2015) was not supported by legitimate zoning objective.
- The AG commented that a moratorium through December 30, 2014 could be interpreted as a reasonable amount of time to pursue the planning of medical marijuana regulation.

AG Rules Against Bans

- The Attorney General disapproved the Wakefield bylaw banning RMDs outright.
- In disapproving this bylaw, the Attorney General determined such a ban would frustrate the Act's purpose and therefore conflict with state law.

AG Rules Against Bans

- The Attorney General noted the Act requires the DPH to register up to 35 RMD, with 1 center in each county and no more than 5 centers per county.
- The DPH is also authorized to register more centers if it determines that 35 are insufficient to meet demand.
- The Act provides “hardship” cultivation registration, allowing qualifying patients unable to access medical marijuana treatment centers due to financial, physical or transportation issues, to cultivate their own marijuana in an enclosed, locked facility.

AG Rules Against Bans

The Attorney General viewed these provisions collectively and determined the Act's purpose is to ensure reasonable access to RMDs, which centers must be dispersed throughout the Commonwealth.

The Attorney General further ruled a municipal ban on RMDs would undermine this purpose. In other words, if one municipality could ban the treatment centers, they all could.

AG Rules Against Bans

The Attorney General's disapproval of Wakefield's express prohibition of RMDs suggests that existing bylaws or ordinances that have the same effect may also be vulnerable to challenge.

For that reason, municipalities may consider reviewing their bylaws or ordinances for consistency with state law.

How do you regulate medical marijuana?

- ZONING BYLAWS

- Add medical marijuana uses to your existing use regulations
- Add Overlay District

- ★ Be mindful of possible protection under G.L. c.40A §3 ¶1 If the operation can qualify as an agricultural use

- GENERAL BYLAWS

- BOARD OF HEALTH REGULATIONS

WATCH FOR POTENTIAL CONFLICTS WITH STATE LAW

When exercising a right to govern locally, a town "exceeds its power only when it passes a by-law inconsistent with the Constitution or laws of the Commonwealth."

See Home Rule Amendment [art. 89 of the Amendments to the Massachusetts Constitution], § 6; G.L. c. 43B, § 13 (Home Rule Procedures Act); Amherst v. Attorney Gen., 398 Mass. 793, 796 (1986).

WATCH FOR CONFLICTS WITH STATE LAW

A by-law may be deemed inconsistent with state law where:

- (1) it is in sharp conflict with it;
- (2) state law evinces an intent to preclude local action;
- (3) the purpose of the state law cannot be achieved in the face of the local bylaw; or
- (4) intent to preclude local action is not express, but can be inferred by the comprehensive manner in which the Legislature has regulated the subject.

Proposed ZBL amendments determined to conflict with state law by AG:

- A special permit cannot be required for hardship cultivation– AG ruled that a discretionary permit requirement conflicted with the intent of the Act, and further that DPH regulations make hardship cultivation available to patients who demonstrate that they qualify for hardship cultivation registration.
- Hardship cultivation cannot be limited to a specific area, particularly if that area is non-residential. AG ruled that that the bylaw's limitation of allowing hardship cultivation only within the Town's Adult Entertainment District, effectively banning hardship cultivation from the residential districts in town conflicted with DPH regulations that hardship cultivation may occur at the primary residence of the qualifying patient or the personal caregiver.

Proposed ZBL amendments determined to conflict with state law:

- Off-site delivery of marijuana by registered marijuana dispensaries cannot be prohibited. AG ruled that a prohibition on off-site deliveries conflicted with DPH regulations allowing medical marijuana to be delivered to a facility for independent testing, and opined further that it would be inconsistent with DPH regulations even if the bylaw had only prohibited off-site delivery to patients.
- Distance requirements authorized by the DPH regulations for RMDs cannot be applied to hardship cultivation. AG ruled that requirements mandating siting of RMDs minimum distances from schools, playgrounds, and other protected uses would impermissibly interfere with the ability of a qualifying patient or personal caregiver under a hardship cultivation registration to cultivate marijuana at their primary residence.

Proposed ZBL amendments determined to conflict with state law by AG:

- A special permit for an RMD cannot be denied on the basis of federal law. Although the U.S. government deems marijuana a Class I substance under the Controlled Substances Act and has the power to take action against those possessing, cultivating or selling marijuana, the Attorney General ruled that municipalities must obey state law until it is determined by a Court of competent jurisdiction to be pre-empted by federal law.
- A municipality cannot interpret a zoning bylaw's prohibition against off-site signage to include an RMD website. As the DPH regulations authorize RMDs to use websites, the Attorney General found that off-site signage restrictions or prohibitions may not apply to websites.

