

STATE OF RHODE ISLAND
DIVISION OF PUBLIC UTILITIES AND CARRIERS

IN RE: RHODE ISLAND FAST FERRY, INC.

DOCKET No. D-13-51

**OBJECTION OF THE TOWN OF NEW SHOREHAM
TO MOTION TO QUASH SUBPOENA FILED BY PAUL FILLIPPI
AND MOTION TO COMPEL DOCUMENT
PRODUCTION AND ATTENDANCE AT DEPOSITION**

The Motion to Quash Subpoena as filed by Paul Filippi's New York attorney contains certain shocking admissions regarding the veracity of the matters asserted in the Paul Filippi affidavit dated September 11, 2015 (the "9-11-15 Filippi Affidavit") which was filed with the Division. The 9-11-15 Filippi Affidavit unequivocally states that Bluewater has acquired from the riparian landowners of the following lots the right to wharf out at two locations:

Plat 7, Lot 23 (owned by Ballard's Inn Realty, LLC);

Plat 6, Lot 159 (owned by Ballard's Wharf Realty, LLC) and

Plat 6, Lot 158 (owned by T&C Holdings, LLC).

Despite the express language of the 9-11-15 Filippi Affidavit, the Motion to Quash Subpoena implies that Bluewater has not acquired riparian rights from the owners of Plat 7, Lot 23 and Plat 6, Lot 159; rather, throughout the Motion to Quash, it is made clear that the only riparian rights which Bluewater may have obtained are to Plat 6, Lot 158 and that as to the remaining rights, Mr. Filippi will "continue to try to convince family members." The Motion further admits that "Mr. Filippi's family have clearly expressed their lack of support for the project." Again, despite the sworn statements in the 9-11-15 Filippi Affidavit, the Motion goes on to state that the availability of Plat 6, Lot 158 is the only relevant issue.

In addition, with respect to Plat 6, Lot 158, Paul Filippi admits in his Motion that when he signed the 9-11-15 Affidavit, despite the assertions of the affidavit to the contrary, he did not have riparian rights to any lot, including Plat 6, Lot 158. In this regard, the Motion states: "The first (correspondence) from Mr. Steven Filippi on September 11, 2015 states that 'is also clear that no riparian rights have been obtained at any property.' While this statement was true at the time that it was made, it was not true after September 16, 2015, when Marion Filippi executed the agreement for the riparian rights to Lot 158 Plat 6." It is therefore apparent that the 9-11-15 Affidavit was executed prior to Bluewater receiving any riparian rights whatsoever.

It should also be noted that the Motion states that the Lease Option Agreement (dated September 11, 2015) refers to Lot 158, Plat 6, when it states: "Second, Mr. Filippi has previously filed a lease for the proposed facility for Lot 158 Plat 6 between Bluewater, LLC and RIFF with the Division." This is also not true. The Lease Option Agreement by its very terms does not set forth any specific dock location; rather, it refers merely to "a pier to be constructed in Old Harbor."

The Motion to Quash complains about the timing of the deposition; however, Paul Filippi is not an innocent witness to a pending litigation matter. Rather, RIFF's application has been pending since July of 2013 and Paul Filippi admitted in the Motion to Quash that he contracted with a marine engineer to design a dock plan for Lot 158, Plat 6 in the late spring of 2014. Despite this, the 9-11-15 Filippi Affidavit and the purported Lease Option Agreement were not dated until September 11, 2015, and were not filed with the Division until the afternoon of September 11, 2015, the last day upon which the Division allowed RIFF to file a declaration demonstrating the availability of a dock for its ferry service in Old Harbor. The subpoena itself was prepared and submitted for service the next day. According to information provided by the

Filippi family, Paul Filippi was contacted and advised that weekend that the constable was attempting to contact him; however, Paul Filippi ducked service so that it was not made until Wednesday.

The Motion to Quash further objects to the relevancy and scope of the documents sought by way of the subpoena duces tecum; however, a review of the document request, a copy of which is attached to the Town and Interstate's joint motion to modify the procedural schedule, clearly demonstrates that it is directly targeted to the salient matters presented in this case. Specifically, all of the requests pertain to either: the matters asserted in the 9-11-15 Filippi Affidavit, the Lease Option Agreement, or the Proposed Piers (which were the two piers referenced in the 9-11-15 Filippi Affidavit).

RIFF's identification of the dock on Block Island which it intends to use for its ferry operation has been a nebulous, moving target in this case. Moreover, the veracity of the matters asserted in the RIFF and Paul Filippi filings with the Division are very much in question.

The deposition of Paul Filippi is permitted by Division Rule of Practice and Procedure 21(b) which provides that the testimony of any witness may be taken by deposition at any time before the hearing is closed. Furthermore, Rule 21(a)(1) states that it is the Division's policy to encourage the timely use of discovery as a means toward effective presentations at hearing and avoidance of the use of cross-examination at hearing for discovery purposes. On September 21, 2015, the hearing officer issued an order permitting the Town to engage in discovery.

Last, based upon the fact that Paul Filippi's counsel has not been admitted pro hac vice, the filing of this Motion is a nullity and should not be entertained by the Division.

For the foregoing, reasons, the Town respectfully requests that the Motion to Quash be denied and that Paul Filippi be ordered to appear for the taking of his deposition and to produce

the documents referenced in the subpoena at a time and place to be designated by the Town.

Town of New Shoreham,
by its Attorneys,
MEROLLA AND ACCETTURO

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CERTIFICATION

I hereby certify that, on September 21, 2015, I served this document via e-mail on the individuals listed on the attached service list.

/s/Katherine A. Merolla, Esq.

EXHIBIT A

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