



To	Vira Cage, Complainant
From	Pamela Nolan Young, Director of Diversity Equity and Inclusion & Human Rights Director for the Town of Amherst, MA
Re:	Investigation of an allegation of discrimination by a Town employee
CC:	Gabrielle Gould, Respondent
CC:	Rob Morra, Respondent
Date:	June 7, 2023

Report of the Human Rights Commission

Interested Parties

On February 22, 2023, *Vira Douangmany Cage* filed a complaint that named The Drake and the Town of Amherst as entities responsible for discriminating against Hazel’s Blue Lagoon. The complainant is an Amherst resident.

Paul Bockelman is the Town Manager for the Town of Amherst and sits on the board of the Business Improvement District (BID).

Leah Carver is the Town of Amherst Grants Manager.

Jeff Dougan is the Assistant Director for Community Services at the Massachusetts Office on Disability. He visited both sites: Hazel’s and The Drake on March 29, 2023.

Gabrielle Gould is the Executive Director of the Business Improvement District, hereinafter the BID and volunteer Executive Director of the Downtown Amherst Foundation.

Sean Mangano is the Finance Director for the Town of Amherst.

Robert Morra is the Building Commissioner for the Town of Amherst.

Sharon Sharry, Director of Jones Library, Sharon Sharry sits on the BID board.¹

Junior Williams is a co-owner of Hazel’s Blue Lagoon; Mr. Williams is not an Amherst resident but is a business owner in the town.

The Drake is run by the Downtown Amherst Foundation, a 501c3 nonprofit formed “to bring Arts and Culture to the Amherst area”². The Drake is a music and performance space open to the public.

¹ *Amherst downtown*. Amherst Downtown. (n.d.). Retrieved April 6, 2023, from <https://www.amherstdowntown.com/>

² *The Drake*. The Drake Amherst. (n.d.). Retrieved April 6, 2023, from <https://www.thedrakeamherst.org/home>

The *Town of Amherst* utilizes a thirteen member Town Council (legislature) and a Town Manager (executive branch) form of government. The Town of Amherst, is considered a city under Massachusetts Commonwealth laws.

Hazel's Blue Lagoon, hereinafter Hazel's is a restaurant and nightclub located in downtown Amherst. Hazel's is owned by Junior Williams and Patrick Chapman. Hazel's, has financial partners but when asked to identify the financial partners the owner, Junior Williams, refused to do so. The complainant, states she has no financial interest in Hazel's and is not an owner or part owner.

The *Amherst Business Improvement District (BID)* is a corporation formed under chapter 180 of the general laws of Massachusetts, the purpose of this corporation is to manage, operate, implement, develop, enhance and seek financial support for activities, programs and services within the designated business improvement district of the town of Amherst, Massachusetts, to provide marketing, maintenance, security, planning and physical improvements to the district which enhance the district as a place to live, conduct business, shop and visit; to carry out any purpose of a business improvement district provided in chapter 40o of the general laws of Massachusetts. The goal is to promote business and cultural activity, and create a thriving, accommodating destination for visitors and the local and regional communities. The BID is governed by a board of directors representing property owners, retailers, residents, businesses, the Town, and academic institutions.

The Downtown Amherst Foundation (DAF) describes itself as “is a newly formed Foundation whose purpose is to build and create culture, beauty, and programming in Downtown Amherst that ensures a thriving, beautiful and diverse cultural college community.”³

Investigation Method

The Human Rights Director⁴ and the Assistant Director of the Office of Diversity Equity and Inclusion conducted the investigation of the complaint by interviewing relevant parties and seeking the assistance of the Massachusetts Office on Disability.

The Complaint Allegations

The complaint filed by the complainant alleges discrimination based on race, color and disability, in a public accommodation. The Human Rights Commission intake form states “The Drake was not required to install a ramp to their stage whereas a black owned business was required to by the Building Commissioner”. The Black owned business referred to is Hazel's Blue Lagoon.

