

November 9, 2018

Delivery by Messenger

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Town of Brookline Select Board
Brookline Town Hall
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**Re: Ascend Mass, LLC – Proposed Marijuana Establishment at 1032 Beacon Street
Select Board Deliberations on Ascend Host Community Agreement**

Members of the Board:

Please be advised we represent Save St. Mary's Neighborhood, Corp., a non-profit seeking to preserve the nature and character of the St. Mary's neighborhood in Brookline.

We understand Ascend, Mass. LLC ("Ascend") intends to engage the Select Board in discussions toward having the Board enter into a Host Community Agreement ("HCA") for its prospective operations at the 1032 Beacon Street locus.

Ascend recently noticed and conducted a required community outreach meeting (three meetings actually, though only one was required), at which there was overwhelming community attendance and opposition to the Ascend proposal.

During the course of these meetings, representatives of Ascend were asked on multiple occasions whether they would be fully transparent as to their organization and investors; their business plans and intentions; their targeted customer demographics; their legal lease rights and obligations with respect to the 1032 locus; and information possessed by them as to traffic, parking, and other impacts on the neighborhood arising from their prospective use of that location for their business.

Countless members of the community attending those meetings were disappointed by the evasive, contradictory, and dismissive responses given by Ascend representatives, and their clear deliberate intention not to disclose material information they certainly already possess, which speaks directly to issues which should be of concern to the Board as it considers entering into an HCA with Ascend. To date, Ascend has suppressed and not provided substantive information on the foregoing topical issues.

The Select Board is now in the position of drafting and producing an HCA with Ascend for this location. We strongly encourage the Board to adhere to the "Guidance on Host Community

Agreements” issued by the Cannabis Control Commission (the “HCA Guidance”), as you engage in this effort.

The HCA Guidance specifically directs municipalities to “structure an HCA in compliance with M.G.L. c. 94G § 3(d)”. The statute expressly requires:

“A marijuana establishment or a medical marijuana treatment center seeking to operate or continue to operate in a municipality which permits such operation shall execute an agreement with the host community setting forth the conditions to have a marijuana establishment or medical marijuana treatment center located within the host community *which shall include, but not be limited to all stipulations of responsibilities between the host community and the marijuana establishment* or a medical marijuana treatment center.” {emphasis added}

Fundamentally, if information exclusively in the possession of Ascend is not disclosed, how can this Board reasonably determine the conditions and impact surrounding Ascend’s proposed business operations, and assess and allocate “all stipulations of responsibilities” between the host community and the marijuana establishment?

It is clear under the HCA Guidelines that one size does not fit all situations. Quoting from the HCA Guidelines:

- “The costs and impacts of housing a Marijuana Establishment will understandably vary from municipality to municipality and negotiated HCSs should reflect the particular impacts on the host community.”
- “Under section 3(d) of Chapter 94G, all HCAs should include terms that describe the conditions that the municipality and Marijuana Establishment must satisfy for that establishment to operate within that host community.”
- “Individual conditions can vary widely.”
- “The type and nature of the conditions included in an HCA are unlimited by section 3(d) of Chapter 94G.”

The Ascend 1032 application before this Board will be the first instance in which the siting of a recreational marijuana facility in a “L” zoning district in Brookline will be considered.

The HCA Guideline’s directive to “reflect the particular impacts”; its acknowledgment that “individual conditions can vary widely”; and its proclamation that the “type and nature of the conditions included in an HCA are unlimited”; implore this Board to make distinctions between the specific provisions of the prospective Ascend “L” District HCA, and those found in the

other “G District” HCAs previously considered by this Board. The Board has clear authority, if not the affirmative responsibility, to do so.

Not only are the realities of a recreational marijuana facility in a “L District”, *per se*, different from those in allowed “G” Districts; the impacts of **this proposed operation, at this particular location, in this particular L District**, compel the highest degree of due diligence and scrutiny. Respectfully, this Board should not settle on endorsing a standard generalized form of HCA, focusing primarily on fees and revenues to the Town. The obvious detrimental impacts on the St. Mary’s neighborhood call out for this Board to stand up at the outset and meet the statutory mandate to include **“*all stipulations of responsibilities between the host community and the marijuana establishment.*”** Deferring material issues to the later stages of municipal licensing processes, after approval on the state level, does not fulfill the statutory mandate and is far too remote and attenuated to be meaningful, productive and protective of all neighborhood and Town interests.

