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E-FILED

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
SUPERIOR COURT DEPARTMENT

WORCESTER, ss.

Docket No. **2285CV404 A**

CAROLINE'S CANNABIS, LLC

Plaintiffs,

v.

STEVE SETTE, TOWN MANAGER and
THE TOWN OF UXBRIDGE

Defendant.

FILED

APR 07 2022

ATTEST:

Del M. M. CLERK

**VERIFIED COMPLAINT FOR MANDAMUS, INJUNCTION,
DECLARATORY JUDGMENT, AND DAMAGES**

NOW COMES Plaintiff Caroline's Cannabis, LLC ("Caroline's Cannabis" or "Plaintiff") and complains against Defendants Steve Sette, Town Manager ("Settee") and the Town of Uxbridge ("Uxbridge") as follows:

PRELIMINARY STATEMENT

1. Caroline's Cannabis and the Town entered into a contract, the Host Community Agreement ("HCA"), pursuant to which both parties undertook certain obligations. Caroline's Cannabis has performed all its commitments pursuant to the contract, but the Town has failed to comply with its obligations. Specifically, Caroline's Cannabis has made all required community impact fee payments, totaling \$1,265,357.59, and the Town has neglected to provide the statutorily required documentation of the costs the Town has incurred that are reasonably related to Caroline's Cannabis's operation. As required for its annual license renewal, Caroline's Cannabis requested the documentation supporting the Town's imposition of the community impact fee, but the Town failed to provide any documentation of costs. Accordingly, Caroline's

Cannabis seeks a writ of mandamus to order the Town to perform its nondiscretionary obligation and provide the required documentation and substantiate the fee. Furthermore, Caroline's Cannabis requests an injunction prohibiting the Town from collecting any further fees until such time as the required documentation is produced to substantiate the alleged costs. Moreover, Caroline's Cannabis seeks a declaratory judgment that the Town cannot seek to recover any impact fee from Caroline's Cannabis in the absence of proof of such costs, and that given that the Town has failed to produce any such costs, no impact fee is due or was properly owed and that a refund from the Town of all funds paid is due. Finally, Caroline's Cannabis brings claims for breach of contract and breach of the covenant of good faith and fair dealing as a result of the Town's refusal to comply with the terms of the contract and failure to act in good faith by charging Caroline's Cannabis fees higher than other marijuana establishments and not in relation to reasonably related costs.

PARTIES AND JURISDICTION

2. Plaintiff Caroline's Cannabis, LLC ("Caroline's Cannabis") is a Massachusetts limited liability company with a principal place of business at 640 Douglas Street, Uxbridge, Worcester County, Massachusetts 01569. Caroline Frankel is the owner and manager of Caroline's Cannabis and executed the HCA.

3. Defendant Steve Sette is the Town Manger of the Town of Uxbridge. Defendant Town of Uxbridge is a municipality within the Commonwealth of Massachusetts and has offices at the Town Hall, 21 South Main Street, Uxbridge, Worcester County, Massachusetts 01569.

4. Jurisdiction is proper in this Court pursuant to M.G.L. c. 212 § 4.

5. Venue is proper in this Court pursuant to M.G.L. c. 223 § 1.

FACTUAL BACKGROUND

6. On November 8, 2016, Massachusetts voters voted in favor of a ballot initiative known as “Question 4” authorizing the limited adult use of marijuana and the licensing of marijuana establishments. The ballot initiative became Chapter 334 of the Acts of 2016 and created the “Regulation and Taxation of Marijuana Act, G.L. c.94G (“2016 Marijuana Act”).

7. On July 19, 2017, the Massachusetts Legislature passed a bill (H.3818) to amend Chapter 334 and the law it created, G.L. c.94G, as well as create additional laws relating to adult and medical use of marijuana. The bill became Chapter 55 of the Acts of 2017 (“2017 Marijuana Act”) and was signed by the Governor on July 28, 2017. The 2017 Act created the Cannabis Control Commission (“CCC”) and also placed limits and restrictions on municipal control over the siting of marijuana establishments.