In a supplemental document, the complainant does allege that the BID retaliated against Hazel's when the BID, as the administrator of American Rescue Act Funds (ARPA funds), denied appropriation of ARPA funds to Hazel's owner. The complainant further alleges the Town Manager violated the public trust and discriminated against Black owned businesses when the Business Improvement District was selected to administer ARPA funds.

³ Amherst Foundation. (n.d.). Retrieved April 11, 2023, from <https://www.downtownamherstfoundation.org/>

⁴ The Humans Rights Director also holds the position of the director of the Office of Diversity, Equity and Inclusion.

Although not included in the formal complaint filed with the Human Rights Commission, during the course of the investigation Junior Williams informed the Human Rights Director and DEI Assistant Director that he believed he had been discriminated against in the permitting process and in the denial of American Rescue Plan Act funds. Pursuant to the broad purview of the Human Rights Commission bylaw those allegations are also considered.

2. Select Applicable Bylaws, and Laws:

Article 3.3 B. of the Town of Amherst Bylaws states in part: No person shall be denied any rights guaranteed pursuant to local, Commonwealth, or federal law on the basis of race or color, gender, physical or mental ability, religion, socio-economic status, ethnic or national origin, affectional or sexual preference, Gender Identity or expression, Genetic Information, or age.

Article 3.3 D.2 of the Town of Amherst bylaws states in part: The Director shall, upon receiving a written complaint from any person or regarding matters pursuant to this bylaw otherwise brought to the Director's attention, investigate promptly the circumstances of any situation within the Town allegedly denying or threatening to deny in whole or in part to any person within the Town on any basis identified in subsection B.⁵

Article 3.3 D.4 The Director shall, thereafter, make efforts (including conciliation conferences) as the Director deems reasonable and appropriate to resolve, by voluntary action on the part of those persons involved, the situation giving rise to the investigation.

Article 3.3 D.5 If voluntary action is not forthcoming or is deemed by the Director to be inadequate, the Director shall, after notice to all persons involved, report the matter to: a. the Town Manager, who may report to the Town Council; 14 General Bylaws Revised December, 2022 b. local or Massachusetts State Police on any matter within their jurisdiction, respectively; c. the Massachusetts Commission Against Discrimination; d. the Office the Attorney General

521 Code of Massachusetts Regulations (CMR) is the specialized building code regarding access for persons with disabilities for buildings in the Commonwealth of Massachusetts. 521 CMR is enforced by the Architectural Access Board.

521 CMR is designed to make public buildings and facilities accessible to, functional for, and safe for use by persons with disabilities.

521 CMR 2.2 INTENT: It is the intent of 521 CMR to provide persons with disabilities full, free and safe use of all buildings and facilities so that all such persons may have the educational, living and recreational opportunities necessary to be as self-sufficient as possible and to assume full responsibilities as citizens.

521 CMR 2.3 VIOLATIONS: 521 CMR is deemed to be a specialized code as referred to in Massachusetts General Law (M.G.L) c. 143, § 96, the violation of which shall constitute gross

⁵ *Home rule charter & general bylaws.* Home Rule Charter & General Bylaws | Amherst, MA - Official Website. (n.d.). Retrieved April 6, 2023, from <https://www.amherstma.gov/207/Home-Rule-Charter-General-Bylaws>

negligence for the purpose of M.G.L. c. 112, § 60G, clause (d), and shall be subject to the additional powers granted to the Board by M.G.L. c. 22, § 13A. ⁶

MG.L. c. 151B, c.151C and G.L. c. 272, §§ 92, 98 and 98A. prohibit discrimination in places of public accommodation. A place of public accommodation is defined as any place, whether licensed or unlicensed, which is open to and accepts or solicits the patronage of the general public. ⁷

Summary of the Statements from Interested Parties

Vira Douangmany Cage is an Amherst resident. Ms. Cage states that she is filing the complaint on behalf of persons who would require ADA accommodations at The Drake performances.

Ms. Cage states she has visited both venues and states that her complaint is based on observations made at both venues. Ms. Cage states the stage at Hazel's was preexisting and that the Building Commissioner required the owners of Hazel's to install a permanent ramp and handrail.

