

# Geraghty & Bonnano, LLC

Attorneys at Law

October 22, 2020

PAUL M. GERAGHTY\*  
MICHAEL S. BONNANO  
JOHANNA McCORMICK  
MARK A. DUBOIS\*  
JONATHAN E. FRIEDLER\*\*

\*Also Admitted in New York  
† Board Certified, Trial Advocate  
\*\* Also Admitted in Massachusetts and North Dakota

Via Email [ggoeschel@eltownhall.com](mailto:ggoeschel@eltownhall.com)  
Gary Goeschel  
Planning Director  
Town of East Lyme  
108 Pennsylvania Avenue  
Niantic, CT 06357

Via Email [kirkscott@hotmail.com](mailto:kirkscott@hotmail.com)  
Kirk Scott, Chairman  
East Lyme Planning Commission

[mnickerson@eltownhall.com](mailto:mnickerson@eltownhall.com)  
Mark Nickerson  
First Selectman  
Town of East Lyme  
108 Pennsylvania Avenue  
Niantic, CT 06357

Re: Nottingham Hills Subdivision  
Lot Line Revisions to Lots 19 & 21  
1 Lot Re-subdivision

Gentlemen:

I am in receipt of Mr. Goeschel's email from Thursday sent to each of us at 4:30 p.m. and want to make clear the timeline of events and our response to same:

1. The "Covid" Policy, which I note is only provided in part, in Mr. Goeschel's email none the less conclusively demonstrates my client's compliance with the filing requirements apparently set by the Town of East Lyme and its Planning Commission. The entirety of the record of my clients application is proof of this fact,

2. Contrary to Mr. Goeschel's claim otherwise, we have provided hard copies of stamped, sealed and signed revised plans since the re-opening of the Town Hall in July. This is reflected in the record of this application as follows:

- On July 27, 2020 we provided original, stamped, signed and sealed set of plans which were responsive to Mr. Benni's plan comments dated March 30, 2020 but not provided to us until June 30, 2020. Electronic copies of these signed, stamped and sealed plans were provided to the Planning Commission on July 24, 2020.
- On August 10, 2020 my client corresponded directly with Mr. Goeschel, Ex. 1 herein, Ex. O in the record of the pending application, and addressed amongst other things the plans submitted on July 27, 2020 (see P. 2 of the aforementioned Ex. 1 herein).
- On August 21, 2020 we received Mr. Benni's comments dated August 12, 2020. As was reflected in detail in my letter to Chairman Scott dated August 28, 2020, we did not receive Mr. Benni's comments until August 21, 2020 because instead of being directed to my client or I they took a rather lengthy and circuitous route prior through other staff members and on to my client.
- On August 26, 2020 I requested in writing, application record Ex. U, an immediate meeting with Mr. Goeschel, Mr. Mulholland and Mr. Benni for purposes of reviewing the comments we had received and was advised no time was available to meet until August 31, 2020.
- On August 28, 2020 I wrote to Planning Commission Chairman Scott to, amongst other things, address the issues involving untimely reviews and staff comments of our application documents. This correspondence appears in the application record as Ex. V
- On August 31, 2020 I met with Bill Mulholland, Victor Beni and Mr. Goeschel at which time I provided each of them with original stamped sealed and signed plans with a revision dated of August 27, 2020 which were responsive to Mr. Benni's comments dated August 12, 2020 but not provided to us until August 21, 2020 (ten days later).

At the meeting we discussed the matters that were memorialized in the memorandum I sent to Mr. Mulholland, Mr. Benni and Mr. Goeschel September 1, 2020, Ex. 2 herein. It was my understanding that all of the previous comments made by Mr. Mulholland and Mr. Goeschel had been resolved prior to or at the August 31, 2020 meeting and that fact is confirmed by both my September 1, 2020 memorandum as well as by both Mr. Goeschel and Mr. Mulholland's lack of response thereto. I would note that Mr. Benni provided a few minor comments on September 2,

2020, Ex. 3, herein which were responded to in the plan revisions dated September 23, 2020 which appear in the record of this application as Ex. Y.

