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VIA EMAIL

Members of the City Council Subcommittee on
Judicial & Legislative/Personnel & Labor:
Bill Plemel (wplemel@new.rr.com)
Jean Stegeman (jstegeman@new.rr.com)
Josh Jones (jkjonesmi@gmail.com)
Frank Pohlmann (fpohlmann@new.rr.com)

Re: O.I. Holdings, LLC/Ottawa Innovations LLC/Higher Love

Dear Members of the J&L and P&L Committee:

I hope you are well. Please be advised that our offices represent O.I. Holdings, LLC, Ottawa Innovations LLC, and Higher Love (collectively, "OIH").

The purpose of this correspondence is to show the J&L and P&L Committee that (1) our clients' applications were scored incorrectly because our clients are entitled to all 50 points; (2) the Scoring Committee did not score the various applications consistently, the scoring process completely deviated from the Ordinance, and the scoring deliberations were not conducted in public; and (3) most importantly, our clients are best suited to comply with the Michigan Regulation and Taxation of Marihuana Act ("MRTMA").

OIH urges the J&L and P&L Committee to analyze the scores and then make a recommendation to council that follows the facts and follows the law. As shown below, the Scoring Committee improperly ignored both.

1. The OIH applications earned all 50 points under the plain language of the Complete Application Material Packet.

The Scoring Committee incorrectly withheld 8 points on each of OIH's three applications. Specifically, the Scoring Committee wrongly withheld 6 points under the Economic Impact section of the rubric for allegedly failing to "propose[] to use a currently existing building or structure" (for a loss of 3 points) and for failing to "commit[] to physical improvements to exterior of currently existing building and property (landscaping, etc.)." It was error to withhold these points. As OIH stated in its application and again at the August 26, 2021 hearing, it proposed to improve the existing building at 3120 Tenth Street. Also included in such proposal was a proposal and commitment to improve the exterior of the building, which should have earned OIH 3 more points. Thus, under the plain language of the Complete Application Material Packet, OIH

is entitled to these 6 points. On August 24, the Selection Committee's stated reason for not assigning points was, tautologically and counterfactually, that "the applicant did not propose to use a currently existing building." The Scoring Committee's explanation blatantly ignores the evidence and OIH's application.

Next, the Scoring Committee erroneously withheld 2 points under the Qualification of the Applicant section for allegedly failing to show that "applicant demonstrates experience with owning operating and/or managing business in a highly regulated industry (min. one year). "Highly regulated" means subject to regulation by LARA..." In order to earn these points, OIH provided confirmation that the Owner and President, Ms. Joni Moore, worked, for approximately five years, as a manager for the Keweenaw Memorial Hospital rehab facility. In fact the offer letter specifically indicated that the position was subject to federal regulations, including HIPAA. The rehab facility accepted both Medicare and Medicaid patients. As OIH explained, hospitals are regulated by both the State of Michigan (LARA) and the federal government (and also the Joint Commission on Accreditation of Healthcare Organizations). No reason was given on August 24, 2021 for withholding these points, but at the August 26, 2021 hearing, the Selection Committee's stated reason for denying the points was, incredibly and erroneously, that healthcare is not a "highly regulated industry." This explanation is indefensible and wrong because state licensing is required for hospitals in Michigan, under the Michigan Public Health code, and LARA regulates hospitals. https://www.michigan.gov/lara/0,4601,7-154-89334_63294_72971_75424---,00.html By withholding these 2 points, the Scoring Committee blatantly ignored their own rubric and the law. OIH implores the J&L and P&L Committee simply to do the right and obvious thing and award all 8 points that the Scoring Committee unlawfully withheld.

2. The Scoring Committee process was improper.

The City of Menominee also improperly deviated from the process it established for cannabis applications. I provide the following relevant information from the Complete Application Material Packet regarding the Menominee marijuana application process:

- b. The City will review each application for completeness.
 - i. If deemed incomplete, the City will notify the applicant in writing of any deficiencies and the applicant will have 5 business days to submit the information identified by the City as being deficient.
 - ii. If deemed complete, the application will be forwarded to the Selection Committee for review and scoring of the application rubric.

- c. Within 21-days following expiration of the Initial Application Period, the Selection Committee shall compile a list that identifies each applicant and the corresponding total of the applicable individual scoring rubric and forward the same to the City Manager.
- d. The City Manager shall forward the results of the individual scores to the City Council Subcommittee on Judicial & Legislative/ Personnel & Labor.
 - i. The City Council Subcommittee on Judicial & Legislative/Personnel & Labor shall consider the list prepared by the Selection Committee and make a recommendation for approval, denial, or approval with conditions, of each application to the City Council.

