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October 15, 2020

Arlington Select Board
730 Massachusetts Avenue
Arlington, MA. 02476

RE: Clarification following Monday October 5th, 2020 HCA licensing Hearing
The Human Connection's Presentation

Dear Members of the Town of Arlington Select Board:

Please allow this letter to clarify and expand upon the points that my client, The Human Connection made the other night, during the Select Board presentation. We would like to provide information and clarification related to the following:

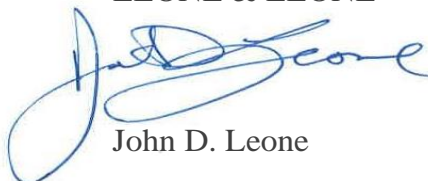
1. The Proposed Location is in Conformance with Arlington's Zoning Bylaw
2. The Proposed Location is in Conformance with Cambridge's buffers around schools, etc.;
3. The Proposed Location offers Increased Potential Municipal Income;
4. As Community Members, The Human Connection is Committed to Arlington.

I am providing herewith a one-page Executive Summary followed by a more detailed discussion of each point of clarification. Please let us know if there are additional questions or if there is additional information either I or my client may provide.

We look forward to continuing the discussion of this important issue with you at the next Select Board meeting.

Thank you for your consideration,

Very truly yours,
LEONE & LEONE



John D. Leone

Executive Summary

1) The Proposed Location is in Conformance with Arlington's Zoning Bylaw

- a. No 'proximity' buffer exists in state regulations; no standard of measurement exists.
- b. Arlington's Zoning Bylaw sets a Proximity Buffer at 2,000 feet from 'property line to property line.'. It is suggested that measuring from the curb cut of property line to the curb cut of property line is the most sensible measurement in the interest of the Town.
- c. Where definitions of measurement do exist at the state level, eg around K-12 schools, Towns are enabled to define and set their own measurements
- d. We suggest the ARB has substantial authority to waive, modify, or otherwise adjust requirements of the Zoning Bylaw in its Environmental Design Review ("EDR") process, all applicants are subject to. Please see the Aug 13th, 2020 memorandum from Town Counsel to the ARB relative to the EDR process, supporting this view.

2) The Proposed Location is in Conformance with Cambridge's buffers

- a. Cambridge's special permit criteria now sets its buffer around K-12 schools at 300 ft, and Cambridge has criteria to reduce that buffer further.
- b. We provide an example of a Cambridge dispensary within 500 ft of a K-12 school, in contrast to state buffers.

3) The Proposed Location offers Increased Potential Municipal Income

- a. The dispensary on the border with Cambridge would produce more revenue for the Town than a dispensary located on Summer St., since Arlington's domestic market would be served by Arlington-based dispensaries, but a Cambridge-border dispensary could additionally compete for the North Cambridge and Alewife market
- b. The Mass. Ave. Economic Corridor, near The Human Connection's proposed site, is distinct from the Broadway Economic Corridor, near Eskar, as evidenced in Arlington's 2015 Master Plan.

4) As Community Members, The Human Connections Owners Are Committed to Arlington

- a. The Human Connections is a Group A Priority status applicant, made up entirely of Arlington residents, committed to supporting the local business community.
- b. If accepted, it would keep the benefits of success *and ownership* local, increasing the economic and commercial benefit to the Town.
- c. Being local it has a higher likelihood of success in local permitting, state application, and execution of their business plan.
- d. Their team is committed to making this a success collectively for their employees, for themselves, and for the Arlington community.

