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VILLAGE OF ASHAROKEN

ENVIRONMENTAL REVIEW BOARD

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In the Matter of the Applications of,
Philip Giunta,
Request for a Seasonal Recreational
Dock Facility at 241 Asharoken Avenue,
Northport, New York 11768

Daniel Akeson,
Request for a Seasonal Recreational
Dock Facility at 255 Asharoken Avenue,
Northport, New York 11768.

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June 27, 2016
7:00 p.m.

HEARING, in the above-captioned
matter, was held on the 27th day of
June 2016, 7:00 p.m. at Asharoken
Village Hall, One Asharoken Avenue,
Asharoken, New York and before
Charmaine DeRosa, CSR.

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A P P E A R A N C E S:

DOUGLAS VAUGHN, Chairman

MICHAEL ELSAS
PATRICK CLEARY
MARTY COHEN

ALSO PRESENT:

Albanese & Albanese, LLP
Village Attorneys
150 Franklin Avenue
Garden City, New York
BY: BRUCE MIGATZ

LAND USE ECOLOGICAL SERVICES, INC
570 Expressway Drive South,
Suite 2F
Medford, New York 11763
BY: DAN HALL

McCARTHY & REYNOLDS, PC
7 East Carver Street
Huntington, New York 11743
BY: MICHAEL L. McCARTHY, ESQ

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[CALLED TO ORDER]

CHAIRMAN VAUGHN: I'm going to call the meeting for the review of 241 and 255 Asharoken. We'll say the pledge first.

[WHEREUPON THE PLEDGE OF ALLEGIANCE WAS RECITED]

CHAIRMAN VAUGHN: Okay. This is our third continuation hearing for the proposed dock, as mentioned at 241 and 255.

At the last meeting we asked Mr. Hall to put together a little information for us.

At this time I ask you to step forward and go through what you have for us.

MR. McCARTHY: Good evening, Mr. Chairman and Members of the Board. My name is Michael McCarthy. I'm an attorney. My office is at 7 East Carver Street in Huntington. Mr. Giunta and Mr. Akeson have asked me to help them along with this permit application.

I know there was two prior meetings, one in November and one last month.

MR. HOLMES: Please use the podium.

[INDICATING PODIUM]

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2 MR. McCARTHY: Does this microphone
3 work?

4 VILLAGE CLERK: Just talk into it.
5 It should work.

6 MR. McCARTHY: Is it on? Most people
7 can hear me so should I speak up?

8 VILLAGE CLERK: No, it should be
9 on.

10 MR. McCARTHY: So, my name is
11 Michael McCarthy. I'm an attorney, 7 East
12 Carver Street, Huntington. I'm here on
13 behalf of the Akeson Family and the Giunta
14 Family. Before I begin, I'd like to point
15 out it's my first time at the new Village
16 Hall. It's quite fantastic and I guess a
17 substantial upgrade to the last home you had.
18 It's a lot better than the power plant. In
19 any event --

20 So, I met Mr. Akeson and Mr. Giunta,
21 and had conversations with Mr. Hall. They've
22 indicated to me what the prior history has
23 been. I don't know how much of detail you
24 kind of need to get into, but what I thought
25 would be helpful, and what I did in

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2 collaboration with Dan, was to synthesize
3 all of the things, the items he felt he had
4 presented previously, presented to this
5 Board, and to the community and put it
6 together in a compendium of sorts.

7 Suffice it to say that in Mr. Hall's
8 estimation, he has redesigned the seasonal
9 floating dock assembly for the Giunta house
10 and the Akeson house to be compliant with
11 every aspect of the Asharoken Village Code.
12 Not only the general requirements that you
13 find that Section 125.22, for the regulation
14 of docks in general, but because these
15 properties are located in the Ida Smith
16 area, of Asharoken, we indicated that we
17 met or exceeded all the strictures of Section
18 125.225b, and there's a list of those
19 criteria. Without going over in detail but
20 we did this compendium, we provided you with
21 the topographical survey of both properties.
22 We provided you with a copy of DEC permits on
23 both properties, and Army Corps of Engineers,
24 but I guess most importantly provided some
25 images of what the properties look like.

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2 So, we thought it would be helpful
3 if we did a Google Earth image and
4 superimposed onto that Google Earth image,
5 the configuration of the seasonal of the
6 docks and then in addition take some beach
7 prospectives.

8 Mr. Latham is an architect. I think
9 the Board is very familiar with Mr. Latham.
10 He took some images of the beach itself and
11 I have them in packets handed up to you. For
12 the benefit of the community, and maybe Dan
13 if you can help me go through these, and we
14 can talk about what these facilities would
15 look like.

