

May 30, 2024

Via Electronic Mail

Jeffrey Shaw, Chair
Board of Selectmen
Uxbridge Town Hall
21 South Main Street
Uxbridge, MA 01569

Re: Host Community Agreement, Ironstone Express, Inc.

Dear Chair Shaw:

The Massachusetts Office of the Inspector General (OIG) received a complaint in June 2020 about the approval process for the host community agreement (HCA) for a marijuana retail business owned by Mr. Barry R. Desruisseaux, who was then serving on the town of Uxbridge's Planning Board.

Desruisseaux incorporated Ironstone Express, Inc. (Ironstone) in February 2019. Through Ironstone, Desruisseaux planned to convert a car wash he owned in Uxbridge into the state's first drive-through retail marijuana dispensary.

State law requires that a marijuana business obtain an HCA from the municipality where it intends to operate. The OIG investigated the circumstances surrounding the execution of Ironstone's HCA with Uxbridge. The OIG found that the HCA that Desruisseaux signed and returned to the town was significantly different than the version the town had provided to Desruisseaux, with terms more favorable to Ironstone than those town officials had approved. No town official reviewed the HCA returned by Desruisseaux before it was signed by the acting town manager.

The OIG also found in the course of its investigation that the town had failed to ensure that town employees completed mandatory state ethics training as required by Section 28 of Chapter 268A of the Massachusetts General Laws.

In light of its investigative findings, the OIG recommends that the town (1) implement measures to prevent and detect unnegotiated changes to contracts; (2) review the Ironstone HCA to determine if legal remedies are available; and (3) ensure that municipal officials complete state ethics training.

Background

State law and Cannabis Control Commission (CCC) regulations require that a municipality and marijuana business execute an HCA as a condition of the CCC granting the business a marijuana establishment license.

On March 25, 2019, the Uxbridge Board of Selectmen voted to have then-Town Manager Angeline Ellison negotiate an HCA with Desruisseaux for his proposed marijuana retail business. On April 9, 2019, Ellison provided Desruisseaux with an eight-page draft HCA, with 31 numbered paragraphs setting the terms for the business's operations in Uxbridge. The terms related to areas such as security at the facility, impact fees and emergency response procedures, in addition to a host of other requirements.

On April 12, 2019, Desruisseaux responded by email, raising objections to eight paragraphs in Ellison's draft HCA. Claiming that those provisions were too onerous or unfair, Desruisseaux requested an HCA modeled on the agreement approved a year earlier for the town's first retail marijuana business. On April 15, 2019, Ellison replied, in part, "The host community agreements have been crafted by present town counsel to meet the requirements of the town's bylaws and direction given by respective select board members Unfortunately[,] the HCAs are not meant for comparison as each business is different."

Soon thereafter, Ellison left her town position, and the Board of Selectmen appointed Police Chief Marc L. Montminy as acting town manager on April 29, 2019.

On May 9, 2019, the then-administrative assistant to the town manager and the Board of Selectmen emailed Desruisseaux the final version of the HCA, which had been prepared by Uxbridge's town counsel. The HCA was eight pages long with 36 numbered paragraphs. The administrative assistant instructed Desruisseaux to review the document, sign two copies, and return them for Montminy's signature.

Desruisseaux prepared, signed and returned a different document on behalf of Ironstone. In Desruisseaux's version, 12 of the numbered paragraphs from pages 4 and 5 of the town's version had been removed and the remaining paragraphs had been renumbered. A substantial part of the HCA's section on community impact fees had been deleted and the "Draft" watermark had been removed from the first page. His version had the same font, typeface and format as the town's final version but was two pages shorter. Pages 2, 3 and 6 of Desruisseaux's version were identical to pages 2, 3 and 8 of the town's version, including the same typos, incorrect punctuation, line breaks and page breaks.

The deleted sections pertained to core operational and public safety matters. Several of Desruisseaux's edits were especially noteworthy. For example, Desruisseaux removed the specified hours of operation, effectively allowing 16 more hours per week of retail sales. Desruisseaux also eliminated the town's input on facility managers and struck the section stating the circumstances under which the town could terminate the HCA, as well as the provision limiting the agreement to five years.

Desruisseaux hand-delivered his version of the HCA to the town manager's office. On May 14, 2019, Montminy signed the Desruisseaux version of the HCA.

