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Zaheer A. Samee
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Mark E. Rumley
Special Counsel

SENT VIA EMAIL: info@opencommonwealth.org

June 2, 2026

Bruce Friedman
8 Marvin Street
Malden, MA 02148

Re: Open Meeting Law Complaint from May 13, 2026

Dear Mr. Friedman,

On May 13, 2026, you filed an Open Meeting Law complaint with the Malden City Council. Your complaint alleges that at a meeting on May 12, 2026, City Council improperly entered executive session by (1) “discuss[ing] topics that were not listed with sufficient specificity on the meeting notice” and (2) “discuss[ing] topics that were not the proper subject of an executive session.” See Exhibit 1, May 13 Open Meeting Law Complaint.

Upon investigating your complaint, we find that no Open Meeting Law violation occurred.

Facts

On May 12, 2026, City Council voted to enter Executive Session during its meeting. The agenda for that meeting provided the following notice, in relevant part:

Order: That the City Council will vote whether to go into Executive Session with Legal Counsel regarding the matter of Benevolent Botanicals LLC and 926 Eastern Avenue LLC v. City of Malden (MA Land Court Docket No. 22MISC000076) for the purposes of Exemption Three Massachusetts General Laws Chapter 30A Section 21(a)(3) to discuss strategy with respect to litigation, and the hearing held on April 28, 2026, where such discussion in open meeting may have a detrimental effect on the litigation position of the City, if so declared by the chair.

Exhibit 1, May 13 Opening Meeting Law Complaint at *5.

As of May 12th, the Benevolent litigation was ongoing. Although the Land Court issued its decision and judgment on January 29, 2026, it held multiple post-judgment hearings with both parties to clarify the scope of the judgment. On April 28, 2026, the Court entered the following note on the docket: “Parties seek clarification of the January 29, 2026 Judgment entered in this action because they disagree about the import of the Decision and Judgment.” The docket entry further stated that, “[b]y May 8, 2026, Plaintiffs to file a proposed clarified judgment addressing each provision of the Bylaw that they contend should be stricken for consistency with the Decision” and that, “[b]y May 20, 2026, Defendant to file any opposition to Plaintiffs’ affidavit and/or proposed clarified judgment.” See Exhibit 2, Benevolent Docket.

Analysis

The Open Meeting Law allows public bodies to “meet in executive session . . . [t]o discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares.” G. L. c. 30A, § 21(a)(3).

I. No violation for lack of specific notice.

First, we find no violation of the Open Meeting Law for failure to provide specific notice of the executive session topic. “Executive session topics must be described, both in the meeting notice and in an announcement during open session, in as much detail as possible without compromising the purpose for which the executive session was called.” OML 2024-144. “When convening in executive session pursuant to Purpose 3, a public body must identify the litigation matter that will be discussed, if doing so will not compromise the lawful purpose for secrecy.” OML 2023-79.

Here, the Council listed the specific litigation matter that was to be discussed, including the docket number, in its notice and announced the same in open session. This was sufficient. See OML 2024-144 (“We find that the notice was sufficiently specific where the Board identified the specific litigation matter it planned to discuss during the executive session”).

II. No violation for improper executive session purpose.

We also find that the Council did not enter executive session for an improper purpose. While judgment had entered in the Benevolent matter as of January 2026, litigation was ongoing because both parties requested that the Court clarify the scope of its judgment. This is clearly reflected on the Court’s docket. See Exhibit 2, Benevolent Docket. The Council therefore had a legitimate Exemption 3 purpose of discussing strategy regarding pending motions to clarify the judgment’s scope; having those discussions in open session could have had “a detrimental effect” on its litigating position. See G. L. c. 30A, § 21(a)(3). See also OML 2020-108 (“a public body has a litigating position to protect if there is pending litigation in which the public body has a litigating position”); OML 2021-25 (“We find that executive session discussions were appropriate under Purpose 3 because they related to pending litigation”).

Conclusion

For the reasons stated, we find no Open Meeting Law violation stemming from the May 12th meeting.

Prasanna Rajasekaran
Assistant City Solicitor
215 Pleasant Street, Suite 420
Malden, MA 02148
prajasekaran@cityofmalden.org
Phone: 781-397-7106

cc: Attorney General's Office (openmeeting@state.ma.us)
Honorable Malden City Council
Alicia A. McNeil, City Solicitor

EXHIBIT 1



The Commonwealth of Massachusetts
Office of the Attorney General
One Ashburton Place
Boston, Massachusetts 02108

OPEN MEETING LAW COMPLAINT FORM

Instructions for completing the Open Meeting Law Complaint Form

The Attorney General's Division of Open Government interprets and enforces the Open Meeting Law, Chapter 30A of the Massachusetts General Laws, Sections 18-25. Below is the procedure for filing and responding to an Open Meeting Law complaint.

Instructions for filing a complaint:

- o Fill out the attached two-page form completely. Sign and date the second page. File the complaint with the public body within 30 days of the alleged violation. If the violation was not reasonably discoverable at the time it occurred, you must file the complaint within 30 days of the date the violation was reasonably discoverable. A violation that occurs during an open session of a meeting is reasonably discoverable on the date of the meeting.
- o To file the complaint:
 - o For a local or municipal public body, you must submit a copy of the complaint to the chair of the public body AND to the municipal clerk.
 - o For all other public bodies, you must submit a copy of the complaint to the chair of the public body.
 - o Complaints may be filed by mail, by email, or by hand. Please retain a copy for your records.
- o If the public body does not respond within 14 business days and does not request an extension to respond, contact the Division for further assistance.

Instructions for a public body that receives a complaint:

- o The chair must disseminate the complaint to the members of the public body.
- o The public body must meet to review the complaint within 14 business days (usually 20-22 calendar days).
- o After review, but within 14 business days, the public body must respond to the complaint in writing and must send the complainant a response and a description of any action the public body has taken to address the allegations in the complaint. At the same time, the body must send the Attorney General a copy of the complaint and a copy of the response. The public body may delegate this responsibility to an individual member of the public body, its counsel, or a staff member, but only after the public body has met to review the complaint.
- o If a public body requires more time to review the complaint and respond, it may request an extension of time for good cause by contacting the Division of Open Government.

Once the public body has responded to the complaint:

- o If you are not satisfied with the public body's response to your complaint, you may file a copy of the complaint with the Division by mail, by email, or by hand, but only once you have waited for 30 days after filing the complaint with the public body. Mail may be sent to: The Division of Open Government, Office of the Attorney General, One Ashburton Place - 20th Floor, Boston, MA 02108. Emails may be sent to: openmeeting@state.ma.us.
- o When you file your complaint with the Division, please include the complaint form and all documentation relevant to the alleged violation. You may wish to attach a cover letter explaining why the public body's response does not adequately address your complaint.
- o The Division will not review complaints filed with us more than 90 days after the violation, unless we granted an extension to the public body or you can demonstrate good cause for the delay.

If you have questions concerning the Open Meeting Law complaint process, we encourage you to contact the Division of Open Government by phone at (617) 963-2540 or by email at openmeeting@state.ma.us.



OPEN MEETING LAW COMPLAINT FORM

Office of the Attorney General
One Ashburton Place
Boston, MA 02108

Please note that all fields are required unless otherwise noted.

Your Contact Information:

First Name: _____ Last Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Phone Number: _____ Ext. _____

Email: _____

Organization or Media Affiliation (if any): _____

Are you filing the complaint in your capacity as an individual, representative of an organization, or media?

(For statistical purposes only)

☐ Individual ☐ Organization ☐ Media

Public Body that is the subject of this complaint:

☐ City/Town ☐ County ☐ Regional/District ☐ State

Name of Public Body (including city/
town, county or region, if applicable): _____

Specific person(s), if any, you allege
committed the violation: _____

Date of alleged violation: _____

Description of alleged violation:

Describe the alleged violation that this complaint is about. If you believe the alleged violation was intentional, please say so and include the reasons supporting your belief.

Note: This text field has a maximum of 3000 characters.

What action do you want the public body to take in response to your complaint?

Note: This text field has a maximum of 500 characters.

Review, sign, and submit your complaint

I. Disclosure of Your Complaint.

Public Record. Under most circumstances, your complaint, and any documents submitted with your complaint, is considered a public record and will be available to any member of the public upon request.

Publication to Website. As part of the Open Data Initiative, the AGO will publish to its website certain information regarding your complaint, including your name and the name of the public body. The AGO will not publish your contact information.

II. Consulting With a Private Attorney.

The AGO cannot give you legal advice and is not able to be your private attorney, but represents the public interest. If you have any questions concerning your individual legal rights or responsibilities you should contact a private attorney.

III. Submit Your Complaint to the Public Body.

The complaint must be filed first with the public body. If you have any questions, please contact the Division of Open Government by calling (617) 963-2540 or by email to openmeeting@state.ma.us.

By signing below, I acknowledge that I have read and understood the provisions above and certify that the information I have provided is true and correct to the best of my knowledge.

Signed: _____

Date: _____

*For Use By Public Body
Date Received by Public Body:*

*For Use By AGO
Date Received by AGO:*



City of Malden

Malden City Hall
215 Pleasant Street
Malden, MA 02148

Meeting Agenda - Final City Council

Council President Amanda Linehan
Councillor at Large Karen Colon Hayes
Councillor Paul Condon
Councillor Peg Crowe
Councillor at Large Michelle Luong
Councillor at Large Carey McDonald
Councillor Ryan O'Malley
Councillor Jadeane Sica
Councillor Chris Simonelli
Councillor Ari Taylor
Councillor Stephen Winslow

Tuesday, May 12, 2026

7:00 PM

City Council Chambers
215 Pleasant Street
Malden, MA 02148

Committee of the Whole

Watch the meeting with Teams: <https://tinyurl.com/53cu2px5>

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE & MOMENT OF SILENCE IN HONOR OF SERVICE MEMBERS

3. ROLL CALL

4. MOTIONS, ORDERS, AND RESOLUTIONS

[262-26](#)

Order: That the City Council work in conjunction with the Traffic Commission to create and institute a citywide residential parking program

Sponsors:

Ari Taylor

[263-26](#)

Be it ordained by the Malden City Council that the Code of the City of Malden (MCC) Title 12 and 9 are hereby amended by the following as is outlined in the body of this paper:

Sponsors:

Michelle Luong

Attachments:

[Home occupation - Residential Kitchen Fee surrounding cities](#)

5. EXECUTIVE SESSION

264-26

Order: That the City Council will vote whether to go into Executive Session with Legal Counsel regarding the matter of Benevolent Botanicals LLC and 926 Eastern Avenue LLC v. City of Malden (MA Land Court Docket No. 22MISC000076) for the purposes of Exemption Three Massachusetts General Laws Chapter 30A Section 21(a)(3) to discuss strategy with respect to litigation, and the hearing held on April 28, 2026, 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, Ron Hogan, Chair of Cannabis Licensing and Enforcement Commission, and Nelson Miller, Building Commissioner, Zoning Officer.
(Roll Call Required)

Sponsors:

Amanda Linehan

6. ADJOURNMENT

CAROL ANN DESIDERIO, CITY CLERK

If you would like to request a reasonable accommodation, please contact Maria Luise, ADA Compliance Coordinator at mluise@cityofmalden.org or 781-397-7000 Ext. 2005

For instructions on enabling live translated captions in Teams, please visit:
www.cityofmalden.org/captions



City of Malden

Malden City Hall
215 Pleasant Street
Malden, MA 02148

Meeting Agenda - Final City Council

*Council President Amanda Linehan
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Councillor at Large Carey McDonald
Councillor Ryan O'Malley
Councillor Jadeane Sica
Councillor Chris Simonelli
Councillor Ari Taylor
Councillor Stephen Winslow*

Tuesday, April 28, 2026

7:00 PM

City Council Chambers
215 Pleasant Street
Malden, MA 02148

Committee of the Whole

Watch the meeting with Teams: <https://tinyurl.com/ycx4fjxm>

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE & MOMENT OF SILENCE IN HONOR OF SERVICE MEMBERS

3. ROLL CALL

4. HEARINGS, PETITIONS, MEMORIALS, AND REMONSTRANCES

Council will hold a public hearing on a National Grid petition to install underground conduits

[153-26](#)

Petition: Massachusetts Electric Company dba National Grid Plan No. 31239416 - National Grid to install underground facilities on Main Street. Trench and install (6) 4" concrete encased conduit from MH A/1 18 to switchgear located on 1100 Main Street approximately 60' on public right of way. Malden, MA.
(Hearing Required)

Attachments:

[1100 Main Street Petition](#)

[Abutters 1100 Main Street](#)

[Hearing Notice 1100 Main Street - Updated March 25, 2026](#)

5. MOTIONS, ORDERS, AND RESOLUTIONS

[233-26](#)

Order: The Mayor will submit the Fiscal Year 2027 Annual Appropriation Orders for the General Fund.