16 MR. MIGATZ: If I may Mr. McCarthy,
17 do you want to have marked as an exhibit
18 what you filed with the Village today which
19 is the June 24, 2016 with a land use for
20 Exhibit A through K?

21 MR. McCARTHY: Yes, that would be
22 helpful Mr. Migatz. In addition
23 you could also, the series of photographs,
24 which are on poster-sized paper, we just had
25 mounted on poster-size for the benefit of the

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2 community to see them. Again, not having the
3 exact benefit, Mr. Migatz, of having been
4 here back in May. I did read the transcript.
5 I'm familiar with the concerns and the
6 conversations that have taken place to date.

7 This image right here --

8 MR. MIGATZ: Let's just get this
9 marked for the record.

10 MR. McCARTHY: Okay.

11 MR. MIGATZ: For the record.

12 Are we keeping a running track? We have a
13 report from Land Use that was filed with the
14 Village. It's dated June 24, 2016.

15 In addition to the narrative of the report,
16 there are exhibits in that report.

17 MR. McCARTHY: Bruce, I purposely
18 called them appendices because I didn't want
19 to confuse the record with exhibits.

20 MR. MIGATZ: You're right. They are
21 called appendices A through K. So if you
22 would like Mr. McCarthy to have this report,
23 with those appendices, as the Applicant's
24 next exhibit. Do we have a running track of
25 exhibits? If not -- We can mark it Exhibit 1

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2 at the June 27, 2016 hearing.

3 Now, as I understand Mr. McCarthy, what
4 you have mounted on the boards are just blow
5 ups of photographs in this report?

6 MR. McCARTHY: Yes. Not all of
7 them but most of them, and in addition we can
8 mark as an exhibit Bruce, is a series of
9 photographs that I handed up to the Board
10 Members. It's five pages total, on ledger
11 size, and that is a smaller version of what
12 Mr. Hall and I will be presenting to the
13 community.

14 MR. MIGATZ: So, what we'll mark as
15 exhibits as Exhibit 2 at the June 27, 2016
16 hearing, the 11 x 17 photographs, containing
17 five photographs, is that correct?

18 MR. McCARTHY: Yes.

19 MR. MIGATZ: What you have on the
20 poster board is just for demonstration
21 purposes, it's just a blown up copy of
22 Exhibit 2?

23 MR. McCARTHY: Yes.

24 So, what we've attempted to do to give
25 the Board and the community a visual, is

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2 to take a look at a before and after, or
3 before and proposed I should say. On Dan's
4 right is the beach. That picture was taken
5 within the last week. That picture was
6 captured by Mr. Latham. What he did was
7 he superimposed and you can see what the
8 assembly would look like, and you can see
9 there's an ability for pedestrians to walk.
10 It's low profile. What Mr. Hall will do is
11 explain again, as he did at the last meeting
12 in May, that this configuration, this
13 seasonal dock assembly, has been designed to
14 meet every criteria of the Village Code.

15 The next image we have is now low tide,
16 looking east. You have the before and the
17 after. The before is going to show you a
18 current dock that's there with a gangway.
19 I'd like to point out emphatically, that
20 the dock that Mr. Hall is proposing for
21 Mr. Giunta and Mr. Akesson, doesn't have a
22 gangway. It's been eliminated. There are no
23 pilings, and again, it's a seasonal assembly
24 which will rise and lower with the tide.

25 These are high tide images, high tide

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2 images looking east, and again the gangway
3 from the existing dock you can see off in the
4 distance. Plenty of ability to walk the
5 beach and won't interfere with pedestrian
6 traffic. Same image looking west, more of a
7 closer view. You can see the existing dock
8 assembly in the distance.

9

[INDICATING PHOTOS]

10 High tide with proposed looking west.
11 If you turn that around -- Oh, it's nothing.
12 In addition, in the report what we have done,
13 and what we don't have blown up, are Google
14 Earth images, and in the report Mr. Hall
15 labeled those as Appendix I. We asked
16 Mr. Hall, in collaboration with Mr. Latham,
17 to superimpose that at various heights.
18 So, you get a prospective from a high
19 altitude, coming to a lower altitude. I
20 hope and I trust that the Board finds
21 that constructive and informative.

22 Now, I don't know that it's necessary,
23 unless you tell me otherwise, unless there's
24 any questions, to have Mr. Hall go through
25 the requirements again, but I can tell you

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2 this; and I'd agree to do it in detail,
3 Mr. Hall's report, beginning at page four
4 analyzes each of the requirements of Village
5 Code Section 125.22.2. I think Mr. Hall is
6 recognized as an expert in this area to some
7 degree. He's been practicing in this field
8 for quite some time, and we've applied each
9 and every one of the criteria of the Village
10 Code. I know Mr. Hall went through it back
11 in May. Again, I'd be pleased to do it
12 again, but we did give you a written
13 narrative.

