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January 23, 2023

Conservation Commission
79 South Street
Wrentham, MA 02093

by e-mail to concom@wrentham.gov

RE: Sheldon Meadow Senior Living Community (SLC) (20 Hancock Street)
Sheldon West Senior Living Community (SLC) (1139 West Street)

Dear Chair Immonen, Members of the Commission and Agent Luce:

I am writing on behalf of myself and my wife Dyan Rook, 43-year residents of 1170 West Street, Sheldonville. We thank the Commission for its efforts to protect the residents of Wrentham from the potentially catastrophic consequences of what we think is, without question, the most inappropriate proposed development for given sites that we have ever seen in Wrentham. I will confine my comments to issues raised at the Commission's January 12, 2023. But with so much at stake in these applications, I respectfully request that Commission members give appropriate consideration to all relevant posted comments by abutters and other Wrentham residents, both to this Commission and to the Planning Board, all of which are part of the public record.

* At the January 12, 2023 meeting, the applicant's attorney Robert Buckley noted that the applicant had the same interest as the Town with respect to ensuring the quality and integrity of imported fill, because "failure to do so could result in liability for the property owner" (Meeting Tape 56:01 and 1:08:05). Mr. Buckley is correct. But I suggest to the Commission, as many abutters and neighbors have previously, that the larger issue is not who might be found legally liable, but rather who will **actually pay** for remediation and other damages resulting from unclean fill or other adverse project impacts. Who makes things whole and by what means? Given the location and sensitivity of the sites, those costs might be considerable. Mr. Buckley proposed that the applicant's draft conditions be reviewed by the Pawtucket Water Supply Board (PWSB) to see if they were satisfactory to them. However, the affected parties include not only the PWSB, but the immediate abutters trying to protect the structural integrity of their homes and septic systems (not simply their "nice view"), any nearby Wrentham resident using well water (and you have heard those concerns from residents of Ellery Street and Sheldon Road,

among others) and indeed the entire Town of Wrentham if the abutting optimal well site for the proposed West Wrentham Town Well is contaminated by unclean fill — especially if that fill contains "forever chemicals" that have been spread over two large sites with documented high water tables.

What makes these applications so problematic to us **is,** in fact, the sensitive and I would say unique nature of the project sites. They are in the Wrentham Watershed Protection District and (although the applicant seems reluctant to admit it) the Aquifer Protection District. They abut the Flood Plain District and are already subject to frequent and increasing year-round flooding. They are surrounded by Wrentham residents whose homes use private wells and septic systems. They abut the best and possibly only realistic site for the West Wrentham Town Well that we have been talking about for more than fifty years, and finally seem to be acting upon. And they impact the drinking water of 130,000 people in Rhode Island. There is **no** room for error. I would not expect any Commission member to answer this publicly, but I ask you to think about this: Unlike the landowner or the applicant's presentation team, you live in Wrentham. You know the existing conditions year-round. You are familiar with previous applications and projects. Can you honestly think of a worse location in Wrentham for what is proposed? A location which impacts so many people?

Returning to the liability issue: These Notices of Intent were filed on April 22, 2022. On February 11, 2022), co-counsel of record for the applicant (Daniel J. Vieira) organized for Christopher Cahill two Massachusetts Limited Liability Companies (LLCs), one for each project — Sheldon Meadow, LLC and Sheldon West, LLC. The purpose of each LLC was "ownership, management and development of real property." Mr. Cahill is the identified Manager of each LLC.

Why does one form a single-project Massachusetts LLC? The name says it all — to limit (and hopefully avoid completely) legal liability and its resulting financial consequences. Any financial recovery on a judgment of liability would ordinarily be limited to the assets of the LLC, which are usually kept as low as possible. It is perfectly legal and smart for the developer to do so. But this Commission should not assume that any determination of liability will produce enough money to pay for the consequences of what went wrong. A Massachusetts Assistant Attorney General for whom I once worked was fond of saying that a judgment of liability with no resulting financial recovery was just another piece of paper for the bottom of the bird cage.