Sponsors:

Carey McDonald

[234-26](#)

The City Council will address the Open Meeting Law complaint submitted on April 16, 2026 by Bruce Friedman of 8 Marvin Street, Malden against the Council related to the release of Executive Session minutes on April 14, 2026.

Sponsors:

Amanda Linehan

Attachments:

[OML Complaint by Friedman on April 16 2026 ES Minutes](#)

6. COMMUNICATIONS

[235-26](#)

Communication: The Fiscal Year 2027 Community Development Block Grant (CDBG) Budget has been sent by the Mayor's Office directly to the Finance Committee to avoid delays on the City Council's review and adoption thereof. The CDBG Budget will come back before the Full Council with recommendations for a final vote after review by the Finance Committee

[236-26](#)

Communication: From Council President Linehan regarding the approval of draft executive session minutes under the provisions of M.G.L. c. 30A, s. 22(g)(1)

Sponsors:

Amanda Linehan

A representative from the Solicitor's Office will follow up on Paper 203-26 with an update to the Council on the investigation into the Open Meeting Law Complaint filed by Bruce Friedman of 8 Marvin Street on April 7, 2026 against the Council related to the Executive Session posted on April 7 under the provisions of M.G.L. c. 30A, s. 21(a)(3) and 21(b)(3).

A representative from the Solicitor's Office will offer an update to the Council on the proceedings held in open court on the afternoon of April 28 regarding the matter of Dris Corporation et al v. City of Malden.

7. TABLED PAPERS

150-26

Petition: Massachusetts Electric Company dba National Grid Plan No. 31200905 - National Grid to install underground facilities on Main Street. Customer to trench and install (6) 4" conduit from MH A/34 on Main Street to proposed switching module, approximately 55 feet on public right of way. 204 Main Street, Malden, MA.

(Hearing Required)

Attachments:

[204 Main Street Petition](#)

[Abutters 204 Main Street](#)

[Hearing Notice 204 Main Street](#)

151-26

Petition: Massachusetts Electric Company dba National Grid Plan No. 31186713 - National Grid to install underground facilities on Main Street. Trench and install (2) 4" concrete encased conduit from MH A/34 on Main Street to pad located on 213 Main Street approximately 220'. Malden, MA.

(Hearing Required)

Attachments:

[213 Main Street Petition](#)

[Abutters 213 Main Street](#)

[Hearing Notice 213 Main Street](#)

8. ADJOURNMENT

CAROL ANN DESIDERIO, CITY CLERK

If you would like to request a reasonable accommodation, please contact Maria Luise, ADA Compliance Coordinator at mluise@cityofmalden.org or 781-397-7000 Ext. 2005

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THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

(617) 727-2200
www.mass.gov/ago

February 19, 2026

OML 2026 – 28

VIA EMAIL ONLY

Janelle Austin, Esq.
KP Law
jaustin@k-plaw.com

RE: Open Meeting Law Complaint

Dear Attorney Austin:

On June 18, 2025, this office received a complaint from Cynthia Allen alleging that the Ware Select Board (the “Board”) violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. The complaint was filed with the Board on May 23.¹ Your office responded to the complaint by letter dated June 18. The complainant alleges that the Board violated the Open Meeting Law at its executive session on May 6 when it (1) discussed topics that were not listed with sufficient specificity on the meeting notice; and (2) discussed topics that were not the proper subject of an executive session.

We appreciate the patience of the parties while we reviewed this matter. Following our review, we find that the Board violated the Open Meeting Law in the ways alleged. In reaching this determination, we reviewed the Open Meeting Law complaint, the Board’s response, and the request for further review. We also reviewed the notice and minutes of the May 6 meeting, including redacted minutes of the executive session, and the minutes of meetings the Board held on June 17 and July 1. We reviewed emails and additional materials forwarded to us by the complainant. We viewed a recording of the open session of the Board’s meeting held on July 1.² We reviewed a Petition for Modification, Reasonable Deviation and / or Cy Pres and addendum, and other filings and orders entered in the matter of the Trust u/w/o Lewis N. Gilbert, Hampshire Probate Court, docket no. HS25P0786PO (“the Litigation”). We reviewed filings and orders entered in the matter of General Trust Petition of Lewis Gilbert Trust, filed by the complainant in Hampshire Probate Court, docket no. HS24P0201PO. We reviewed *in camera* correspondence from counsel for Baystate Health, Inc. (“Baystate”) to the Board, dated April 29. Finally, we reviewed posts made by the Facebook group Friends of Mary Lane Hospital.

¹ All dates are in 2025 unless otherwise stated.

² We accessed the recording at https://videoplayer.telvue.com/player/TDGUXaDdkMUZKBTU1_JxP2_g1gEpRjc/media/961645.

FACTS

We find the facts as follows. The Mary Lane Hospital was established in the Town of Ware in 1924, funded in part by a trust established under the will of Lewis Gilbert (the “Gilbert Trust”). In or about 1991, Baystate assumed operations of The Mary Lane Hospital. The Hospital closed in or about 2023. Following the closure, residents and officials of Ware have sought the return of a healthcare facility to town. Among the considerations has been whether funds from the Gilbert Trust should be made available to Baystate for the establishment of a new convenient care center. The convenient care center contemplated by Baystate would not be located at the Mary Lane Hospital site. A related, but separate, issue was an article, Article 33, that was added by citizens’ petition to the 2025 Annual Town Meeting warrant. Article 33 authorized the Board to take a temporary easement by eminent domain at the Mary Lane Hospital site, to conduct studies and testing “with respect to the suitability of said property for hospital, medical clinic, or other mental or physical health clinic purposes and / or uses.” There has been sustained community interest in the Mary Lane Hospital site and in the availability of healthcare in Ware.³

The Board posted notice of a meeting to be held on May 6. The notice included, among others, the following executive session topic:

Executive Session per M.G.L. Open Meeting Law, Chapter 30A, Section 22(f), (g). . . & M.G.L. Chapter 30A, Section 21(a)(3) to discuss strategy with respect to litigation where an Open Meeting may have a detrimental effect on the litigating position of the public body and the Chair so declares with respect to potential litigation. The Board will discuss and deliberate as to litigation strategy.

The May 6 meeting went forward as scheduled. Prior to the vote to enter executive session, Chair Nancy Talbot read the purposes of the executive session as they appeared on the notice. The vote to enter executive session carried. There were multiple topics to discuss in executive session. When the Board reached the discussion of “litigation strategy,” Attorney Patricia Davidson addressed the Board regarding a proposal to have Baystate “come into town,” according to the minutes.⁴ A discussion ensued regarding Baystate’s proposal and use of money from the Gilbert Trust to fund the establishment of a convenient care center in Ware. Three of the four Board members agreed that the best course was to work with Baystate and Bank of America, as trustee of the Gilbert Trust, to re-establish healthcare in town. Chair Talbot moved to allow Attorney Davidson to work with Bank of America to support Baystate’s proposal to establish a convenient care or urgent care center in Ware. The motion was seconded and passed.

Cynthia Allen filed the instant Open Meeting Law complaint on May 23. The Annual Town Meeting took place on June 2. On June 25, after it had responded to the Open Meeting Law complaint, the Board posted notice of a meeting to be held on July 1. The notice did not

³ See, e.g., Sarah Heinonen, “Ware needs a hospital, residents say, as reuse of site considered,” *The Reminder* (Feb. 28, 2024), <https://thereminder.com/local-news/ware-needs-a-hospital-residents-say-as-reuse-of-si/>.

⁴ The minutes have been released to the public. There remain redactions as to other executive session topics unrelated to the subject of this complaint.

include as a topic of discussion Mary Lane Hospital, Baystate, or the Gilbert Trust. However, the notice did include as a topic Ms. Allen's Open Meeting Law complaint.

Specifically, the notice listed:

OLD BUSINESS

Open Meeting Law Complaint filed against Select Board by Cynthia Allen, dated May 23, 2025: acknowledge receipt of complaint, review and discuss Board's response, vote to take any remedial action, and authorize submission of response by Town Counsel
(Continued from June 17, 2025)

On June 29, a Facebook group called Friends of the Mary Lane Hospital posted the link for the July 1 Board meeting. The group posted: "PROTECT THE TRUST FUNDS - On Tuesday July 1st our Selectboard will be discussing the Mary Lane trust funds." The June 29 post also included an open letter encouraging readers to attend the July 1 meeting to support the Friends' alternative to the Baystate plan the Board endorsed on May 6.

In open session at the Board's July 1 meeting, Chair Talbot read Ms. Allen's Open Meeting Law Complaint.⁵ The Board voted to release minutes of the May 6 executive session, with redactions. The executive session minutes were also read into the record. At the suggestion of counsel for Baystate, Attorney Ryan Barry, the Board also voted to affirm the May 6 vote to work with Bank of America in support of Baystate's proposal to establish a convenient care or urgent care center in Ware.⁶ The discussion of Baystate's proposal and the use of Gilbert Trust funds to finance it lasted approximately 45 minutes, much of which consisted of public comment from those opposed to the Baystate plan.

DISCUSSION

- I. Baystate's proposal to establish a convenient care center and the use of the Gilbert Trust to help fund it were not proper topics for executive session.

Public bodies may enter a closed, executive session for any of the ten purposes enumerated in the Open Meeting Law. G.L. c. 30A, § 21(a). Among those ten enumerated purposes is "Purpose 3," which allows a public body to convene in executive session to "discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares." G.L. c. 30A, § 21(a)(3). A public body may invoke Purpose 3 to discuss litigation strategy only when it has a litigating position to protect relative to the topic of that discussion. See OML 2025-201; OML 2019-161; OML 2018-110.⁷

⁵ The discussion of the complaint commences at 1:10 in the recording.

⁶ Minutes of the July 1 meeting do not include this vote. The minutes should be amended to include it.

⁷ Open Meeting Law determinations may be found at the Attorney General's website, www.mass.gov/ago/openmeeting

In her request for review, the complainant alleges that the discussion of the Gilbert Trust held in executive session on May 6 was not proper under Purpose 3 because there was no threat of litigation concerning the Gilbert Trust.⁸ We agree. In its response to the complaint, the Board does not argue that there was a threat of litigation over the Gilbert Trust but states that it met in executive session to discuss a threat of litigation over Article 33, “following a written letter outlining such potential litigation by Baystate.” The purpose articulated in the Board’s response does not align with the discussion that was actually had in executive session. As we have been presented with no information that litigation was threatened over Baystate’s plan to establish a convenient care center, we find that the Board met in executive session for an improper purpose.

II. Notice of the May 6 meeting was not sufficiently specific.

The Open Meeting Law requires that public bodies post notice 48 hours in advance of a meeting, not including weekends and holidays. G.L. c. 30A, § 20(b). Meeting notices must include, among other things, a list of the topics that the Chair, or any other individual charged with creating the meeting notice, reasonably anticipates will be discussed at the meeting. Id. The list of topics must include “sufficient specificity to reasonably advise the public of the issues to be discussed at the meeting.” 940 CMR 29.03(l)(b).

We generally consider a topic to be sufficiently specific when a reasonable member of the public could read the topic and understand the anticipated nature of the public body's discussion. See OML 2023-199; OML 2019-134; OML 2015- 35. The Open Meeting Law requires that the notice describe topics with sufficient specificity so that the public can make an informed decision whether to attend the meeting to observe the discussion regarding a topic of interest. See OML 2023-86; OML 2019-95; OML 2018-22.

