

Executive Session Meeting Minutes regarding Paper 61-25
Benevolent Botanicals et al v. City of Malden
February 4, 2025

Order: That the City Council will vote to go into Executive Session with Alicia A. McNeil, City Solicitor regarding the matter of Benevolent Botanicals and 926 Eastern Avenue v. The City of Malden for the purposes of Exemption Three Massachusetts General Laws Chapter 30A Section 21(a)(3) to discuss strategy with respect to litigation, where such discussion in open meeting may have a detrimental effect on the litigation position of the City, if so declared by the chair. And if so allowed by the Body, to admit Maria Luise, Special Assistant to the Mayor.
(Roll Call Required)

During the Committee of the Whole on February 4, 2025, a motion was made by Councillor Simonelli, seconded by Councillor Winslow to enter into Executive Session, order was approved by a 11-0 roll call vote.

Yea- Colón Hayes, Condon, Crowe, Linehan, McDonald, O'Malley, Sica, Simonelli, Spadafora, Taylor, and Winslow
Nea- Zero

The meeting was called to order at 7:40 PM. In attendance were Councillors Colón Hayes, Condon, Crowe, Linehan, McDonald, O'Malley, Sica, Simonelli, Spadafora, Taylor, and Winslow. Also in attendance was City Clerk Carol Ann Desiderio, Clerk of Committees Lisa Cagno, Special Assistant to the Mayor Maria Luise, and City Solicitor Alicia McNeil.

The meeting opened with City Solicitor Alicia McNeil giving a reminder to all parties present that Executive Session (ES) must remain in confidence only between the parties who are in attendance. What is discussed in this session may not be shared with staff, spouse, or anybody for that matter. The City of Malden is in active litigation, and nothing should be done that would risk leaking the City's position, for any reason at all. Attorney McNeil offered an opportunity to those present to ask further questions on ES or the laws pertaining to ES; no one responded so she proceeded.

The reason for this evening's meeting is because the Legal Department has closing arguments on this case on Friday, February 7 and City Solicitor Alicia A. McNeil felt it necessary to review with Council prior. Additionally, she received communication from Benevolent Botanicals and 926 Eastern Avenue (BB) on today's date with an offer of compromise to resolve the matter of sanctions.

The trial has already been had, all that is left is closing arguments, however, BB has filed a motion for sanctions. Prior to the trial, approximately September, BB had inadvertently through a FOIA request, discovered an email from someone asking GIS Manager Steve Fama for zoning maps. That led them to realize the maps had not been produced as evidence. Solicitor McNeil spoke with Fama, obtained the maps in question and produced them to BB's lawyers. Their legal team filed sanctions against Malden on two counts: maps were not produced with evidence and Fama was not on the witness list as a person who was involved with information in this trial. BB additionally found a GIS expert to testify regarding distances and the surrounding area of the establishment. McNeil argued that Fama wouldn't have specific information on this case in the same way a secretary in a legal firm

wouldn't have intimate knowledge that would require being listed on the discovery list. Benevolent filed an additional motion for missing meeting minutes of the City's cannabis review committee. Upon investigation, Solicitor McNeil discovered there were extensive notes she was previously unaware of from this cannabis review committee from 2018. She produced those notes to Benevolent. The court is encouraging both sides to find a mutual resolution. BB is arguing that if they were aware of Steve Fama, they would not have had to hire a GIS expert to support their case.

Knowing the Council was scheduled to meet on this subject matter in Executive Session on this date, BB offered a confidential settlement offer dated February 4, 2025 as a means of dropping the sanctions only, not to settle the entire case. A decision on this offer, or a counter-offer, must be submitted by 1:00 PM tomorrow, Wednesday, February 5. The offer to withdraw motion for sanctions is contingent upon the satisfaction of the following:

1. The parties will enter into a written agreement within 30 days, at which time the City of Malden will pay Benevolent Botanicals LLC ("Benevolent") and 926 Eastern Avenue LLC \$100,000 for attorneys' fees incurred in connection with the motion for sanctions and supplemental motion for sanctions;
2. The written agreement shall provide that City of Malden must allow for Benevolent's special permit application to be sent to the City Council within 10 days of Plaintiffs and the City of Malden entering into this agreement;
3. The written agreement shall also provide that City Council must open a special permit hearing on Benevolent's special permit application within 30 days of receipt of Benevolent's application and close the hearing within 60 days;
4. As part of the written agreement, the City of Malden shall stipulate that, as part of the City Council's consideration of the special permit application, that the way by which the City of Malden measures its buffer zones (i.e., nearest property line to nearest property line) is violative of G.L. c. 94G and therefore the City Council cannot use the distance between Benevolent's proposed location and any residential property within said buffer zone as a basis for denying the issuance of a special permit to Benevolent; and
5. The Parties will proceed with the hearing on the motion for sanctions and conduct the closing arguments this Friday, February 7, 2025. Should an agreement be reached and a written agreement executed, only at that time will the Parties inform the Court about an agreement, at which time it will request a stay on the Court's consideration of this matter pending the outcome of the special permit hearing beyond applicable appeals.

