

LAW OFFICE OF
DREW W. HOYT
15 WALL STREET, P.O. BOX 9
FOXBORO, MA 02035

OFFICE: (774) 215-0550
CELL: (508) 439-0069
EMAIL: DHOYT.HOYTLAW@GMAIL.COM

April 20, 2021

Via Email (jaubin@seekonk-ma.gov)

Mr. Keith Rondeau, Chairman
Seekonk Zoning Board of Appeals
Seekonk Town Hall
100 Peck Street
Seekonk, MA 02771

Re: Greenbrier II 40B Project

Dear Mr. Chairman:

I represent Douglas and Cathy Metz, of 135 Greenbrier Drive, and Jarred and Linda Minieri, of 129 Greenbrier Drive. My clients are long-time residents in the original Greenbrier development, having lived there since 2008-2009. They are among the few unfortunate unit owners who bought townhomes at Greenbrier, before R.I. Seekonk Holdings, LLC ("RISH") decided to stop selling units and to operate the remaining ~70 townhomes as apartments, rather than selling them for owner-occupancy as was original planned and advertised. My clients have a unique perspective on the Greenbrier II application currently pending before the Board.

What the Board must keep in mind, as it reviews RISH's Greenbrier II application, is that RISH is unlikely to comply with any requirements the Board might impose as conditions of approval, unless doing so serves RISH's financial interests. Once the proposed apartments are constructed, RISH will operate them to maximize its profits. Permit conditions will only be as useful as the enforcement mechanisms attached to them and the Town's willingness to enforce them. This is borne out by RISH's operation of the Greenbrier I development, which the Board should carefully scrutinize before issuing any permit for the Greenbrier II expansion.

The Board should deny the proposed application, for the reasons explained below. If for some reason the Board chooses to issue a comprehensive permit, the Board must be extremely careful in the drafting of the permit, to ensure that any conditions imposed by the Board will actually be complied with.

In reviewing RISH's compliance history at Greenbrier I, and the proposed Greenbrier II development, the Board should pay particular attention to four issues:

1. The wastewater treatment facility;
2. Water supply;
3. Traffic; and
4. 40B profit limits.

Wastewater Treatment Facility

RISH does a poor job maintaining the wastewater treatment facility ("WWTF") for the Greenbrier development. As the Conservation Commission explained in its initial comments on this project, "there have multiple issues with pump failures and raw effluent being released from the existing on-site package treatment plant at Greenbrier I," just within the past four years. See October 2, 2020 letter from the Seekonk Technical Review Committee to the Massachusetts Housing Partnership.

Over the past couple months, my clients have witnessed a daily parade of pump trucks en route to the WWTF, at all hours of the day. They asked RISH's owner, H. Charles Tapalian, why the WWTF was being constantly pumped out. He answered that "a large amount of grease has gotten into the membranes ... we cannot balance the flow with the amount of grease that is suddenly being flushed into the system ... we are trucking away the material that cannot be processed in a timely manner." See attached email correspondence between Jarred Minieri and H. Charles Tapalian.

The WWTF is, by far, the largest operational expense for the Greenbrier development. The temptation for RISH to cut corners on inspections, operation and maintenance, is great. Allowing a private development company to own and manage a sewer plant, serving hundreds of Seekonk residents, was a foolish gamble by the Town in the first instance, as demonstrated by reports of "raw effluent being released" less than 15 years after the development was built. It would be the height of folly to double down on that gamble by trusting RISH to responsibly handle the sewage of hundreds of additional units.

It is only a matter of time before the WWTF becomes too costly for RISH (or RISH's successor) to operate profitably, at which point the Town will likely need to step in. The Board should consider that eventuality, and prepare for it, by either denying proposed Greenbrier II expansion or by requiring an adequate, ironclad financial assurance mechanism that will protect the Town when the private sewer treatment experiment at Greenbrier ultimately fails.

The Board should carefully scrutinize the operational history of the WWTF, and the financial assurance mechanisms that now exist, if any. This review should be conducted with the assistance of an independent peer reviewer.

Water Supply

My clients echo the concerns of the Seekonk Water District (“SWD”). As explained in its April 14, 2021 letter to the Board, “[t]he SWD has concerns about the impact of this proposed development on the District’s distribution system and available fire flow capacity when the proposed buildings are built out.”

Given that RISH “proposes to service the new buildings by extending the existing water infrastructure,” my clients and other Greenbrier residents are among those who would be put at risk by insufficient water pressure in the event of a fire. The Board must ensure that the existing Greenbrier water supply infrastructure is not overtaxed by the proposed expansion.

Traffic

RISH’s failure to comply with the traffic control requirements of the original Greenbrier design has resulted in what can only be described as a traffic nightmare, which directly impacts my clients among many others.

When building the original Greenbrier development, RISH was supposed to install gates in several locations — most importantly, at the Howland Street entrance to the development — to ensure that Greenbrier’s internal driveways did not become cut-through streets for general traffic.

