

**Town of Weymouth
Massachusetts**

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Robert L. Hedlund
Mayor

Town of Weymouth
75 Middle Street
Weymouth, Massachusetts 02189

January 18, 2022

CC: ALL COUNCILORS

Edward E. O'Sullivan, Esquire
Manager & Counsel
Cove Outdoor LLC
Post Office Box 590545
Newton Center, Massachusetts 02459
Certified Mail, Return Receipt Requested #7012 2210 0000 7624 9955

E-MAILED
21 JAN 22

DA

With copies to:

William J. McNulty, Jr., Esquire
190 Old Derby Street, Suite 307
Hingham, Massachusetts 02043
Certified Mail, Return Receipt Requested #7012 2210 0000 7624 9948
(as attorney for Bates Brothers Seam Face Granite Co., Inc. and Lorusso-Bristol Stone Corp.)

Via email and certified mail, return receipt requested

SUBJECT: **Notice of default by Cove Outdoor LLC of the Billboard Relocation Agreement between the Town of Weymouth and Cove Outdoor, LLC, dated July 27, 2018, ("Agreement") and as amended by the Amendment to Billboard Relocation Agreement between the Town of Weymouth and Cove Outdoor, LLC, dated January 8, 2021, ("Amendment").**

Dear Attorney O'Sullivan:

This letter pertains to the *Agreement*, as amended, between Cove Outdoor, LLC and the Town of Weymouth described above.

As you are aware, various sections of the *Agreement*, as amended, state that:

1. "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*." *Amendment*, § 8(a)(vi) (first sentence), as amended.

As stated in the most recent meeting with Cove Outdoor and the Town on January 6, 2022, and in numerous emails, and most recently in an hour-long telephone conversation between you and me on January 13, 2022, Cove Outdoor has not "satisfied all of its obligations." The Town lists below in detail how Cove Outdoor has missed many deadlines, failed to satisfy all of its obligations to the Town, and failed to fulfill the commitments it made to the Weymouth residents. Yet inexplicably and without permission or agreement with the Town, on January 14, 2022, Cove Outdoor turned on one of the two billboard faces at 611 Pleasant Street.

2. "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")." *Agreement*, § 8(a)(vi) (second sentence), as amended.

Cove Outdoor has not satisfied many of its obligations as of today, and it certainly did not satisfy all its obligations by September 30, 2021. Cove Outdoor requested an extension of time on September 28, 2021, even though it was clearly apparent for many weeks that Cove Outdoor would not be able to satisfy timely all of its obligations.

The Town responded to Cove Outdoor's request for an extension of time on October 6, 2021. Cove Outdoor never adequately responded to the Town's offer to consider a request for an extension of time, and Cove Outdoor certainly never accepted the Town's offer. After Cove Outdoor turned on the billboard on January 14, 2022, without the Town's permission and in breach of the agreement, the Town withdrew its offer to consider a request for an extension of time via email at 3:04 p.m. on January 14, 2022. No "previously agreed upon tolling period applies" excusing Cove Outdoor's performance.

3. "The Light Blocking Technology Cove shall install at 611 Pleasant Street and 0 Fennell 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." *Agreement*, § 8(a)(ix), as amended.

As stated in the most recent meeting with Cove Outdoor and the Town on January 6, 2022, and in numerous emails, and most recently in an hour-long telephone conversation between you and me on January 13, 2022, the light blocking technology Cove Outdoor installed at 611 Pleasant Street does not perform as Cove Outdoor promised.

First, houses that should be in the "black-out" area are not, for example 93 Century Road.

The Town sent an email on February 23, 2021, approving the Formetco technology that Cove Outdoor selected and presented to the Town. In that February 23 email, we specifically wrote that the Town is "willing to approve the Formetco technology as depicted in the attached" plan. The Town has relied upon Cove Outdoor since that February 2021 email to install light-blocking technology consistent with that plan. We only found out that Cove Outdoor did not, and apparently never had any intention to do so, when Cove Outdoor sent the Town an email on December 17, 2021.

Second, houses that should be in the blacked-out area receive more than one percent brightness as promised by Cove Outdoor's agent, Formetco. For example, during a recent test on December 16, 2021, light readings by the Town inspector showed a brightness at 21 Price Way of 0.12-foot candles over ambient. Light readings by the same inspector at 145 Century Road, a house that should have been in the blacked-out area, showed a brightness of 0.02-0.03-foot candles over ambient, which is 16-25% brightness, not one percent brightness as promised.

Third, the area that should be blacked out isn't. Residents see a green light, which is contrary to all the videos Cove Outdoor ever showed us demonstrating light blocking technology.

For these reasons, the light blocking technology Cove Outdoor installed at 611 Pleasant is not the "type, kind, and style previously discussed with the Town."

4. "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." *Agreement*, § 8(a)(x), as amended.

As described below, Cove Outdoor has not fulfilled the commitments it made to Weymouth residents, nor have residents modified in writing Cove Outdoor's responsibilities.

5. "Cove Outdoor will plant trees on the properties of neighbors affected by the digital sign." *Agreement*, § 8(a)(x)(d), as amended.

"Cove Outdoor will build Stockade fencing or equivalent where affected neighbors may want a visual barrier." *Agreement*, § 8(a)(x)(f), as amended.

As Cove Outdoor admitted in an email you sent to the Town, dated January 12, 2022, at 9:32 p.m., attaching a file entitled "Cove-- 611 Pleasant Street Remediation Final (002)," Cove Outdoor reached agreement with only five out of the six, affected Century Road neighbors, an 83% compliance rate.

6. "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." *Agreement*, § 8(a)(x)(e), as amended.