14 So, as I've indicated when we first
15 took the microphone, under Section 125.22.2
16 is criteria A through F, and we've met or
17 exceeded every requirement of the code.
18 As it pertains to the scriptures of the
19 Ida Smith property, the addition of
20 125.22.5b1, paragraphs A through E,
21 beginning at page eight, again in
22 length describing how it is that all
23 the requirements are going to be met.

24 There was quite a bit of conversation
25 that I learned from reading the transcript,

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2 from the presentation in the May meeting,
3 my colleague and friend, Mr. Savin, and
4 apparently there's a lot of dialogue and
5 confusion about the application of the
6 New York State Environment Quality and
7 Review Act. I'd like to speak about that.
8 The reason why I'd like to speak about that
9 is because, both for the Giunta property and
10 for the Akesson property, the New York State
11 Department of Environmental Conservation
12 has made a determination that both of these
13 actions, these floating dock assemblies, are
14 viewed as Type 2 Actions pursuant to SEQRA.
15 That's a very very significant finding by the
16 New York State DEC.

17 Now, under New York State DEC regulations
18 which are allowed to be promulgated, under
19 the Article Conservation Law, are embodied as
20 the Board knows, under 6NYCRR Section 617.
21 In particular under 617.5, Type 2 Actions
22 are identified. There's a series of them.
23 An important part, the regulations say that
24 these, Type 2 Actions, have been determined
25 not to have a significant impact on the

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2 environment or are otherwise precluded
3 from Environmental Review under Environmental
4 Conservation Law, Article 8.

5 The actions identified in Subdivision C
6 of this section apply to all agencies. That
7 means whether a lead agency, an involved
8 agency or an interested agency. There's
9 no distinction made.

10 In order to try to determine the
11 significance of that, and to help
12 practitioners and municipalities, the New
13 York State DEC in about 1982 came up with
14 a kind of folksie and little hoaksie kind of
15 a handbook, they called it the SEQRA
16 Handbook. The SEQRA Handbook said, and you
17 can go to the DEC website to print it, that
18 Type 2 Actions are those actions and classes
19 of actions that are found categorically to
20 not have significant adverse impacts on the
21 environment, or actions that are statutorily
22 exempted from SEQRA review. The only reason
23 that I underscore this at this point now, is
24 the length of the conversation that took
25 place.

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2 I am familiar with Chapter 61 of
3 the Asharoken Village Code. Chapter 61
4 of the Asharoken Village Code is entitled
5 Environmental Quality Review. And I know
6 that the section that applies to docks and
7 piers and wharfs appears to have been added
8 in 1994, as a local law. That's very very
9 significant from a legal prospective.

10 Under the municipal home rule law, of the
11 State of New York, any Village or Town or
12 City can enact a local law, which will have
13 the force and effect of a New York State
14 enacted statute, provided however, it not be
15 inconsistent with an existing State Statute.

16 So, I respectfully maintain that to the
17 extent that there's any inconsistency, with
18 respect to the Asharoken Village Code, and
19 the regulations that are promulgated by the
20 New York State DEC, the DEC regulations have
21 to trump the local ordinance. If left in
22 doubt, there is a mechanism at the end of the
23 SEQRA regulations that leaves these
24 determinations, these disputes have you, to
25 the Commissioner. It's very seldom that it

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2 happens.

3 Quite frankly, I think there's
4 inconsistencies even in your Chapter 61 as
5 you read it, because when you read Chapter
6 61, Section 61.2 Paragraph A; it talks about
7 compliance required with the Environmental
8 Quality Review Act. It specifically states
9 that Type 2 Actions are not subject to SEQRA
10 review. The SEQRA implementation of
11 regulations specifically require at Section
12 617.5, that a municipality can't make a Type
13 2 Action a Type 1 Action in its regulations.
14 You can't do it. All agencies are bound by
15 that.

16 So, does that mean that you're going to
17 grant the dock permit application? No.
18 Does that mean that that's going to cause you
19 to recommend that the application be
20 approved? I hope so. I think it's
21 dispositive of the legal point that there
22 has been quite a bit of conversation about,
23 and that's my interpretation of it. So, I'd
24 be pleased to answer any questions in the
25 analysis or in my interpretation of the

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2 environmental regulations.

3 MR. ELSAS: I did have one

4 question about the legal questions.

5 Maybe you can help me pull up this low tide.

6 [INDICATING]

7 This particular one. Just based on

8 the appearance -- So, just looking at this

9 at low tide, it appears, and it may just be

10 the angle or the camera, that there is much

11 less beach here than there is here.

