

*Town of Weymouth
Massachusetts*

Robert L. Hedlund
Mayor

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Weymouth, MA 02189



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MEMORANDUM

TO: ARTHUR MATHEWS, PRESIDENT, WEYMOUTH TOWN COUNCIL
MEMBERS OF THE WEYMOUTH TOWN COUNCIL

FROM: MAYOR ROBERT L. HEDLUND *[Signature]*

SUBJECT: DISAPPROVAL OF MEASURE 20-117

DATE: JANUARY 4, 2021

CC: SANDRA WILLIAMS, CHAIR, WEYMOUTH PLANNING BOARD
MEMBERS OF THE WEYMOUTH PLANNING BOARD
TED LANGILL, CHIEF OF STAFF
JOSEPH CALLANAN, TOWN SOLICITOR
ROBERT LUONGO, DIRECTOR, DEPARTMENT OF PLANNING AND
COMMUNITY DEVELOPMENT

I write, under Section 3-7 of the Weymouth Town Charter, to express my disapproval of Measure 20-117, Town Council zoning ordinance amendment to Section 120-64.7.1, Billboard Relocation Overlay District, imposing a one-year moratorium on new permit issuance. I also return this measure without my approval to the Council, according to that Charter provision.

As you are aware, the Town has been negotiating an amendment to the Billboard Relocation Agreement in an effort to remediate the unanticipated negative impacts caused by the 611 Pleasant Street billboard while also working to achieve the many goals of the original agreement including the removal of the Route 3A billboards, mitigating the impacts of the South Weymouth Route 18 billboard, and preserving the 42 acres of privately owned open space abutting Gagnon Park.

After many months of negotiations, public hearings, meetings, and draft proposals, the Town and Cove Outdoor, LLC have negotiated an amendment to the agreement which achieves the Town's goals as described. This agreement was not easily arrived at and took countless hours of staff time along with resident and Council input to finalize; however, we feel it is in the best interest of the residents of Weymouth and specifically addresses the concerns and requests of the Century Road-area neighbors. The amendment is enclosed for your reference and I will outline the major provisions further in this memo.

As we approached the end of the calendar year, I had two options left to pursue as it relates to the Billboard Relocation Agreement and resolving this issue. First, I could reject all attempts to amend the agreement and revert back to the original agreement signed in April of 2018. Second, I could continue to negotiate with Cove and amend the agreement with the plan to resolve the issues and retain much of what we initially wanted to accomplish. If I opted to revert back to the original agreement, the next steps would be calling on various provisions in the agreement for which Cove would be in breach or required to fulfill. This would certainly incite a

lengthy legal battle with Cove as we would attempt to remove or remediate 611 Pleasant Street and fight the construction of the 613 Pleasant Street billboard which Cove has legally obtained a permit for and has a right to construct. Likely, the existing billboard would operate at full capacity, as is, until we were able to have a preliminary injunction ordered to turn the board off during litigation (not guaranteed). That could take several months and would leave the board shining in the Century Road neighborhood for the duration. The timeline on a resolution would be subject to the courts and could take several years with the risk of the Town losing, a billboard at 611 remaining, and a second billboard at 613 to be constructed. This process would leave the ultimate decision on the fate of the billboards in the hands of a judge.

An alternative to this direction, is what you have before you: an amendment to the relocation agreement. At every juncture it has been made clear by the Century Road residents that they want the billboard lowered and light blocking technology installed. In addition, it is clear that a billboard at 613 Pleasant Street will have many negative impacts on the neighborhoods across the street, including the Century Road residents. It also has been made clear by the residents abutting the Finnell Drive area, that they would like the 42 acres of privately owned undeveloped, industrially-zoned land preserved and no development to happen in that area. This land is zoned industrial and is developable by right. In order to achieve these goals and meet the residents' needs, we have negotiated the amendment to the agreement.