I note that the plans provided to Mr. Goeschel on August 31, 2020, my memorandum dated September 1, 2020 nor Mr. Benni's comments dated September 2, 2020 do not appear in the online record of my client's application and hereby request that these documents be made a part of the online record of my client's application immediately.

- On October 6, 2020 I submitted revised signed and sealed plans with a revision date of September 23, 2020 that addressed Mr. Benni's September 2, 2020 comments and further added the perc test and test hole locations as well as test hole data supplied to my client by Ledge Light Health District.

In response to Mr. Goeschel's email, I do not believe Jeff Torrance provided Mr. Goeschel with plans related to this Lot Line Revision/Re-Subdivision dated June 25, 2020 as indicated in his email. My recollection relating thereto is that when Mr. Goeschel and I met with Mr. Torrance and Mr. Luich on June 30, 2020 it was to discuss the long delayed release of the Town of East Lyme's Open Space Covenant that had been fully complied with and that should have been released in 2004 as well as the assignment of conservation easements to the East Lyme Land Trust. Documents provided by Mr. Torrance on or about this date were in support of the claims made by my client and Niantic Real Estate LLC against East Lyme in regards to these matters. As Mr. Goeschel may recall this was around the same time that he confused an administrative wetlands permit with a re-Subdivision request due to a what we were informed was a misfiling by Planning Department Staff that resulted in a nearly two month delay for review of my clients property located at 12 Upper Kensington Drive.

We believe that we have timely responded to all of staff comments when we received same. Given the fact that it has been stated on a number of occasions by Mr. Goeschel during the public hearings that the application was complete but for the Ledge Light review we were surprised, at the very least, that further comments from staff were being solicited at this late date.

Certainly this raises the ire of my client that there is an attempt to throw up road blocks at the last minute reminiscent of the claims raised and successfully prosecuted by New England National, LLC and Niantic Real Estate, LLC against the town in the earlier part of this century (Ex.4). I would hope that is not the case here. None the less we have endeavored to respond to the various correspondence and comments today.

Sincerely

Paul M. Geraghty

# EXHIBIT 1

**ENGLISH HARBOUR ASSET MANAGEMENT, LLC**  
**1712 Pioneer Avenue , Suite 1939**  
**Cheyenne, Wyoming 82001**  
**(307) 256-7229**

EX. 0

August 10, 2020

Via email: ggoeschel@eltownhall.com  
Gary Goeschel  
Director of Planning  
Town of East Lyme  
108 Pennsylvania Avenue  
Niantic, CT 06333

Re: Re-subdivision – Nottingham Hills Lots 19 & 21

Dear Gary:

As an initial matter, and as evidenced by the July 24 & 27, 2020 submitted plan, we are no longer considering the land to be provided to the East Lyme Land Trust, Inc. "a lot" as this proved to be more trouble than it was worth and we can convey the land to the East Lyme Land Trust under Connecticut Law simply by providing a legal description of the property being conveyed. Accordingly the pending application should now be considered a 3 lot re-subdivision of existing lot 19 aka 22 Upper Kensington Drive and Lot 21 aka 24 Upper Kensington Drive.

1. Water Supply and Sanitation Report

Paul Geraghty met with Danielle Holmes on Monday afternoon August 10, 2020 to address this application and others. We are scheduling a few additional test holes for early next week. Proposed well locations appear to be code compliant given the current locations for the proposed septic systems.

2. Plans Stamped, Signed and Sealed

The most recent of these plans were submitted via email pursuant to the Town of East Lyme's Covid policy as is identified on the Planning Department website on July 24, 2020 and originals were hand delivered to the Planning Department on July 27, 2020. These plans appear in the record of this application as the East Lyme Planning Department's Ex. H

Please confirm you are in possession of original stamped, signed and sealed plans for this application.