8. On March 7, 2018, the CCC promulgated final regulations at 935 CMR 500.

9. The CCC is required by law to engage in a licensing process for marijuana establishments. During the application process, applicants must have executed a Host Community Agreement (“HCA”) with the municipality.

10. The HCA may include a community impact fee to be paid to the host community, provided, however, that the community impact fee shall be reasonably related to the costs imposed upon the municipality by the operation of the marijuana establishment or medical marijuana treatment center and shall not amount to more than 3 per cent of the gross sales of the marijuana establishment or medical marijuana treatment center or be effective for longer than 5 years. Any cost to the Town imposed by the operation of a marijuana establishment must be documented and considered a public record under Massachusetts public records laws, G.L. c.4 §7 cl. 26 and G.L. c.66 §10.

11. Caroline's Cannabis is licensed to operate a Licensed Marijuana Establishment ("LME") at 640 Douglas Street, in Uxbridge.
12. Caroline's Cannabis's sole owner and shareholder, Caroline Frankel, is a Social Equity Program Participant and Social Equity Program Member as of May 3, 2019.
13. Caroline's Cannabis submitted its application for a Retail Marijuana Establishment on June 1, 2018, and received its provisional license from the CCC on October 23, 2018.
14. Prior to receiving its CCC license, Caroline's Cannabis entered into an HCA with the Town dated May 21, 2018. See Exhibit A.
15. Angeline Elison was the Town Manager of the Town of Uxbridge at the time of the execution of the HCA, and as agent for the Town, was authorized by vote of the Board of Selectman, to execute the HCA and bind the Town.
16. Pursuant to the HCA, Caroline's Cannabis agreed to pay a community impact fee pursuant to the provisions of the HCA and Massachusetts law.
17. The HCA provides:

Community Impact Fee: The Town anticipates that, as a result of the Operator's operation of the Retail Establishment, the Town will incur additional expenses and impacts upon its road system, law enforcement, inspectional services, permitting services, administrative services, public health services and education in addition to potential additional unforeseen impacts upon the Town. Accordingly, in order to mitigate the direct and indirect financial impact upon the Town and use of Town resources, the Operator agrees to annually pay a community impact fee to the Town, in the amounts and under the terms provided herein (The "Annual Payments").
18. The HCA sets forth an Annual Payment "in an amount equal to three percent (3%) of the gross revenue from the Retail Marijuana Establishments annual cannabis or marijuana product sales, as long as the fee is reasonably related to the costs imposed upon

the town by the operation of the marijuana establishment.” HCA, Page 1, Payment

(Emphasis added).

19. Furthermore, the HCA provides that it is governed by the laws of the Commonwealth of Massachusetts.

20. Caroline’s Cannabis obtained its final license from the CCC issued on February 7, 2019.

21. Caroline’s Cannabis commenced operations on March 15, 2019.

22. Pursuant to the HCA, Caroline’s Cannabis made impact fee payments each quarter, beginning on July 1, 2019.

23. M.G.L. c. 94G, § 3(d) provides: "Any cost to a city or town imposed by the operation of an [ME or MTC] shall be documented and considered a public record as defined by clause Twenty-sixth of section 7 of chapter 4."

24. The associated regulations provide:

A [ME or MTC] shall submit as a component of the renewal application documentation that the establishment requested from its Host Community the records of any cost to a city or town reasonably related to the operation of the establishment, which would include the city's or town's anticipated and actual expenses resulting from the operation of the establishment in its community. The applicant shall provide a copy of the electronic or written request, which should include the date of the request, and either the substantive response(s) received or an attestation that no response was received from the city or town. The request should state that, in accordance with M.G.L. c. 94G, § 3(d), any cost to a city or town imposed by the operation of a [ME or MTC] shall be documented and considered a public record as defined by M.G.L. c. 4, § 7, cl. 26."

935 CMR 500.103; 935 CMR 501.103.

25. Thus, an ME or MTC licensee must seek documentation of the cost imposed by its operations in the host community.

26. On or about July 30, 2020, Caroline's Cannabis, through counsel, requested the documented costs as required for its annual license renewal application to the Cannabis Control Commission ("CCC").