To summarize, the amendment does the following:

- Cove Outdoor LLC turned off the billboard at 611 Pleasant Street in accordance with the amendment provision requesting it be off within 3 days of execution or by 1/2/2021.
- Cove Outdoor LLC will install light blocking technology on the 611 Pleasant Street billboard.
- Cove Outdoor LLC will lower the 611 Pleasant Street billboard at a height agreed upon by the residents, between 20 and 25 feet per the December 2019 Remediation Agreement
- Cove will complete all other provisions of the December 2019 Remediation Agreement (includes installation of stockade fencing, plantings, and screening along resident homes and Route 3).
- Cove will complete all work related to 611 Pleasant Street by 9/30/2021. **Until the work is completed the billboard will remain off and non-functioning.** If the work is not completed by the deadline, the billboard will be removed. (Note, there are a few instances in which the deadline for completion is tolled such as COVID-19 related delays or pending an appeal to a Conservation Commission decision).
- Cove Outdoor LLC will submit all required documents and paperwork to the State Office of Outdoor Advertising (OOA) for the 0 Finnell Drive billboard permit application.
- If OOA issues a permit for 0 Finnell Drive, Cove will surrender its permits for the 613 Pleasant Street billboard. At no time will the Town issue a building permit for the 613 Pleasant Street billboard.
- Bristol Brothers Development, Inc. will convey the 42 acres of open space to the Town. A small parcel including and surrounding the billboard will remain in control of Bristol Brothers.
- The Town will revoke its revenue share from the billboards in order to offset lost profits to Cove as well as fund the conveyance of the 42 acres of open space.
- All billboards will have light blocking technology installed on all faces. Remediation in the form of plantings, screening, and fencing will be offered to any impacted residents.

- The Route 3A billboards will be removed at the expiration of their existing leases, as detailed in the existing agreement.
- All other provisions of the agreement not referenced in this amendment, including mitigating the South Weymouth billboard, are preserved.

As noted, this plan relies on the construction of 0 Finnell in order to achieve the goals of the agreement and mitigate the impacts of 611 Pleasant Street. **However, the moratorium as adopted by the Council makes that impossible.** From a practical standpoint, the one-year moratorium will prevent Cove from constructing and operating a billboard at 0 Finnell, curtailing their ability to receive financing that will support the lowering of the 611 billboard and installation of site blocking technology. In addition, the 0 Finnell billboard allows Bristol to convey the 42 acres to the Town. Without 0 Finnell, there is no means to preserve the land and it will be developed, as is allowable by right. As such, the moratorium results in no preserved land and no mitigation of 611.

Additionally, based on guidance from our Town Solicitor, I believe the moratorium as adopted is illegal. Attached to this memo you will find correspondence from the Town Solicitor regarding the legality of adopting a measure that is punitive toward an existing permit holder and could be construed as reverse spot zoning (see January 4, 2020 Memo Recommendation to Disapprove Measure 20-100, Moratorium on Billboard Building Permits).

While the legal reasoning cannot be ignored, **I ask that you consider my rejection of the veto based on the practical implications this will have in our attempts to amend the existing billboard agreement and resolve the issues with the current board.** Please consider how the moratorium will thwart our efforts and result in what will be a lengthy and costly legal battle in which we will have no control of the outcome and certainly will not achieve the goals originally intended by the agreement. **To be clear, overriding this veto will only guarantee protracted litigation without any guarantee of mitigating the impacts of the 611 Pleasant Street billboard, preventing the construction of a billboard at 613 Pleasant Street, preserving the 42 acres at 0 Finnell Drive, removing the billboards in North Weymouth, or mitigating the billboard impacting South Weymouth residents.**

Thus, I disapprove of this measure as ineffective (or possibly not lawful). I welcome Councilors the opportunity to discuss the amendment to the agreement and our efforts to resolve these issues.