Although Cove Outdoor touts as an accomplishment that another party built a berm, which was not even started until mid-December 2021, months after the September 30 deadline, Cove Outdoor has not yet planted *any* "lower height evergreens." Cove Outdoor has not even told us when it will ever plant the lower height evergreens promised by Cove Outdoor.

The Town and Century Road residents intended these evergreens to help preserve the visual barrier between the industrial operations on the site of the billboard and the Century Road neighborhood. Cove Outdoor exacerbated the visual impact of the industrial operations by cutting hundreds of trees to improve the billboard's visibility. With inches of snow on the ground, the Town has no idea when Cove Outdoor will ever be able to plant these trees on the berm.

7. "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." *Agreement*, § 8(a)(xi)(d), as amended.

Cove Outdoor thwarted at every turn the Town's effort to oversee the installation of the light blocking technology. The Town was fearful of Cove Outdoor's inability to perform properly, given its history so far; thus, the Town repeatedly requested advance notice of actions involving the installation of the light blocking technology, but Cove Outdoor did not provide sufficient detail to the Town for it to arrange proper oversight. Cove Outdoor would frequently inform the Town in vague details that something may occur during a particular week, but then only provide the specific date and time that same day or the day before. This short notice, if any notice was ever provided at all, was insufficient with the schedules of the Town officials involved to be able to arrange the proper Town official to be on site to oversee Cove Outdoor's operations.

8. "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." *Agreement*, § 8(a)(xi)(g), as amended.

"Cove will provide the Town Council President a weekly email update." *Agreement*, § 8(a)(xi)(h), as amended.

As Cove Outdoor admitted in an email you sent to the Town, dated January 12, 2022, at 9:32 p.m., attaching a file entitled "Cove-- 611 Pleasant Street Remediation Final (002)," Cove Outdoor sent out only

44 weekly updates. The first weekly update Cove Outdoor sent out after signing the Amendment was on January 15, 2021. There have been 51 weeks since then, which is more than 44, an 86% compliance rate.

9. "No party may otherwise assign, sublet or otherwise transfer their interest in this Agreement, in whole or in part, without the prior written consent of the other, said consent not to be unreasonably delayed or withheld, but may not be compelled by law or equity." *Agreement*, § 12(a).

In Cove Outdoor's dealings with the Town, Cove Outdoor has only ever described its relationship with Landmark Dividend as an entity that "bought its income stream." Cove Outdoor has never described Landmark to the Town as an assignee or transferee. However, Cove Outdoor has assigned to Landmark its lease with Bates Brothers Seam Face Granite Co., Inc., Lorusso-Bristol Stone Corp., or both, which is a breach of Cove Outdoor's agreement with the Town.

10. "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." *Agreement*, § 4, as amended by the *Amendment*, § 2(e).

"Cove will pay the Static Landlords payments as described within their agreements." *Agreement*, § 8(a)(iii).

At least one Static Billboard landlord has complained to the Town that Cove Outdoor owes the landlord money, which constitutes a failure on Cove Outdoor's part "to fulfill the agreements it has, and will have, with all Static Billboard landlords" and "pay the Static Landlords payments as described within their agreements."

11. "Cove commits to mitigate the impact of the current static Billboard located at 1550 Bedford Street in Abington, Massachusetts within one year of the Execution Date [of the *Agreement*, which was July 27, 2018]. *Agreement*, § 7.

"Cove will work and cooperate expeditiously with the owner and tenant of a static billboard located at approximately 1555 Bedford Street, Abington, Massachusetts to remove the static billboard and replace it with an electronic billboard with sight blocking technology that reduces the light and glare Weymouth residents experience from the existing static billboard." *Agreement*, § 8(a)(iv).

Cove Outdoor has neither mitigated nor removed nor replaced the Abington billboard, which is now advertising marijuana, which Cove Outdoor also promised it would not.

12. "Cove shall further provide each Party with a copy of the current additional insured endorsement page reflecting that Cove added each Party as an additional insured for each insurance policy to which Cove added the Parties." *Agreement*, § 8(a)(ii).

The *Agreement* required Cove Outdoor to procure insurance on behalf of the Town. We never received proof that you have, which is a separate obligation under the *Agreement*, which clearly has been breached by failure to provide proof of insurance.

Accordingly, Cove Outdoor has numerous duties and obligations that it had the responsibility to complete before today. It did not.

Cove Outdoor has missed many deadlines, failed to satisfy all of its obligations to the Town, and failed to fulfill the commitments it made to the Weymouth residents. Even though Cove Outdoor failed to keep its promises, Cove Outdoor turned on the billboard without permission and in breach of the *Agreement*.

The purpose of this letter is to provide written notice, pursuant to the *Agreement*, § 9(b), that the Town considers Cove Outdoor to have failed to conform or comply with many express and implied obligations of the *Agreement*.

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We have specifically set forth above the respects to which the Town asserts a default and considers that Cove Outdoor has so far failed to perform or comply with these numerous provisions of the *Agreement*, as amended.

Pursuant to the *Agreement*, § 9(b), Cove Outdoor now has sixty (60) days after receipt of this notice to remedy or commence to remedy these defaults as alleged by the Town. The delivery of this default notice and the lapse of sixty (60) days thereafter shall be a condition precedent to any termination of this *Agreement*. Without a valid *Agreement*, Cove Outdoor does not have authority under zoning to maintain operations of the 611 Pleasant Street billboard.

If Cove Outdoor wishes to avail itself of the provision of the *Agreement*, § 12(n) (first sentence), please let us know who the "senior representatives" of Cove Outdoor are that you wish to attempt to resolve the numerous disagreements the Town listed above. Please also let us know when you would be available to meet.

Thank you very much.

Sincerely,


Joseph Cathlamet
Town Solicitor