27. The response from the Town, received almost two months later, was insufficient.

28. The Town responded with a letter dated September 21, 2020, stating that the answer was "difficult to provide since the impact of cannabis businesses in Town vary based on their operation." The letter further provided that "[t]he Town has found that while we had anticipated the impact on services in the Town of Uxbridge to be mainly to the Uxbridge Police Department, the level of security that is required in any cannabis facility has helped keep these costs under control and the demand to the UPD is controllable. The Town has observed, however, that the impacts instead are in the area of infrastructure, particularly water and the increased usage that the cannabis facilities in Town have caused and the need to improve delivery to all as a result. The Town infrastructure has also been impacted through its roads and the increased traffic that some facilities have brought to Town..."

29. The Town's response failed to document any costs.

30. The Town's alleged impacts are related to increased water usage and water delivery, which would be related to marijuana cultivators, not retail stores such as Caroline's Cannabis, and alleged increased traffic that "some facilities have brought to Town," although Caroline's Cannabis is accessed by a State road.

31. There were no impacts for the request made on June 30, 2020, related to Caroline's Cannabis.

32. At the time of the request for documented costs for 2020 license renewal, Caroline's Cannabis had made impact fee payments of \$92,013.83 on July 1, 2019, \$121,133.06 on October 1, 2019, \$107,629.92 on January 1, 2020, and \$96,287.30 on April 7, 2020.

33. Thus, Caroline's Cannabis paid \$417,064.11 prior to its request for documented costs on June 30, 2020.

34. On or June 30, 2021, Caroline's Cannabis, through counsel, again requested the documented costs as required for its annual license renewal application to the CCC.

35. The Town provided no response to the June 30, 2021, request.

36. Thus, the Town has failed to provide any documented costs pursuant to G.L. c. 94G §3(d).

37. Additionally, based on comments by town officials that there have not been any negative impacts or costs, the imposition of the annual impact fee is in direct conflict with state law and the terms of the HCA that only allow an impact fee to the extent it is reasonably related to costs imposed by the operation of Caroline's Cannabis.

38. For example, at the Board of Selectmen's meeting on April 6, 2021, Selectman Mandile stated that there have not been negative impacts for retail stores.

39. At the same meeting, when the impact payments were discussed, neither the board members nor the Town Manager could provide any past or existing impacts.

40. At a subsequent meeting on May 10, 2021, during discussion about the impact payments, Selectman Mandile asked the Town Manager to confirm impacts from the marijuana establishments and the Town Manager confirmed that no known impacts have been reported or exist.

41. At the Board of Selectmen Meeting on June 28, 2021, Selectman Mandile stated that he did his own research within the Town, and he could not find any known impacts.

42. The Board of Selectmen and Town Manager have supported three different warrant articles to expanding the number of marijuana retail stores allowed in the Town because the existing retail stores have had a positive impact for the Town. The vote failed each time at Town Meeting.

43. At the time of the request for documented costs for 2021 license renewal, Caroline's Cannabis had made impact fee payments of \$33,067.91 on July 2, 2020, \$130,559.21 on October 5, 2020, \$141,803.76 on January 5, 2021, and \$151,580.84 on April 6, 2021.

44. Thus, Caroline's Cannabis paid \$457,011.72 prior to its request for documented costs on June 30, 2021, for a total of \$874,075.83 impact fee payments made as of June 30, 2021.

45. Since then, Caroline's Cannabis made impact fee payments of \$131,380.52 on August 1, 2021, \$116,404.23 on October 5, 2021, and \$79,002.04 on January 4, 2022.

46. Caroline's Cannabis paid an additional \$326,786.79 since it made its request for document costs on June 30, 2021.

47. Caroline's Cannabis made another payment of \$64,494.97 on April 5, 2022. Thus, to date, Caroline's Cannabis has made all Annual Payments as required by the HCA, totaling \$ 1,265,357.59.

48. The Town, however, has breached the HCA and is in violation of state law because the impact fee is not reasonably related to costs resulting from the operation of Caroline's Cannabis.

