



August 15, 2022

VIA EMAIL

Mayor Russell Kraly
Village of Round Lake
442 North Cedar Lake Road
Round Lake, Illinois 60073

Trustee Charlie Foy
Village of Round Lake
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Trustee Sanjay J. Patel
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Trustee Carolina Schottland
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Trustee Sergio Rodriguez
Village of Round Lake
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Round Lake, Illinois 60073

Re: Proposed Landfill Project (Round Lake Ski Hill)

Dear Mayor Kraly and the Board of Trustees:

As you may recall from the meeting of the Committee of the Whole on August 1, 2022, I represent Lino and Donna Cordoba; Robert and Patricia Ross; Lane and Lisa Brown; Pedro and Magali Arteaga; and Chris Swanson, all of whom live adjacent to the proposed landfill project that is the subject of the public hearing here today, and since that date, some other residents have retained my firm.

My clients and I have reviewed the packet published on Friday in advance of today's meeting, including the "Response to Questions and Comments" prepared by the Village staff and the public letter to the Mayor and the Board from David L. Shaw, the attorney for CHDS, LLC, the company owned and/or controlled by Daniel Powell. Much of Mr. Shaw's missive addresses my presentation to the Committee of the Whole on August 1, 2022, and I would like to compliment him on offering cogent points to arguments that I did not make and refuting statements that I did not say. A skeptic

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might conclude that Mr. Shaw offered these strawman arguments to easily blow them down rather than tackle the arguments I did make and the statements I did say that are unassailable. But, I would prefer to give Mr. Shaw the benefit of the doubt that he did not take accurate notes during the Committee of the Whole meeting and simply did not have an opportunity to listen to the audio recording of it or, even, reach out to me to inquire what I actually said.

For example, Mr. Shaw charges that I said that “the only reason the Applicant is seeking approval of this project from the Village is because it was rejected by Lake County,” and this client “had filed an application with the County for a landfill rather than a ski hill,” both of which Mr. Shaw claims are “totally false” statements. In fact, what I said, verbatim, was the following:

[I]f you do your due diligence, you will learn that this is not the first ski hill that Mr. Powell has proposed. Indeed, just a short while ago, he was pitching the same idea to property located in unincorporated Zion, overseen by the Lake County Board. He spend nearly three years seeking approval and modifying plans, and he ultimately gave up.

I did not say that proposed ski hill was rejected by Lake County as Mr. Shaw falsely charges. I then merely continued by saying that this “alone should raise some eyebrows – what does Lake County know or has investigated that caused Mr. Powell to start from scratch elsewhere?” These remain legitimate questions. I also said that this “project did not start as a ski hill. Rather, it started as a usual landfill project. But, when he could not get zoning, he came up with the ski hill notion that fit into the zoning requirements.” I did not say that he “filed an application with the County for landfill rather than a ski hill,” as Mr. Shaw hyper-technically contends; instead, I merely said that the project started as a usual landfill project, something Mr. Powell would undoubtedly testify to under oath and, in any event, representatives with whom I spoke from Lake County would.

Mr. Shaw also charges that I implied there was a conflict of interest implicit in the proposed project by reminding the Board of its fiduciary duties, which he asserts is a “popular political tactic.” He asserts that his client has no business or other financial dealings with any elected or appointed official of Round Lake and charges that my comments were “totally unfounded and inappropriate.” The righteous indignation with which Mr. Shaw conveys his thoughts, as if nothing of this sort court ever happen, reveals something of a guilty conscience. This is warranted. If the Board does its due diligence, it would learn that, on June 6, 2016, the proposal of Mr. Powell’s company, DA Development, LLC, to lease for a landfill the 57 acres on Wilson Road was presented to the Committee of the Whole, and it was set for vote/approval at the next Board meeting on June 20, 2016. At that time, Mr. Kraly, as trustee, then moved for approval, but a number of conscientious Board members moved to table the vote so that they could do some due diligence, including visiting other sites operated by Mr. Powell. Interestingly, one of the sites that Mr. Powell touted as exemplary was the landfill in Hawthorn Woods, something I will touch on in a moment. The motion

to table passed, over Mr. Kraly's and Mr. Foy's "nay" vote. During a site visit, a few of the trustees noticed papers in Mr. Powell's truck showing business dealings with the then-mayor, Daniel MacGillis, and accused him of a conflict of interest and being "in cahoots" with Mr. Powell.

As a result, at the next Board meeting, held on July 5, 2016, Mayor MacGillis pulled the Wilson landfill project from the agenda. Mayor MacGillis explained that Mr. Powell's company was selling topsoil from Mayor MacGillis's property and adding landfill, an on-going project. He explained further that Mr. Powell could return to petition the Board for approval of the Wilson landfill once the personal project was completed. There is no public record of when the project with Mayor MacGillis's property was purportedly completed, but the next year, on September 5, 2017, the Board – with two new trustees substituting for two that were previously on the Board who voted to table the project – approved the Wilson landfill project, with Mr. Kraly voting in favor and Mr. Foy absent from the meeting.