12 MR. McCARTHY: I think it's just the

13 angle.

14 MR. ELSAS: So, you think it's just

15 the angle?

16 MR. McCARTHY: If you look at the

17 Google Earth image in the report, and I think

18 it's Appendix 5.

19 MR. HALL: It's definitely the

20 angle and the contours of the beach. As

21 the contours go up, it give the prospective,

22 the allusion, that it's not.

23 MR. ELSAS: That it's not.

24 MR. HALL: You can see Google

25 imaging, and the site plan.

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MR. ELSAS: Okay. You don't have that picture, that big Google to show that?

MR. HALL: We don't have that enlarged. No, we can't. The reason being is because the larger I make it, the more distorted the image will be.

Just a small minor point to deal with about that; as you can see on the floating dock, there are spaces between the floats. They've been brought up previously.

MR. ELSAS: You can see the same number of spaces?

MR. HALL: There are different colors here. There are consecutive spaces here that floats under the wood, the spaces between, and that alleviates the water flow and items from getting potentially stuck in there. Now the water can go through the dock spaces. That was brought up previously and I wanted to address that.

MR. MCCARTHY: I thought I prepared enough copies of this report. I gave one to Mr. Savin.

MR. CLEARY: Do you have additional

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2 copies to hand out to the community?

3 MR. McCARTHY: You can have it.

4 The Board had the color images. You can have
5 it.

6 MR. MIGATZ: There's one here.

7 MR. McCARTHY: So, does anyone want
8 to look at this?

9 MS. WENDEROTH: Do you have more
10 copies?

11 MR. McCARTHY: That's all I brought
12 with me. I can make more available though.

13 MS. WENDEROTH: We should have this
14 in advance I think.

15 CHAIRMAN VAUGHN: We received the
16 paperwork today. We can give people a minute
17 to get involved, take a look at the board,
18 and so they can see them.

19 MR. McCARTHY: Sure. I can't
20 tell you that I don't know what happened
21 between May and when I was engaged, but we
22 pulled this together. But again, I want to
23 assure everyone, that the report itself is
24 a just copulation of what was previously
25 discussed. The images are here and

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2 professionally done. I'll make myself
3 available.

4 MR. CLEARY: You've raised the
5 point about consistency of SEQRA in our
6 local laws. I'd like Bruce's opinion with
7 respect to consistency or less restrictive.
8 Must our local laws be consistent with our
9 State Legislation, or can we adopt laws that
10 are whatever we choose, provided they are no
11 less restrictive than the State Legislation?
12 I don't mean you to pine off-hand. I think
13 that's just the question.

14 MR. MIGATZ: I'm not going to
15 pine off-hand. There is authority in the
16 regulations for a local municipality to
17 add Type 2 and Type 1 Actions. As far as
18 inconsistency argument, I want a closer
19 look at that.

20 MR. CLEARY: It's seeming that your
21 argument is wanting you to adopt exactly what
22 is in State legislation. Why would we do
23 that if we're mixed up the issues. I think
24 we have some authority to modify things for
25 local intent and purposes.

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MR. MIGATZ: More importantly, don't forget this Board does not make a SEQRA finding.

MR. CLEARY: Understand.

MR. MIGATZ: This Board really does not have to grasp or wrestle with that.

MR. CLEARY: I understand that. It was a point that sort of may be taking place.

MR. MIGATZ: That's a discussion to be made at the Board of Trustees level.

MR. CLEARY: I understand.

MR. MIGATZ: They will make the SEQRA determination.

MR. McCARTHY: Any other questions?

MR. CLEARY: My other point is this is just here today. None of us has had the opportunity to digest this. It's a thorough document, and there's a lot of information here.

MR. McCARTHY: Wouldn't expect you to. So, thank you.

MR. CLEARY: We appreciate that.

MR. McCARTHY: All right. I'll move

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2 this podium to someone else and answer the
3 questions.

4 CHAIRMAN VAUGHN: Anybody else here
5 to speak on behalf of the applicants?

6 [THERE WAS NO RESPONSE]

7 Anybody that would like to speak against?

8 MR. SAVIN: Good evening Members
9 of the Board and members of the community.
10 As you know I've addressed you twice now in
11 this application. We are here tonight and
12 there's a lot of new submissions, which I'll
13 talk about in moment.

14 I'd like to start off and maybe you'll
15 be surprised, but I agree with whatever
16 Mr. McCarthy said about the State treating
17 dock applications as Type 2, no question
18 about it. Mr. Migatz, in answering your
19 question Mr. Cleary, started to address it,
20 and Mr. McCarthy is taking the position
21 that the Village Law is basically in conflict
22 with the State Law. I disagree with that
23 statement.