Solicitor McNeil noted the underlining issue of the main case is the buffer zone, which is why they are demanding Malden stipulate the City is measuring the buffer zone in violation of 94G.

Council President summarized for the Body that this case has been passed down through three different City Solicitors. As difficult as it is to inherit a case mid-trial, it's more so difficult to know what can't be known, such as discovery of the maps and meeting minutes. Back in 2018 Fama was asked to produce maps showing the difference between 150' and 75' buffer zones. Two Solicitors ago, there was a decision made that buffer zones are not dimensional controls. If they were considered dimensional controls, zoning relief would have been an option for applications such as BB's. All of this happened prior to Solicitor McNeil's time with the City.

At this time, Benevolent Botanicals does not even have a complete application that is appropriate for submission to the Council Special Permit process because they were denied a variance from the Board of Appeal on the buffer zone. This denial was upheld in court. This is why part of their settlement demands the Council allow for the special permit application with 30 days; without this stipulation there is no way their application may move forward.

Councillor Crowe asked for explanation on how M.G.L. c. 94G is calculated. 94G only has one buffer zone. Initially, when the law was first enacted, that buffer zone when from property line to property line and it was only for schools. Long after Malden's ordinance was passed, the statute was changed to measure from geometric center to geometric center but remains relevant to only schools.

Councillor Winslow inquired about the standard of review the court will be using. How important would the maps have been to BB's case? Is it to the judge's discretion to determine if the \$100,000 is justified? Further, the City has always been clear on the buffer zone ordinance running from property line to property line, it was the State that changed their measurements. Solicitor McNeil does not imagine the court will rule the lack of maps as immaterial. The court will have to determine that if the maps were omitted, then how important were they to the case? There is also the risk the court could rule against the entire case, whereas this settlement offer is only for the sanctions. When the State statute on buffer zones was amended, 94G was meant to be a recommendation for cities while writing ordinances. One of the settlement demands is Malden admits to being in violation of 94G.

Councillor Crowe commented at the time the ordinance was written, some people wanted no buffer zone and Planning Board recommended 150'. The 75-foot zone may be considered a compromise between the two. Dimensional control relief is based on how a situation (ie: parking) applies to the parcel itself whereas buffer zones are in consideration of how a situation applies to surrounding parcels. She does still believe the zone should be measured from property line to property line and does not believe Malden's zoning ordinance is too restrictive. We already have three businesses open or about to open.

Councillor Sica agreed. She has been actively involved with this ordinance since 2018. She is confident in being able to win this case. The court has not ruled that Malden's buffer zones are too restrictive. Indeed, Melrose, Medford, Saugus, and Quincy all have zoning more restrictive than Malden. Councillor Sica stated Quincy's buffer zone is 1,500 feet from residential houses, whereas Malden is only 75 feet. Medford only offers one small area in the city where cannabis establishments are allowed. Melrose only allows it on Route 99. Saugus only allows it on Broadway. Malden has many more locations available. Although CLEC did initially approve BB's application to move forward in the process, so too have several other applicants that didn't work out for one reason or another. Possibly seven or eight businesses were approved by CLEC and only three have made it in front of the Council for a special permit. Councillor Sica is of the belief this attorney filed for sanctions specifically to create leverage to push through the special permit application. At this point, she supports rejecting the settlement offer and moving on to closing arguments.

It was brought to the attention of the Body by Councillor Spadafora that a person affiliated with Benevolent Botanicals had utilized social media to make public accusations of perjury against city staff as well as several indecent comments about and towards members of the Council. He asked for

consideration if this is the type of business owner Malden wants in their community. Solicitor McNeil had to call opposing counsel to report these comments, as she stated, that are not only untrue but disgusting and completely inappropriate and she insisted counsel speak with his client to take the comments down.

Councillor McDonald surveyed the room to determine if there is any piece of a settlement the Body would entertain. The consensus of the room is that there is no support for payout of \$100,000 or to admit any guilt. Councillor O'Malley is amenable to allowing BB to appear before the Council. Councillor Taylor inquired what happens if they come before the Council and the application still gets rejected? How does that open the City up to further litigation? Councillor O'Malley asked if there is a way to issue the special permit without any settlement or admission of guilt (94G) without having a determination on file? Councillor McDonald believes the heart of BB's case is that they felt misled by what Malden's zoning would or would not allow and they (McDonald) would be willing to entertain a hearing before the City Council with no promises on how the vote would go. They asked if there is support in the room for such a proposal.

A motion was made by Councillor Sica, seconded by Councillor Simonelli to reject the settlement offer, motion passed by an 11-0 roll call vote.