So, I could understand Mr. Shaw's defensiveness that his client could participate in engaging in personal business dealings with an elected official of Round Lake at the time that he was proposing to and engaging in business with the Village, since his client had already done so. But, there is more to the story. Mr. Powell, through his company, Richland Creek Round Lake, LLC, was in the market to purchase vacant land. Recognizing that there is almost no vacant land in or about Round Lake, Mr. Powell apparently had little choice but to purchase Mayor MacGillis's vacant land, which he did on June 7, 2019, for \$200,000. Given Mr. Powell's apparent need for the land, one might think he would develop it. But, no, the land remains vacant today. In fact, Mr. Powell currently has it listed for sale – for \$170,000. So, despite the general increase in land values and record-high inflation, Mr. Powell is offering to sell the property at a loss. Either Mr. Powell is a very bad business person – something that in-and-of-itself should give the Board pause – or there is something more here than meets the eye. In any event, I apologize to Mr. Shaw and his client if my reminder to the members of the Board to follow their fiduciary obligation caused them any offense.

Mr. Shaw also incorrectly asserts that I said that the Village of Hawthorn Woods had sued Mr. Powell's company. I am quite familiar with the case, so I am aware that Mr. Powell's company, PML Development LLC, initiated the lawsuit against the Village of Hawthorn Woods. What I did say was that Mr. Powell claimed, among other things, that the Village of Hawthorn Woods was responsible for the various breaches that Mr. Powell's company made, a position rejected explicitly by the Appellate Court: "We also reject PML's argument that its obligations under the contract should be excused because the Village prevented its performance of those obligations." *PML Development, LLC v. Village of Hawthorn Woods*, 2022 Ill. App.2d 200779 ¶ 53 (2nd Dist.). In fact, Mr. Powell's company lost the suit. They had filed to recover damages, and in the end they got zilch. Moreover, the Appellate Court found that Mr. Powell's company breached its contract with the Village of Hawthorn Woods. This is what I said and, despite Mr. Shaw's defamatory comment to the contrary, I was not "deceptive."

What is interesting, though, is what Mr. Shaw did not contest in his letter. For example, I noted that the Village of Hawthorn Woods issued a number of stop work orders to Mr. Powell's company. Interestingly, the contract between the Village of Hawthorn Woods and Mr. Powell's company provided for certain remedies, including "all remedies at law or in equity" and "the right to issue a stop work order to assure compliance" with the terms of the agreement. By contrast, the Annexation Agreement with Round Lake has neither of these – the remedy is only "in equity," with no remedy at law for damages and no provision for a stop work order. The stop work order proved essential in the Hawthorn Woods matter, for Mr. Powell's company was in repeated breach of the contract.

On December 10, 2012, the Village issued a stop work order because Mr. Powell's company commenced working before a grading permit was issued. On March 14, 2014, the Lake County Stormwater Management Commission contacted the Village's engineer regarding an extreme amount of mud track-out at the site, and the Village Enforcement Officer inspected. He confirmed violations of Section 600.10 of the Lake County Watershed Development Ordinance, Part IV.D of the Illinois EPA National Pollutant Discharge Elimination System ILR10 Construction Permit and the Stormwater Pollution Prevention Plan submitted by the engineers for Mr. Powell's company. Thereafter, Bob Oja from the McHenry-Lake Soil and Water Conservation District, on behalf of the IEPA, inspected the site and, according to the Village, found many of the same violations regarding the track out on Midlothian Road, as well as numerous other site deficiencies. So, on March 21, 2013, the Village issued a stop work order due to these life safety issues caused by the severe mud track out on Midlothian Road. On March 28, 2013, the Lake County Stormwater Management Commission found that the site was "in violations, non-compliant" and noted fourteen (14) unsatisfactory items, the most that the Village's Enforcement Officer had ever seen in such a report.

On August 5, 2013, the Village's Enforcement Officer inspected the site and recommended a stop work order because he found that many of the same site deficiencies he noted in his March 2013 inspection report were not remedied. The deficiencies were also confirmed by Mr. Powell's company's own Designated Erosion Control Inspector. On September 4, 2014, the Village learned that Mr. Powell's company was bringing in unauthorized fill material to the site, so the Village issued a stop work order. Mr. Powell explained that baghouse dust – which is a violation of the Illinois Environmental Protection Act – was mixed in with other fill materials. On November 20, 2014, the Village issued a stop work order because Mr. Powell's company failed satisfy compaction testing requirements; committed soil erosion and violations and drove through wetlands; removed clay from greater than 10 x 10 foot sections; failed to submit complete fill tickets; failed to pay property taxes; and failed to provide proof of insurance. On August 27, 2015, Mr. Powell's company violated the Clean Water Act by filling a wetland under the jurisdiction of the Army Corp without a permit, to which Mr. Powell testified was an "oopsie."