Ms. Cage states the stage at The Drake was a new build and was not required to install a permanent ramp. In addition, she noted that The Drake does NOT have a permanent ramp for accessing the performance stage and that a temporary ramp is currently in use. She asserts that pursuant to the Massachusetts Architectural Access Board a permanent ramp is required pursuant to 521 CMR sect14.6 and section 14.6.1

Ms. Cage noted The Drake does not have wheelchair access to its stage nor does it have a permanent handrail.

Ms. Cage states the Town of Amherst disregarded building codes to allow The Drake to open when it delayed the opening of Hazel's. Ms. Cage states that the discriminatory action was taken by the Building Commissioner.

To support her allegations, Ms. Cage provided a video clip of an interaction with an unidentified employee of The Drake and an article about the difficulties the owners of Hazel's faced in obtaining a permit to allow Hazel's to open. **[See Exhibit A]**

Junior Williams is a co-owner of Hazel's Blue Lagoon with Patrick Chapman. Mr. Williams states that he has had a difficult time establishing the business. He was told by the owner of the premises that it was turnkey. He signed a lease in 2021; but was unable to open until 2022. He reports that he had several difficulties with the permitting process, that each time an inspector came to review the premises; he was told something different that he needed to repair. He states he found this distressing and questionable because he was told by the owner of the premises that the building was turnkey.

⁶ 521 CMR - 2006 edition. Mass.gov. (n.d.). Retrieved April 6, 2023, from [https://www.mass.gov/lists/521-cmr-2006-edition#521-cmr-\(.pdf-format\)-](https://www.mass.gov/lists/521-cmr-2006-edition#521-cmr-(.pdf-format)-)

⁷ Section 98. General Law - Part IV, Title I, Chapter 272, Section 98. (n.d.). Retrieved April 6, 2023, from <https://malegislature.gov/Laws/GeneralLaws/PartIV/TitleI/Chapter272/Section98>

He states that he had no less than six visits by an electrician before he was able to get the permit to pass the inspection for electricity. He also reports that he had several other issues with the licensing and permit process. For example, he shared that he had gone to obtain a CORI check at the Police Department and presented those documents to Town officials who rejected them and told him that they would have to pull the CORI report. He stated he did not understand why the report he obtained from the Police Department was not sufficient. He reports issues with the Health Inspector and Plumbing Inspector's inspection of the gas stove.

Mr. Williams also reports that he had difficulty receiving assistance from the Town through the ARPA grants that were provided through the BID. He states he was made aware of two grant applications one for existing businesses and one for new businesses. He states he was told that he was ineligible for the new business grant application, although his business had not yet opened in Amherst and he applied for an existing business application and was denied a grant funding. He also stated that he was on a Chamber of Commerce Zoom call meeting where someone talked about the ability to provide businesses with patio furniture for outdoor seating during COVID and that he was discouraged from seeking the furniture. He states someone made a remark that he wouldn't want the patio furniture and that he would want to get his own. He states that he would have taken the furniture if it had been offered to him. He states that he was not made aware that he had been denied the grant for funding until he read about it in the newspaper. He states the newspaper reported the reason he was denied funding was his lack of good standing with the owner of the premises.

When asked to describe the experience, regarding the installation of the ADA compliant ramp, Mr. Williams states when he leased the premises the building had NO ramp or handrailing. He was informed by a Building Inspector that he had to make repairs to the VIP/ stage area and to install a ramp and hand railings. He made the suggested repairs and they were initially rejected by the building inspector. Mr. Williams states the second repair/construction of the ramp was approved.

Mr. Williams reports that the entire permitting process has been very frustrating. He further states that his communications with the trade professionals (plumbing, electrical, construction, etc.) have suffered because he has had to require tradespeople to make multiple trips to the premises for repairs to meet inspection needs. Some members of the trades have reported to Mr. Williams that the work previously performed, was up to code and the repeated requests to perform additional work were not needed.