1. The Proposed Location is in Conformance with Arlington's Zoning Bylaw

- a) No 'proximity' or 'density' buffer exists in the state regulations; therefore, no standard of measurement exists for a proximity or density buffer.
- b) Buffers that do exist, eg those around k-12 schools or areas in which children commonly congregate, may be revised by municipalities, as seen in The Cambridge example below
- c) In giving power to local authorities to adjust buffers, the state *specifically allows Towns to define their own measures of distance*. This has been true as far back as DPH regulations:
 - i. "If a municipality enacts its local bylaw or ordinance regarding the buffer zone, it may also determine its own standard of measure." ([Guidance for Municipalities](#), pg. 2 under 'Buffer Zones')
 - ii. The DPH measured the distance from building to building rather than Property line to Property line. We submit that buffer zone measurements have not been fixed and that they evolve with the development of the industry
- d) For the density buffer, we have the term "property line to property line" in our bylaws, which we suggest could and should be interpreted as "[*curb cut of the*] property line to [*curb cut of the*] property line" since the point of access, not the 'as the crow flies' property line, is the most relevant measure of interest to the Town for the purpose of the 2,000 foot density buffer.
- e) In a recent attempt to identify the shortest walking path between nearest property lines for the proposed location, my client found and walked a route of 2,600 feet, which entailed cutting through St Paul's cemetery, ducking under a fence, and wading through a row of trees along the Alewife bike path. Alternatives using conventional streets were considerably longer.
- f) The Human Connection's location *benefits* from being located on a large commercially zoned lot with its increased privacy and security towards the back of the property away from Massachusetts Avenue. Paradoxically, the back of the lot, which happens to be physically closer to another pending adult use retailer, Eskar, would be less accessible to that other applicant's location, not *more* accessible.
 - i. Further, defining distance as "[*nearest*] property line to [*nearest*] property line" makes a disadvantage of what should be seen as an advantage of The Human Connection's 23-35 Massachusetts Avenue site: its distance from the street and therefore from the other adult use establishment.
 - ii. This would make *size* a unique and disadvantaged feature for the few large, appropriately zoned parcels in Arlington, where the location of the curb cut and the location of the building on the site may be distant.

- g) To make the entire 23-35 Mass Ave location viable may not require an ARB variance or changes to Bylaw, but merely a clarification and codification of the measurement of proximity outlined in the bylaw for the Arlington Building Inspector
 - i. Eg: The Measurement of proximity from one Adult Use Retailer to another shall be a radius of 2,000 feet as measured from curb cut of property line to curb cut of property line.
- h) The ARB has substantial authority to waive, modify, or otherwise adjust requirements of the Zoning Bylaw in its Environmental Design Review ("EDR") process, to which The Human Connection's application is subject
 - i. Town Counsel's memorandum of August 13, 2020 to the Arlington Redevelopment Board, ([Correspondence Received from Town Counsel D. Heim 08132020](#)), opines that the ARB has substantial discretion and authority to exceed or waive the provisions of the Bylaw under ARB's charter legislation, the Zoning Bylaws, and the EDR and Special Permit processes
 - 1) "The ARB is a special permit granting authority vested with the responsibility and discretion to employ qualitative standards rather than simply apply tables of regulations. The language expressed in EDR's provisions invites creativity and innovation as well as a potential exchange of relaxed requirements for conditions of stated value to the Board and community." (Authority, pg 8)
 - 2) We argue ARB's substantial authority in the EDR process enables it to allow for exceptions to be made to the proximity buffer, however it is defined, under circumstances where the density buffer runs counter to the purpose of the Bylaw, the Board's stated goals and policies, and values of the community.
- i) Because there is no proximity buffer at the state level, and no definition for its measurement, the measurement of the buffer must be defined and codified locally.

2. **The Proposed Location is in Conformance with Cambridge's buffers**

- a) [Cambridge Special Permit Criteria](#), 11.803.3, allows buffer zones around k-12 schools and playgrounds for cannabis dispensaries to be 300 feet, or less than 300 feet if certain criteria are met [**emphasis** ours, for ease of reading].
 - 11.803.3 Buffer Zones.
 - i. (a) A Cannabis Retail Store or Cannabis Production Facility shall not be permitted **within 300 feet** of a pre-existing public or private school providing education in kindergarten or any of grades one through 12, except where the Planning Board, in issuing a special permit, approves a reduced distance upon finding that the location will cause no substantial adverse impact due to site-specific factors or other mitigating efforts agreed to in writing by the permittee and made conditions of the special permit.

