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**Sent:** Friday, December 21, 2018 6:01 PM

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**Subject:** HCA timing

Dear Select Board members,

I am a Pc1 TMM and something of a neighbor to both the proposed Ascend cannabis site and the two proposed sites on Commonwealth Ave. I write to address the procedural timeline you've been working with to date, and where the HCA fits in that timeline. I know that you signed some other HCA's quickly, with a plan to scrutinize the proposals at the planning, zoning, and licensing phases. But I believe that you really should not entertain an HCA for Ascend until more issues are resolved, and I want to set out my reasons.

1. First, you may have misjudged the timeline for all of the HCAs. I have read the letter that Chris Tsouros provided you, providing a cogent reading of the legal requirements. The law appears to embrace a basic concept that the HCA must set out all of the obligations between the parties. I appreciate that no one raised this issue with you for prior HCAs, which may have been relevant to the decision to sign. But now that it has been raised, it's not an adequate response to the merits of the argument to say, 'we need to repeat for future HCAs what we did in the past.' Nothing about the prior process binds you to repetition once an issue with the interpretation of the HCA requirements has been raised. To the contrary, now that it's been raised, you would be in a different position were you to sign an HCA and turn out to be mistaken about your interpretation of the requirements.
2. Second, it would be highly unusual to set aside your new experience and information. When you signed the other HCAs, there were no operating recreational cannabis shops in Massachusetts. All traffic studies and predictions were offered by the proposed operators and accepted as working hypotheses by this and other towns. You have more information now, both from the experiences of Leicester, Northampton, and Salem, and from a set of figures you've seen from Washington State, all of which point to a significant under-estimation of sales volume, numbers of customers, and traffic. In an effort to treat all applicants the same, will you force yourselves to ignore what you've learned since you signed the other agreements? To me, it makes no sense for you to ignore new experiences in making your next decision, simply in order to treat this applicant the way others were treated when we didn't know what we now know. Then the lack of knowledge was real, now it would need to be feigned. I have trouble imagining any legal or political requirement that would force you to do that—force you to pretend it is still September of 2018. This week, it was reported that in light of the experience in Leicester and Salem, Lowell will require all traffic issues to be completely resolved before they sign any more HCAs. Learning from experience includes actually benefitting from that experience by tweaking processes.
3. Third, you have not yet signed an HCA for a site in an L district. Town meeting voted to allow cannabis shops in L districts. But it did not thereby repeal the distinctive concept of an L district. The planning and layout of L districts centers on a predominantly walking customer base. That distinguishes 1032 St. Mary's from the other potential sites, in a way that makes the movement of customers uniquely relevant from the start. If you don't fully understand the movement of customers there, you can't make even a passing judgment about the suitability of that site, or what terms would need to be in an HCA to deal with that site. Decades of permitting decisions on that block were made possible by reliance on that basic walking concept. A number of the proposed cannabis sites are heavily trafficked, but they also have greater traffic capacity. St Mary's is unique thus far because it combines zoning that is meant to be local, a history of permitting on the block enabled by that local concept unifying the block design, the potential for the biggest cannabis customer base in the town if not in the state, and the least traffic capacity. There is plenty to distinguish this application from the prior applications in deciding what you need to see before you'll sign an HCA, because it's already apparent to a growing number of residents that you probably don't have a feasible proposal in front of you for 1032 St. Marys, given that block's capacity to manage people, without even asking whether you have a desirable proposal.
4. You have not signed a prior HCA for a site that is pledged to become compliant with zoning only after the HCA is signed. If a subdivision of 1032 St. Marys would cure its zoning problem, it is improper to sign the HCA until the subdivision has happened. Because there are costs to the subdivision, Ascend wants to both avoid the subdivision and have you treat the subdivision as a fait accompli. Indeed, if the subdivision were a sure thing, it would already have happened. Until the subdivision occurs, you don't know the address of the proposed site, much less the size and operation proposal. You don't have a site at all. You don't have a signed lease as required. Nothing that's been presented to date has been premised on a subdivided property, and an HCA based on a proposal not before you would be unique and inappropriate.
5. The planning, zoning, and licensing phases of the process address mitigation issues. You have instead a

suitability issue. At no other site to date has anyone raised a suitability issue with you, but at this site, a suitability issue has been raised, and it therefore should be vetted before you enter an agreement. If it isn't possible to move the likely customer base through the block safely and without an outsized detrimental impact on the businesses, the neighbors, and the substantial number of Brookline commuters who pass through that bottle neck each day, there is no point in signing an HCA, and it would be unwise to sign one on a promise of mitigation efforts given that the agreement itself would need to contain the requirements for those efforts.

6. Finally, questions continue to linger over Ascend's treatment of the neighbors and of the process, and you have not had a similar situation presented by prior applicants. I would urge you to be skeptical of numbers provided to you by an industry intended to set the terms for signing agreements with that industry. I urge you to assess the credibility of each operator based on how forthright that operator has been in dealing with this or any other town. If you have any doubts on this score, or any doubts develop, I think it's your responsibility to evaluate those before deciding whether to enter an agreement.

Thank you for your time and your service.

Yours,

Kate Silbaugh

(I am entering an internet holiday until after the new year, but wanted to reach out before then).