Notwithstanding the Board’s claim that it “listed an agenda item” for the discussion it had in executive session, we find that notice of the May 6 meeting was not sufficiently specific. The notice made no mention of Baystate’s proposal to establish a convenient care center or of the Gilbert Trust. Upon reading the notice of the May 6 meeting, a reasonable member of the public would not understand the anticipated nature of the Board’s discussion.

Moreover, that the discussion was held in executive session does not excuse the Board from the Law’s notice requirements. Even if a discussion of Baystate’s plan for a convenient care center or the Gilbert Trust were proper under Purpose 3,⁹ notice still was insufficiently specific. Executive session topics must be described, both in the meeting notice and in an announcement during open session prior to convening in executive session, in as much detail as possible without compromising the purpose for which the executive session was called. See G.L. c. 30A, § 21(b)(3); see also District Attorney for the N. Dist. v. Sch. Comm. of Wayland,

⁸ Generally, we do not review allegations that were not raised in the complaint originally filed with the public body. See OML 2025-87; OML 2021-86. However, we have reviewed the propriety of a stated executive session purpose as a threshold matter, even if not raised by the complainant. See OML 2023-29; OML 2022-201; OML 2015-126. Here, the complainant learned of the substance of the executive session discussion after the Board released minutes in response to the Open Meeting Law complaint. In other words, it was only by filing the Open Meeting Law complaint that the complainant obtained the information that supports the additional allegation. Therefore, it is appropriate for us to review this allegation.

⁹ As noted above, we find that it was not.

455 Mass. 561, 567 (2009) (“[a] precise statement of the reason for convening in executive session is necessary . . . because that is the only notification given the public that a [public body] would conduct business in private, and the only way the public would know if the reason for doing so was proper or improper”).

As we have twice previously explained to the Board, when convening in executive session pursuant to Purpose 3, a public body must identify the litigation matter it will discuss, if doing so will not compromise the lawful purpose for secrecy. See OML 2020-53; OML 2019-86; see also OML 2025-185; OML 2024-111; OML 2023-189; OML 2016-12. We generally defer to a public body’s assessment of whether identifying the litigation matter to be discussed would compromise the purpose for the executive session; however, a public body must be able to demonstrate a reasonable basis for that claim if challenged. See OML 2025-43; OML 2024-195; OML 2016-12; OML 2015-14. The Board has not offered any information suggesting that reference to Baystate or the Gilbert Trust in the notice of the May 6 meeting would have compromised the purpose of the executive session. Indeed, it could not offer such information where the discussion of Baystate and the Gilbert Trust was not proper for executive session. For all of the above reasons, we find that notice of the May 6 meeting was not sufficiently specific.

Additionally, the Board’s July 1 vote did not remedy the violation, as the Board intended. At its July 1 meeting, the Board discussed at length the topic of Baystate’s use of the Gilbert Trust to establish a convenient care center in Ware in open session. There was significant input from members of the public during this discussion. However, the Board’s efforts to address the May 6 violation failed because the Board did not list the topic on the notice of the July 1 meeting. Like the notice of the May 6 meeting, the notice of the July 1 meeting failed to include as a topic Baystate’s proposal to establish a convenient care or urgent care center in Ware or the funding of such a clinic by the Gilbert Trust. Although the Friends of the Mary Lane Hospital raised awareness of the July 1 meeting through its Facebook post, that outreach cannot substitute for proper notice by the public body.

Finally, we consider the complainant’s suggestion, articulated in the email she sent to our office and to the Board on June 20, that the Board’s violation was intentional. See G.L. c. 30A, § 23(c). An intentional violation is an “act or omission by a public body or a member thereof, in knowing violation of [the Open Meeting Law].” 940 CMR 29.02. An intentional violation may be found where the public body acted with deliberate ignorance of the law’s requirement or has previously been advised that certain conduct violates the Open Meeting Law. Id.

In a prior determination, OML 2020-53, we found that the Board violated the Open Meeting Law when it failed to identify in the notice or announcement the litigation to be discussed in a Purpose 3 executive session—the same violation we find here.¹⁰ Although this determination was issued five years prior to the May 6 meeting at issue here, at least one member sat on the Board at the time and the other members should have received a copy of the OML

¹⁰ Arguably, the violation here is more serious because there was no threat of litigation as to the topic that was discussed in executive session, even though the notice listed litigation as the Purpose 3 topic, and so the nature of the executive session discussion was entirely obscured from the public.

2020-53 determination when they joined the Board.¹¹ Because the Board has been warned that failure to identify the subject of a Purpose 3 executive session discussion violates the Open Meeting Law, unless identifying the subject would compromise the lawful purpose for the executive session, we find the violation here intentional.

The complainant asks us to nullify the votes held on May 6 and July 1. See G.L. c. 30A, § 23(c) (providing that “[u]pon the finding of a violation, the attorney general may issue an order to . . . nullify in whole or in part any action taken at the meeting”). Nullification would not be disproportionate to the seriousness of the violation here. After much consideration, however, we decline to exercise our discretion to nullify the votes. The complainant has been explicit in her desire to use nullification by this office to challenge a certification of the July 1 vote filed in the Litigation with the hope of defeating the Cy Pres action. As an initial matter, we note that although our office is empowered to nullify action taken at a meeting, we may not nullify a court filing. Moreover, our decision not to nullify the vote is informed by the Litigation and the action filed by the complainant in the Hampshire Probate Court. In both of those matters, the Court found that the complainant did not have standing to object to the Cy Pres action, and in issuing its final judgment approving the Cy Pres petition, the Court did not state that it relied on the vote that the complainant seeks to nullify. Therefore, notwithstanding finding a serious violation of the Open Meeting Law, we decline to order the requested remedy.

CONCLUSION

For the reasons stated above, we find that the Board violated the Open Meeting Law when it discussed topics that were not listed with sufficient specificity on the meeting notice and were not the proper subject of an executive session.

Because we find an intentional violation, as explained above, we refer this matter for a hearing pursuant to 940 CMR 29.07(3) and recommend that the Board be assessed a fine of \$300 pursuant to G.L. c. 30A, § 23(c) (“Upon the finding of a violation, the attorney general may issue an order to . . . impose a civil penalty upon the public body of not more than \$1,000 for each intentional violation”). We invite the Board to contact this office to discuss the hearing process or a resolution of this matter.

Furthermore, we order the Board’s immediate and future compliance with the Open Meeting Law and caution the Board that future similar violations may be considered evidence of intent to violate the Open Meeting Law.

¹¹ Within two weeks of qualification for office, persons serving on a public body must certify that they have reviewed, among other things, a copy of each Open Meeting Law determination issued within the last five years to the public body of which they are a member and in which the Attorney General found a violation of the Open Meeting Law. See G.L. c. 30A, § 20; 940 CMR 29.04(1)(b). See also Certificate of Receipt of Open Meeting Law Materials, available at <https://www.mass.gov/doc/certificate-of-receipt-of-open-meeting-law-materials-102120/download>.

We now consider the complaint addressed by this determination to be resolved. This determination does not address any other complaints that may be pending with the Board or with our office. Please feel free to contact our office at (617) 963-2540 if you have any questions regarding this letter.

Sincerely,



Matthew Lindberg
Assistant Attorney General
Division of Open Government

cc: Nancy Talbot, Chair, Ware Select Board (via email: ntalbot@townofware.com)
Kathleen Galford, Assistant Town Clerk (via email: kgalford@townofware.com)
Cynthia Allen (via email: [REDACTED])

This determination was issued pursuant to G.L. c. 30A, § 23(c). A public body or any member of a body aggrieved by a final order of the Attorney General may obtain judicial review through an action filed in Superior Court pursuant to G.L. c. 30A, § 23(d). The complaint must be filed in Superior Court within twenty-one days of receipt of a final order.

EXHIBIT 2

22 MISC 000076 Benevolent Botanicals LLC , et al. v. City of Malden , et al. RUBIN

- Case Type:
- Miscellaneous
- Case Status:
- Closed
- File Date
- 02/14/2022
- DCM Track:
-
- Initiating Action:
- ZAC - Appeal from Zoning/Planning Board, G.L. Chapter 40A, § 17
- Status Date:
- 02/14/2022
- Case Judge:
- Rubin, Hon. Diane R.
- Next Event:
-
-

Property Information

926 Eastern Avenue
Malden

[All Information](#) [Party](#) [Event](#) [Docket](#) [Financial](#) [Receipt](#) [Disposition](#)

Party Information

Benevolent Botanicals LLC

- Plaintiff

Party Attorney

- Attorney
- Croft, Esq., Bradley L
- Bar Code
- 633347
- Address
- Ruberto, Israel and Weiner PC
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- 7th Floor
- Boston, MA 02109
- Phone Number
- (617)742-4200
- Attorney
- Gutbezah, Esq., Adam Garrett
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[More Party Information](#)

926 Eastern Avenue, LLC

- Plaintiff

Party Attorney

- Attorney

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[More Party Information](#)**City of Malden**
- Defendant**Party Attorney**

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[More Party Information](#)**Sullivan, William**
- Defendant**Party Attorney**

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[More Party Information](#)

Senatillaka, David
- Defendant

Party Attorney[More Party Information](#)

Chu, Susan
- Defendant

Party Attorney[More Party Information](#)**Events**

Date	Session	Location	Type	Event Judge	Result
04/12/2022 02:00 PM	J. Rubin	Courtroom 403 - Fourth Floor	Case Management Conference	Rubin, Hon. Diane R.	Held via video
08/29/2022 02:30 PM	J. Rubin	Courtroom 403 - Fourth Floor	Motion to Dismiss	Rubin, Hon. Diane R.	Held via video
10/12/2022 09:30 AM	J. Rubin		Status Conference	Rubin, Hon. Diane R.	Canceled

Date	Session	Location	Type	Event Judge	Result
11/16/2022 10:00 AM	J. Rubin	Courtroom 403 - Fourth Floor	Status Conference	Rubin, Hon. Diane R.	Held via video
01/05/2023 09:30 AM	J. Rubin		Status Conference	Rubin, Hon. Diane R.	Rescheduled
01/11/2023 11:30 AM	J. Rubin	Courtroom 403 - Fourth Floor	Status Conference	Rubin, Hon. Diane R.	Held via video
05/05/2023 09:30 AM	J. Rubin	Courtroom 403 - Fourth Floor	Status Conference	Rubin, Hon. Diane R.	Held via video
11/20/2023 09:30 AM	J. Rubin	Courtroom 401 - Fourth Floor	Summary Judgment Hearing	Rubin, Hon. Diane R.	Rescheduled
11/22/2023 09:30 AM	J. Rubin	Courtroom 401 - Fourth Floor	Summary Judgment Hearing	Rubin, Hon. Diane R.	Held via video
03/04/2024 09:30 AM	J. Rubin	Courtroom 403 - Fourth Floor	Pre-Trial Conference	Rubin, Hon. Diane R.	Held via video
09/11/2024 01:30 PM	J. Rubin	Courtroom 403 - Fourth Floor	Motion in Limine	Rubin, Hon. Diane R.	Held via video
10/01/2024 02:00 PM	J. Rubin	Off Site	View	Rubin, Hon. Diane R.	Held in person
10/07/2024 09:30 AM	J. Rubin	Courtroom 1102 - Eleventh Floor	Trial	Rubin, Hon. Diane R.	Held - First Day of Trial
10/08/2024 09:30 AM	J. Rubin	Courtroom 1102 - Eleventh Floor	Ongoing Trial	Rubin, Hon. Diane R.	Held in person
10/09/2024 09:30 AM	J. Rubin	Courtroom 1102 - Eleventh Floor	Ongoing Trial	Rubin, Hon. Diane R.	Held in person
02/07/2025 11:00 AM	J. Rubin	Courtroom 1102 - Eleventh Floor	Ongoing Trial	Rubin, Hon. Diane R.	Held - Trial Ends
05/08/2025 10:00 AM	J. Rubin	Courtroom 1102 - Eleventh Floor	Hearing	Rubin, Hon. Diane R.	Held in person
04/28/2026 09:30 AM	J. Rubin	Courtroom 401 - Fourth Floor	Motion	Rubin, Hon. Diane R.	Held via video
05/27/2026 11:30 AM	J. Rubin		Status Conference	Rubin, Hon. Diane R.	