24 Mr. Migatz said that there is a provision
25 in the State SEQRA that the local

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2 municipality, in this case the Village of
3 Asharoken, can classify other things as Type
4 1 Actions or any type of actions for specific
5 things.

6 Well the State has treated docks as Type
7 2 Actions. The Village of Asharoken is not
8 treating docks as Type 1 Actions. They are
9 treating docks in the Ida Smith property as
10 Type 1 Actions. Keep in mind, this doesn't
11 apply, and you don't sit, and we've been
12 through this, on any dock application unless
13 it involves the Ida Smith property, basically
14 from here to the Duck Island Causeway. If
15 you do a dock up in Duck Island Harbor, it
16 has nothing to do with you, because Section
17 61 and 122 of the Village Code is all about
18 docks in an environmentally sensitive area.

19 That is what the prior Village Boards,
20 and I think it was 1978 and 1994 they did
21 the initial enactment of the Village Board
22 Environmental Quality Review and the
23 amendment in 1994. For whatever the reasons
24 it was done by the Village, and the Village
25 specifically classified, as Mr. Migatz said,

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2 that they were entitled to under the State
3 SEQRA, certain applications are to be
4 classified as Type 1, and that's the
5 difference here. It's not a conflict.
6 It's because of the environmentally
7 sensitive area of the Ida Smith property.

8 Now, there has been some great
9 submissions this evening, and I know the
10 Board asked for this but unfortunately some
11 of the members have passed it out, and I saw
12 it this evening for the first time. As Mr.
13 McCarthy pointed out, we are colleagues and
14 certainly on a friendly basis and he gave me
15 a copy of it, and I'm looking at it for the
16 first time. I know you haven't seen it,
17 because I believe it was only delivered to
18 the Village at 2:30 this afternoon.

19 So, we're all looking at this for the
20 first time. It's pretty extensive. It
21 appears, from what I looked at in the first
22 few minutes before the hearing, and while
23 Mr. McCarthy was making his presentations,
24 there's a lot of what was a reiteration of
25 what Mr. Hall has said. What I'm asking is

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2 that this Board not make any decision
3 tonight, that they postpone this hearing
4 until next month or whatever time you think
5 is necessary, for not only for you to review
6 what has been submitted this evening but the
7 community.

8 The community last time and I don't know,
9 maybe a half a dozen or maybe there was a
10 dozen speakers that got up after I was
11 standing here in opposition. I talked about
12 the Village Code and all the environmental
13 issues that are set forth in the code, and
14 the things that you're supposed to look at.
15 We talked about the tides, and the fish and
16 the beach and swimming and boating, and
17 discharge from boats, and things like that.
18 A lot of it I don't see addressed in here,
19 but what happened is the speakers, after they
20 addressed specific things in the Ida Smith
21 property that you can have a boat here,
22 and a boat here and a boat in Duck Island
23 but you're still going to have emissions.
24 They talked about specific things
25 involving existing docks, the couple or

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2 one or two that are here, and they talked
3 about seaweed collecting along the dock and
4 up on the shore because the dock was there,
5 and because it couldn't follow the flow or
6 the tide or the wind.

7 They talked about fish kills, dead fish,
8 whether it was because the docks -- I don't
9 know, and I got no idea. I don't think you
10 have any idea, but none of that's has been
11 addressed. I know that you have ideas but
12 I don't think that any of us would know that
13 until we've read this. I know I haven't read
14 it, and I don't believe any of you have read
15 this yet. I think both you, myself, and all
16 the people that are here and have been here
17 at two other meetings now would need the
18 opportunity to review this.

19 Again, you're not making the
20 determination as I've said and Mr. Migatz
21 has said. It's a recommendation that you
22 make to the Board. However, there's four
23 of you here tonight, I think there's seven
24 or eight of you all together then. The
25 others are not here this evening. To make

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2 a recommendation for the five members to the
3 Village Board because of your expertise in
4 specific areas, that can make an informed
5 environmental recommendation to the Board,
6 and I'm asking you to do that.

7 By just looking at this stuff tonight
8 is one thing. Even a zoning application,
9 the applicant may not see everything that is
10 being presented --I'm sorry, the opposition
11 may not see everything that is going to be
12 presented at that hearing that evening,
13 and they usually don't adjourn it for the
14 opportunity to come back, but in this
15 situation, we've seen nothing, absolutely
16 zero, of what was being presented here this
17 evening and neither have you.