He states that through the numerous communications with the various inspectors he asked several times if it would be possible for them to provide all of the information about needed repairs when they made their first inspection. He states that he does believe that he has been discriminated by the Town. Mr. Williams clearly expressed to the investigators that the inspectors have been scrutinizing the business and that each time they visit they add another violation. He states that the original drawings prepared by the architect did not include the ADA ramp to the stage area. He states that the Building Inspectors were inconsistent in their communication.

Robert Morra is the Building Commissioner for the Town of Amherst. Mr. Morra states that he has worked in the inspection industry since 2000. He received his certification in 2004. Mr. Morra summarized the permitting process as follows:

An applicant files for a building permit generally submitting a narrative report and a plan produced by a certified architect. A permit is issued and a general contractor begins work and contacts the Town for inspection as each phase is completed. Permits are issued for fire, electrical, plumbing, kitchen, and health prior to a full occupancy permit. Some work required must be completed by licensed professionals pursuant to the building code.

Mr. Morra states that he and the other inspectors worked extremely hard to assist Mr. Williams with the permitting process. Mr. Morra states he personally spoke with Mr. Williams' architect and with other trades to assist in the permitting process. The Town of Amherst has an online permit application and tracking system called Open Gov. The system allows any applicant to submit documentation online, it sends notification of the receipt to the application and forwards communication via email about next steps that should be taken. Mr. Morra states, generally a general contractor, would utilize the system to communicate with the inspectors and to provide needed documentation and updates. Mr. Morra states that Mr. Williams did not utilize the system. Mr. Morra noted, although Mr. Williams hired Steve Greenwald as general contractor, Mr. Greenwald was not contracted to perform all the work and that Mr. Williams sought members of the trades to perform the work under his supervision. Unfortunately, some of these individuals were not licensed. The building code requires that some work be completed by a licensed contractor.

Mr. Morra also noted that the Town has a Permit Administrator that assists businesses, property owners and residents with the permitting processes. The Permitting Administrator and a representative from each inspection area, i.e., electrical, fire, health meet weekly to discuss issues and coordinate the Town's response.

Mr. Morra saw and inspected both buildings, Hazel's Blue Lagoon which is a nightclub and restaurant, and The Drake which is described as a nightclub and music venue. Both Hazel's and The Drake had their initial ADA compliant ramps rejected by the Building Commissioner, he states the ramp at Hazel's was rejected because the work performed was not performed by a licensed contractor, as required by the building code, and was not being properly constructed in compliance with the Massachusetts Architectural Access Board (AAB) standards. The initial ramp at The Drake was rejected because it did not meet the standards for a commercial use. The ramp approved by Mr. Morra for The Drake is a commercial grade custom designed and fabricated modular ramp capable of being removed when not needed. Mr. Morra states that the ramp fully meets the building code. The ramp approved and required at Hazel's is a permanent ramp that fully meets the requirements of the building code and the AAB.

Mr. Morra states that there is a distinction between the uses of the ramps in the two spaces. He notes that the ramp in Hazel's is to a space open to the public and sometimes used as a VIP area. Mr. Morra states The Drake is a venue that may have events that do not utilize the stage nor include use

of the stage by the general public. He further states that in those cases removal of the ramp does not create a code violation. Mr. Morra states he did not recommend the AAB variance process because it is used for modification or substitution for an AAB rule or regulation which he does not believe has occurred in this situation.

Mr. Morra states he showed no favoritism or partiality in the permitting process. Mr. Morra denies he or any other inspectors treated Mr. Williams differently due to his race or color. Mr. Morra denies that he or any member of his staff engaged in any discriminatory acts or processes. In fact, he states that he and the members of his staff went above and beyond what is required to support Mr. Williams in the pursuit of his new business. For example, Mr. Williams was granted a temporary certificate of occupancy to allow him to open temporarily under certain conditions. While awaiting his license, Mr. Williams was granted more than one temporary certificate of occupancy while remaining work was being completed.