Docket Information

Docket Date	Docket Text	Amount Owed	Image Avail.
02/14/2022	Complaint filed.		
02/14/2022	Case assigned to the Fast Track per Land Court Standing Order 1:04.		Image
02/14/2022	Land Court miscellaneous filing fee Receipt: 428403 Date: 02/14/2022	\$240.00	
02/14/2022	Land Court surcharge Receipt: 428403 Date: 02/14/2022	\$15.00	
02/14/2022	Uniform Counsel Certificate for Civil Cases filed by Plaintiff.		
02/22/2022	Affidavit of Compliance with Notice requirements of Chapter 40A, Sec. 17 filed by Adam Garrett Gutbezah, Esq..		 Image
02/23/2022	The case has been assigned to the F Track. Notice sent. Notice of Judge and Track Assignment was generated and sent to: Plaintiff: Bradley L Croft, Esq. blc@riw.com Plaintiff: Michael Dana Rosen, Esq. mdr@riw.com Plaintiff: Adam Garrett Gutbezah, Esq. agg@riw.com null: File Copy Sent On: 02/23/2022 13:47:43		 Image
02/23/2022	Event Scheduled Judge: Rubin, Hon. Diane R. Event: Case Management Conference Date: 04/12/2022 Time: 02:00 PM Counsel notified via email.		

Docket Date	Docket Text	Amount Owed	Image Avail.
04/05/2022	Joint Case Management Conference Statement, filed.		
04/12/2022	Event Resulted: Case Management Conference scheduled on: 04/12/2022 02:00 PM Has been: Case management conference held via videoconference. Attorney Michael Rosen appeared on behalf of the plaintiff and Attorney Kathryn Fallon appeared on behalf of the defendants. Court is in receipt of the parties' Joint Case Management Conference Statement. By way of background, Attorney Rosen confirmed that the plaintiff sought a variance from the City's marijuana buffer zone (Ordinance § 12.12.190), which precludes any marijuana establishments within 75 feet of a residential use, and such variance was denied by the Malden Board of Appeals. Plaintiff now brings three counts: violation of G.L. c. 94G, § 3(a); violation of the Open Meeting Law; and an appeal pursuant to G.L. c. 40A, § 17 of the decision denying the variance. Court flagged for the parties Tracer Lane II Realty, LLC v. City of Waltham, Docket No. SJC-13295, which is currently under advisement with the Supreme Judicial Court and may affect the resolution of the G.L. c. 94G, § 3(a) claim in this case. With respect to the Open Meeting Law claim, the court discussed with Attorney Rosen whether plaintiff wants to proceed with the claim, and whether the Land Court would have ancillary jurisdiction. Attorney Fallon raised potential issues of administrative exhaustion or lack of jurisdiction and advised that the Town plans to file a dispositive motion for such claim. Following colloquy, Attorney Rosen to file by May 12, 2022, a status report advising as to whether plaintiff intends to proceed with the Open Meeting Law claim. By June 13, 2022, defendant to file any responsive pleading. The court put in place the following discovery schedule: By September 30, 2022, discovery to be complete, to include expert designations and disclosures. By October 7, 2022, counsel to file a joint report advising as to the status of discovery, prospects for settlement or mediation, and advising of any other matters necessitating the court's attention. Status conference scheduled for October 12, 2022, at 9:30 A.M., with parties to request an interim status conference if the Tracer Lane II Realty, LLC decision is issued before such time. Hon. Diane R. Rubin, Presiding Counsel notified via email.		
04/13/2022	Scheduled Judge: Rubin, Hon. Diane R. Event: Status Conference Date: 10/12/2022 Time: 09:30 AM		
04/28/2022	Amended Complaint filed.		
06/10/2022	Defendants' Rule 12(b)(6) Motion to Dismiss, filed.		
06/10/2022	Memorandum in Support of Defendants' Rule 12(b)(6) Motion to Dismiss, filed.		
06/14/2022	Plaintiffs have until July 11, 2022 to file any Oppositions to "Defendant's Rule 12(b)(6) Motion to Dismiss. If there will be any Reply Briefs they should be filed by August 12, 2022 with a hearing on August 29th at 2:30 pm. Counsel notified via email. Judge: Rubin, Hon. Diane R.		
06/14/2022	Scheduled Judge: Rubin, Hon. Diane R. Event: Motion to Dismiss Date: 08/29/2022 Time: 02:30 PM		
07/11/2022	Plaintiff Benevolent Botanicals LLC's Opposition to Defendants' Rule 12(b)(6) Motion to Dismiss, filed.		
08/04/2022	Defendant's Reply Memorandum in Response to Plaintiff's Opposition to Defendant's Rule 12(b) Motion to Dismiss, filed.		
08/22/2022	Notice of Withdrawal of Appearance of Kathryn Fallon and Notice of Entry of Appearance of Counsel, filed.		
08/29/2022	Event Resulted: Motion to Dismiss scheduled on: 08/29/2022 02:30 PM Has been: Hearing on motion to dismiss held via videoconference. Attorneys Michael Rosen and Adam Gutbezahl appeared on behalf of the plaintiff and Attorney Alicia McNeil appeared on behalf of the defendants. Before the court were: Defendants' Rule 12(b)(6) Motion to Dismiss; Memorandum in Support of Defendants' Rule 12(b)(6) Motion to Dismiss; Plaintiff Benevolent Botanicals LLC's Opposition to Defendants' Rule 12(b)(6) Motion to Dismiss; and Defendant's Reply Memorandum in Response to Plaintiff's Opposition to Defendant's Rule 12(b) Motion to Dismiss. Following hearing, motion taken under advisement with decision to issue shortly. Discovery extended until October 31, 2022, to include expert designations and disclosures. Parties to file a Joint Status Report by November 9, 2022, advising as to whether discovery is complete, whether experts have been retained, and whether the case is ready for scheduling of a pre-trial conference or summary judgment briefing. In addition, counsel to report on the status of proposed amendments to the Malden Cannabis Ordinance and any other projects proposed under the Malden Cannabis Ordinance where a variance is required. Status Conference scheduled for November 16, 2022 at 10:00 am. Counsel notified via email.		

Docket Date	Docket Text	Amount Owed	Image Avail.
	Judge: Rubin, Hon. Diane R.		
08/30/2022	Event Resulted: Status Conference scheduled on: 10/12/2022 09:30 AM Has been: Canceled Hon. Diane R. Rubin, Presiding		
08/31/2022	Scheduled Judge: Rubin, Hon. Diane R. Event: Status Conference Date: 11/16/2022 Time: 10:00 AM		
08/31/2022	Decision and Order on Defendants' Motion to Dismiss, issued. (Copies emailed to Attorneys Michael Rosen, Adam Gutbezahl, Bradley Croft, and Alicia McNeil) Judge: Rubin, Hon. Diane R.		 Image
09/06/2022	Second Amended Complaint, filed.		 Image
09/16/2022	Answer and Defenses of the Members of the City of Malden Board of Appeal to Plaintiffs' Second Amended Complaint, filed.		 Image
10/11/2022	Joint Motion to Extend Discovery Deadline, filed and ALLOWED. Discovery Deadline is Extended to November 14, 2022. All the other dates will stay the same. Counsel notified via email. Judge: Rubin, Hon. Diane R.		 Image
11/08/2022	Joint Status Report, filed.		 Image
11/16/2022	Event Resulted: Status Conference scheduled on: 11/16/2022 10:00 AM Has been: Status conference held via videoconference in 22 MISC 000076 and case management conference held via videoconference in 22 MISC 000552. Attorneys Michael Rosen and Adam Gutbezahl appeared on behalf of the plaintiffs in 22 MISC 000076 and the defendants in 22 MISC 000552, with Gary Oshry and Michael Clebnik present, and Attorney Alicia McNeil appeared on behalf of the defendants in 22 MISC 000076 and the plaintiff in 22 MISC 000552. Court is in receipt of the Joint Status Report in 22 MISC 000076 and the Joint Case Management Conference Statement in 22 MISC 000552. With respect to 22 MISC 000076, counsel advised that the only fact discovery outstanding is the deposition of Mr. Clebnik, which was postponed due to a health issue and is now scheduled for November 21, 2022, and that the parties are still in the process of engaging experts. Following colloquy, fact discovery is extended for the limited purpose of conducting Mr. Clebnik's deposition, and the deadline for expert designations and disclosures is extended to December 30, 2022. With respect to 22 MISC 000552, counsel advised that the City of Malden is appealing defendants' claim that the City should provide defendants with a Certificate of Constructive Approval under G.L. c. 40A, § 9. Attorney Rosen advised that in his opinion, 22 MISC 000552 is a matter of bylaw interpretation, and will be ripe for a judgment on the pleadings without discovery. Attorney McNeil advised that she does not anticipate the need for discovery, but needs to confirm with her client. Following colloquy, Defendants in 22 MISC 000552 may file on or after December 1, 2022, any dispositive motions in accordance with Land Court Rule 4, provided that if Plaintiff believes discovery is necessary, it may provide written notice to the court identifying what discovery is necessary. Status conference in both cases scheduled for January 5, 2023, at 9:30 A.M., with parties to file by December 30, 2022, a joint status report on both cases. Hon. Diane R. Rubin, Presiding Counsel notified via email.		 Image
11/21/2022	Scheduled Judge: Rubin, Hon. Diane R. Event: Status Conference Date: 01/05/2023 Time: 09:30 AM		
01/03/2023	Event Resulted: Status Conference scheduled on: 01/05/2023 09:30 AM Has been: Rescheduled to January 11, 2023 at 11:30 am. Hon. Diane R. Rubin, Presiding		
01/03/2023	Scheduled Judge: Rubin, Hon. Diane R. Event: Status Conference Date: 01/11/2023 Time: 11:30 AM Counsel notified via email.		
01/09/2023	Joint Status Report, filed.		 Image

Docket Date	Docket Text	Amount Owed	Image Avail.
01/11/2023	Event Resulted: Status Conference scheduled on: 01/11/2023 11:30 AM Has been: Status conference held via videoconference in 22 MISC 000076 and 22 MISC 000552. Attorneys Michael Rosen and Adam Gutbezahl appeared on behalf of the plaintiffs in 22 MISC 000076 and the defendants in 22 MISC 000552, with Gary Oshry and Michael Clebnik present, and Attorney Alicia McNeil appeared on behalf of the defendants in 22 MISC 000076 and the plaintiff in 22 MISC 000552 (the "City"). Court is in receipt of the Joint Status Report in both cases. Counsel first advised that discovery in 22 MISC 000076 is nearly complete, but Attorney McNeil advised that the City is still working to engage an expert witness. Following colloquy, the deadline for expert designations and disclosures in 22 MISC 000076 is extended to January 31, 2023, for plaintiffs and to February 28, 2023, for defendants. Court then discussed with counsel whether they intend to resolve these cases through trial or by motion(s) for summary judgment, and whether the cases should be heard together or whether a determination in one may affect the outcome in the other. Counsel jointly advised that the cases should be heard separately, with 22 MISC 000552 decided prior to 22 MISC 000076. Counsel further advised that they intend to resolve 22 MISC 000552 through motion(s) for summary judgment, with defendants in that case already having filed a motion, and to proceed to trial in 22 MISC 000076. Following colloquy, court put in place the following briefing schedule for defendants' motion for summary judgment in 22 MISC 000552: by February 2, 2023, plaintiff to file any oppositions and/or cross motions for summary judgment; any responses to be filed by February 28, 2023; and any further filings by March 14, 2023. Hearing on motion(s) for summary judgment scheduled for March 23, 2023, at 10:00 A.M. In 22 MISC 000076, parties to file a joint status report by April 3, 2023, with a status conference scheduled for May 5, 2023, which may be converted to a Pre-Trial Conference, as may be appropriate. Hon. Diane R. Rubin, Presiding Counsel notified via email.		
01/13/2023	Scheduled Judge: Rubin, Hon. Diane R. Event: Status Conference Date: 05/05/2023 Time: 09:30 AM		
02/28/2023	City of Malden's Motion to Enlarge Time for Disclosure of Expert Witnesses, filed.		
02/28/2023	Plaintiffs Benevolent Botanicals LLC and 926 Eastern Avenue LLC's Opposition City of Malden's Motion to Enlarge Time for Disclosure of Expert Witnesses, filed.		
03/08/2023	Court is in receipt of City of Malden's Motion to Enlarge Time for Disclosure of Expert Witnesses, as well as Plaintiffs Benevolent Botanicals LLC and 926 Eastern Avenue LLC's Opposition City of Malden's Motion to Enlarge Time for Disclosure of Expert Witnesses. After due consideration and in light of the City's request for a modest extension of only three weeks until March 21, 2023, and in light of the City's reported recent technical telephone and computer issues, the City's motion is ALLOWED. Counsel notified via email. Judge: Rubin, Hon. Diane R.		
03/31/2023	Joint Status Report, filed.		
05/01/2023	Joint Status Report, filed.		
05/05/2023	Event Resulted: Status Conference scheduled on: 05/05/2023 09:30 AM Has been: Status conference held via videoconference. Attorneys Michael Rosen and Adam Gutbezahl appeared on behalf of the plaintiffs, with Gary Oshry and Michael Clebnik present, and Attorney Alicia McNeil appeared on behalf of the defendants. Court is in receipt of the Joint Status Report filed March 31, 2023, and Joint Status Report filed May 1, 2023. Counsel confirmed that discovery is complete, and Attorney McNeil advised that defendants do not intend to take any depositions. Court then discussed with counsel how best to resolve this case, and whether the case is suitable for motion(s) for summary judgment. Following colloquy and by May 26, 2023, Plaintiffs to file any motion for summary judgment, with briefing in accordance with Land Court Rule 4 and either party to request a hearing, if they so choose. Hon. Diane R. Rubin, Presiding Counsel notified via email.		
05/24/2023	Assented-to Motion to Extend Summary Judgment Deadline, filed.		
05/25/2023	Assented-to Motion to Extend Summary Judgment Deadline ALLOWED. Deadline to file Summary Judgment Motion has been extended to June 9, 2023. Counsel notified via email. Judge: Rubin, Hon. Diane R.		
06/08/2023	Benevolent Botanicals LLC and 926 Eastern Avenue, LLC's Motion for Summary Judgment, filed.		

