STATE OF RHODE ISLAND **DIVISION OF PUBLIC UTILITIES AND CARRIERS**

IN RE: RHODE ISLAND FAST FERRY, INC.: **Docket No.: D-13-51**

BLUEWATER, LLC OPPOSITON TO

TOWN OF NEW SHOREHAM'S MOTION TO RECONSIDER

Once again the Town has invented another procedurally and substantively incorrect condition precedent to delay this process. Procedurally their contention "is that the signing/filing of a document by local counsel after that time limit does not relate back to the original filing as set forth in the case law submitted by the Town and was therefore untimely." Therefore, "under the *Ferry* case and the rules of the Rhode Island Supreme Court, the Town did not respond to the merits of the Motion to Quash."

This argument makes no sense, as the Town failed to respond to the *First Production,* the document upon which the Division's latest Order was predicated. Furthermore, Hearing Officer Spirito explicitly asked the Town in an email if they intended to respond to the, "Response and Objection to First Production. If yes, how much time do you need to file your response?" *See. Hearing Officer Spirito Email 10/14/15*Yet at this point, instead of responding to the merits of the production, the Town freely chose to instead, file a motion challenging Attorney Overturf's Pro Hac Vice standing. During the ensuing week, the Town elected not to address one substantive point made by Bluewater's First Production. Only after the ruling did not go in their favor, did they attempt to gain another bite at the apple though this Motion to Reconsider.

Specifically, while we are unsure as to what the uncited *Ferry* case refers to in the Town's motion, "it is well settled that a motion to reconsider should be treated as a motion to vacate under Super. R. Civ. P. 60(b)." *Iadevaia v Town of Scituate Zoning Board Of Review*

C.A. No. 09-1565 at 4 (R.I. Super 2011) *School Comm. of City of Cranston v. Bergin-Andrews,* 983 A.2d 629, 649 (R.I. 2009).

Moreover, it does not authorize "a motion merely for reconsideration of a legal issue . . . where the motion is nothing more than a request that the [trial] court change its mind." *Id.* at 5 *citing* Jackson, 734 A.2d at 507 n.8 *citing United States v. Williams*, 674 F.2d 310, 312-13 (4th Cir. 1982)); *see also Cashner v. Freedom Stores, Inc.*, 98 F.3d 572, 577 (10th Cir. 1996) (noting that, ***Rule 60(b) is not intended "to allow a party merely to reargue an issue previously addressed by the court when the re-argument merely advances new arguments or supporting facts which were available for presentation at the time of the original argument").***

Therefore, as to the Towns procedural argument, their Motion to Reconsider is deficient on its face, as it cites no information that could not have been presented in response to the First Production when they were asked to do so by this Division. Instead, the Town chose to wait until after the Order was issued to file this motion in an attempt to merely advance the new, erroneous *(discussed infra)* argument that somehow the Town, not the Army Corps of Engineers, initiates the USACE 408 permitting process. Again, an erroneous argument they could, and should, have made prior to the Order. In addition, the town now wants to respond to all of Bluewater's production with new arguments and supporting facts, which were clearly available for presentation at the time of the original argument. The town's counsel is ample with experienced litigators who intentionally chose to respond only to the procedural issues when prompted by this Division. Therefore, the Town's motion is both facially deficient and directly contrary to Rule 60(b) as set forth in both Rhode Island and Federal Courts, thus we pray it not be granted.

As to the substance of their argument, the Town has invented another condition precedent claiming yet another authority they do not possess. They now claim that they, the town, not the Army Corps of Engineers, are required to initiate the Army Corps of Engineers 408 permitting process. Specifically, as stated in the First Production, Bluewater worked in conjunction with

Mr. Joe Corrigan, a career Army officer who routinely assist clients with Army Corps of Engineers permitting, ***as well as advocacy on behalf of municipalities*** or companies in Corps of Engineers civil works projects. Based on this extensive experience, Mr. Corrigan's assessment was that, "the project proposed by Bluewater qualifies for a permit under Section 408 because it is not injurious to the public interest, nor will it impair the usefulness of the Corps' project." *KDW Letter*. In fact, Mr. Corrigan is actively preparing Bluewater's USACE permitting timeline in compliance with this Division's Order. Consequently, the Federal USACE 408 permit process, which Bluewater LLC has already initiated with the Corps, is the proper venue to determine if the project will receive the necessary permits.

In closing, the Town has invented yet another false condition precedent in an attempt to delay this process in any way possible. The Town had full knowledge of all of Bluewater's production and chose not to respond substantively until after the Order was issued. Consequently, the Town's Motion to Reconsider is deficient and in direct contravention to the application of Rule 60(b) as set forth in both the Rhode Island and Federal Courts Rules of Procedure.

Respectfully submitted by Paul Filippi
By and through his attorney

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CERTIFICATION PAGE BELOW

CERTIFICATION

I hereby certify that on the 23 day of October 2015, a copy of the above Opposition to the Town's Motion to Reconsider was emailed both to the proper Division and to the Counsel for the Town of New Shoreham.

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