***Town of Weymouth
Massachusetts***

Joseph Callanan
Town Solicitor

Town of Weymouth
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Robert L. Hedlund
Mayor

Town of Weymouth
75 Middle Street
Weymouth, Massachusetts 02189

MEMORANDUM

TO: ROBERT L. HEDLUND, MAYOR
FROM: JOE CALLANAN, TOWN SOLICITOR
SUBJECT: RECOMMENDATION TO DISAPPROVE MEASURE 20-100, MORATORIUM ON BILLBOARD BUILDING PERMITS
DATE: JANUARY 4, 2021
CC: TED LANGILL, CHIEF OF STAFF
ROBERT LUONGO, DIRECTOR, PLANNING AND COMMUNITY DEVELOPMENT
ERIC SCHNEIDER, PRINCIPAL PLANNER
JEFFREY E. RICHARDS, C.B.O. DIRECTOR, DEPARTMENT OF MUNICIPAL LICENSES AND INSPECTIONS
CHRISTINE HOWE, PROGRAM MANAGER

While I understand your frustrations and that of residents and Councilors who have been dealing with Cove for more than a year and half, ***I would strongly recommend you veto this measure.*** We remain committed to rectifying, as best we can, the existing problems caused by the 611 Pleasant Street billboard but creating more legal problems does not seem to be a wise path toward resolution. This measure, well intended as it may be, clearly does not rectify the existing situation, but instead creates more future legal problems.

These additional problems include: the measure conflicts with the United States Constitution and state law. The measure does not comply with established standards for permissible moratoriums, constitutes reverse spot zoning, and may constitute a regulatory taking, exposing the Town to millions of dollars in potential damages. For these reasons, among other reasons, I strongly recommend that you veto the measure as it is illegal.

In general, a municipality “is given broad authority to establish zoning districts regulating the use and improvement of the land within its borders.” *Andrews v. Town of Amherst*, 68 Mass. App. Ct. 365, 367-368 (2007). However, a municipality has no power to adopt a zoning by-law that is “inconsistent with the constitution or laws enacted by the [Legislature].” Home Rule Amendment, Mass. Const. amend. art. 2, § 6. The constitutional test to determine the validity of a zoning by-law is whether the ordinance is clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare. *Sturges v. Town of Chilmark*, 380 Mass. 246, 256 (1980).

Here, this measure is arbitrary and capricious as it does not apply uniformly throughout a defined area, but instead singles out not just a single lot, but a single permit holder. The measure is unreasonable as it conditions a building permit upon performance of a private agreement, whether or not that private agreement is actually enforceable. Finally, the measure is not related to the typical purposes of zoning, such as public health, safety, morals, or general welfare, but seems to be a punitive effort to have a private party perform its obligations.

A municipality may impose reasonable time limitations on development, at least where those restrictions are temporary and adopted to provide controlled development while the municipality engages in comprehensive planning studies. *Sturges*, 380 Mass. at 252. “Except when used to give communities breathing room for periods reasonably necessary for the purposes of growth planning generally, or resource problem solving specifically, as determined by the specific circumstances of each case, [*Sturges*, 380 Mass. at 257], such zoning ordinances do not serve a permissible public purpose, and are therefore unconstitutional.” *Zuckerman v. Town of Hadley*, 442 Mass. 511, 520-21 (2004).

A temporary moratorium is within a Town’s zoning power when there is a stated need for “study, reflection and decision on a subject matter of [some] complexity.” *W.R. Grace v. Cambridge City Council*, 56 Mass. App. Ct. 559, 569 (2002) (upholding adoption of time limited interim zoning moratorium while study is conducted, also determining no reverse spot zoning because legitimate purpose being carried out). This measure does not intend to provide the Town time to study “growth planning,” nor “resource problem solving.” The measure intends to punish a permit holder while it, not the Town, takes time to study, reflect and decide upon how the permit holder will fulfill its obligations.

As stated in *Zuckerman*, moratorium ordinances designed to limit development are invalid except when used to give communities “breathing room for periods reasonably necessary for the purposes of growth planning generally, or resource problem solving specifically.” *Zuckerman*, 442 Mass. at 520. A desire that a specified existing permit holder performs certain obligations is not proper purposes for restricting development. In other words, a municipality cannot use zoning ordinances as tools to stop or strangle future development. *Sturges*, 380 Mass. 246, 259 (1980) (“We are not confronted with a by-law generally designed to exclude persons from acquiring” a home.).