(b) A Cannabis Retail Store or Cannabis Production Facility shall not be permitted **within 300 feet** of a pre-existing public children's playground, public youth athletic field, or public youth recreation facility, except where the Planning Board, in issuing a special permit, approves a reduced distance upon finding that the location will cause no substantial adverse impact due to site-specific factors or other mitigating efforts agreed to in writing by the permittee and made conditions of the special permit.

- ii. *Note that Cambridge has found multiple instances in which siting a dispensary less than 300 feet from schools caused no substantial adverse impact due to site-specific factors and has allowed applications to proceed through to licensing.*

b) Cambridge Day, Alex Bowers, "[Proposed recreational pot shop is acceptable 400 feet from school complex, officials decide](#)" Oct 18, 2019 -- *An example of where Cambridge has allowed a cannabis use within 500 feet of a school.*

3. **The Proposed Location offers Increased Potential Municipal Income**

- a. Having an additional dispensary on the Cambridge border represents a significant potential increase in municipal income versus a Summer St sited dispensary
 - i. Arlington's domestic market, as well as portions of Lexington and Winchester's population are likely to be captured by an Arlington-based dispensaries regardless of where they are sited, especially if they are located at the poles of Arlington's thoroughfares
 - ii. Meanwhile, a Cambridge border-based Arlington dispensary could compete in the lucrative Alewife and North Cambridge markets, bringing in additional commerce and municipal income to the town, above forecast expectations.
 - iii. The Human Connection's proposed location would be the closest dispensary to Alewife by walking or bike and is near densely residential North Cambridge
- b. The Mass. Ave. Economic Corridor, near The Human Connection's proposed site, is distinct from the Broadway Economic Corridor, near Eskar.
 - i. We suggest that Eskar's economic area relates more to Somerville's Teele Square, Tufts area, and West Somerville broadly, and that the Mass. Ave. Economic Corridor, near The Human Connection's proposed site, relates more to North Cambridge, Alewife, and Capitol Square.
- c. This is born out in [Arlington's 2015 Master Plan](#), which highlights Broadway as a priority development area, distinct from the centers that run along Mass. Ave. Some examples of this assumption, which runs throughout the Master Plan, include:
 - i. "The three village centers and Broadway are priorities for redevelopment," implying the Broadway Economic Corridor is a distinct developmental area, apart from the three villages

- ii. "Priority development areas might include the Mill Brook corridor, Broadway, and Massachusetts Avenue," once again implying Broadway is a development area distinct from Mass. Ave.
 - iii. "The Town should encourage commercial properties along Massachusetts Avenue, Medford Street, and Broadway to develop to their highest and most valuable potential by slightly expanding height and lot coverage limits, and making more flexible requirements for on-site open space and parking." Here, we note the Master Plan recommendation is especially relevant for my client's proposed site.
- d. Motivated by the Master Plan, The Human Connection has proposed three similarly sized and populated districts that map onto Arlington's main thoroughfares (see page 42 of the presentation).

4. **Commitment to Arlington**

1. The Human Connection is a top tier, Group A Priority applicant in Arlington as it is 100% owned by Arlington Residents
2. Being an entirely Arlington-owned entity, it is committed to the Town. We hope that the Town believes:
 - Having an Arlington applicant and supporting the local business community is important;
 - That keeping the benefits of ownership and success from an Arlington-based cannabis company in town is valuable;
 - That an Arlington-based business will have a high likelihood of success in its local permitting, state application, and execution of its local business plan.
3. My client is committed to continue to work with the Town on advancing this site, which it believes is the most ideally suited location for the intended use of any proposed or operating site in Town
4. The Human Connection is committed to the Town. If the proposed location is found to be unsuitable, they are willing to continue to work with the Town to identify a mutually acceptable alternative site, although they firmly believe that the proposed location is suitable on all levels.
5. Jared lives here. He and his wife raise their children here. They and all who are a part of The Human Connection team will make this a success collectively – for their employees, for themselves, and for the Arlington community as a whole.

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