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The Bowditch & Dewey Real Estate Blog

Town of Uxbridge Refunds \$1,171,633.60 in Community Impact Fees to Caroline's Cannabis, LLC

BY JOSEPH R. DUQUETTE AND AMANDA ZURETTI • FEBRUARY 13, 2024

On December 23, 2023, the Town of Uxbridge entered into an Agreement for Judgment with retail marijuana licensee Caroline's Cannabis, LLC to refund \$1,171,633.60 in excess community impact fees paid to the town, which amounted to approximately 80% of fees paid by Caroline's Cannabis LLC pursuant to its Host Community Agreement with the town.

In 2017, M.G.L. c. 94G, § 3(d) allowed cities and towns to enter into Host Community Agreements with marijuana licensees that required community impact fee payments up to 3% of gross revenue. Caroline's Cannabis LLC executed such a Host Community Agreement with Uxbridge in 2018.

According to the Massachusetts Cannabis Business Association's May 2022 Host Community Agreements Analysis 2.0, many municipalities entered into Host Community Agreements with cannabis licensees that "imposed the maximum allowed impact fee [3% of gross revenue] and used a number of different reasons to justify it."

Sparked in part by criticisms from the budding marijuana industry, M.G.L. c. 94G, § 3(d) was amended by Chapter 180 of the Acts of 2022 to require that a "community impact fee shall: (A) be reasonably related to the costs imposed upon the municipality by the operation of the marijuana establishment or medical marijuana treatment center, as documented pursuant to [applicable provisions of the statute]; (B) amount to not more than 3 percent of the gross sales of the marijuana establishment or medical marijuana treatment center; (C) not be effective after the marijuana establishment or medical marijuana treatment center's eighth year of operation; (D) commence on the date the marijuana establishment or medical marijuana treatment center is granted a final license by the commission; and (E) not mandate a certain percentage of total or gross sales as the community impact fee."

In 2022, Caroline's Cannabis LLC filed suit, alleging in its complaint that the town "has neglected to provide the statutorily required documentation of the costs the town has incurred that are reasonably related to Caroline Cannabis's operation" as required under its Host Community Agreement and M.G.L. c. 94G, § 3(d). Additionally, the

town had entered into Host Community Agreements with 18 other licensees with community impact fee payments ranging from 0% to 1.75%.

The Town of Uxbridge was unable to provide sufficient documentation of impacts resulting from Caroline's Cannabis LLC's business operations to support the sum of the community impact fees paid, and the suit was resolved by agreement between the parties.

Given the practice of many municipalities to impose the 3% of the gross sales community impact fee, the outcome of Caroline's Cannabis LLC's litigation may have just paved the way for many more Massachusetts cannabis businesses to demand community impact fee payment refunds from municipalities. The case is docketed as Worcester Superior Court Caroline's Civil Action No. 22 85CV 00406.