This measure also singles out, not a single lot, but a single permit holder. In this case, that constitutes illegal reverse spot zoning. G.L. c. 40A, § 4 (“Any zoning ordinance or by-law which divides cities and towns into districts shall be uniform within the district for each class or kind of structures or uses permitted.”); *see also W.R. Grace & Co.-Conn. v. Cambridge City Council*, 56 Mass. App. Ct. 559, 569 (2002) (internal citations omitted) (“Spot zoning occurs ‘where one lot or a small area has been singled out for treatment less onerous than that imposed upon nearby, indistinguishable properties. Amendments that impose more restrictive treatment on given parcels than is imposed on other parcels in the same zoning district are often characterized as ‘reverse spot zoning.’ However, the legality of a given zoning

amendment turns not on what parcel has been singled out, or even on the effect on the parcel, but rather on whether the change can fairly be said to be in furtherance of the purposes of the Zoning Act.”). This measure is not uniform within the district or use permitted. It singles out a single permit holder—explicitly, by name—and does not further the purposes of the Zoning Act, such as public health, safety, morals, or general welfare. Instead, the measure states the “moratorium may be lifted only if Cove ... fulfills all obligations” under an agreement with residents.

The Zoning Act “suggests” that the objectives of zoning include: protection of health and safety; lessening of congestion, overcrowding and concentration; facilitating provision of municipal services, schools and parks; encouraging housing for persons of all income levels; conserving property values and natural resources; and encouraging appropriate land use. St. 1975, c. 808, § 2A.

The types of local laws to be adopted to achieve such objectives are defined in Chapter 808 as including, but not limited to, laws restricting, prohibiting, permitting or regulating: *uses of land*, including wetlands, lands subjected to flooding, bodies of water and water courses; *noxious uses*; *size, height, bulk, location and use of buildings and other structures*; and *signs*, except those subject to M.G.L.A. c. 93, §§ 29 to 33 and to M.G.L.A. c. 93D; *areas and dimensions of land* and waters to be occupied or unoccupied by uses and structures; *population density and intensity of use*; *accessory facilities and uses*; and *development of natural, scenic and aesthetic qualities*. St. 1975, c. 808, § 2A. Here, the purpose of this measure is to inappropriately use zoning to require a private permit holder to fulfill its obligations to private residents in Town.

Finally, the measure likely constitutes an illegal regulatory taking. *See MacNeil v. Town of Avon*, 386 Mass. 339, 341 (1982) (“[W]hile property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking.... [A] strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change,” *quoting Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415-416 (1922); *see also First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 482 U.S. 304, 318 (1987) (“temporary” takings which, as here, deny a landowner all use of his property, are not different in kind from permanent takings, for which the Constitution clearly requires compensation). Thus, enforcement of this measure may expose the Town to a takings claim by Cove and possibly the underlying landowner.

A takings claim by Cove for an improperly withheld building permit could be as high as \$5 million dollars. *Memorandum from Town Solicitor to Ordinance Committee Chair*, dated October 28, 2019. Even if the building permit were withheld for only one year, a reasonable estimate of damages would be more than \$500,000. I cannot recommend strongly enough that you veto this measure to avoid subjecting the Town to a potential six- or seven-figure liability.

**AMENDMENT to BILLBOARD RELOCATION AGREEMENT BETWEEN THE
TOWN OF WEYMOUTH AND COVE OUTDOOR, LLC**

THIS AMENDMENT ("Amendment"), is made on this the _____ day of December, 2020 to the following document: Cove Outdoor, LLC's billboard relocation agreement with the Town of Weymouth and the landlords of the new electronic billboards, by and between the **TOWN OF WEYMOUTH**, a body corporate and politic, acting through its Mayor, with an address of 75 Middle Street, Weymouth, Massachusetts 02189 ("**Town**"), **BATES BROTHERS SEAM FACE GRANITE Co., Inc. and LORUSSO-BRISTOL STONE Corp.** ("**Electronic Billboard Landlords**"), corporations duly organized under the laws of the Commonwealth of Massachusetts that do business in the Commonwealth of Massachusetts at 410 Whiting Street, Hingham, Massachusetts 02043 and Post Office Box 230, 331 West Street, Walpole, Massachusetts 02081, respectively, and **COVE OUTDOOR, LLC** ("**Cove**"), a corporation duly organized under the laws of the Commonwealth of Massachusetts that does business in the Commonwealth of Massachusetts at 44 School Street, Suite 200, Boston, Massachusetts. The Town, the Electronic Billboard Landlords, and Cove may be referred collectively within this document as the "**Parties**," and the Billboard Relocation Agreement, dated July 27, 2018, may be referred to as the "Agreement."