<u>Docket Date</u>	<u>Docket Text</u>	<u>Amount Owed</u>	<u>Image Avail.</u>
06/08/2023	Memorandum of Law in Support of Benevolent Botanicals LLC and 926 Eastern Avenue, LLC's Motion for Summary Judgment, filed.		 Image
06/08/2023	Benevolent Botanicals LLC and 926 Eastern Avenue, LLC's Concise Statement of Material Facts, filed.		 Image
06/08/2023	Affidavit of Gary Oshry, filed.		 Image
06/08/2023	Affidavit of Adam G. Gutbezah, Esq., filed.		 Image
06/08/2023	Appendix Part I Exhibits A-M, filed.		 Image
06/08/2023	Appendix Part II Exhibits N-LL, filed.		 Image
07/12/2023	City of Malden's Motion in Opposition to Benevolent Botanicals LLC's and 926 Eastern Avenue LLC's Motion for Summary Judgment and Cross Motion for Summary Judgment, filed.		 Image
07/12/2023	City of Malden's Response to Benevolent Botanicals LLC and 926 Eastern Avenue LLC's Statement of Material Facts and City of Malden's Statement of Material Facts, filed.		 Image
07/12/2023	City of Malden's Memorandum in Support of its Opposition to Benevolent Botanicals LLC's and 926 Eastern Avenue LLC's Motion for Summary Judgment and Cross Motion for Summary Judgment, filed.		 Image
07/12/2023	Defendant, City of Malden's Appendix in Support of Summary Judgment, filed.		 Image
07/26/2023	Benevolent Botanicals LLC and 926 Eastern Avenue, LLC's Consolidated Reply in Support of their Motion for Summary Judgment and Oppositions to Cross-Motion for Summary Judgment, filed.		 Image
07/26/2023	Benevolent Botanicals LLC and 926 Eastern Avenue, LLC's Response to City of Malden's Statement of Material Facts, filed.		 Image
07/26/2023	Affidavit of Adam G. Gutbezah, Esq., filed.		 Image
07/26/2023	Appendix in Support of Benevolent Botanicals LLC and 926 Eastern Avenue, LLC's Consolidated Reply in Support of their Motion for Summary Judgment and Oppositions to Cross-Motion for Summary Judgment, filed.		 Image
08/02/2023	Scheduled Judge: Rubin, Hon. Diane R. Event: Summary Judgment Hearing Date: 11/20/2023 Time: 09:30 AM Counsel notified via email.		
09/14/2023	Joint Motion to Extend the Deadline for the City of Malden's Responsive Summary Judgment Pleading, filed and ALLOWED. The Time to file a Response is Extended to September 25, 2023. Counsel notified via email. Judge: Rubin, Hon. Diane R.		 Image
09/26/2023	City of Malden's Motion and Memorandum in Support of its Reply to Benevolent Botanicals, LLC's and 926 Eastern Avenue, LLC's Opposition to Malden's Cross Motion for Summary Judgment, filed.		 Image
09/26/2023	Defendant, City of Malden's Appendix in Support of Reply Memorandum for Summary Judgment, filed.		 Image
11/20/2023	Event Resulted: Summary Judgment Hearing scheduled on: 11/20/2023 09:30 AM Has been: Rescheduled to November 22, 2023 at 9:30 am, per order of the court. Hon. Diane R. Rubin, Presiding		Image
11/20/2023	Scheduled Judge: Rubin, Hon. Diane R. Event: Summary Judgment Hearing Date: 11/22/2023 Time: 09:30 AM Counsel notified via email.		
11/22/2023	Event Resulted: Summary Judgment Hearing scheduled on: 11/22/2023 09:30 AM Has been: Hearing on motion for summary judgment held via videoconference. Attys. Michael Rosen and Adam Gutbezah appeared on behalf of the Plaintiff and Atty. Alicia McNeil appeared on behalf of the Defendant. Court is in receipt of: (1) Benevolent Botanicals LLC and 926 Eastern Avenue, LLC's Motion for Summary Judgment along with the memorandum of law and appendix in support thereof; (2) Benevolent Botanicals LLC and 926 Eastern Avenue, LLC's Concise Statement of Material Facts; (3) City of Malden's Motion in Opposition to Benevolent Botanicals LLC's and 926 Eastern Avenue LLC's Motion for Summary Judgment and Cross Motion for Summary Judgment along with the memorandum and appendix in support thereof; (4) City of Malden's Response to Benevolent Botanicals LLC and 926 Eastern Avenue LLC's Statement of Material Facts and City of Malden's Statement of Material Facts;		

Docket Date	Docket Text	Amount Owed	Image Avail.
	(5) Benevolent Botanicals LLC and 926 Eastern Avenue, LLC's Consolidated Reply in Support of their Motion for Summary Judgment and Oppositions to Cross-Motion for Summary Judgment and the appendix in support thereof; (6) Benevolent Botanicals LLC and 926 Eastern Avenue, LLC's Response to City of Malden's Statement of Material Facts; (7) City of Malden's Motion and Memorandum in Support of its Reply to Benevolent Botanicals, LLC's and 926 Eastern Avenue, LLC's Opposition to Malden's Cross Motion for Summary Judgment and the appendix in support thereof. Following argument, the court DENIES parties cross-motions on summary judgment for the reasons articulated on the record and as follows: The court concludes that this matter requires trial because there are disputed questions of material fact on a number of issues subsidiary to the plaintiffs' claim that the Malden Cannabis Bylaw ("the "Cannabis Bylaw") violates the Commonwealth's cannabis statute, as applied to the plaintiffs' proposed project to open a retail marijuana establishment ("RME"). Plaintiffs contend that the Cannabis Bylaw constitutes an "unreasonably impracticable" regulation under G.L. c. 94G, § 3(c). Section 1 of Chapter 94G defines "unreasonably impracticable" to mean: "that the measures necessary to comply with the regulations, ordinances or by-laws adopted pursuant to this chapter subject licensees to unreasonable risk or require such a high investment of risk, money, time or any other resource or asset that a reasonably prudent businessperson would not operate a marijuana establishment." Factual disputes remain as to: (1) whether the Northern Strand Community Trail, which separates the plaintiffs' property at 926 Eastern Avenue from the adjacent residential neighborhood, is in fact permeable or is an "impassable barrier" as that term is used in 935 CMR 500.0002 (though there applicable only to schools); (2) what import, if any, are alleged statements made by member(s) of the Cannabis Licensing & Enforcement Commission and/or city staff as to the availability of a variance to the residential buffer zone in the Cannabis Bylaw; (3) which of the alleged fifty or so parcels within the City are eligible for use as an RME, and where those parcels are located with respect to the various zoning districts, buffer zones, other licensed RMEs (with respect to geographic diversity and principle use requirements), and why those locations are not (or were not) available to plaintiff Benevolent Botanicals LLC; and (4) the details of plaintiff Benevolent Botanical's alleged diligent search for an eligible and available location for use as an RME. Having denied the cross-motions for summary judgment, and following colloquy, the court put in place the following schedule: by February 26, 2024, parties to file a joint pre-trial memorandum: including a unified statement of the issues to be tried; a statement of undisputed facts, to the extent practicable, and identifying whether the contested facts are challenged on the basis of relevance or on some other grounds; a list of agreed-upon exhibits, to the extent practicable, and identifying whether the contested exhibits are challenged on the basis of relevance or on some other grounds; finalizing the witness lists, noting whether any witnesses will testify via zoom; identifying any motions in limine or issues that may require further briefing; and including a proposed itinerary for a view of the property. Further, the court notes its interest in evidence and exhibits addressing the dispute issues above, inter alia. Lastly, parties to file an agreed upon copy of the Malden Bylaws in its entirety. Pre-trial conference scheduled for March 4, 2024, at 9:30 A.M. Hon. Diane R. Rubin, Presiding Counsel notified via email.		
11/27/2023	Scheduled Judge: Rubin, Hon. Diane R. Event: Pre-Trial Conference VIA ZOOM. Date: 03/04/2024 Time: 09:30 AM Counsel notified via email.		
02/26/2024	Joint Pre-Trial Memorandum, filed.		
03/04/2024	Event Resulted: Pre-Trial Conference scheduled on: 03/04/2024 09:30 AM Has been: Pre-trial conference held via videoconference. Attorneys Michael Rosen and Adam Gutbezahl appeared on behalf of the plaintiffs, with Gary Oshry and Michael Clebnik present, and Attorney Alicia McNeil appeared on behalf of the defendant. Court is in receipt of parties' Joint Pre-Trial Conference Memorandum. Court and counsel reviewed the Joint Pre-Trial Memorandum, first confirming the following four issues for trial: (1) Whether the restrictions codified in Section 12.12.190 of the Code of Malden ("MCC") regarding the locations of retail marijuana establishments ("RME") in Malden violates G.L. 94G, § 3, facially and/or as applied to plaintiffs; (2) Whether the way by which Malden measures buffer zones in MCC § 12.12.190(F)(1) violates state law; (3) Whether Malden violated G.L. c. 94G, § 3(a)(2) by ordaining MCC § 12.12.190 without first obtaining approval of the ordinance by Malden voters; and (4) Whether Malden's regulatory framework and application process violates G.L. c. 94G by prolonging and delaying the review of Priority Applicants, such as participants in the Cannabis Control Commission's Social Equity Program under G. L. c. 94G, § 22. Following colloquy, the court set the following schedule. By March 8, 2024, parties to confer and confirm the following tentative trial dates (July 16-18, 2024, or August 13-15, 2024), or notify the court if October dates were preferred. By April 5, 2024, parties to file a supplemental pre-trial conference memorandum detailing the following: (1) whether closing arguments will be held at the close of the evidence or scheduled after the court receives trial transcripts and post-trial briefing; (2) whether any party intends to file motion(s) in limine and on what subject (3) a proposed schedule and route for a view of the property; and (4) whether parties will engage a court reporter or rely on the court's FTR recording system. In the event the parties are unable to reach agreement on these matters, the supplemental pre-trial conference memorandum to so specify and advise whether briefing and/or a hearing is requested. View to be scheduled once trial dates are confirmed. Hon. Diane R. Rubin, Presiding		