...

On May 17, 2021, the Selection Committee issued a memo to the Judicial & Legislative/Personnel & Labor, containing the Selection Committee's scores on the marijuana applications. Then on June 3, 2021, the City Manager issued a memo stating:

The recommendation I provided to the JL & PL Committee was to reclassify the City Manager's selection committee rubric scoring results with the city manager's recommendation as a preliminary report and not a recommendation. The rationale for the reclassification of the recent May 2021 court decision out of the 6th Circuit Court for Oakland County, which reinforced the previously limited but now emerging opinion that selection/scoring/reviewing/committee exercise more than ministerial functions and meeting of committees exercising powers like selection/scoring/reviewing/committees must be open to public scrutiny.

In light of the 6th Circuit Court decision, I recommend holding off on moving forward with the J&L /P&L committee consideration of any recommendations based on the selection committee's review of applications and assigning of points.

To address the emerging trend of lower courts in applying the OMA to selection/scoring committee meetings, a public meeting will be held by the selection/scoring committee. All applicants will be

placed on notice that the committee will be discussing its rationale for each rubric factor not awarded full potential points and each application will be given an opportunity to be heard by the committee on why points should have been given. The committee will then make a final determination.

Also on June 3, 2021, the City advised applicants regarding the new process in an email which stated:

...the Selection Committee is scheduling a public meeting on June 15, 2021 at 11:00 am at City Hall 2511 10th Street Menominee, MI 49858. This meeting will allow for an applicant or their designee to **present to the selection committee information for reconsideration regarding their rubric score** which was completed by the by the selection committee. The applicant shall request reconsideration for the specific score within a category and section recorded on the scorecard.

An applicant must submit their written response for reconsideration and the response must be physically received at Menominee City Hall 2511 Tenth Street Menominee, MI 49858 by June 11, 2021 by 2:00 pm (c.s.t.) to be considered by the selection committee.

Contrary to the Complete Application Material Packet and contrary to the June 3, 2021 notice, the Selection Committee did not meet (again) until August 24, 2021. This was a deviation from the established process, and there was no public explanation as to why the deviation occurred or was necessary. The undersigned attempted to speak with the City Attorney about the new process, but the City Attorney refused to communicate directly with the undersigned. On the other hand, OIH has confirmed that the City Attorney spoke directly to counsel for at least one other applicant.

At the August 24, 2021 hearing, the Selection Committee announced they were “scoring the applications” (rather than re-scoring or reviewing), apparently disavowing the May 17, 2021 scores. The August 24, 2021 Selection Committee consisted of three people. There are a total of 34 scored elements in each application, and a total of 26 applications. Each and every score by the Selection Committee was identical. They did not vary from each other at all, which is statistically highly improbable. Also, there was little to no discussion among the Selection Committee members regarding the rationale for the scores. This suggests that the Scoring Committee met outside of the public eye to determine ahead of time how it would score the applications.

Thus, OIH's concerns with the scoring process are: (1) the actual process deviated from the process stated in the Complete Application Material Packet; (2) there has been no cogent or consistent explanation for that deviation; (3) the City did not treat all the applicants in a materially similar way, refusing to speak with some but speaking with others about the new process and scoring criteria; and (4) the Scoring Committee appears to have pre-determined its August 24 scores outside the public eye. Unfortunately, irregularities that favor some applicants over others invite litigation because they are fundamentally unfair.

3. In this competition, OIH is best suited to comply with MRTMA in Menominee.

The Michigan Regulation and Taxation of Marihuana Act requires that when there are more qualified applicants than local cannabis licenses, a municipality must engage in a competition process designed to select the applicant most suitable to comply with MTMA in the municipality.

In this competition, OIH is the most qualified because OIH is the only applicant with vertically integrated operations in the Upper Peninsula. Also, unlike its competitors (for example, Lume's advertising has been found to violate local ordinances in Adrian, Michigan, <https://www.lenconnect.com/news/20200305/lume-cannabis-co-suspension-upheld>) OIH has not violated any cannabis rule or regulation.

On the suitability test, which is mandated by state law, OIH is the most suitable applicant in this competition, and for that reason too, we ask the J&L and P&L Committee to follow the facts and the law and recommend that OIH receive the three licenses for which it applied.

Last, OIH respectfully invites members of the J&L and P&L Committee to listen to its August 26 presentation for the Scoring Committee, found here: <https://oimenominee.com/>.

Thank you

Sincerely,

MILLER JOHNSON

By



Joslin E. Monahan

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