Should this Commission issue Orders of Conditions, I hope it will take steps to ensure that the Town or its residents never have to pay for any damages caused by the applicant — perhaps by requiring surety bonds for a period of years, or other enforceable financial guarantees. On December 12, 2022, Mr. Buckley suggested (Meeting Tape 48:50) that he thought it would be unreasonable for the Town to take what he considered to be extraordinary measures to protect against something that had a "one in a million, one in ten million" chance of happening. If the applicant truly believes that these projects involve nothing more than scratch-ticket odds of something going wrong, I see no reason

why the applicant should object to financial guarantees ensuring that the Town and its residents will be made whole if something does go wrong. Unfortunately, the potential liability may extend not only to the applicant but to the Town, if the Town accepts responsibility for overseeing the monitoring and inspection of fill and the sites subsequently become contaminated with unclean fill. Mr. Buckley stated (Meeting Tape 1:08:23) that "we could talk all night about hypotheticals. We are putting the science and the commitment behind what we say we're going to do." And, "We are committing that the fill brought into the site will be clean" (Meeting Tape 0:55:30). That is good. But let the applicant back up that commitment with appropriate and enforceable financial guarantees so the Town and the abutters are not on the hook if something does go wrong.

* Further on the issue of fill to be trucked into the sites: I would first ask the Commission to consider that the figure of 4,200 truckloads that has been discussed at Planning Board and Conservation Commission meetings is an **applicant estimate** made several months ago. My experience has been that applicants often estimate such numbers on the low side. The actual number could be considerably higher (and is unlikely to be lower), depending upon the mix of trucks used and the need to address both conditions of approval and conditions encountered during construction, such as erosion from flooding. Unless the applicant is willing to agree as a condition of approval to limits on the number of trucks or the total amount of fill to be trucked in (which could never effectively be enforced in any event), it would be prudent for the Commission to assume that there might be significantly more than 4,200 truckloads. And that relates to the "risk" as pointed out by Chair Immonen on January 12, 2023: the more truckloads, the higher the likelihood that some or many may contain contaminants, possibly "forever chemicals," whether intentionally or by accident. Even by the applicant's likely conservative estimate, there are at least 4,200 chances for something to go wrong.

Both this Commission and the Planning Board have commented that this amount of outside fill appears to be unprecedented for any project in Wrentham. It was incorrect for Mr. Buckley to compare this (Meeting Tape 1:07:04) to the relatively insignificant amount of fill brought in whenever the Town of Wrentham reconstructs a roadbed. Wrentham makes sure that its accepted roads are not built in resource areas already prone to flooding. And a Town road is a necessary public benefit, unlike these for-profit projects. The comparison makes no sense.

When Chair Immonen inquired of the applicant how much sampling would be necessary or appropriate, Mr. Buckley's response (Meeting Tape 48:31) was, "We can debate how many angels dance on the head of a pin." He then suggested (above) that the chances of something going wrong were more like one in a million or one in ten million.

I have no idea where Mr. Buckley got those numbers. Perhaps he should tell the Commission. While he may not have meant to do so, I believe that his responses trivialized the legitimate concerns of the abutters and neighbors and the responsibilities of this Commission to protect the residents of Wrentham (and Pawtucket). This is not a

philosophical or hypothetical debate involving dancing angels. It has nothing to do with a small group of NIMBYs bound and determined to stop all development to preserve their nice view, as Mr. Buckley has previously suggested. Many letters to this Commission and the Planning Board make that clear. The objections, which I believe to be from more than 100 households at this time, have come from throughout Wrentham, not just from the relatively small number of contiguous abutters. These projects do not even rise to the level of being controversial. **Nobody** wants them except the applicant. Other developments within a half-mile of the project sites have not been opposed. That is a matter of record.

If it happens to you, it's not one chance in ten million, it's one chance in one. Engineers are not infallible as to predicting the future. I fully respect their training and ability to apply current data, models and assumptions in making predictions. But when any of those inputs change, the output changes accordingly. Sometimes a small change in input (perhaps climate change), or a previously unconsidered input, creates a big change in the original predicted output. And water doesn't always do what engineers think it should do. If it did, my backyard might not be flooded every year since Gold Street was laid out. If the "unexpected" happens here, what then? Who holds the bag? What is the real-world remedy and who pays for it?