The transparent sharing of information is the touchstone of any understanding of said responsibilities. We contend the Select Board cannot proceed to discharge its responsibilities under the HCA Guidelines if it lacks the basic foundational information necessary to understand Ascend, its operations, and the myriad of impacts on the St. Mary’s neighborhood, so it can address real impacts, and assess respective responsibilities, in a specific and meaningful way.

Respectfully, we therefore request the following:

1. The Select Board (the Town Administrator, Town counsel and other municipal participants, as applicable) immediately include representatives of Save St. Mary’s Neighborhood, Corp. in the preliminary information sharing and HCA discussions between them (and other municipal departments) and Ascend; now and throughout all stages of the HCA drafting process with Ascend; and,
2. The Select Board require Ascend to disclose the following information, now, immediately, at the outset of the process, before any HCA is considered by this Board:
 - (a) the letter of intent with its landlord at 1032 Beacon Street, and any lease drafts, side letters, agreements and/or executed leases;
 - (b) all demographic data, studies, analyses projections, and information which provide information as to the anticipated target market and customer base for Ascend’s products; specifically including any breakdowns or projections of the split between “local”, “non-local”, and transient customers;

- (c) all business projections as to anticipated gross income, net income, customer visits, low, normal and peak hours of activity; employee staffing models; average product sales; total sales volume; product delivery volumes; average customer transaction sales; and other indicators of the anticipated sales volume and activities from the location;
 - (d) all traffic and parking data, studies, analyses projections, and information relative to (i) the St. Mary's area, including but not limited to Beacon Street, Carlton Street, Park Drive, St. Mary's Court, and St. Mary's Street; (ii) general information as to traffic and pedestrian activity at medical and/or recreational marijuana facilities; and all related information as to the projected impact of the facility on vehicular and pedestrian activity in the area;
 - (e) all data, studies, analyses and information concerning college and university populations (e.g. Boston University, Northeastern, Simmons, etc.) which may provide customers to the facility;
 - (f) all information concerning prospective or existing transactions for off-site parking employees or customers of the proposed facility; or for valet or other types of arrangements to accommodate customer trips to the facility;
 - (g) all information concerning communications between Ascend and local schools (including the McKinley School and City of Boston administrative personnel), day care providers, pre-school programs, and other youth programs that operate in the St. Mary's area; and any proposed education or impact remediation plans pertaining thereto; and,
 - (h) all other information needed for the Select Board to render a fully informed and complete assessment as to the responsibilities to be allocated under an HCA with Ascend;
3. The Select Board defer any action on an HCA with Ascend unless and until the foregoing information has been provided and properly shared and evaluated;
 4. The Select Board require the documents requested above be available to Save St. Mary's Neighborhood, Corp. at least sixty (60) days in advance of any substantive discussions on an Ascend HCA; to permit detailed, thoughtful and considered response thereto; and,
 5. There be immediate disclosure as to the status of all material communications to date with representatives of Ascend; disclosure of any existing drafts of a

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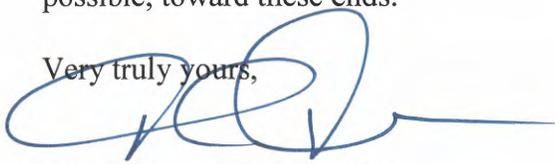
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prospective HCA with Ascend; and continuing disclosure and participation in such ongoing and future discussions and communications.

We respectfully submit the foregoing for a full and complete vetting of Ascend's intentions and impacts, and in the best interests of a full and transparent inclusionary process meeting the statutory standard.

We look forward to further discussions with the Board and municipal officials, as soon as possible, toward these ends.

Very truly yours,



Christopher C. Tsouros, Esq.
Legal Counsel

Select Board Direct Delivery to: Mr. Neil Wishinsky, Chairman; Mr. Ben Franco, Member; Ms. Nancy Heller, Member; Mr. Bernard Greene, Member; Ms. Heather Hamilton, Member.

cc: Save St. Mary's Neighborhood, Corp.
Mr. Mel Kleckner, Town Administrator
Ms. Joslin Ham Murphy, Town Counsel