**3. Yield Plan Section 4-2-4**

This was provided as part of the initial application on March 3, 2020 as page 3 of the submitted plans and appears in the record of this application as page 3 of the East Lyme Planning Department's Ex. B. I provided this plan again in my reply dated July 7, 2020 to your and Mr. Benni's comments received on June 30, 2020. The Conventional Plan appears as part of that response which is identified as Ex. E to the Planning Departments record.

If you believe this plan is deficient please provide me the specifics of your claimed deficiency so we can either discuss it/them or we can make the requested corrections.

**4. Erosion and Sedimentation and Control Plan**

See attached Ex. 1 which will be added to a new page (Page 5 of 5) to this applications plans.

If you believe this plan is deficient please provide me the specifics of your claimed deficiency so that we can either discuss it/them or we can make the requested corrections.

**5. Construction Sequence Plan for Driveway and Rain Garden**

See attached Ex. 2 which will also be added to new page 5 Of 5 of this applications plans.

If you believe this plan is deficient please provide me with the specifics of your claimed deficiency so that we can either discuss it/them or we can make the requested corrections.

Please be advised our Surveyor's office has been without power and closed for much of the past week due to Tropical Storm Isaias so it may be a few days before we are able to provide you with revised plans which will be provided to you in both electronic and original form stamped, signed and sealed.

Sincerely,

A handwritten signature in cursive script that reads "Kristen Clarke".

Kristen T. Clarke PE

Cc Paul Geraghty via email [pgeraghty@geraghtybonnano.com](mailto:pgeraghty@geraghtybonnano.com)

Danielle Holmes via email [dholmes@llhd.org](mailto:dholmes@llhd.org)

Bill Mulholland via email [billm@eltownhall.com](mailto:billm@eltownhall.com)

Mark Nickerson via email [mnickerson@eltownhall.com](mailto:mnickerson@eltownhall.com)



# EXHIBIT 1

**EROSION & SEDIMENT CONTROL  
NARRATIVE**

PRE-CONSTRUCTION

1. DISTURBANCE OF SOIL SURFACES IS REGULATED BY STATE LAW. ALL WORK SHALL COMPLY WITH AN APPROVED 'EROSION AND SEDIMENT CONTROL PLAN' TO PREVENT OR MINIMIZE SOIL EROSION.
2. THE INSTALLATION AND MAINTENANCE OF EROSION CONTROL DEVICES IS THE RESPONSIBILITY OF THE LAND OWNER, DEVELOPER, AND THE EXCAVATION CONTRACTOR. TOWN OFFICIALS SHALL BE NOTIFIED IN WRITING OF THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE INDIVIDUAL RESPONSIBLE FOR THIS WORK.
3. THE CONTRACTOR SHALL USE THE 'CONNECTICUT GUIDELINES FOR SOIL EROSION AND SEDIMENT CONTROL' (2002), AS AMENDED, AS A GUIDE IN CONSTRUCTING THE EROSION AND SEDIMENT CONTROLS INDICATED ON THESE PLANS. THE GUIDELINES MAY BE OBTAINED FROM THE CONNECTICUT COUNCIL ON SOIL AND WATER CONSERVATION, STATE OFFICE BUILDING, HARTFORD, CT.06106.