49. Pursuant to G.L. c. 94G, §3(d), a community impact fee shall be reasonably related to the costs imposed upon the municipality by the operation of the marijuana establishment.

50. Community impact fees that are "reasonably related" are those that compensate the municipality for its anticipated and actual costs resulting from the operation of the marijuana establishment. The fee must bear some reasonable relation to the costs of providing municipal services or other benefits to the marijuana establishment and not merely be a fee without a sufficient basis and justification. *See* CCC Guidance on Host Community Agreements, Revised by the Commission: January 16, 2020, at p. 4. There must be a proportionality between the cost or impact claimed by the community and the fee required of the marijuana establishment. *See id.* at p. 5. citing *Koontz v. St. John's River Water Management District*, 133 S. Ct. 2586 (2013) and Attorney General's letter on Hanover Annual Town Meeting Warrant Articles #22 and 23 (Zoning), December 1, 2014.

51. The CCC also interprets the "community impact fee" as needing to comply with applicable legal requirements established in the decisional law. In the municipal context, "regulatory fees" can be imposed based on the municipality's power to regulate businesses or activities within its borders, but only if certain requirements are met: (1) The fee must be charged in exchange for a service which benefits the ME or MTC paying the fee in a manner not shared by other members of the public; (2) It is paid by choice, in that the ME or MTC paying the fee has the option of not utilizing the service and thereby avoiding the charge; and (3) It is collected not to raise revenues but to compensate the municipality providing the services for its expenses. *See* CCC Guidance, *supra*, citing *Denver St. LLC v. Town of Saugus*, 462 Mass. 651, 652-653 (2012), citing *Emerson College v. Boston*, 391 Mass. 415, 424-425 (1984).

52. Caroline's Cannabis requested the documented costs to the Town imposed by the operation of Caroline's Cannabis as required by M.G.L. c. 94G, § 3(d) but the Town has failed to comply with the terms of the HCA or Massachusetts law.

53. The Town has collected \$ 1,265,357.59 in impact fees from Caroline's Cannabis and has not produced documented costs to show that the Town has incurred \$ 1,265,357.59 in costs reasonably related to the operations of Caroline's Cannabis.

54. The Town has also entered into HCAs with other marijuana establishments.

55. Caroline's Cannabis's HCA provides: "Should the TOWN enter into an agreement with any other Marijuana Establishment for siting in TOWN at material terms more favorable to that Marijuana Establishment than the terms of this Agreement are to OPERATOR, this Agreement shall be modified to reflect those terms." *See* HCA at p. 2.

56. The Town has entered into eighteen HCAs that have lower impact fees than those assigned to Caroline's Cannabis. Seventeen of those HCAs were entered into after the Town executed the HCA with Caroline's Cannabis. One of those HCAs was executed five days before the Town executed Caroline's Cannabis.

57. The impact fees assigned to those eighteen other Marijuana Establishments range from 0% to 1.75%.

58. Caroline's Cannabis has requested that the Town reduce or eliminate its impact fee based on the terms of its HCA that provide that the Town shall modify its HCA to reflect the more favorable terms given to another Marijuana Establishment but the Town has failed to take any action.

59. Caroline's Cannabis requests a refund of all Annual Payments it paid that were assessed in violation of the HCA and state law.

60. As a result of the Town's failure to comply with the terms of the HCA, Caroline's Cannabis has been and continues to be damaged.

COUNT I—MANDAMUS

61. Plaintiff repeats and realleges the allegations contained within the above paragraphs as if fully restated herein.

62. The Town has a defined ministerial and non-discretionary legal obligation and duty to provide documentation as required pursuant to the HCA and G.L. c. 94G, §3.

63. The Town agreed to provide documentation of any cost imposed by the operation of Caroline's Cannabis when it entered into the HCA.