* I ask the Commission to consider a situation (article attached) that was reported in the press just within the last week. A Massachusetts construction company hired by the State of Rhode Island to rebuild the 6-10 connector in Providence has been charged by the Rhode Island Attorney General with illegally using nearly 5,000 tons of contaminated soil and stone on the project and lying about it after the fact. The contaminants included arsenic, polycyclic hydrocarbons, and known carcinogens.

Understanding that these are allegations at this time, they offer a cautionary tale for this Commission. Under its contract with the State of Rhode Island, the lead contractor had agreed to a plan that laid out standards for soil composition and containment. The plan required the contractor to meet specified health and safety standards for any soil it brought in to use as fill. The allegations are that, in violation of the agreement, the construction company brought in material from one untested site, and another site known to contain hazardous materials. The alleged illegal dumping was first reported by union construction workers on the site and confirmed through testing by the Rhode Island Department of Transportation and Department of Environmental Management. Further according to the allegations, when officials confronted the contractor about the source of the fill, he lied about its origins and provided fabricated certification that the material had been tested and met the agreed standards for use. The allegations continue that, after actual tests were carried out, it took two months before the lead contractor notified authorities that the soil was in fact contaminated, and in the meantime, the company continued to use the tainted fill. And further, that the lead contractor was ordered to remove the contaminated material, but misrepresented the amount that was used and

disposed of only six truckloads. (Fortunately, the contaminated fill appears to be buried in an environmentally inert location, and environmental officials have concluded that it would pose more of a threat to public health to remove it rather than leave it alone.) Apparently, the lead contractor and the parties that delivered the fill are now pointing fingers at each other, and the lead contractor is disputing the characterization of the soil and stone as "solid waste." Protracted litigation seems likely.

The above example, if the allegations are true, answer any question as to "what could possibly go wrong?" There was an agreed protocol in place for testing, where the materials would come from, what standards of cleanliness would be met, and what documentation would be provided. And yet this is what is alleged to have happened. Is this a "one in a million, one in ten million" event? I strongly doubt that. But I do know that these proposed Wrentham fill sites are not environmentally inert. The consequences of something like the alleged situation in Providence happening on the Sheldon sites would be catastrophic.

I am not suggesting that the applicant or its team are intentionally misleading this Commission. I have been a licensed professional myself for 47 years and take that seriously, as I am sure they do. Many of the other Wrentham residents who have expressed concerns and objections are also licensed professionals, with years of training and experience in relevant subject areas. Having represented applicants myself for more years than I care to think about, I know that the job of the paid representative is to present the project in the light most favorable to the applicant, consistent with ethical obligations that come with the license. But, in our opinion, what is being proposed here is for all practical purposes an experiment, one never before conducted in Wrentham. There simply cannot be any guarantees given for such an experiment. I see no reason why this Commission or any other Board should allow the experiment to be conducted given the potential consequences, which are difficult to imagine in the worst case. If they do allow the experiment, it should only be done with the most stringent safeguards and enforceable guarantees in place so the applicant, and not the residents and taxpayers of Wrentham, will pay 100% if the experiment goes wrong. We certainly do not need another Madison Street situation, or worse, in West Wrentham.

Sincerely,

-s-

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enc.

cc. Wrentham Board of Health

The Providence Journal

Massachusetts construction company faces criminal charges for using contaminated soil on 6-10 road project

Alex Kuffner, The Providence Journal
Thu, January 19, 2023, 5:09 AM EST · 5 min read

PROVIDENCE – The office of Attorney General Peter F. Neronha on Wednesday charged the Massachusetts company hired by the state to rebuild the 6-10 connector with illegally using nearly 5,000 tons of contaminated soil and stone on the $247-million road project, and lying about it after the fact.