Ironstone opened for business in August 2022 after the town increased the number of retail marijuana outlets permitted under its zoning bylaws.

Findings

Finding 1: Desruisseaux introduced unnegotiated changes to the HCA that affected Ironstone's operational and public safety requirements in Uxbridge.

Desruisseaux told the OIG that the only person he negotiated with was Ellison; he did not negotiate the HCA's terms with Montminy, who was then the acting town manager. Nor did Desruisseaux negotiate with the town counsel or any other representative of the town. Desruisseaux acknowledged that after receiving the HCA from the administrative assistant on May 9, he prepared an alternative version, removing 12 paragraphs he deemed objectionable. In so doing, Desruisseaux made material changes to Ironstone's operational requirements in Uxbridge.

The OIG does not find credible Desruisseaux's assertion that he informed a clerical employee at Town Hall that he had substituted his own version of the HCA for the one the town had sent him for his signature. Nor does the OIG believe, if it were credible, that it is a cure. Pursuant to the instructions from the town manager's administrative assistant, Desruisseaux should have been fully aware that the town was not negotiating the HCA at that point and had sent him the HCA solely for his signature. Furthermore, he did not communicate the changes to the acting town manager, town counsel or any other person with authority to negotiate the HCA.¹

Finding 2: No Uxbridge official reviewed the version of the HCA that Desruisseaux prepared, signed and returned to Town Hall before the acting town manager signed it.

Montminy told the OIG that the agreement he signed on May 14, 2019, was the document he retrieved from the town manager's inbox. He said he was unaware of earlier HCA drafts containing different terms.

Montminy understood his duties as acting town manager to be mainly as a caretaker during the short period between Ellison's departure and the appointment of an interim town manager. He said he signed the HCA from the town manager's inbox without a review because he believed someone else was responsible for verifying its language.

Town counsel did not review any version of the Ironstone HCA after sending it to the administrative assistant, who, in turn, forwarded it to Desruisseaux on May 9, 2019. Town counsel

¹ In an interview in April 2023, Desruisseaux said he verbally informed a clerical employee that he had substituted his own HCA for the one the town sent for his signature. However, Desruisseaux did not mention this fact during an earlier interview in September 2020, and the OIG found no evidence that Desruisseaux made such a disclosure.

stated that no one from the town sent her the signed HCA that Desruisseaux returned to Town Hall. She told the OIG that it was not the town's practice to have counsel review documents at that stage.

Conclusions and Recommendations

The OIG concludes that the town of Uxbridge did not have strong contracting procedures in place to mitigate vulnerabilities like that illustrated by this troubling course of events.

The OIG also made an incidental finding that not all town board members had completed mandatory state ethics training as required by Section 28 of Chapter 268A of the Massachusetts General Laws.

Based on its findings and conclusions, the OIG recommends that town officials take action to:

1. Implement measures to prevent and detect unnegotiated changes to contracts and other legal agreements, including, but not limited to, policies and procedures related to ensuring documents are locked to prevent unnegotiated changes and implementing a review process prior to final execution;
2. Review the Ironstone HCA with legal counsel to determine whether legal remedies are available; and
3. Ensure that municipal officials complete mandatory state ethics training.

Within 30 days of receiving this letter, please notify this office in writing of your plans to implement the recommendations herein. Please provide any updated documentation that reflects changes made pursuant to these recommendations.

If you have any questions, please contact George Xenakis, director of the OIG's Audit, Oversight and Investigations Division, at 617-722-8853 or George.Xenakis@mass.gov.

Thank you for your immediate attention to this matter.

Sincerely,



Jeffrey S. Shapiro, Esq., CIG
Inspector General

Jeff Shaw, Chairman
May 30, 2024
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cc (via email):

John Wise, Vice Chairman, Uxbridge Board of Selectmen
Brian Plasko, Clerk, Uxbridge Board of Selectmen
Peter DeMers, Member, Uxbridge Board of Selectmen
Stephen Mandile, Member, Uxbridge Board of Selectmen
Steve Sette, Town Manager, Town of Uxbridge
Ava Callender Conception, Acting Chair, Massachusetts Cannabis Control Commission
Debbie Hilton-Creek, Acting Executive Director, Massachusetts Cannabis Control Commission
The Hon. Adam Gomez, Chair, Joint Committee on Cannabis Policy
The Hon. Daniel M. Donahue, Chair, Joint Committee on Cannabis Policy
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