64. Caroline's Cannabis entered into the HCA based on the good faith representations of the Town in the HCA.

65. Caroline's Cannabis is required to submit the documentation to the CCC for its license renewal.

66. Caroline's Cannabis has no plain or adequate remedy at law.

67. The issuance of a writ of mandamus will be an effective remedy.

WHEREFORE, Plaintiff requests this Honorable Court order the Defendant Town of Uxbridge to produce the documentation of any cost imposed by the operation of Caroline's Cannabis required by the HCA and G.L. c. 94G, and for such other and further relief as the Court deems just and proper.

COUNT II—INJUNCTION

68. Plaintiff repeats and realleges the allegations contained within the above paragraphs as if fully restated herein.

69. The Town has failed to produce the documentation of any cost imposed by the operation of Caroline's Cannabis as required by the HCA and G.L. c. 94G to support the community impact fee it has assessed and is continuing to assess against Caroline's Cannabis.

70. Caroline's Cannabis requests that the Town be enjoined from using any funds from the payment of the community impact fees until such time as the Town produces the required documentation of costs, and the costs are determined to substantiate the imposition of the impact fee.

71. Caroline's Cannabis further requests an order enjoining the Town from collecting any further impacts fees until such time as the Town produces the required documentation of costs, and the costs are determined to substantiate the imposition of the impact fee.

72. No harm will occur to the Town as the funds, upon information and belief, have been deposited into a segregated account and no funds received from the community impact fees from Caroline's Cannabis have been expended to date.

73. Caroline's Cannabis, however, will incur irreparable harm if it is required to continue to pay the impact fees and it is later determined to have been improperly assessed.

WHEREFORE, Plaintiff requests an injunction from the Court to enjoin the Town of Uxbridge from using the funds from the payment of the community impact fees until documentation is produced supporting the costs, and an order enjoining the Town from collecting any further impacts fees until such time as the Town produces the required documentation of costs, and further relief as the Court deems just and proper.

COUNT III—DECLARATORY JUDGMENT

74. Plaintiff repeats and realleges the allegations contained within the above paragraphs as if fully restated herein.

75. Plaintiff seeks declaratory relief pursuant to M.G.L. c. 231A.

76. G.L. c. 94G, § 3(d) provides “[a]n agreement between a marijuana establishment ... and a host community may include a community impact fee for the host community; provided, however, that the community impact fee shall be reasonably related to the costs imposed upon the municipality by the operation of the marijuana establishment ... and shall not amount to more than 3 per cent of the gross sales of the marijuana establishment or medical marijuana treatment center or be effective for longer than 5 years. Any cost to a city or town imposed by the operation of a marijuana establishment or medical marijuana treatment center shall be documented and considered a public record as defined by clause Twenty-sixth of section 7 of chapter 4.”

77. The HCA provides that an Annual Payment “in an amount equal to three percent (3%) of the gross revenue from the Retail Marijuana Establishments annual cannabis or marijuana product sales, **as long as the fee is reasonably related to the costs imposed upon the town by the operation of the marijuana establishment.**” HCA, Page 1, Payment.

78. Community impact fees that are “reasonably related” are those that compensate the municipality for its anticipated and actual costs resulting from the operation of the marijuana establishment and must bear some reasonable relation to the costs of providing municipal services or other benefits to the marijuana establishment and not merely be a fee without a sufficient basis and justification.

79. The Town is attempting to assess an impact fee that is not reasonably related to anticipated or actual costs resulting from Caroline’s Cannabis’s operation.

80. There is now an actual, justiciable controversy with respect to which the Plaintiff is entitled to a declaration of its rights against the Town.

WHEREFORE, Plaintiff requests a declaratory judgment be entered in its favor against Defendant Town of Uxbridge and that the Court declare as follows: (a) that the Town has failed to produce documentation of any cost imposed by the operation of Caroline's Cannabis as required by the HCA and G.L. c. 94G; (b) that in the absence of any documentation the Town has failed to assess a community impact fee that is reasonably related to anticipated or actual costs resulting from Caroline's Cannabis's operation; (c) that the Town has not incurred and will not incur any anticipated or actual costs resulting from Caroline's Cannabis's operation; (d) that the community impact fee is improperly assessed; (e) that the Town is not entitled to any payment by Caroline's Cannabis for the community impact fee; (f) that the funds paid by Caroline's Cannabis to the Town as a community impact fee are to be returned to Caroline's Cannabis with interest; (g) that Caroline's Cannabis is entitled to recover the costs and expenses of this action, including attorneys' fees; and (h) that Caroline's Cannabis is entitled to such other and further relief as the Court deems just and proper.

