

Stuart Smith

From: Legal Services Department [Legal@memun.org]
Sent: Friday, May 09, 2008 4:11 PM
To: stuart@sequinsoftware.com
Subject: RE: Edgecomb - re: Moratorium

Dear Stuart,

I have reviewed Articles 34-36. Although it is too late to remove any of these articles from the warrant due to illegality, it is important to understand their effect if enacted so that the voters can be made aware of the several reasons why enactment of these articles is unwise.

Article 34 calls for a moratorium on the construction of "commercial use" buildings, to last "until the town's Land Use Ordinances are written or rewritten to comply with and reflect the intent of the Comprehensive Plan." There is no authority for an open-ended moratorium such as this. 30-A M.R.S.A. Sec. 4356 limits the duration of a moratorium to a definite term of no more than 180 days. This moratorium, if enacted, would expire six months after the petition was submitted, regardless of whether the Land Use Ordinances had been rewritten at that time. Any construction of "commercial use" buildings could proceed at that time. The only way to extend the moratorium would be for the Selectmen to vote to do so before the first 180-day period has expired.

Article 35 sets the effective date of the moratorium as the date the petition was submitted. I understand that the intent in doing so was to prevent the construction of a particular facility for which a permit has already been granted. My opinion is that the moratorium could not prevent the construction of that already approved project. Retroactivity provisions are reviewed rather strictly by the courts. Review begins from the standpoint of 1 M.R.S.A. Sec. 302 (a statute governing the interpretation of laws), which provides that the enactment of an ordinance does not effect any action or proceeding pending at the time of the enactment. An ordinance can only avoid this general rule of interpretation by specifically providing that its intent is to affect proceedings pending at the time of the enactment. *Kittery Retail Ventures v. Town of Kittery*, 2004 Me. 65. Article 35 contains no such language. It provides only that the moratorium is to be "effective" beginning on the date the petition was submitted, but without more, that effective date would only apply to applications for which substantive review did not begin until after the submission of the petition. It certainly would not affect any project for which a permit was approved prior to the petition's submission.

Furthermore, if any construction has begun in reliance on the permit issued, then the owner of this project may have developed a vested right to complete the project. A moratorium cannot affect a person's vested rights if it was enacted in bad faith. A court will look at whether there really was a need to cease development so as to implement more effective standards. See *Waste Disposal Inc. v. Town of Porter*, 563 A.2d 779 (Me. 1989). It seems clear that this moratorium was proposed to affect this one project. If a court found that there really were no significant discrepancies between the Comprehensive Plan and the Land Use Ordinance so as to justify the moratorium, it would find the moratorium to be invalid at least as applied to this project. Given the problems outlined here and in the prior paragraph, I would expect the affected landowners to bring a lawsuit to enjoin the enforcement of the moratorium.

Article 36 directs the Planning Board to review the Land Use Ordinance for compliance with the Comprehensive Plan and to present to the 2009 town meeting any amendments necessary to make the two agree. If approved, this would actually require the Planning Board to undertake such a review. In the event Article 36 is approved, I would recommend that the Planning Board hold at least one hearing to review the Ordinance and the Comp Plan for conformance and make a record of its findings. If the Board finds that the two are actually in agreement and there is no need for any amendments, then it would not be obligated to put any amendments forward for town meeting vote. If it does find some discrepancies, then it would have to present the necessary amendments for the Selectmen to be included on the 2009 town meeting warrant.

I hope this is of help to you in explaining these issues to the voters. Please contact me if you have any further questions.

5/15/2008

Best regards,

Kristin M. Collins
Staff Attorney

Maine Municipal Association
60 Community Drive, Augusta, ME 04330
(207) 623-8428
(207) 623-1287 (fax)

-----Original Message-----

From: Stuart Smith [mailto:seguinsoftware@yahoo.com]
Sent: Thursday, May 08, 2008 3:19 PM
To: Legal Services Department
Subject: RE: Edgecomb - re: Moratorium

Thanks Kristin!

Here is the whole warrant. The articles are 34, 35, and 36.

Stuart

Stuart Smith

CONFIDENTIALITY NOTE

This electronic message contains information about Seguin Software that is confidential or privileged. The information is intended to be for the use of the individual or entity named on this message. If you are not the intended recipient, be aware that any disclosure, copying, distribution, or use of the contents of this electronic communication is prohibited. If you have received this message in error, please notify us immediately by a reply to this E-mail or by telephone at 800-205-2497.

From: Legal Services Department [mailto:Legal@memun.org]
Sent: Thursday, May 08, 2008 2:37 PM
To: stuart@seguinsoftware.com
Subject: Edgecomb - re: Moratorium

Dear Stuart,

Here is a link to our Moratoria Information Packet:
<http://www.memun.org/members/infopks/Legal/Moratorium.htm>. Please send me a copy of the warrant articles at issue and I will be happy to provide a written opinion as to their effect.

Also, here is a link to Lamoine's ordinance regulating charitable donations: <http://www.lamoine-me.gov/Town%20Hall/Ordinances/DonationOrdinance..htm>. As I mentioned, there are many ways in which a town could restrict requests or donations, but this should provide you with a good starting point.

Best regards,

Kristin M. Collins
Staff Attorney

Maine Municipal Association
60 Community Drive, Augusta, ME 04330
(207) 623-8428
(207) 623-1287 (fax)