Unsurprisingly, RISH failed to install and maintain a functional gate on Howland Street, or anywhere else. As a result, Greenbrier is now used as a cut-through to avoid the congestion on Fall River Avenue in the vicinity of the Rt. 195 exit and the old Showcase Cinemas building. The word is out about the cut-through. Every day, especially during rush hour, a large and steadily increasing number of cars and trucks (including commercial vehicles) enter Greenbrier via Cole Street, then travel through the development along Springhouse Trail, Forsythe Circle, and Howland Street, exiting to County Street. By doing so, they are able to avoid the long backup of traffic on Fall River Avenue approaching the traffic light at County Street. It has turned what were meant to be quiet side streets into major traffic routes.

The building where my clients live is located at the corner of Forsythe Circle, Howland Street, and Greenbrier Drive. They have a front-row seat to the massive amount of cut-through traffic through the development.

The existing cut-through traffic along Forsythe Circle and Howland Street will be substantially exacerbated by the proposed Greenbrier II expansion. The Board should not even consider allowing the expansion without (i) a peer-reviewed traffic study, and (ii) an ironclad, enforceable requirement that gates be installed and maintained at all access-points to and from the Greenbrier complex. The use of Greenbrier as a cut-through must end.

40B Profit Limits

Chapter 40B imposes limits on the operating profits of apartments developed via comprehensive permits. Excess profits, if any, must be paid to the municipality in which the development is located.

However, RISH will be able to easily skirt any profit restrictions on Greenbrier II, wringing out every dollar of allowed profit — but never more — by co-mingling Greenbrier II's finances (e.g., expenses for sewer treatment, trash disposal, grounds maintenance, etc.) with those of Greenbrier I (which was not developed under Chapter 40B and is not subject to profit restrictions) and other Tapalian-controlled entities. By shifting costs from Greenbrier II to Greenbrier I (e.g., by overpaying for sewer treatment), or vice versa, RISH will be able to game the system, at the expense of my clients (in the event Greenbrier II underpays for the use of Greenbrier I infrastructure, which my clients fund through condominium fees) or at the expense of the Town (in the event Greenbrier II overpays various Tapalian entities for their services, to avoid excess profits that would need to be paid to the Town).

The Town must closely scrutinize the financial relationship between Greenbrier I and the proposed Greenbrier II developments, and between the Greenbrier condominium trusts and other Tapalian entities. If the expansion is allowed (which it shouldn't be), conditions must be imposed to ensure that the two developments remain financially separate and distinct, and that Greenbrier II pays fully and fairly for the use of Greenbrier I resources.

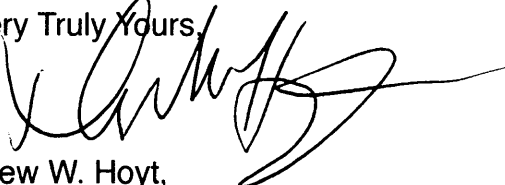
Conclusion

It was a mistake for the Town to have allowed Greenbrier I. The Board should not compound that mistake by allowing a developer with a history of noncompliance and poor management to build and operate hundreds of additional apartments. It is an especially bad idea to allow expanded use of the Greenbrier WWTF, which is already causing releases of untreated effluent to the environment.

The Board should proceed with utmost care, caution, and deliberation. The Board is entitled to utilize independent peer reviewers to scrutinize the project, and should take full advantage of that opportunity. A thorough review of this proposal will reveal ample reasons why the application should be rejected.

Thank you for your consideration.

Very Truly Yours,



Drew W. Hoyt,
Attorney for the Metztes and Minieris

From: Charles Tapalian < [redacted] >
Sent: Thursday, April 1, 2021 5:10 PM
To: Jarred Minieri [redacted] >
Cc: [redacted]
Subject: Re: Waste Water Treatment Facility

[redacted - not related to WWTF] .You can tell the group that we are preparing to upgrade the facility and put in larger grease traps as a large amount of grease has gotten to the membranes-----Beta engineering is working on the problem and are waiting for the licensed operator of the plant to get them the results of certain tests they require to make a final design of the changes required---- we will also be building another tank to balance the flow ----- because we can not balance the flow with the amount of grease that is suddenly being flushed in the system we are trucking away the material that cannot be processed in a timely manner-----this is not my field so I rely on the experts -----
-if you want to talk to them I will get you their number once I contact them and tell them you would like to hear it from someone else-----

[redacted - not related to WWTF]

-----Original Message-----

From: Jarred Minieri ([redacted]
To: Charles Tapalian [redacted]
Sent: Thu, Apr 1, 2021 4:12 pm
Subject: Re: Waste Water Treatment Facility

Good Afternoon Charlie,

Could you please provide us with an update and details as to what exactly is happening with the Waste Water Treatment Facility?

Thank you,

Jarred