COUNT IV—BREACH OF CONTRACT

81. Plaintiff repeats and realleges the allegations contained within the above paragraphs as if fully restated herein.

82. The HCA constitutes a contract between Caroline's Cannabis and the Town.

83. Caroline's Cannabis has satisfied all conditions and responsibilities of the contract.

84. The Defendant Town has failed to perform its obligations, specifically by failing to produce the documentation required to support the community impact fee and by assessing an impact fee not supported by documentation of anticipated or actual costs resulting from Caroline's Cannabis's operation.

85. The Defendant Town has failed to perform its obligations, specifically by failing to reduce or eliminate the impact fees assessed to Caroline's Cannabis while providing more favorable terms to other Marijuana Establishments.

86. The Defendant Town has assessed and collected impact fees from Caroline's Cannabis that are in violation of the HCA because such fees are greater than those imposed upon other Marijuana Establishments.

87. Defendant's failure constitutes a breach of the agreement.

88. As a result of Defendant's breaches, Plaintiff has suffered and will continue to suffer damages.

WHEREFORE, Plaintiff requests an award of damages against the Defendant in an amount to be determined at trial, an award of its attorney's fees and costs, and for such other and further relief as the Court deems just and proper.

COUNT V—BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

89. Plaintiff repeats and realleges the allegations contained within the above paragraphs as if fully restated herein.

90. Caroline's Cannabis entered into an agreement with the Town of Uxbridge, specifically the HCA.

91. Implied in any contract is the covenant of good faith and fair dealing.

92. Caroline's Cannabis agreed to perform under the contract and has performed all its obligations in good faith.

93. The Defendant agreed to perform under the contract, including providing documentation in support of the community impact fee as required by G.L. c. 94G, but has

refused to provide such documentation, or is unable to provide such documentation because none exists, while still assessing the community impact fee.

94. The Defendant's failure to perform and refusal to produce the required documentation or imposition of the fee without any basis when Caroline's Cannabis has satisfied all its requirements constitutes a breach of the covenant of good faith and fair dealing.

95. The Defendant agreed that it would modify Caroline's Cannabis's HCA to reflect material terms more favorable to another Marijuana Establishment than the terms of Caroline's Cannabis's HCA.

96. The Defendant executed HCAs with other Marijuana Establishments with lower or no impact fees but refused to modify Caroline's Cannabis's HCA to eliminate its impact fees to reflect the same terms given to other Marijuana Establishments.

97. The Town Manager Steve Sette represented that the terms of Caroline's Cannabis's HCA would be modified but failed to do so.

98. The Town failed to perform in good faith by refusing to honor the terms of the HCA after inducing Caroline's Cannabis to enter into the HCA based on the terms in the HCA that the impact fees would be reasonably related to its operations and modified if more favorable terms were provided to other Marijuana Establishments.

99. As a result of Defendant's breaches, Plaintiff has suffered and will continue to suffer damages.

WHEREFORE, Plaintiff requests an award of damages against the Defendant in an amount to be determined at trial, an award of its attorney's fees and costs, and for such other and further relief as the Court deems just and proper.

VERIFICATION

I, Caroline Frankel, being first duly sworn, state that I am the owner and manager of the plaintiff Caroline's Cannabis, LLC in the above-captioned action; that I have read the foregoing complaint and know the contents hereof; and that it is true to my knowledge and belief.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY, THIS 7th DAY OF APRIL, 2022.

/s/ Caroline Frankel
Caroline Frankel

signed w/ approval,
/s/ Thomas K. MacMillan
Thomas K. MacMillan, Esq., BBO# 312150

RESPECTFULLY SUBMITTED,

PLAINTIFF CAROLINE'S CANNABIS, LLC

By Its Attorneys,

Dated: April 7, 2022

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