Gabrielle Gould the Executive Director of the Business Improvement District states that she provided between 80-100 hours of her time free to the owners of Hazel's to assist them in establishing their business. These manhours are valued at \$75.00 an hour or over \$6000. She states this is not in her job description nor what the average BID does. However, in the wake of a global pandemic, Ms. Gould endeavored to do more to support Amherst small businesses succeed.

She states that she was involved in multiple things to assist the owners of Hazel's, everything from filing their adjusted LLC to obtaining a liquor license. She states "she wrote the liquor license application, photocopied their documents, helped them secure and work with an architect, helped them with the fire systems and asking the Town to put a second health inspector on this project as the owners and the first health inspector were at odds" She assisted with securing building trades, provided help with marketing, attended Design Review Boards (DRB) and Liquor license meetings where she spoke on behalf of Hazel's. In addition, she states she met with their landlord on several occasions to get them financial and other assistance.

Ms. Gould explained the process under which the Business Improvement District and Downtown Amherst Foundation (BID/DAF) received the contract to distribute ARPA funds. She stated she submitted a proposal when the ARPA funds were announced. She believes the BID was the first proposal received by the Town. She states, the funds were awarded along with a contract that stipulated specifics for the funds held by the DAF. She states the contract was very specific and that the DAF has had to report regularly with proof of payment and copies of bills, contracts, and receipts. Ms. Gould met with and worked with Paul Bockelman, Leah Carver and Sean Mangano regarding the grant application.

Ms. Gould states that Hazel's did apply for the new business grant after missing the deadline for the pre-existing business grant. She states the reasons Hazel's did not receive a grant are wide-ranging. The committee [awarding the grant], felt unanimously, that this business was not in good standing. The committee was aware of an Alcoholic Beverages Control Commission (ABCC) closure and the promotion of free drink tickets, a violation of Massachusetts liquor laws, among other concerns. **[See Exhibit B]**

Finally, in response to the visit by Jeff Dougan to The Drake, Ms. Gould reports that The Drake is seeking a variance from the AAB. She states The Drake is in the process of completing the paperwork.

On March 28th, Jeff Dougan, from the Massachusetts Office on Disability, visited both The Drake and Hazel's Blue Lagoon. He first visited The Drake where he noted that the remodel of the nightclub space likely exceeded 30% of the prior space which would have triggered compliance with 521 CMR. He noted that the ramp being used at The Drake is a portable commercial grade ramp. Gabrielle Gould, who was present at the review of the premises, told Jeff Dougan that the ramp is used only on open mic nights when the stage is open for the general public. Ms. Gould also stated that she communicates with all performers about their accommodation needs. Jeff Dougan opined that by code, The Drake should have had a permanent ramp with an appropriate handrail. He opined that in order for the temporary ramp to meet state requirements The Drake should have applied for a variance from the Architectural Access Board. Mr. Dougan suggested a variance be sought. Gabrielle Gould noted that use of a permanent ramp would have delayed the opening at The Drake. While at The Drake, Mr. Dougan reviewed the bathrooms and found that they met the ADA requirements.

Following the review of the premises at The Drake Mr. Dougan went to view the premises of Hazel's. He noted that both venues provide live music. He noted that a ramp would have been required to a stage/VIP area, as 521 CMR access requirements require access to all public areas. Mr. Dougan noted that the ramp at the Hazel's complies with the requirements of the Architectural Access Board. Mr. Williams informed Mr. Dougan that had he had the option to have a portable ramp he might have chosen to utilize a portable ramp instead of the permanent ramp. Mr. Williams and Mr. Dougan noted the permanent ramp does take up considerable space in the venue. Mr. Dougan noted that the loss of space was also noted by The Drake as a reason for why they chose to use the portable ramp at The Drake. Mr. Williams told Mr. Dougan that he was told by the building inspector that his ramp needed to be a permanent ramp. Mr. Williams told Mr. Dougan that The Drake opened after Hazel's and he was surprised to learn that The Drake was not required to install a ramp as he had been required to do so.