Proposed ZBL amendments determined to conflict with state law by AG:

- If an RMD qualifies as a commercial agricultural use under G.L. c.40A §3, a municipality cannot require a special permit for it. Westborough's bylaw stated in its definition of the term "agricultural" that "agricultural shall not include any uses or activities associated with Medical Marijuana Treatment and Dispensing Facilities or Marijuana Cultivation."
- AG found that a municipality had no power to eliminate the statutory protection of G.L. c.40A §3 by way of a bylaw amendment and acknowledged that it was possible an RMD could qualify as a commercial agricultural use for the purposes of G.L. c.40A §3.

PROCEDURES

ZONING

- Follow the process set forth in G.L. c.40A §5
 - Planning Board Public Hearing
 - Report & Recommendation
 - Town Meeting or City Council: 2/3 vote

BOARD OF HEALTH

- Regulations can be adopted at a regular meeting after a summary of the substance of any regulation is published once in a newspaper of general circulation in the city or town. G.L. c.111 §31.
- Check if there are local restrictions for adoption of regulations.

HELPFUL LINKS

MA Department of Public Health MMJ page:

<http://www.mass.gov/eohhs/gov/departments/dph/programs/hcq/medical-marijuana.html>

Final DPH Regulations:

<http://www.mass.gov/eohhs/docs/dph/regs/105cmr725.pdf>

If you would like to read copies of the Attorney General's decisions on moratoria or bans, please visit:

www.k-plaw.com and scroll down to March 13, 2013 on our home page.

Thank You!

Please note that the descriptions/summaries of the law and regulations described here are only that and the actual text of the law and regulations should be consulted when crafting local regulation of medical marijuana.

Kay Doyle, Esq.
Kopelman and Paige, Esq.
101 Arch Street, 12th Floor
Boston, MA 02110
kdoyle@k-plaw.com
(617) 556-0007 x.1726

Connect with me on **www.linkedin.com** for regular updates on
medical marijuana law news!



Planting Hope, Inc.
A Non-Profit Medical Cannabis Company
2131 Washington Street
Boston, MA 02119

Town of Northborough
63 Main Street
Northborough, MA 01532

October 15, 2013

Ladies and Gentlemen,

Thank you for tonight's opportunity to speak before Northborough joint boards and Town Council. Planting Hope Inc. is a non-profit company organized in Massachusetts for the purpose of providing safe, reliable, and highest quality medical cannabis to registered qualifying patients in State. Planting Hope is very proud to share that Massachusetts Department of Public Health (DPH) on September 23, 2013, invited Planting Hope Inc. to proceed to Phase II in the highly competitive process of becoming a Massachusetts Registered Dispensary.

As part of Phase II process, Planting Hope is in search of a two locations; one for its cultivation and "MIP's" processing operation; and another for its dispensary or "storefront" location. Since there are solar "spectrum" benefits to greenhouse cultivation, Planting Hope is interested in leasing existing greenhouse space, should it become available in Northborough. Our MIP's operation would, at a minimum, comply with FDA requirements. Planting Hope is fortunate to have Lan-Tel as its premier security consultant. Equally important, the Planting Hope Management Team possesses extensive expertise in producing effective and safe medical cannabis, in educating our patients fully and responsibly on choices and benefits of regulated medical cannabis. Please note that only patients who are registered with DPH and who possess a medical prescription from a certified doctor, also registered with DPH, may qualify to receive medical cannabis.

In a Commonwealth steeped in rich history of progress and change, the voters of Massachusetts approved the Humanitarian Use of Medical Cannabis in November of 2012. Today, Planting Hope is proudly positioned at the forefront of advancing exciting and unprecedented progress and change in the area of managing pain sensibly, safely, and affordably. It is our hope and passion that we might bring this important goal and effort to Town of Northborough.

The directors of Planting Hope, Inc. welcome any future opportunity to discuss how we may meet your planning needs, explain DPH Phase II application process, and describe Planting Hope operation plans in detail. Sincerely yours,

Douglas G. Ford, Treasurer
Planting Hope, Inc.

email: doug@plantinghopeinc.org Office: 781 631 6495

**Joint Meeting
Medical Marijuana
MEETING SIGN-IN SHEET
October 15, 2013**

Name	Street Address	Email Address
Fran Berkst	76 Cedarhill Rd	
Rob Berger	46 Washburn St	NCE1@AOL.COM
Mark Rutan	27 Hemlock Dr.	
Klaus Rand	234 A Church St	
Richard Rand	" " "	ZBA
Michelle Gillespie	117 Howard St	Planning
John	240 Green St	
Dmy Poretsky	47 Indian meadow	d.poretsky@verizon
Jamie Terry		jerry@town.northborough.ma

on the
me