Yea- Colón Hayes, Condon, Crowe, Linehan, McDonald, O'Malley, Sica, Simonelli, Spadafora, Taylor, and Winslow
Nea- Zero

After the vote but before a motion to adjourn, Councillor McDonald asked about Solicitor McNeil's level of confidence in this case. She believes the City has a good chance in this case for many of the reasons that have already been discussed during this meeting. With this, Councillor McDonald sought discussion about making a counter-offer. A suggestion was made to offer BB a hearing for a special permit in exchange for dropping not just the sanctions but the entire case.

A motion was made by Councillor Sica, seconded by Councillor Simonelli to exit Executive Session and adjourn the Council, motion failed by an 3-8 roll call vote.

Yea- Sica, Simonelli, Spadafora
Nea- Colón Hayes, Condon, Crowe, Linehan, McDonald, O'Malley, Taylor, Winslow

A motion was made by Councillor McDonald, seconded by Councillor Linehan, to authorize Solicitor McNeil to make a counter-offer to agree to hear the special permit application with no promise to grant, in exchange for dropping the entire case with no conditions attached, motion passed by a 6-5 roll call vote.

Yea- Colón Hayes, Linehan, McDonald, O'Malley, Taylor, Winslow
Nea- Condon, Crowe, Sica, Simonelli, Spadafora

A motion was made by Councillor Sica, seconded by Councillor Simonelli to exit Executive Session and adjourn the Council, motion passed by an 11-0 roll call vote.

Yea- Colón Hayes, Condon, Crowe, Linehan, McDonald, O'Malley, Sica, Simonelli, Spadafora, Taylor, and Winslow
Nea- Zero

Executive Session was adjourned at 9:19 PM.

Minutes compiled by City Clerk Carol Ann Desiderio

At a duly posted Executive Session on February 11, 2025, a motion was made by Councillor Colón Hayes, seconded by Councillor Winslow to approve the above meeting minutes, motion passed by a 10-0 roll call vote.

Yea- Colón Hayes, Condon, Crowe, Linehan, McDonald, O'Malley, Simonelli, Spadafora, Taylor, and Winslow

Nea- Zero

Absent- Sica

At a duly posted Executive Session on February 10, 2026, a motion was made by Councillor Sica, seconded by Councillor Simonelli, to retain the above noted minutes in continued non-disclosure until the City Solicitor has determined the time frame for the appeal process has been exhausted, motion passed by a 10-1 roll call vote.

Yea- Colón Hayes, Condon, Crowe, Linehan, Luong, McDonald, Sica, Simonelli, Taylor, and Winslow

Nea- O'Malley

Absent- Zero

Minutes released from non-disclosure March 11, 2026.

Alicia McNeil

From: Adam G. Gutbezahl <agg@riw.com>
Sent: Tuesday, February 4, 2025 1:27 PM
To: Alicia McNeil
Cc: Michael D. Rosen
Subject: RF: Motion for Sanctions **For Potential Settlement Purposes Only**

CONFIDENTIAL SETTLEMENT COMMUNICATION PURSUANT TO MASS. G. EVID. § 40B

All:

Thank you for reaching out. Plaintiffs are willing to withdraw their motion for sanctions upon satisfaction of the following:

- 1) The parties will enter into a written agreement within 30 days, at which time the City of Malden will pay Benevolent Botanicals LLC ("Benevolent") and 926 Eastern Avenue LLC \$100,000 for attorneys' fees incurred in connection with the motion for sanctions and supplemental motion for sanctions;
- 2) The written agreement shall provide that City of Malden must allow for Benevolent's special permit application to be sent to the City Council within 10 days of Plaintiffs and the City of Malden entering into this agreement;
- 3) The written agreement shall also provide that City Council must open a special permit hearing on Benevolent's special permit application within 30 days of receipt of Benevolent's application and close the hearing within 60 days;
- 4) As part of the written agreement, the City of Malden shall stipulate that, as part of the City Council's consideration of the special permit application, that the way by which the City of Malden measures its buffer zones (i.e., nearest property line to nearest property line) is violative of G.L. c. 94G and therefore the City Council cannot use the distance between Benevolent's proposed location and any residential property within said buffer zone as a basis for denying the issuance of a special permit to Benevolent; and
- 5) The Parties will proceed with the hearing on the motion for sanctions and conduct the closing arguments this Friday, February 7, 2025. Should an agreement be reached and a written agreement executed, only at that time will the Parties inform the Court about an agreement, at which time it will request a stay on the Court's consideration of this matter pending the outcome of the special permit hearing beyond applicable appeals.

Plaintiffs believe that, given the seriousness of the conduct resulting in their pursuit of sanctions, this is an eminently reasonable compromise on their part. That said, our clients are willing to consider a reasonable counter-offer from the City of Malden. We understand that the City Council is conducting an executive session tonight, during which session the above may be discussed. Michael and I are happy to make ourselves available should that be of assistance to you or the City Council. Nonetheless, we respectfully ask that you let us know by 1:00 p.m. tomorrow whether the City agrees to these terms and/or proposes an alternative resolution. Until the parties have executed a mutually agreed upon written agreement, please know that Plaintiffs reserve all of their rights and waive none.

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