Docket Date	Docket Text	Amount Owed	Image Avail.
	Counsel notified via email.		
03/06/2024	Defendant's Counsel emailed the court stating the proposed dates that were discussed at the Pre-Trial Conference do not work. The court proposed October 7-9, 2024 for Trial dates.		
04/03/2024	Joint Supplemental Pre-Trial Memorandum, filed.		
04/05/2024	Notice of Docket Entry: Court has reviewed the parties' Joint Supplemental Pre-Trial Memorandum and, with the benefit of that filing, sets the following schedule, based on tentative trial dates of October 7 through 9, 2024: Motions in Limine to be filed by August 12, 2024, with oppositions to be filed by September 4, 2024, and a hearing to be held on September 11, 2024 at 2:00 p.m. With respect to the parties' proposed alternative routes for the view, that topic to be discussed also on September 11, 2024, at which time the court will also set deadlines for filing of stipulations and agreed-upon and disputed trial exhibits. The court proposes that a view be held during the week of September 29, 2024, at a mutually convenient time, mid-day. Counsel notified via email. Judge: Rubin, Hon. Diane R.		Image
04/05/2024	Scheduled Judge: Rubin, Hon. Diane R. Event: Motion in Limine Date: 09/11/2024 Time: 02:00 PM		
04/05/2024	Scheduled Judge: Rubin, Hon. Diane R. Event: View Date: 10/01/2024 Time: 11:00 AM		
08/12/2024	Plaintiffs' Motion in Limine No. 1 - Motion to Exclude all Evidence, Testimony, or Argument Concerning any and all Agreements entered into by 926 Eastern Avenue, LLC prior to June 26, 2018 to Sell or Otherwise Convey its property, filed.		 Image
08/12/2024	Plaintiffs' Memorandum in Support of their Motion in Limine No. 1, filed.		 Image
08/12/2024	Plaintiffs' Motion in Limine No. 2 - Motion to Exclude all Evidence, Testimony, or Argument Concerning any Thomas Tamagna, filed.		 Image
08/12/2024	Plaintiffs' Memorandum in Support of their Motion in Limine No. 2, filed.		 Image
08/12/2024	City of Malden's Motion in Limine No. 1 to Exclude Expert Testimony and the Report from Jonathan M. Silverstein, filed.		 Image
08/12/2024	City of Malden's Memorandum in Support of its Motion in Limine No. 1 to Exclude Expert Testimony and the Report from Jonathan M. Silverstein, filed.		 Image
08/12/2024	City of Malden's Motion in Limine to Recall Malden's own Witnesses during Malden's case in chief, filed.		 Image
08/12/2024	City of Malden's Motion in Limine to Exclude any Zoning Map, other than the Zoning Map that was part of Malden's ordinance in 2021, filed.		 Image
08/12/2024	City of Malden's Memorandum in Support of its Motion in Limine to Exclude any Zoning Map, other than the Zoning Map that was part of Malden's ordinance in 2021,, filed.		 Image
09/04/2024	Plaintiffs' Opposition to Defendant's Motion in Limine to Exclude Expert Testimony and the Report from Jonathan M. Silverstein, filed.		 Image
09/04/2024	City of Malden's Memorandum in Support of its Plaintiff's Motion in Limine No.1 to Exclude all Evidence, Testimony or Argument concerning any and all Agreements entered into by 926 Eastern Avenue, LLC prior to June 26, 2018 to sell or otherwise convey its property, filed.		 Image
09/04/2024	Plaintiffs' Limited Opposition to Defendant's Motion in Limine to Exclude any Zoning Map, other than the Zoning Map that was part of Malden's Ordinance in 2021, filed.		 Image
09/04/2024	City of Malden's Motion in Opposition to Plaintiff's Motion in Limine No.1 to Exclude all Evidence, Testimony or Argument concerning any and all Agreements entered into by 926 Eastern Avenue, LLC prior to June 26, 2018 to sell or otherwise convey its property, filed.		 Image
09/04/2024	Certificate of Service, filed.		 Image
09/11/2024	Event Resulted: Motion in Limine scheduled on: 09/11/2024 01:30 PM Has been: September 11, 2024. Hearing on Motion in Limine held via videoconference. Attorneys Michael Rosen and Adam Gutbezahl appeared on behalf of the plaintiffs, with Gary Oshry and Michael Clebnik present, and Attorney Alicia McNeil appeared on behalf of the defendant. Before the court were: Plaintiffs' Motion in Limine No. 1 - Motion to Exclude all Evidence, Testimony or Argument concerning any and all Agreements entered into by 926 Eastern Avenue, LLC prior to June 26, 2018 to sell or otherwise convey its property; Plaintiffs' Motion in Limine No. 2 - Motion to Exclude all Evidence,		 Image

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	Testimony, or Argument Concerning any Thomas Tamagna; City of Malden's Motion in Limine No. 1 to Exclude Expert Testimony and the Report from Jonathan M. Silverstein; City of Malden's Motion in Limine to Recall Malden's own Witnesses during Malden's case in chief; City of Malden's Motion in Limine to Exclude any Zoning Map, other than the Zoning Map that was part of Malden's ordinance in 2021, all together with supporting memoranda and oppositions thereto. PLAINTIFFS' MOTION IN LIMINE No.1: Following argument, court DEFERRED ruling on Plaintiff's Motion in Limine No. 1 because at this time it is unclear how the testimony and evidence about leasing activity at the proposed property location prior to adoption of the Cannabis Ordinance may be relevant to the issues before the court and because the court will be able to better evaluate any objections to this evidence at the time of trial. PLAINTIFFS' MOTION IN LIMINE No. 2: With no opposition filed and City advising that they do not intend to call Thomas Tamagna, court ALLOWED this motion. CITY OF MALDEN'S MOTION IN LIMINE No. 1: Following argument, court DENIED City's Motion in Limine seeking to preclude the introduction of plaintiffs' expert witness Jonathan Silverstein for the reasons articulated on the record, in the plaintiffs' opposition and as follows. Based on review of Attorney Silverstein's resume, I conclude he is qualified as to experience and expertise regarding local zoning in Massachusetts and the process municipalities undertake in adopting a range of zoning ordinances, as well as experience with the new cannabis statute, M.G.L. c. 94G. In the first instance, I reject defendant's argument that Attorney Silverstein's testimony should be barred because it addresses the ultimate issues in this case, specifically whether the ordinance violates M.G.L. c. 94G, because plaintiffs have clarified that Attorney Silverstein will not testify directly on this issue, but rather as to background regarding the process and analysis undertaken by municipalities to adopt new zoning. See National Amusements, Inc. v. City of Boston, 29 Mass. App. Ct. 305 (1990). Further, Massachusetts law permits does not preclude expert testimony on the ultimate issue in a case if that testimony may aid the finders of fact. See Mass. Guide to Evid. §704; Commonwealth v. Woods, 419 Mass. 366, 374-375 (1995); and Simon v. Solomon, 385 Mass. 91, 105 (1982). Here, the court as finder of fact may benefit from Attorney Silverstein's testimony, and as provided for in the Massachusetts Guide to Evidence, "[a]n opinion is not objectionable just because it embraces an ultimate issue." Mass. Guide to Evid. §704. CITY OF MALDEN'S MOTION IN LIMINE TO RECALL MALDEN'S OWN WITNESSES DURING MALDEN'S CASE IN CHIEF: With no opposition filed, court ALLOWED this motion. CITY OF MALDEN'S MOTION IN LIMINE TO EXCLUDE ANY ZONING MAP, OTHER THAN THE ZONING MAP THAT WAS PART OF MALDEN'S ORDINANCE IN 2021: Defendant here ask court to preclude introduction of draft zoning maps other than the map adopted as part of the City's Cannabis Ordinance in 2021. with no opposition, court ALLOWS this motion and will consider any other maps as may be introduced at the time of trial. Lastly, court and the parties discussed the details of the upcoming trial scheduled to commence on October 7, 2024 in person at 9:30 a.m.: By September 30, 2024, parties to deliver four Exhibit Binders to the Land Court (one copy for the court, one copy for the witness stand, and one copy for each of the parties); View scheduled on October 1, 2024, at 2:00 p.m.; and counsel to provide Sessions Clerk Jennifer Noonan with contact information for the court reporter no later than October 2, 2024. Hon. Diane R. Rubin, Presiding Counsel notified via email.		
09/13/2024	Scheduled Judge: Rubin, Hon. Diane R. Event: Trial IN PERSON. Date: 10/07/2024 Time: 09:30 AM Counsel notified via email.		
09/13/2024	Scheduled Judge: Rubin, Hon. Diane R. Event: Ongoing Trial IN-PERSON. Date: 10/08/2024 Time: 09:30 AM Counsel notified via email.		
09/13/2024	Scheduled Judge: Rubin, Hon. Diane R. Event: Ongoing Trial IN-PERSON. Date: 10/09/2024 Time: 09:30 AM Counsel notified via email.		
09/26/2024	Plaintiffs' Motion for Sanctions, filed.		
09/26/2024	Memorandum of Law in Support of Plaintiffs' Motion for Sanctions, filed.		
09/27/2024	Notice of Docket Entry: Any Oppositions to "Plaintiffs' Motion for Sanctions" to be filed by Thursday, October 3, 2024. The Court will be hearing this at the start of Trial on October 7, 2024 and asks Defendant' counsel to file the allegedly withheld documents asap.		

Docket Date	Docket Text	Amount Owed	Image Avail.
	Counsel notified via email. Judge: Rubin, Hon. Diane R.		
09/30/2024	Parties' Stipulated Findings of Fact, filed.		
10/01/2024	Event Resulted: View scheduled on: 10/01/2024 02:00 PM Has been: Held in person. Attorney Michael Rosen and Attorney Adam Gutbezahel on behalf of the plaintiffs, and Attorney Alicia McNeil on behalf of the defendant, with several parties and other interested individuals present. Hon. Diane R. Rubin, Presiding		Image
10/03/2024	City of Malden's Memorandum in Opposition to Plaintiffs' Motion for Sanctions, filed.		
10/07/2024	Event Resulted: Trial scheduled on: 10/07/2024 09:30 AM Has been: Held - First Day of Trial held in person. Attorneys Michael Rosen and Adam Gutbezahel appeared on behalf of plaintiffs, and Attorney Alicia McNeil appeared on behalf of defendant, with several parties and other interested individuals present. Court confirmed with counsel for the record that the Board of Appeals continues to be listed in the docket as a nominal defendant, with claims against the Board of Appeals maintained only for the purposes of appeal, with trial proceeding only with respect to Plaintiffs' claims against the City of Malden. Further dockets to reference the City of Malden as the only defendant. Court is in receipt of Plaintiffs' Motion for Sanctions, Memorandum of Law in Support of Plaintiffs' Motion for Sanctions, City of Malden's Memorandum in Opposition to Plaintiffs' Motion for Sanctions, and Parties' Stipulated Findings of Fact. Court Reporter, Loretta Hennessey, sworn in and transcribed the proceedings. Court heard argument on plaintiffs' Motion for Sanctions. Following argument, for the reasons stated on the record and as follows, court DEFERRED ruling on plaintiffs' motion for sanctions in light of a lack of clarity about the potential relevance of the documents (including, inter alia, several maps created by the City's GIS Operations Manager, Steve Fama) and late produced (now marked as Joint Exhibit 49) and in light of an incomplete record about both the City's efforts to undertake a thorough search and the question of relevance. During the first day of trial, on several occasions during the examination of City Planner Michelle Romero by Attorney Gutbezahel, a question arose as to whether there might be additional documents that had not been produced to the plaintiffs. Accordingly, Plaintiffs to maintain a list of such documents, and after conferring with defendant, file that list with the court. Further, with respect to Plaintiffs' motion for sanctions, court to provide the parties with an opportunity for further briefing once the scope and extent of documents at issue are identified, with parties to propose a briefing schedule that will not interfere with the parties' joint request to continue introduction of the evidence, without interruption. With respect to the view taken on October 1, 2024, Attorney McNeil noted the City's objection to commentary made by plaintiffs' counsel regarding certain properties identified, with court to disregard any such commentary to the extent it constituted argument. Court confirmed issues before the court were the same as stated in the March 4, 2024 docket: (1) Whether the restrictions codified in Section 12.12.190 of the Code of Malden ("MCC") regarding the locations of retail marijuana establishments ("RME") in Malden violates G.L. c. 94G, § 3, facially and/or as applied to plaintiffs; (2) Whether the way by which Malden measures buffer zones in MCC § 12.12.190(F)(1) violates state law; (3) Whether Malden violated G.L. c. 94G, § 3(a)(2) by ordaining MCC § 12.12.190 without first obtaining approval of the ordinance by Malden voters; and (4) Whether Malden's regulatory framework and application process violates G.L. c. 94G by prolonging and delaying the review of Priority Applicants, such as participants in the Cannabis Control Commission's Social Equity Program under G. L. c. 94G, § 22. Parties introduced Joint Exhibits 1- 48 and Parties' Stipulated Findings of Fact. Exhibit 49 (containing the late produced documents) was marked for evidence, with no objection. Plaintiff called City Planner Michelle Romero as a hostile witness, with direct examination by Attorney McNeil following. Trial to continue on October 8, 2024, with the testimony of Mr. Nelson Miller, Mr. Jonathan Silverstein, and Mr. Michael Novak. Hon. Diane R. Rubin, Presiding Counsel notified via email.		Image
10/08/2024	Event Resulted: Ongoing Trial scheduled on: 10/08/2024 09:30 AM Has been: Second Day of Trial held in person. Attorneys Michael Rosen and Adam Gutbezahel appeared on behalf of plaintiffs, and Attorney Alicia McNeil appeared on behalf of defendant, with several parties and other interested individuals present. Court Reporter, Loretta Hennessey, sworn in and transcribed the proceedings. Exhibits 50 - 63 were marked for evidence. Chalks 1-10 were introduced. With respect to Exhibits 43, 52, and 53 (excerpts of videos of certain meetings of the Cannabis Licensing and Enforcement Commission or "CLEC" played via YouTube), plaintiffs to file paper Exhibits providing a hyperlink to the videos (through a YouTube link or otherwise), as well as transcripts of the excerpts relied upon by plaintiffs. Thereafter, defendant may file supplemental transcribed portions within thirty days. With respect to the term "impassable barrier," the parties stipulated that term is not defined in the Malden Zoning Ordinance.		