18 Based on the volume of stuff and the
19 issues that were discussed, and I mean it
20 wasn't specified in the transcript from last
21 month, but you had asked for a series of
22 things, and I think some of those things
23 are here. It appears that some of those
24 other things are not here. Again, either
25 you or I or anybody else are going to know

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2 until we have an opportunity to review.

3 For what it's worth, Mr. Fineo, who was
4 here representing Mr. Sbarro, I spoke to him
5 this afternoon. I've been keeping in touch
6 with him regularly and he had asked; Ken, has
7 anything had been submitted yet. I told him
8 at 1:30 this afternoon, I says nothing yet.
9 He says, well if anything comes up, I'm
10 certainly not going to have an opportunity
11 to review it, and what's the point of coming
12 down and commenting on something I haven't
13 seen. That's why he's not here this evening.
14 He asked me to convey those feelings to you.
15 Thank you.

16 MR. CLEARY: Thank you.

17 CHAIRMAN VAUGHN: Thank you.

18 Anybody else like to speak at all?

19 Mr. Holmes?

20 MR. HOLMES: I have one quick
21 question for --

22 MR. MIGATZ: First, state
23 your name and address.

24 MR. HOLMES: I'm sorry. Robert
25 Holmes, 205 Asharoken Avenue. I'm a resident

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2 of the Ida Smith area, its largest single tax
3 payer, and I own approximately two acres
4 under water land.

5 My first question to Mr. Hall, what are
6 the McGowns [phonetic] and why is there an
7 application form submitted for them. I'm not
8 sure how that fits in the package?

9 MR. McCARTHY: May I?

10 MR. HOLMES: Sure. Talk to
11 Mr. Migatz.

12 MR. MIGATZ: The questions should go
13 to the Board, and if the Board can't
14 rectify --

15 MR. HOLMES: There is an application
16 form for Timothy and Jean McGowan [phonetic].
17 I'm wondering why. I don't know what that
18 has to do with this proceeding.

19 CHAIRMAN VAUGHN: Mr. McCarthy?

20 MR. McCARTHY: Yes, I'm sorry.
21 It has absolutely nothing to do with the
22 proceeding. My young assistant was
23 working against the deadline with this
24 report. Everything was coming in quickly.
25 My other young assistant hit the print

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-ERB-

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2 button for a client of mine. It was a
3 ZBA application in Huntington, and the one
4 page got mixed in with the rest of the pages.

5 We caught it on your copy, but the
6 one that I had emailed to Bruce earlier in
7 the day contained this page. It has nothing
8 to do with it. It was a mistake made by my
9 assistant.

10 MR. HOLMES: Okay. No problem.

11 MR. SAVIN: Stop picking on us young
12 people.

13 MR. McCARTHY: Yes.

14 MR. HOLMES: Rather than to take
15 the time to repeat my comments from prior
16 hearings, I do request, and those written
17 comments, which were also submitted to the
18 Board previously, I would request them to be
19 incorporated for today's comments as well.
20 If you wish I could resubmit those comments.

21 MR. MIGATZ: That's not necessary.

22 MR. HOLMES: Thank you. The ERB's
23 mandate, per Section 125-22.4 is very simple,
24 and I quote: "To review the effects of the
25 proposed structure on the surrounding areas."

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2 Full stop, that's it. It would seem to me
3 those effects have been amply and audibly
4 demonstrated by both legal experts and
5 the majority of the affected residents
6 and neighbors and certainly the dozen or so
7 people that were here last time.

8 Instead of commenting on the validity
9 of these applications, or the fact that the
10 designs continue to seemingly ignore basic
11 elements of Code, such as the fact that the
12 dock should be four feet wide, according to
13 code, and not forty, I am asking this Board
14 to allow the public the opportunity to have
15 meaningful input at these meetings, just as
16 I asked you last time, which would be
17 impossible this evening. So, I reiterate the
18 sentiments that Mr. Savin offered.

19 By way of illustration, I would like to
20 read from the transcript of the last ERB
21 meeting. the 102 page transcript and the
22 minutes that were first available late in
23 the afternoon on June 20th, one week ago.

24 As you all may remember, this Board
25 suggested that in order to provide the

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-ERB-

31

2 applicants' engineer a detailed list of
3 requests pertaining to both the design and
4 the environmental impact, but was told they
5 should do so immediately at that meeting,
6 for reasons I do not fully discern.
7 While I've edited some of the dialogue
8 for the sake of brevity, the transcript
9 states: "MR. CLEARY: That's what we'll
10 provide. We'll provide that for you. MR.
11 MIGATZ: You're going to need to provide it
12 now. MR. HOLMES: Excuse me, point of order.
13 MR. MIGATZ: No point of order, you're out of
14 order. MR. HOLMES: If it doesn't exist in
15 the transcript, we don't receive it until the
16 next meeting. How are we supposed to
17 understand what was communicated tonight,
18 what was memorialized in writing. How do
19 we review and make comment, and have an
20 intelligent meeting? MR. MIGATZ: Even
21 though you're out of order or point of order,
22 what is filed is a public record, and you
23 have a right to inquire if something has been
24 filed. The Village Clerk does not have the
25 obligation to notify people when things are

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-ERB-

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2 filed. If anything is filed, you can FOIL
3 it."