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which hereby are acknowledge, the Parties hereby amend the Agreement as follows:

1. **Definitions**. Any words, phrases, or terms used in this Amendment, unless otherwise defined herein, have the same meanings as set forth in the Agreement.

2. **Amendments.**

- a. Bristol Bros. Development Corp. shall be added as a party to this Amendment and this Agreement as an additional "Electronic Billboard Landlord," who owns property at 0 Finnell Drive, specifically parcel ID nos. 32-423-4 and 36-452-9.
- b. Concerning Cove and the Town's extensive, yet unsuccessful, efforts to reach agreement with the existing lessees of the Static Billboards, said Agreement is hereby amended in section two by striking out the phrase "within a year of the execution of this Agreement" and inserting in place thereof the following phrase:- "at the end of their existing leases"
- c. Said Agreement is hereby further amended in section two by striking out the phrase "613 Pleasant Street" and inserting in place thereof the following phrase:- "0 Finnell Drive"
- d. In order to (i) offset the loss profits Cove incurred by deferred operation of its electric billboard to resolve concerns of Weymouth residents; (ii) fund the commitments Cove made to Weymouth residents over the operation of its Electric Billboards; and (iii) to fund the Town's acquisition of the entire 0 Finnell Drive site, parcel ID nos. 32-423-4 and 36-452-9 from Bristol Bros Development Corp., said Agreement is hereby further amended by striking out section three. The intent of the parties with this subsection is that the Electronic Billboard Landlords shall credit Cove any grant payments owed to the Town in the past and going forward into the future and that the Town hereby assigns and waives any and all grant payments related to 0 Finnell Drive to Bristol Bros. Development Corp.

- e. Concerning Cove and the Town's extensive, yet unsuccessful, efforts to reach agreement with the existing lessees of the Static Billboards, said Agreement is hereby further amended by striking out section four and inserting in place thereof the following section:-

REMOVAL OF STATIC BILLBOARDS IN NORTH WEYMOUTH

Cove agrees to fulfill the agreements it has, and will have, with all Static Billboard landlords along Route 3A to not renew their existing billboard leases and remove the existing Static Billboards at the end of these existing leases. Removal of these Static Billboards shall be the obligation of Cove, either through the existing lessee, the Static Billboard landlord, or Cove itself, but shall not be the obligation of the Town. Each Static Billboard shall be removed within ninety days of the expiration of its existing lease, unless a longer period of time is agreed to by the Town in writing.

- f. In order to (i) offset the loss profits Cove incurred by deferred operation of its electric billboard to resolve concerns of Weymouth residents; (ii) fund the commitments Cove made to Weymouth residents over the operation of its Electric Billboards; and (iii) to fund the Town's acquisition of the entire 0 Finnell Drive site, parcel ID nos. 32-423-4 and 36-452-9 from Bristol Bros Development Corp., said Agreement is hereby further amended by striking out section five.
- g. In order to (i) offset the loss profits Cove incurred by deferred operation of its electric billboard to resolve concerns of Weymouth residents; (ii) fund the commitments Cove made to Weymouth residents over the operation of its Electric Billboards; and (iii) to fund the Town's acquisition of the entire 0 Finnell Drive site, parcel ID nos. 32-423-4 and 36-452-9 from Bristol Bros Development Corp., said

Agreement is hereby further amended by striking out section six and inserting in place thereof the following section:-