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	Trial was held, with plaintiffs calling building commissioner and zoning enforcement officer, Nelson Miller, as a hostile witness, with Attorney McNeil to recall Mr. Nelson in defendant's case in chief. Mr. Novak was qualified as an expert witness on behalf of plaintiffs, as was Jonathan Silverstein who was qualified as an expert witness, for the reasons set forth on the record, and in the docket dated September 11, 2024. Trial to continue on October 9, 2024, with the continued testimony of Mr. Silverstein, and the testimonies of Mr. Christopher Fevry, Ms. Stee McMorris, Mr. Clebnik, and Mr. Gary Oshry. Hon. Diane R. Rubin, Presiding Counsel notified via email.		
10/09/2024	Event Resulted: Ongoing Trial scheduled on: 10/09/2024 09:30 AM Has been: Third Day of Trial held in person. Attorneys Michael Rosen and Adam Gutbezahel appeared on behalf of plaintiffs, and Attorney Alicia McNeil appeared on behalf of defendant, with several parties and other interested individuals present. Court Reporter, Paulette Cook, sworn in and transcribed the proceedings. Exhibits 64 - 65 were marked for evidence. Trial was held, beginning with the continued testimony of Jonathan Silverstein, followed by the testimonies of Mr. Fevry, Ms. McMorris, Mr. Oshry, Mr. Miller, and Mr. Lynch. At the close of testimony, introduction of the evidence was closed. By November 12, 2024, as agreed upon by the parties, defendant to produce the following four categories of documents to the plaintiffs: (1) The four categories of documents to which Michelle Romero testified on October 7, 2024; (2) All documents and communication concerning the City of Malden's Ad-Hoc Cannabis Committee (also known as the Cannabis Review Committee); (3) All communications from January 1, 2016 concerning City Council Paper 283 of 2018, including, without limitation, sent, received, and deleted communications for the following five e-mail custodians: Michelle Romero; Steven Fama; Anthony Rodriguez; Jadeane Sica; and Craig Spadafora; and (4) The Planning Board meeting minutes from June 19, 2018, as well as the Rules & Ordinance Committee meeting minutes from May 22, 2018 and June 26, 2018. Thereafter, by November 22, 2024, plaintiffs to file a Supplemental Motion for Sanctions, with defendant to file any opposition by December 6, 2024. Counsel may thereafter seek leave of Court to file a reply brief. Parties to file any post-trial briefs, proposed findings of fact and rulings of law, and/or supplements to any pre-trial briefing sixty (60) days after receipt of transcripts, with closing arguments and hearing on motion for sanctions scheduled for February 7, 2025, at 11:00 A.M. Hon. Diane R. Rubin, Presiding Counsel notified via email.		
10/11/2024	Scheduled Judge: Rubin, Hon. Diane R. Event: Ongoing Trial Date: 02/07/2025 Time: 11:00 AM		
10/29/2024	Transcript of October 7, 2024 October 8, 2024 October 9, 2024 before Hon. Diane R. Rubin. All briefs and/or memoranda should be submitted to the Court on or before 01/07/2025.		
11/22/2024	Plaintiffs' Supplemental Motion for Sanctions, filed. (Courtesy Copies received 11/25/2024)		
11/22/2024	Memorandum of Law in Support of Plaintiffs' Supplemental Motion for Sanctions, filed.		
11/22/2024	Appendix to memorandum in Support of Supplemental Motion for Sanctions Exhibits A - J, filed.		
11/22/2024	Appendix to memorandum in Support of Supplemental Motion for Sanctions Exhibits K - P, filed.		
11/22/2024	Appendix to memorandum in Support of Supplemental Motion for Sanctions Exhibits Q - R, filed.		
11/22/2024	Appendix to memorandum in Support of Supplemental Motion for Sanctions Exhibits S (part 2) - T, filed.		
11/22/2024	Appendix to memorandum in Support of Supplemental Motion for Sanctions Exhibit S (part 1), filed. (Courtesy Copies received 11/25/2024)		
12/06/2024	City of Malden's Supplement Motion in Opposition to Plaintiffs Supplemental Motion for Sanctions, filed.		
12/10/2024	Atty. Gutbezahel will file a Reply Brief to the Supplemental Motion for Sanctions and to the Opposition filed by January 17, 2024. Counsel notified via email. Judge: Rubin, Hon. Diane R.		
01/07/2025	Plaintiffs' Proposed Findings of Fact and Rulings of Law, filed.		
01/08/2025	Defendant, City of Malden's Motion for Leave to file Late Post Trial Motions, filed and ALLOWED. The court has accepted and docketed the Post Trial briefs. Counsel notified via email.		 

Docket Date	Docket Text	Amount Owed	Image Avail.
	Judge: Rubin, Hon. Diane R.		
01/08/2025	Defendant, City of Malden's Proposed Findings of Fact and Conclusions of Law, filed.		
01/17/2025	Reply in Support of Plaintiffs' Supplemental Motion for Sanctions, filed.		
01/28/2025	Counsel emailed the court a Stipulation between the parties as to the timing of Closing Arguments: 1) Malden's Closing Argument (maximum 25 minutes); 2) Plaintiffs' Closing Argument (maximum 25 minutes); 3) Plaintiffs' Argument on Supplemental Motion for Sanctions (maximum 12.5 minutes plus any time not used for Closing Argument); 4) Malden's Argument on Supplemental Motion for Sanctions (maximum 12.5 minutes plus any time not used for Closing Argument); and 5) Plaintiffs' Rebuttal on Supplemental Motion for Sanctions (if Plaintiffs have any remaining time).		
02/05/2025	Atty. Gutbezahl emailed the court a status as to the documents: "With respect to the late-produced documents, there were productions that occurred pre-trial and post-trial. The pre-trial production occurred on September 19, 23, 24, and 25, 2024. That production was entered into evidence at trial as Exhibit 49. The post-trial production occurred on November 12, 2024. The breakdown of that production may be found on page 9 of the Memorandum of Law in Support of Plaintiffs' Supplemental Motion for Sanctions (which I have screenshot below for this Court's convenience). We produced portions of the post-trial production, which may be found at Exhibits P and Q. We will be sure to hand-deliver today or tomorrow the remaining documents that were produced on November 12, 2024."		
02/07/2025	Trial Ends.: Ongoing Trial scheduled on: 02/07/2025 11:00 AM Has been: Held - Trial Ends. Closing arguments and hearing on plaintiffs' motion for sanctions held in person. Attorneys Michael Rosen and Adam Gutbezahl appeared on behalf of plaintiffs, and Attorney Alicia McNeil appeared on behalf of defendant, with several parties and other interested individuals present. Court is in receipt of (1) Plaintiffs' Supplemental Motion for Sanctions, (2) Memorandum of Law in Support of Plaintiffs' Supplemental Motion for Sanctions, (3) Appendix to memorandum in Support of Supplemental Motion for Sanctions Exhibits A - J, (4) Appendix to memorandum in Support of Supplemental Motion for Sanctions Exhibits K - P, (5) Appendix to memorandum in Support of Supplemental Motion for Sanctions Exhibits Q - R, (6) Appendix to memorandum in Support of Supplemental Motion for Sanctions Exhibits S (part 2), (7) Appendix to memorandum in Support of Supplemental Motion for Sanctions Exhibit S (part 1), (8) City of Malden's Supplement Motion in Opposition to Plaintiffs Supplemental Motion for Sanctions, (9) Plaintiffs' Proposed Findings of Fact and Rulings of Law, (10) Defendant, City of Malden's Proposed Findings of Fact and Conclusions of Law, and (11) Reply in Support of Plaintiffs' Supplemental Motion for Sanctions. Counsel presented their closing arguments, followed by their arguments on the plaintiffs' motion for sanctions. Following argument, court set the following schedule relative to the motion for sanctions: (1) by February 21, 2025, parties to jointly file an updated Table of Contents for all Trial Exhibits, to include newly admitted Exhibit 66 (produced to the plaintiffs after the close of the evidence), together with a copy of Exhibit 66; (2) by February 21, 2025, plaintiffs to file any supplemental motion for sanctions highlighting the case law supporting the requested relief and identifying specific late-produced documents that would have aided plaintiffs in the preparation of their case and the reasons therefore; and (3) by March 7, 2025, defendant to file any response to the plaintiffs' supplemental motion. Hon. Diane R. Rubin, Presiding Counsel notified via email.		
02/10/2025	Index of Trial Exhibits, filed.		
02/19/2025	Plaintiffs' Second Supplemental Motion for Sanctions, filed.		
02/19/2025	Plaintiffs' Memorandum in Support of Second Supplemental Motion for Sanctions, filed.		
02/21/2025	Withdrawal of Adam Garrett Gutbezahl, Esq. for Benevolent Botanicals LLC, 926 Eastern Avenue, LLC, filed		
03/10/2025	City of Malden's Motion in Opposition to Plaintiffs' Second Supplemental Motion for Sanctions filed.		
03/10/2025	Case taken under advisement.		
03/11/2025	City of Malden's Motion for a Hearing on Plaintiffs' Allegations in its Second Supplemental Motion for Sanctions Pertaining to Michelle Romero, filed.		
03/11/2025	Case no longer under advisement.		
03/14/2025	Scheduled Judge: Rubin, Hon. Diane R. Event: Hearing		