On May 9, 2023 EV Realty Trust, Barry Roberts, Trustee, the Amherst Building Commissioner, Vira Cage and The Disability Access Advisory Board were notified by the Division of Occupational Licensure, that the Architectural Access Board or AAB had received notice that The Drake was in violation of M. G. L. c. 22sec. 13A and 521 CMR. The Drake was provided fourteen days to respond to the notice. **[See Exhibit C]** On June 6, 2023, The Building Commissioner and the Disability Access Advisory Committee were provided copies of the EV Realty application for a variance.

Conclusions

As reported, the complainant is not an owner nor has a financial interest in Hazel's.

The complainant was not denied access to the stage at The Drake, nor did she state that she witnessed anyone not gaining access to the stage at The Drake.

The complainant has standing to bring this complaint pursuant to the Town's bylaw. Although she would likely not have legal standing in a court of law or in judicial administrative body as the complainant was not a party to the alleged wrongdoing.

The Building Commissioner rejected the first portable ramp proposed by the owners of The Drake.

The stage at The Drake is accessible by a commercial grade portable ramp. The representative from the Massachusetts Office on Disability noted the ramp met the standards required to provide accessibility; although he noted in his opinion that the owners of The Drake should have sought and obtained a variance from the Architectural Access Board.

The Building Commissioner's Administrative Approval of the land use permit dated April 21, 2022 includes a specific condition requiring The Drake management to provide a AAB compliant ramp to the stage. **[See Exhibit D]**

The Building Commissioner rejected the first permanent ramp proposed by Hazel's.

The stage at Hazel's is accessible by a permanent ramp. The representative from the Massachusetts Office on Disability found the ramp at Hazel's met the standards required to provide accessibility and noted the ramp would have been required by the Architectural Access Board unless the owner sought a variance.

The owners of The Drake and of Hazel's report very different permitting and licensing experiences. The owners of The Drake report that their experience was smooth and without delay other than the rejection of the first temporary ramp. The owners of The Drake attribute the ease of their experience to their experience in licensing, permitting and business operations as well as the professionalism of the trades used.

The owner of Hazel's reported that the licensing and permitting process was very difficult, contained many delays and presented many challenges. The owners of Hazel's attribute the difference in experience to racial discrimination. The owners of Hazel's are Black men.

The investigators noticed a significant difference in the plans for the two premises. The plans for The Drake are very detailed, including a building description, scope of work, building code, use group and classification, and an additional forty (40) other references to code and building requirements. By contrast the plans prepared for Hazel's lack the same level of specificity. The plans for The Drake indicate a portable ramp would be used. The plans for Hazel's indicate a permanent ramp will be used. **[Exhibit E]**

Based on the statements made by all parties and the documents presented it appears the processes and acts of the Town employees and those of the BID were NOT discriminatory as the Town required both parties to have a ramp that meet AAB standards. Not clear and left to the determination of the AAB is whether the portable ramp used by The Drake will meet those standards.

The facts and evidence also show that Ms. Gould attempted to assist Mr. Williams with the establishment of his business, although he did not receive grant funding.

Recommendations:

That the Town permitting process be explained for businesses seeking to start a business in Amherst. Perhaps the Chamber of Commerce, the BID and the Town could hold quarterly workshops.

That, when possible, the initial meeting to discuss necessary compliance for electrical, plumbing, health and gas codes be conducted with all inspectors so that prospective business establishments have a complete picture of the scope of work needed or perhaps, following the initial inspection by each inspector a master document be created to provide the full scope of the mandated compliance issues to new entrepreneurs.

That the Town continue to ensure that all inspections, permitting and licensing processes be free from unlawful discrimination.

That the Town continue to ensure impartial access to grant funding.

Pursuant to the Article 3.3 D.4 the Human Rights Director recommends that the Complainant, Vira Cage and the Respondents, Gabrielle Gould and Rob Morra engage in a conciliation conference to facilitated by the Director of Human Rights to discuss, the situation giving rise to the investigation for the sole purpose of discussing possible actions which might mitigate or prevent future similar complaints.

The parties must voluntarily agree to the conference as the Human Rights Director has no authority to mandate attendance.