ONE-TIME STIPEND FROM COVE

Cove will pay a One-Time Stipend to the Town in the amount of four hundred thousand dollars (\$400,000) for remediation efforts to satisfy resident complaints to which the Town committed. Cove shall disburse this One-Time Stipend to the Town in the following manner: (i) a down payment of fifty thousand dollars (\$50,000) upon the first payment Cove receives for Cove's cash flow related to the electronic billboard on the 0 Finnell Drive Property; and (ii) a payment of three hundred and fifty thousand dollars (\$350,000.00) upon Cove's receipt of payment for its cash flow or the sale of a digital billboard located at 0 Finnell Drive in Weymouth. If Cove fails to fulfill this One-Time Stipend in full before June 30, 2022, then Cove shall also owe the Town interest on the unpaid amount at the rate of the most recent bond rate the Town issued prior to June 30, 2022, compounded quarterly, from the date of this agreement until Cove fulfills its One-Time Stipend."

- h. Said Agreement is hereby amended by inserting at the end of section 8(a), the following new sections:-

vi. On January 2, 2021 or within three days of the execution of this Agreement by Cove, whichever is later, Cove shall cease all advertising and turn off each billboard faces at 611 Pleasant Street until Cove has satisfied all of its obligations pursuant to this section 8(a)(vii-xii) of the Agreement. If Cove does not satisfy these obligations described in the previous sentence by September 30, 2021, unless a previously agreed upon tolling period applies, then Cove will surrender its billboard permit for the billboard at 611 Pleasant Street and remove all billboard structures at 611 Pleasant Street

("Cove's Performance Period"). If Cove has not been able to accomplish its obligations pursuant to Section 8(a)(vii-xii) of the Agreement by April 30, 2021, the Town will not object to allowing Landmark Dividend, LLC to have the right to cure and finish those obligations on behalf of Cove.

If any party other than Cove appeals the decision of the Town of Weymouth Conservation Commission to allow for tree cutting to lower the billboard at 611 Pleasant Street, then Cove's Performance Period will be tolled during the pendency of said appeal. In addition, if Cove has installed Light Blocking Technology at 611 Pleasant Street, then Cove may illuminate and run advertisements on the billboard faces at 611 Pleasant Street during the pendency of any such appeal, if acceptable to the Town and state's Office of Outdoor Advertising.

vii. Within one week of the execution of this Amendment by all signatories, Cove will order and have promptly delivered two (2) fourteen by forty-eight-foot digital billboard faces incorporating Light Blocking Technology to replace the current digital faces at the electronic billboard located at 611 Pleasant Street. Cove shall promptly install the faces incorporating Light Blocking Technology upon delivery.

viii. Cove shall install Light Blocking Technology on the new Electronic Billboard at 0 Finnell Drive during construction and before any operation of the new Electronic Billboard at 0 Finnell Drive. Furthermore, the Town will not issue its approval after final inspection for the new Electronic Billboard at 0 Finnell Drive unless Cove has two Light Blocking Technology faces at 611 Pleasant Street. In addition, if Cove has not fulfilled its obligations under section 8(a)(x)(d-f) by the time the Town is prepared to issue its approval

after final inspection for the new Electronic Billboard at 0 Finnell Drive, then the Town may withhold its approval after final inspection until Cove has submitted, and the Town approves, an enforceable completion schedule for these remaining obligations within the Agreement's existing timeframe.

ix. The Light Blocking Technology Cove shall install at 611 Pleasant Street and 0 Finnell Drive shall be the type, kind, and style previously discussed with the Town and residents and shall be from a manufacturer approved by the Town.

x. Cove shall fulfill the commitments it made to the Weymouth residents in a "Remediation agreement for neighborhoods near the 611 Pleasant Street digital billboard," dated December 18, 2019, unless the residents agree in writing to modify these responsibilities. If the Commonwealth of Massachusetts denies an additional tree cutting permit, or the Town of Weymouth Conservation Commission denies Cove's wetlands permit, and consistent with section 8(a)(xi) below, then Cove will be released only from its obligations to lower the sign as referenced in section 8(a)(x)(a).