Mr. Shaw did not address any of these violations in his letter. Moreover, the agreement with the Village of Hawthorn Woods provided that, at the end of the contract term, Mr. Powell's company

would deed the property to the Village for \$1.00, free and clear of any liens. Instead, Mr. Powell's company failed to pay real estate taxes, which were sold on at least one parcel, and he could not convey the property as required. Interestingly, the quality control expert in charge of testing the quality of the landfill was, among others, Mr. Powell's father. After an article was published in the Daily Herald after the August 1, 2022 meeting of the Committee of the Whole, the former mayor of Hawthorn Woods, Joseph Mancino, commented as follows: "To Round Lake residents, don't do it. It will be a nightmare. Ask how it turned out for the Village of Hawthorn Woods, this will be a disaster, I promise you."

Mr. Shaw also falsely states that I stated that "Mr. Powell's company filed for bankruptcy protection and left creditors with \$3.5 million in unpaid, unsecured obligations . . . an overstatement of about 600%." What I did say was that Mr. Powell filed for *personal* bankruptcy protection, in which he identified more than \$3.2 million in liabilities. The bankruptcy trustee's report found "no distribution," stating that "there is no property available for distribution from the estate over and above that exempted by law." The total claims discharged without payment equaled \$3,272,609.14. I stand by my statement as true. But, the more important point is not that the filing of bankruptcy in-and-of-itself is "nefarious," as Mr. Shaw charges I allege. Quite to the contrary, the bankruptcy laws are available to be used, and I do not begrudge Mr. Powell for taking advantage of them. I merely pointed out that these laws remain available to him now, and where will the Village of Round Lake be when he and/or his company decides to take advantage of them again?

At bottom, the operative question is: what is destroying a life worth? According to Mayor Kraly, who is a proponent of the project, it is worth \$1.5 million. For this amount, he is willing to destroy the lives of my clients, who live on Townline Road, with 150 trucks going in and 150 trucks going out each day, six days per week, from 7:00 a.m. to 8:00 p.m., 11 hours per day, for some 10-12 years. The Browns, who live there, have a three children, a six year old, a 10 year old, and an 11 year old. The Cordobas, who have lived there for some 32 years, operate a landscaping business, for which they have to mobilize their trucks daily to go to work. And, none of this is necessary. Access to the property could be obtained off of Fairfield Road. There is no difference in the traffic if access was off of Fairfield than Townline because, to get to Townline, you have to have access off of Fairfield. Will it be more difficult for Mr. Powell to obtain permitting from Lake County? Probably. But, is it not worth the effort to prohibit a catastrophe to these people? Moreover, if Lake County does not approve the project, should not this convey something to the Village? Is the Village so clouded by the promise of money that it cannot see reality? Further, where is the traffic study? The only one submitted was for after a ski hill is built some 10 or 12 years from now. Even the additional traffic study noted in the Village staff report relates only to after construction commences. Where is the traffic study for the landfill process itself?

Any proper financial planner would advise to diversify one's portfolio. The Village is betting everything on this ski hill. First, does anyone know how much it will cost? Our back of the napkin calculations, based on pricing from Snowflex's website, run into the millions if not tens of millions

of dollars. Where is this noted in any plan? Further, has anyone on the Board or the administration reached out to Snowflex? We have, and the company requires its own engineering to make a ski hill. Where are those plans? And, let us say the improbable happens, and the landfill project is completed and a beautiful ski hill built. What happens if it is a failure? What is the profitability of the one ski hill in Virginia, which, by the way, affiliated with a university and located away from homes? Many communities have considered year-round skiing, including communities in Texas; yet, what insight does Round Lake possess that these other communities that rejected or forewent the idea do not see? The risk is too high – ski mountainous high – that the Village will end up with an unmovable eyesore.

Insofar as attracting businesses to Round Lake, has the Village thought of doing the opposite – lowering taxes and providing incentives to draw in businesses? This would help hiring and employment, and, ultimately, be the business-friendly community that you all desire. Do not let Round Lake become and be known as the dumping ground of Lake County.

Each of you, whether new or experienced, has an equal vote. We ask you to cast it wisely and do what you know in your heart is right, casting aside the short-sighted promise of summer winter wonderland. No other matter on which you will vote will be more important than this one for the Round Lake community. We look forward to at least three of you voting your conscience against adoption of the faulty Annexation Agreement.

Very truly yours,



Kenneth J. Ashman