Barletta Heavy Division and Dennis Ferreira, the former superintendent of the project for the Canton, Massachusetts-based company, are each facing two counts of illegal disposal of solid waste, one count of operating a solid waste management facility without a license, and one count of providing a false document to a public official. The defendants are set to be arraigned in Superior Court, Providence, on Feb. 1.

While some of the material containing hazardous substances came from the Pawtucket/Central Falls commuter rail station project, the bulk of it was trucked across the state line from Massachusetts.

"In the end, it comes down to this: as alleged in the information, Mr. Ferreira and Barletta Heavy Division used the 6-10 site as an environmental dumping ground," Neronha said at a news conference Wednesday morning. "Not only for Rhode Island waste. Worse, they made Rhode Island a dumping ground for Massachusetts waste."

In response to the filing, Barletta said it violated no criminal laws and described the charges as baseless "both legally and factually."

"Barletta intends to fight these charges vigorously and is confident that it will prevail and restore its impeccable reputation once the facts are fully and accurately presented in court," the company said in a statement.

The charges in state court follow a separate investigation by the office of U.S. Attorney Zachary A. Cunha that resulted in criminal charges being leveled against Ferreira in federal court for making false statements and in Barletta paying $1.5 million in civil penalties for its part in the scheme. Ferreira, who was fired from his job at Barletta, pleaded guilty on Dec. 14 to three counts of making a false statement in connection with a federally-funded highway project and is set to be sentenced on March 16.

The federal and state cases centered upon the use in the summer of 2020 of backfill that Barletta improperly trucked in from other projects it was working on to the 6-10 location. After workers complained that the company was disposing of hazardous materials on the site, Local 57 of the International Union of Operating Engineers, whose members drove bulldozers and other heavy machinery at the site, tested soil samples and found toxins at unacceptable levels.

The union notified the state Department of Transportation and the Department of Environmental Management of its findings. The DOT followed up with tests of its own and also found levels of contaminants, including carcinogens, above regulatory limits.

Under its contract with the state for the project that got underway in 2018, Barletta had agreed to a plan that laid out standards for soil composition and containment. The plan required the company to meet those health and safety standards with any soil it brought in to use as fill.

In violation of the agreement, Barletta brought in material from two other projects of which it was the lead contractor. The fill included untested stone from a train station project in Jamaica Plain in Boston that was later discovered to be contaminated and soil from the Pawtucket/Central Falls rail station project that the company knew contained hazardous substances.

Previous tests of the Pawtucket/Central Falls station site, which had been used as a rail yard for nearly 150 years, had confirmed the presence of arsenic, as well as polycyclic aromatic hydrocarbons, or PAHs, a class of chemicals that occur in coal, crude oil and gasoline. At Ferreira's direction, Barletta had 52 truckloads, or 1,114 tons, of material delivered from the site. Another 93 truckloads, totaling 3,460 tons, were brought in from Jamaica Plain.

According to both the state and federal criminal complaints against him, when officials confronted Ferreira about the source of the fill, he lied about its origins and provided a false certification that it had been tested and met the standards for use.

After actual tests were carried out, it took two months before Barletta notified authorities that the soil was in fact contaminated, Neronha said. In the meantime, the company continued to use the tainted fill.

Neronha said Barletta was ordered to remove the contaminated material, but misrepresented the amount that was used and disposed of only 6 truckloads, or about 130 tons, as directed, at the Central Landfill in Johnston.

In its statement, Barletta disputed the characterization of the soil and stone at issue as "solid waste" and that the deliveries of soil from the Pawtucket/Central Falls rail project and from Massachusetts were overseen solely by Ferreira "without the authorization or knowledge of Barletta."

Neronha credited Sgt. Sheila Paquette, of the DEM's Division of Law Enforcement, who led the investigation, and staff with his office who are prosecuting the case.

He said the contaminated material is buried within the Route 6-10 project site and currently poses no public health hazard. There are no plans to try it remove it.

"From talking to the environmental experts here, the consensus is to try and dig up and remove the materials at this point would pose more of a threat to public health than simply leaving them there," Neronha said.

This article originally appeared on The Providence Journal: Neronha charges Mass. firm for using tainted fill in 6-10 project