These commitments include the following:

- a) Cove Outdoor will lower the digital sign at 611 Pleasant Street 20 to 25 feet, or lower, in height.
- b) [Amended. *See* subsection 8(a)(vi-ix), above.]
- c) [Amended. *See* subsection 8(a)(vi-ix), above.]
- d) Cove Outdoor will plant trees on the properties of neighbors affected by the digital sign. Cove will consult with an arborist as well as meet with those residents to determine, through mutual agreement, the adequate number and type of trees to be planted.

- e) Cove Outdoor will plant lower height evergreens behind the area in which the state-permitted tree cutting will take place to help preserve visual barrier from the operation of the quarry in consultation with an arborist.
- f) Cove Outdoor will build stockade fencing or equivalent where affected neighbors may want a visual barrier.

xi. Cove shall prepare a tree cutting permit with whatever assistance from the Town in whatever capacity it may provide to lower the 611 Pleasant Street billboard, *see* subsection 8(a)(x)(a), above. The Town shall make its best efforts to get any state-required fees waived as the additional tree cutting is in the public interest, and not merely a commercial interest. If the Town is unsuccessful with persuading the state to reduce or waive any required fees, however, then Cove shall pay all fees required for tree cutting necessary to lower the 611 Pleasant Street billboard. If Cove must pay the state for the tree cutting permits, then Cove will be required to lower the 611 Pleasant Street billboard within one year after execution of this amendment. Cove shall also pay all costs, fees, and expenses of lowering the 611 Pleasant Street billboard. The number of feet of lowering of 611 Pleasant Street billboard, if lowering is necessary, will be determined by Cove and the Town, but in accordance with the "Remediation agreement for neighborhoods near the 611 Pleasant Street digital billboard," dated December 18, 2019.

In order to fulfill Cove's obligations pursuant to the December 18, 2019 remediation agreement, Cove will perform the following:

- a) Have its finance partner, Landmark Dividend, hold back from a sale of the cash flow for 611 Pleasant Street billboard remediation funds in the amount of \$541,708 to purchase Light

Blocking Technology, cut trees, and lower the billboard pursuant to the terms of this Amendment (the "Escrow Funds").

- b) Of the Escrow Funds, \$303,548.42 will be paid directly by Landmark Dividend to a billboard hardware company to pay for the Light Blocking Technology billboard faces.
- c) The remaining \$238,159.58 will be disbursed by Landmark Dividend directly to vendors to perform the tree cutting and sign lowering.
- d) Oversight of this process will be conducted by the Town and a representative designated by the neighborhood residents as determined by the Weymouth residents who signed the "Remediation agreement for neighborhoods near the 611 Pleasant Street digital billboard," dated December 18, 2019.
- e) Cove will work with the Town's Conservation Commission to file the Notice of Intent for any tree removal that is necessary in the wetlands buffer zone and wetlands as well as exhaust all efforts to comply with the Conservation Commission to obtain an Order of Conditions necessary to complete the tree removal.
- f) If tree cutting and sign lowering is not possible to a denial from the Weymouth Conservation Commission or denial of a tree cutting permit from the State Department of Transportation and Cove has exhausted all reasonable options and possibilities for tree removal that will provide for the lowering of the 611 Pleasant Street billboard, as finally determined solely by the Town and consistent with section 8(a)(x) and (xi) of this Agreement, any remaining funds will only be disbursed to Cove upon execution of a written agreement signed by the same parties as the "Remediation agreement for neighborhoods near the 611 Pleasant Street digital billboard," dated December 18, 2019.
- g) Cove will provide any residents who request it with regular correspondence, including a weekly e-mail update, and will

meet with concerned residents monthly to maintain open lines of communication.