4 Subsequently, when the issue of possible
5 FOIL document delays was raised, Mr. Migatz
6 stated: "Let me tell you how I handle that,
7 okay, as an attorney for applicants
8 throughout many towns and villages on Long
9 Island, I don't send in the FOIL request. I
10 go down and I look at the documents. You have
11 the right to look at the documents. You don't
12 have to wait for documents to be photocopied
13 and sent to you. You have the right to come
14 and look at the documents. If something is
15 filed, and I will advise the Village Clerk
16 now, if something is filed by the applicant
17 in response to this Board's request, the
18 public has the right to see it. You would
19 fill out a FOIL request but it should be
20 approved right then and there, and you can
21 view it. If you want copies, copies have
22 to be sent out and that takes time. You come
23 down and you look at it.

24 The minutes and the transcript at
25 the last meeting, wherein this Board made a

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-ERB-

33

2 variety of request to the applicant, were not
3 available until June 20, one week ago today.
4 As of noon today no revised plans or
5 applicant responses to the many environmental
6 questions had been submitted. Late this
7 afternoon, moments before Village Hall
8 closed for the day, Ms. Rittenhouse, the
9 Village Clerk, received two voluminous
10 digital files from the applicants. No
11 one could possibly have reviewed them in
12 detail as of this hour.

13 The Code goes on to state "an applicant
14 must file all papers with the Village Clerk
15 not later than two weeks prior to the regular
16 monthly meeting of the ERB so that his
17 application may be discussed at such
18 meeting."

19 I am obviously not an attorney,
20 so I do not understand the legal basis
21 for presuming that this logical and simple
22 notification process applies solely to the
23 original application and not to all
24 subsequent submissions attempting to
25 perfect that application for the benefit

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-ERB-

34

2 of the ERB.

3 While this is a common last minute
4 strategy in commercial real estate dealings
5 and variance disputes, it is disingenuous
6 and I think it is unworthy of this forum.
7 In the public, it is unfair and it is
8 unnecessary.

9 I, and others, have spent thousands
10 on expert legal representation in order to
11 ensure that our communications to this Board
12 are fact-based, they are timely and they are
13 concise. To ask us to continue to fund these
14 efforts, when no meaningful documentation or
15 communication is available to us in advance
16 of these meetings is an undue and
17 unjustifiable burden. I ask that the Board
18 consider that the two-week in advance
19 document notification and submission as
20 outlined in Village Code be adhered to for
21 all future meetings. Thank you.

22 CHAIRMAN VAUGHN: Thank you.

23 Does anybody else have anything to say?

24 MS. WENDEROTH: Christen Wenderoth,
25 223 Asharoken Avenue. I would just like to

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-ERB-

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2 have my letter of May 19th resubmitted for
3 these proceedings.

4 MR. MIGATZ: I believe that letter
5 was submitted last time, was it not?

6 MS. WENDEROTH: You don't have to
7 resubmit it. It's part of the record.

8 MR. CLEARY: Mr. Chairman, to spare
9 us the rest of the evening, I'm going to,
10 based on the information that was submitted
11 to us this evening, I'm going to request that
12 we adjourn tonight's meeting.

13 MR. MURPHY: I have something.

14 MR. CLEARY: Mr. Murphy?

15 MR. MURPHY: Ken Murphy, 263
16 Asharoken Avenue, in the Ida Smith property,
17 with a history going back about fifty years
18 in this area. I submitted a letter last
19 time. I don't want to go through all of those
20 things again, but I do want to speak on one
21 more issue. It's kind of a larger issue than
22 perhaps even the specifics of the two docks
23 that we're talking about. It speaks perhaps
24 more directly to you through the Board that
25 the decisions that the Trustees and the Board

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-ERB-

36

2 is making. It's a large scale, bigger
3 decision.

4 I'm not an attorney. I'm not an
5 architect. I don't have a staff. I have
6 an iPhone and a set of Sharpies that I
7 bought today at Staples. For just a little
8 prospective, this is what we're talking
9 about.