Docket Date	Docket Text	Amount Owed	Image Avail.
	Date: 05/08/2025 Time: 10:00 AM IN-PERSON. Counsel notified via email.		
04/22/2025	Plaintiffs' Response to City of Malden's Motion for a Hearing on "Plaintiffs' Allegations in Its[sic] Second Supplemental Motion for Sanctions Pertaining to Michelle Romero, filed.		 Image
05/08/2025	Event Resulted: Hearing scheduled on: 05/08/2025 10:00 AM Has been: May 8, 2025. Hearing held in person. Attorney Michael Rosen appeared on behalf of plaintiffs, and Attorney Alicia McNeil appeared on behalf of defendant. Court is in receipt of Index of Trial Exhibits, Plaintiffs' Second Supplemental Motion for Sanctions, Plaintiffs' Memorandum in Support of Second Supplemental Motion for Sanctions, Withdrawal of Adam Garrett Gutbezah, Esq. for Benevolent Botanicals LLC, 926 Eastern Avenue, LLC, City of Malden's Motion in Opposition to Plaintiffs' Second Supplemental Motion for Sanctions, City of Malden's Motion for a Hearing on Plaintiffs' Allegations in its Second Supplemental Motion for Sanctions Pertaining to Michelle Romero, and Plaintiffs' Response to City of Malden's Motion for a Hearing on "Plaintiffs' Allegations in Its[sic] Second Supplemental Motion for Sanctions Pertaining to Michelle Romero. Court heard arguments on the above sanctions motions. Following argument, court to take this case under advisement. Hon. Diane R. Rubin, Presiding		
05/09/2025	Notice of Docket Entry: Notice of Docket Entry was generated and sent to: Plaintiff: Michael Dana Rosen, Esq. mdr@riw.com Defendant: Alicia Ann McNeil, Esq. amcneillaw@gmail.com Sent On: 05/09/2025 10:23:30		 Image
05/15/2025	Affidavit of Lisa Cagno, filed.		 Image
05/15/2025	Affidavit of Alicia McNeil, filed.		 Image
05/15/2025	Certificate of Service, filed.		 Image
05/29/2025	Plaintiffs' Report Regarding Admissibility of Post-Trial Discovery, filed.		 Image
05/30/2025	City of Malden's Memorandum that all Post-Trial Discovery should be used as Evidence in the Trial and for Sanctions, filed.		 Image
08/04/2025	Appearance of Adam Garrett Gutbezah, Esq. for Benevolent Botanicals LLC, 926 Eastern Avenue, LLC, filed		 Image
12/18/2025	Notice of Docket Entry: Court notes that the relief requested by the Plaintiffs includes, among other things, a request that the court invalidate the marijuana zoning bylaw appearing at Section 12.12.190 of the Malden Municipal Code. Accordingly, court instructs Plaintiffs to promptly provide notice to the Office of the Attorney General per Mass. R. Civ. P. 24(d). Plaintiffs shall provide notice no later than December 24, 2025, with confirmation of such notice to be filed with the court. Judge: Rubin, Hon. Diane R. Notice of Docket Entry was generated and sent to: Plaintiff: Bradley L Croft, Esq. blc@riw.com Plaintiff: Michael Dana Rosen, Esq. mdr@riw.com Plaintiff: Adam Garrett Gutbezah, Esq. agg@riw.com Defendant: Alicia Ann McNeil, Esq. amcneillaw@gmail.com Sent On: 12/18/2025 11:44:39		 Image
12/18/2025	Affidavit of Michael D. Rosen, Esq., filed.		 Image
01/29/2026	Decision issued. (Copies emailed to Attorneys Bradley Croft, Michael Rosen, Adam Gutbezah, and Alicia McNeil) Judge: Rubin, Hon. Diane R.		 Image
01/29/2026	Judgment after trial entered. (Copies emailed to Attorneys Bradley Croft, Michael Rosen, Adam Gutbezah, and Alicia McNeil) Judge: Rubin, Hon. Diane R.		 Image
02/13/2026	Notice of Appeal by City of Malden to the Supreme Judicial Court filed.		 Image
03/02/2026	Withdrawal of Notice of Appeal, filed.		 Image
03/26/2026	Notice of Docket Entry: Status conference held via videoconference on March 25, 2026 via zoom. Attorney Benjamin Klein appeared on behalf of Dris Corporation. Attorney Alicia McNeil appeared on behalf of the City of Malden and City of Malden Board of Appeal. Attorney Michael Rosen appeared on behalf of Benevolent Botanicals LLC.		 Image

Docket Date	Docket Text	Amount Owed	Image Avail.
	Status conference was held as scheduled in 24 MISC 000281. However, because the plaintiffs in both 24 MISC 000281 and 22 MISC 000076 are similarly situated and each case concerns the operation of retail marijuana establishments in Malden, Attorney Michael Rosen appeared at this status conference on behalf of the plaintiff in 22 MISC 000076, Benevolent Botanicals LLC. Court inquired as to how this case should move forward in light of the decision issued in 22 MISC 000076. Attorney Klein reported that the parties disagree about the interpretation of the Benevolent Botanicals decision and judgment. Attorney Klein reported that his client continues to await clarity about what zoning relief is necessary to open and operate a retail marijuana establishment in Malden. Counsel in 22 MISC 000076 reported that the parties disagree about the scope of the court's decision. Court then set the following schedule: By April 8, 2026, Attorney Rosen to file a motion for clarification in 22 MISC 000076 to the extent there is any ambiguity about the scope of the court's decision; By April 22, 2026, the City to file any opposition thereto. Hearing on the motion for clarification scheduled for April 28, 2026 at 9:30A.M. Court also encouraged the parties in 22 MISC 000706 to consider mediation to avoid the time, expense, and risk of protracted litigation. Court maintains in place the stay of 24 MISC 000281 Dris Corporation, et al v. City of Malden Board of Appeal, et al. until the April 28, 2026 status conference. Judge: Rubin, Hon. Diane R. Notice of Docket Entry was generated and sent to: Plaintiff: Bradley L Croft, Esq. blc@riw.com Plaintiff: Michael Dana Rosen, Esq. mdr@riw.com Plaintiff: Adam Garrett Gutbezah, Esq. agg@riw.com Defendant: Alicia Ann McNeil, Esq. amcneillaw@gmail.com Sent On: 03/26/2026 12:52:31		
03/26/2026	Scheduled Judge: Rubin, Hon. Diane R. Event: Motion Date: 04/28/2026 Time: 09:30 AM		
04/03/2026	Plaintiff's Motion for Clarification of Judgment, filed.		
04/22/2026	Defendant, City of Malden's Response Plaintiffs' Benevolent Botanicals LLC and 926 Eastern Avenue LLC Motion for Clarification of Judgment, filed.		
04/23/2026	Certificate of Service, filed.		
04/27/2026	Notice of Docket Entry: Court notes that at least one excerpt from the Malden zoning bylaw appended to the City's Response to Plaintiffs' Motion for Clarification of Judgement appears to differ from the complete bylaw introduced into evidence at trial. Specifically, the Table of Uses (Section 12.12.030) differs. Court requests that counsel for the City file a clarification with the court prior to the hearing tomorrow. Judge: Rubin, Hon. Diane R. Notice of Docket Entry was generated and sent to: Plaintiff: Bradley L Croft, Esq. blc@riw.com Plaintiff: Michael Dana Rosen, Esq. mdr@riw.com Plaintiff: Adam Garrett Gutbezah, Esq. agg@riw.com Defendant: Alicia Ann McNeil, Esq. amcneillaw@gmail.com Sent On: 04/27/2026 14:40:55		 
04/27/2026	Defendant, City of Malden's Response for Clarification of Its Filing of the Ordinance "Table of Uses - MCC sec 12.12.030", filed.		
04/28/2026	Event Resulted: Motion scheduled on: 04/28/2026 09:30 AM Has been: Hearing on Plaintiffs' Motion for Clarification of Judgment held via videoconference. Attorneys Michael Rosen and Adam Gutbezah appeared on behalf of Benevolent Botanicals LLC. Attorney Alicia McNeil appeared on behalf of the City of Malden and City of Malden Board of Appeal LLC. Attorney Benjamin Klein appeared on behalf of Dris Corporation. Court is in receipt of Plaintiff's Motion for Clarification of Judgment and Defendant, City of Malden's Response Plaintiffs' Benevolent Botanicals LLC and 926 Eastern Avenue LLC Motion for Clarification of Judgment, and Defendant, City of Malden's Response for Clarification of its Filing of the Ordinance "Table of Uses ~ MCC section 12.12.030." At the outset, the court notes two housekeeping matters: First (per the court's April 27, 2026 docket entry requesting a clarification regarding an apparent discrepancy in Exhibit 3 to the Defendant's Response), the Defendant has now filed Exhibit 3(a) [Replacement] to replace Exhibit 3. Second: both counsel agreed and confirmed that Section 12.32.60 of the Malden City Code incorrectly references Section 12.12.20, but such reference is a typo and instead should read "Section 12.12.190." Parties seek clarification of the January 29, 2026 Judgment entered in this action because they disagree about the import of the Decision and Judgment. This dispute arose as the Plaintiffs began the process of applying for permits and approvals following issuance of the Decision and Judgment. In this context, Plaintiffs contend that a marijuana-specific special permit is no longer required in order to operate a retail marijuana establishment. Instead, according to Plaintiffs, they may proceed to seek any applicable permits and approvals just like any other typical retail establishment in Malden's Industrial 1		

Docket Date	Docket Text	Amount Owed	Image Avail.
	Zoning District. Defendant, however, contends that a marijuana special permit is still required because the Judgment struck only Section 12.12.190 of the Bylaw and the Bylaw elsewhere references to marijuana -- in Sections 12.12.010 (Special Permit Requirements), 12.12.030 (Table of Uses), and 12.32.060 (Zoning Definitions). Following argument, for the reasons articulated on the record, in the Plaintiffs' papers, the court concludes that additional sections of the Bylaw should be stricken in order to effectuate the Decision. Accordingly, Plaintiffs' motion is ALLOWED and court puts in place the following schedule to ensure all parties are able to address the final terms of a clarified judgment: By May 8, 2026, Plaintiffs to file a proposed clarified judgment addressing each provision of the Bylaw that they contend should be stricken for consistency with the Decision. The proposed judgement may also address CLEC related licensing requirements, if any, for informational purposes. Also by May 8, 2026, Plaintiffs to file an affidavit regarding the gross square footage of their proposed retail establishment (because there may be a dispute about how the Table of Uses applies to the proposed establishment); By May 15, 2026, Defendant to advise the court if they are prepared to work collaboratively with Plaintiffs to negotiate a stipulated resolution laying out the permits and approvals necessary for Plaintiffs to commence operations; By May 20, 2026, Defendant to file any opposition to Plaintiffs' affidavit and/or proposed clarified judgment. Hon. Diane R. Rubin, Presiding		
04/30/2026	Notice of Docket Entry: Notice of Docket Entry was generated and sent to: Plaintiff: Bradley L Croft, Esq. blc@riw.com Plaintiff: Michael Dana Rosen, Esq. mdr@riw.com Plaintiff: Adam Garrett Gutbezah, Esq. agg@riw.com Defendant: Alicia Ann McNeil, Esq. amcneillaw@gmail.com Sent On: 04/30/2026 11:37:16		 Image
05/08/2026	Affidavit of Gary Oshry, filed.		 Image
05/08/2026	Plaintiffs' Proposed Clarified Judgment, filed.		 Image
05/12/2026	Affidavit of Adam G. Gutbezah, Esq., filed.		 Image
05/15/2026	Defendant City of Malden's, Notice to the Court pursuant to the Court's April 28, 2026 Order, filed.		 Image
05/20/2026	Defendant, City of Malden's, Proposed Clarified Judgment and Response to Plaintiffs' Proposed Timeline, filed.		 Image
05/21/2026	Plaintiffs' Response to Defendant's Proposed Clarified Judgment, filed.		 Image
05/21/2026	Defendant, City of Malden's, Sur-Reply to Defendants' Response to Malden's Proposed Clarified Judgment and Response to Plaintiffs' Proposed Timeline, filed.		 Image
05/26/2026	Scheduled Judge: Rubin, Hon. Diane R. Event: Status Conference Date: 05/27/2026 Time: 11:30 AM VIA ZOOM. Counsel notified via email.		

Financial Summary

Cost Type	Amount Owed	Amount Paid	Amount Dismissed	Amount Outstanding
Cost	\$255.00	\$255.00	\$0.00	\$0.00
	\$255.00	\$255.00	\$0.00	\$0.00

Receipts

Receipt Number	Receipt Date	Received From	Payment Amount
428403	02/14/2022	Croft, Esq., Bradley L	\$255.00
			\$255.00

Case Disposition		
Disposition	Date	Case Judge
Judgment after trial entered.	01/29/2026	Rubin, Hon. Diane R.