- h) Cove will provide the Town Council President a weekly email update.
- i) At request of the Mayor, Cove will provide any nonproprietary information to whomever named by the Mayor.
- j) In addition to Cove already retaining qualified contractors to pursue state DOT tree cutting permits and to pursue approvals from Town Conservation Commission and to keep billboard illumination at a lower level, Cove shall continue to address completion of all obligations with best efforts, to the best of Cove's ability and in good faith. Whether Cove has addressed, or is addressing, its obligations in good faith shall be determined solely by the Town.

xii. Cove shall surrender its billboard permits for 613 Pleasant Street, if the state grants permits for 0 Finnell Drive. Cove shall similarly satisfy MassDOT by filing the amendments the state seeks for the billboard at 611 Pleasant Street. Cove shall not request a local building permit for the 613 Pleasant Street billboard at any time before June 30, 2021 or the date of expiration of the state billboard permit for 613 Pleasant Street, whichever is later, if the Office of Outdoor Advertising denies the extension of said permit. Whether the Town grants such a building permit shall be in the sole and final discretion of the Town.

- i. Said Agreement is hereby amended by inserting at the end of section 8, the following new subsection:-

h. Conveyance of 0 Finnell site by to Bristol Bros. Development Corp. to the Town. Bristol Bros. Development Corp. shall convey the 0 Finnell Drive site, parcel ID nos. 32-423-4 and 36-452-9, to the Town within sixty (60) days of the i) the state granting two

billboard permits to operate a billboard at 0 Finnell Drive with Light Blocking Technology at that site and ii) all other permits and approvals have been obtained, including building permits and wetland permits, and all appeal periods have expired or if any appeals are filed, all appeals have been exhausted to allow the two billboards to operate.

This conveyance shall be fee simple with a fully executed recordable deed to the Town, to be placed in escrow until the two billboard faces are legally permitted to operate, are constructed, and in full operation at which time the deed shall be released from escrow and recorded at the Registry of Deeds. If the two billboard faces are not constructed and in full operation within twelve (12) months of the deed being placed in escrow, the deed will be released from escrow to Bristol Bros. Development Corp.

The only land remaining at 0 Finnell Drive owned by Bristol Bros. Development Corp. shall be land necessary to construct, access, provide utilities and maintain the billboard at 0 Finnell Drive. Bristol Bros. Development Corp.'s transfer of this land will not impede Cove's access to install and maintain a billboard at 0 Finnell Drive. The Town will cooperate with Cove and Bristol Bros. Development Corp. to the extent legally possible to ensure that Cove has access to install and maintain the billboard at 0 Finnell Drive. Any terms of this subsection may be modified or extended by only Bristol Bros. Development Corp. and the Town without consent of the other Parties.

- j. Said Agreement is hereby amended by inserting at the end of section 8(a)(v), the following new sentence:- "Cove acknowledges that the Town may amend its guidelines as to the content of advertising on the 611 Pleasant Street billboard or any other billboards for which Cove

has a permit (i.e., banning advertising for strip clubs and tobacco companies) after providing reasonable notice to Cove within the next three years of the date of the execution of this agreement. The most recent amendment of the guidelines is attached as Exhibit A.

3. **Additional covenant.** After the execution of this Agreement, Cove and the Town shall promptly execute such documents and other papers and take such further actions as may be reasonably required or desirable by each party to carry out the provisions and the transactions contemplated by this Agreement as expeditiously as possible.
4. **Tolling of Deadlines Due to COVID-19 Restrictions.** With the exception of the new section 8.a.vi, all other deadlines in this Amendment will be tolled for any period for which the Governor of Massachusetts institutes Phase 2 or Phase 1 of COVID-19 restrictions in the Commonwealth of Massachusetts.
5. **Effect.** Except as specifically modified hereby, the Agreement shall remain in full force and effect and are hereby ratified and confirmed by the Parties.

IN WITNESS WHEREOF, the Parties have executed this Amendment under seal as of the date first written below.

Town of Weymouth

By:

(Signature)

Title: Mayor

Date:

Approved as to Form:

Joseph Callanan, Town Solicitor

Cove Outdoor, LLC

By:

(Signature)

Title:

(Authorized Representative)

Date:

Bates Brothers Seam Face Granite Co., Inc.

By:

(Signature)

Title:

(Authorized Representative)

Date:

Lorusso-Bristol Stone Corp.

By:

(Signature)

Title:

(Authorized Representative)

Date:

Bristol Bros. Development Corp.

By:

(Signature)

Title:

(Authorized Representative)

Date:
