

FARBER AND LINDLEY, LLC
30 BOLTWOOD WALK - FRONT 101
AMHERST, MASSACHUSETTS 01002-2187

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August 20, 2021

Honorable Mayor Terence Murphy
Holyoke City Hall
536 Dwight Street, Room 1
Holyoke, MA 01040

Dear Mayor Murphy,

Please be advised that this office represents Open Square, LLC and Open Square Properties, LLC (hereafter Open Square), in their legal concerns. I am writing to you regarding the proposed Marijuana Manufacturing Establishment (MME) at 109 Lyman Street in Holyoke, City Lot 023-01-014.

Reasons for Letter

I write on Open Square's behalf to ask for clarity around the current status of any potential MME at 109 Lyman Street including conversations with city officials or applications for a Host Community Agreement or Special Permit, to express our sincere and legal objections to a potential MME at 109 Lyman Street and to let the city know our plans should actions be taken to issue a Host Community Agreement or approve or seek approval for a Special Permit for a MME at this location.

Specific Objections

This property is directly across Lyman Street from Open Square, an existing mixed-use development with over 40 small and medium businesses. For the reasons expressed below, we oppose the establishment of such a business at this location:

1. A MME is not permitted at 109 Lyman Street under the current Holyoke Zoning Ordinance, Section 7.10 Marijuana Facilities as amended and approved on May 20, 2021.
2. A MME at 109 Lyman Street will harm existing businesses at Open Square including retail, service and banquet facilities.
3. A MME at 109 Lyman Street will harm Open Square's ability to attract new tenants.

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7 EXCHANGE STREET, BARRE, MA 01005
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**Holyoke City Clerk's
Holyoke, MA**

4. A MME at 109 Lyman Street will halt Open Square's development progress, particularly plans for residential units in Mill 1, thereby also harming the city. Open Square cannot market or sell residential lofts with cannabis odor present at any level.

Current Understanding

In January of 2021 a Delaware-based company, Enamel Properties LLC, purchased lot 023-01-014 (109 Lyman Street) for \$500,000. Small Wonder Cultivation, LLC, a Massachusetts company was also established in January of 2021 at this location to "Apply for a License with the CCC". One of the owners of the Small Wonder Cultivation has posted videos on-line describing the proposed MME operations at 109 Lyman Street. A lawyer for Small Wonder Cultivation has had conversations with City staff about applying for a MME license.

Legal Objection 1: MME Not Permitted at 109 Lyman Street under the Holyoke Zoning Ordinance.

Section 7.3 Location

- a. A MME shall not be located in buildings that contain any residential units, including transient housing such as hotels, motels, and dormitories. *An MME shall have a 200-foot buffer from any other use as listed in Table 4.3 Table of Principles uses.*

Mill 1 and Mill 4 at Open Square are within 200 feet of 109 Lyman Street and contain *other uses* including but not limited to Restaurant, Retail, Personal Service, and Business.

Legal Objection 2: Odor Control Per Holyoke Zoning Ordinance

Section 7.10.2- Physical Requirements

- d. Ventilation- all marijuana establishments shall be ventilated in such a manner that:
 - ii. *No odor from marijuana cultivation, processing or consumption can be detected by a person with an unimpaired and otherwise normal sense of smell at any adjoining use or adjoining property to the marijuana establishment.*

My client's due diligence indicates the odors generated from cultivation of marijuana cannot be filtered or redirected to eliminate all odors outside the facility, no matter the technology or expenditure to do so. This is the reason why most cultivation operations are established away from other businesses, often in either purely industrial areas or rural locations. Contrary to 109 Lyman Street being an isolated location, it is near the center of the City and right next to over 40 existing small and medium businesses. It is inevitable that odors from an MME at 109 Lyman Street would be detected by a person with an unimpaired and otherwise normal sense of smell well beyond the 200 foot buffer already mandated under the Holyoke Zoning Ordinance. The idea that individuals, businesses or their customers would wish to operate or visit a business or hold an event next to a facility that would make the surrounding area smell like marijuana, is patently absurd.

Legal Objection 3: Negative Financial and Social Impact on City and the Neighborhood Violates Holyoke Zoning Ordinance

Section 9.3.2 - Special Permits/Criteria

Special permits shall be granted by the special permit granting authority, unless otherwise specified herein, *only upon its written determination that the benefit to the city and the neighborhood outweigh the adverse effects of the proposed use, taking into account the characteristics of the site and of the proposal in relation to that site.* In addition to any specific factors that may be set forth in this ordinance, the determination shall include consideration of each of the following:

1. Social, economic, or community needs which are served by the proposal;
4. Neighborhood character and social structures;
5. Impacts on the natural environment; and
6. Potential fiscal impact, including impact on city services, tax base, and employment.

The adverse effects of the proposed use on these criteria are clear, including:

- The loss of visitors to Open Square retail and hospitality establishments that bring people downtown every day.
- The presence of a windowless mill building that expels unpleasant smells into the neighborhood while eliminating the potential development of residential units in Mill 1.
- The loss of Mill 1 Event Venue bookings, and customers to Serene Salon, Pearl Bridal Shop, and Comfort Bagel which bring thousands of people to downtown Holyoke each year.

Legal Objection 4: Financial Harm to Open Square, its tenants and the City of Holyoke.

The establishment of an MME, which would include any activity of cultivation or other use that could generate odors of marijuana, would have a severe negative impact on Open Square and the businesses located at Open Square. The very real potential financial impact to the businesses at Open Square could run into millions of dollars, in addition to harming the largest development in downtown Holyoke that's been supporting the city economically and socially for twenty-one years. Many existing businesses including the wedding and event venue and other retail establishments would not be able to operate if the smell of marijuana is present for customers visiting their establishments. This in turn would have a negative impact on the growth of the canal district as a vibrant mixed use urban center as well as on tax revenue to the City of Holyoke. The modest tax revenue gained by the City from a small MME establishment at this location would be more than off-set by these losses.

Potential Legal Action

Given the extreme social, cultural and financial impact that such an establishment would have in this location, if allowed, my client would have no alternative but to bring a legal challenge to its establishment and seek financial remuneration in the form of a taking by its establishment. I do

not make this statement as a threat, but to make sure you understand the devastating impact such an establishment would have on my client and all of his tenants and their businesses.

Request For Follow-up

We request answers in writing via email to john@opensquare.com to the following questions within 10 business days:

1. Please confirm that the City has not received a Host Community Agreement application for lot 023-01-014 and please notify us if the City does receive one.
2. Please describe the process for reviewing and executing a Host Community Agreement.
3. Please confirm that the City has not received a Special Permit Application for lot 023-01-014 and please notify us if the City does receive one.

Very Truly Yours,



Lawrence J. Farber, Esq.

For Open Square Properties LLC and Open Square LLC

↓ Cc:
All City Councilors

All Planning Board Members

Director of Planning & Economic Development

Members of the Board of Appeals

Enamel Properties, LLC c/o David Gaz, DMD

Scott Curran