10 MR. MIGATZ: Mr. Murphy, if you would
11 just direct your comments to the Board,
12 please.

13 MR. MURPHY: Okay. This is
14 what we're talking about. This is the
15 stretch of beach that we're looking at, that
16 has been virtually unchanged for about
17 seventy or eighty years, since this point,
18 with the exception of the Richard Orafino
19 dock down at one end of it.

20 MR. CLEARY: Where was that
21 photograph taken from?

22 MR. MURPHY: That's taken from the
23 upper deck in my house.

24 MR. CLEARY: Alright.

25 MR. MIGATZ: When was that taken?

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MR. MURPHY: Excuse me?

MR. MIGATZ: When was that taken?

MR. MURPHY: About three weeks ago. So, that's kind of the clean sweep of beach where people walk, kayak and it allows seaweed to quickly transverse.

So, just to be clear, and you know here is where my expensive Sharpie comes in.

So, we are talking about two docks that are to be coming in here, and you're talking about all the specifics etcetera, etcetera and so on. It's a substantial change. There was a seaweed build up just a couple of weeks ago, but it started to spread. You could see where seaweed would start to gather.

What I'm more concerned about is the issue I raised in my letter about the proliferation, and that the Pandora's Box, that the Trustees will now open should these docks be approved. I have heard nothing come in this that says, if these docks get approved they form the basis now for substantial approval of further docks.

So, while this might be 2016, or 2017.

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-ERB-

38

2 Now, 2017 -- and I'm not a lawyer, is sure
3 to see one, two or three more applications.
4 I believe that from what I have heard so far,
5 if these get approved, there's really no
6 basis to deny the others.

7 So, what you're ultimately talking
8 about ten years of people changing, sales.
9 You can easily, and all you have to do is
10 look out here, right now at the southern part
11 of the beach that what you had will be
12 forever lost, because what you now have is
13 the potential for many many docks in this
14 area.

15 To me, you potentially have arms race in
16 docks. I'd like to see the Board try and
17 decide who is going to get a dock, and who's
18 not getting a dock, because there are people
19 that are too close.

20 So, all I'm saying is, what I'd like the
21 Board to consider is; this is what you've got
22 and this is what is worthy of protection.
23 That is if you look in ten years, you can
24 almost predict that is what you're going to
25 have. People will remember what it used to

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-ERB-

39

2 look like. So, that's the point.

3 This Board can protect this piece of
4 strand now, and I would also encourage the
5 applicants, the new residents of Asharoken,
6 to contribute to preservation by respectfully
7 and humbly withdrawing the application,
8 living here for a while. Think about it.
9 See what makes this place special, and then
10 think about it and go forward. Thank you.
11 I'll leave the photographs if you want but
12 this is very expensive.

13 MR. MIGATZ: Mr. Holmes, you
14 handed something into the Board, and the
15 reporter, which appears to be what you
16 testified from. Do you want that marked as an
17 exhibit?

18 MR. HOLMES: Yes.

19 MR. MIGATZ: We'll mark it as
20 Exhibit 3 at the June 27th hearing, the
21 letter dated June 27th from Robert W. Holmes.

22 Mr. Murphy, do you want to submit that
23 exhibit you have, that document --

24 MR. MURPHY: I'll take the
25 photographs and email it.

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MR. MIGATZ: You want to take

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photographs of those photographs?

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MR. MURPHY: Yes.

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MR. MIGATZ: That's acceptable,

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but is it fair to say that your overlay

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display that is not to scale?

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MR. MURPHY: I think that would be a

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fair statement.

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MR. MIGATZ: For demonstration

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purposes, you concede that the overlay is

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not to scale.

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MR. MURPHY: It is for provocative

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purposes. Thank you.

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MR. MIGATZ: That will be marked as

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Exhibit 4 when it gets received by the

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Village.

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CHAIRMAN VAUGHN: Would anybody else

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like to speak, either side?

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[THERE WAS NO RESPONSE]

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I think that from the responses we've

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heard and due to the fact that we did just

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receive the paperwork with no time to read

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it, or review and look at it from everybody's

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standpoint, we're going to reschedule this

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-ERB-

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2 meeting and adjourn it for July 25th,

3 which will be Monday of next month.

4 MR. CLEARY: Yes.

5 [ADJOURNED UNTIL JULY 25, 2016]

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CERTIFICATION

COUNTY OF SUFFOLK)

SS:

STATE OF NEW YORK)

I, CHARMAINE DEROSA,
Certified Court Reporter, in the
State of New York, do hereby certify:

THAT, the foregoing is a
true and accurate transcript of
my stenographic notes taken for
the Environmental Review Board, on
June 27, 2016.

I HAVE HEREUNTO set my hand on
this 27th day of June, 2016.

Charmaine DeRosa, CSR