DURING CONSTRUCTION

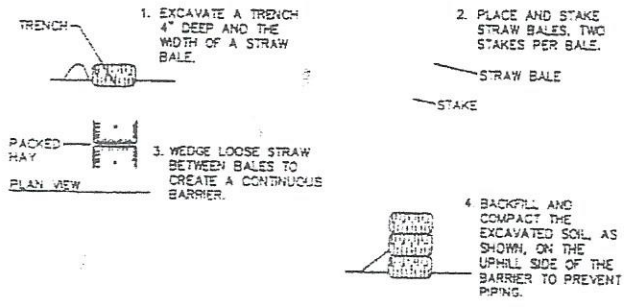
4. THE CONTRACTOR SHALL INFORM ALL CONSTRUCTION SITE WORKERS ABOUT THE MAJOR PROVISIONS OF THE EROSION AND SEDIMENT CONTROL PLAN AND SEEK THEIR COOPERATION IN AVOIDING THE DISTURBANCE OF THESE CONTROL MEASURES.
5. THE CONTRACTOR SHALL SCHEDULE ALL OPERATIONS TO LIMIT DISTURBANCE TO THE SMALLEST PRACTICAL AREA FOR THE SHORTEST POSSIBLE TIME.
6. THE CONTRACTOR IS RESPONSIBLE FOR THE TIMELY INSTALLATION, INSPECTION, REPAIR OR REPLACEMENT OF EROSION CONTROL DEVICES TO INSURE PROPER OPERATION.
7. THE CONTRACTOR SHALL INSPECT AND REPAIR EROSION AND SEDIMENT CONTROL DEVICES AT THE END OF EACH WORKING DAY AND AFTER EACH STORM.
8. THE CONTRACTOR SHALL NOTIFY THE ENGINEER OF UNSATISFACTORY EROSION CONDITIONS NOT CONTROLLED BY THE EROSION AND SEDIMENT CONTROL PLAN AND SHALL INSTALL ADDITIONAL MEASURES AS DIRECTED.
9. FIELD CHANGES TO THE EROSION AND SEDIMENT CONTROL PLAN SHALL BE MADE ONLY WITH THE APPROVAL OF THE ENVIRONMENTAL TOWN PLANNER OR AGENT, I.e. LOCATION OF SILT FENCE, STOCKPILE, DEWATERING AREA etc.
10. ACCUMULATED SEDIMENT REMOVED FROM EROSION CONTROL DEVICES IS TO BE SPREAD AND STABILIZED IN LEVEL, EROSION RESISTANT LOCATIONS AS GENERAL FILL WITHIN LAWN AND LANDSCAPE AREAS.
11. ALL DISTURBED AREAS NOT COVERED BY BUILDINGS, PAVEMENT OR WOOD MULCH SHALL BE PLANTED WITH GRASS ON 4 IN. TOPSOIL.
12. MULCHING IMMEDIATELY FOLLOWING SEEDING, MULCH THE SEEDBED SURFACE WITH STRAW OR HAY AT A RATE OF 70 LBS./1000 SF. SPREAD MULCH BY HAND OR MULCH BLOWER. PUNCH MULCH INTO SOIL SURFACE WITH TRACK MACHINE APPROXIMATELY 2-3 IN. TO ANCHOR.
13. SEEDING BETWEEN APRIL 1 TO JUNE 1, AND AUGUST 15 TO SEPTEMBER 1. ALL DISTURBED AREAS SHALL BE IMMEDIATELY GRADED AND SEEDDED TO PROMOTE STABILIZATION OF SLOPES.
14. A FABRIC FILTER SOCK SHALL BE USED FOR ANY DEWATERING.

**SOIL AND EROSION CONTROL**

1. HAY BALES / SILT FENCE ARE TO BE INSTALLED PRIOR TO CONSTRUCTION.
2. ONLY REMOVE TREES AND VEGETATION NECESSARY FOR CONSTRUCTION.
3. PERMANENT SEEDING SHOULD BE DONE AS SOON AS POSSIBLE AFTER CONSTRUCTION FINISHES. LIME AND FERTILIZE. RECOMMENDED SEEDING DATES ARE APRIL 15 TO JUNE & AUG. 15 TO OCT. 1.
4. RECOMMENDED SEED (PER EROSION AND SEDIMENT CONTROL HANDBOOK) KY31 TALL FESCUE 150 lbs. PER ACRE.
5. HAY BALES AND SILT FENCE TO REMAIN WHERE PLACED UNTIL ALL DISTURBED AREAS ARE PERMANENTLY STABILIZED.
6. NO ERODED SEDIMENT SHALL BE PERMITTED TO LEAVE THE SITE OR WASH INTO THE DRAINAGE SYSTEM.
7. IF SEEDING CANNOT MEET RECOMMENDED DATES, TEMPORARY MULCH IS TO BE APPLIED IN ACCORDANCE WITH THE TABLE BELOW.

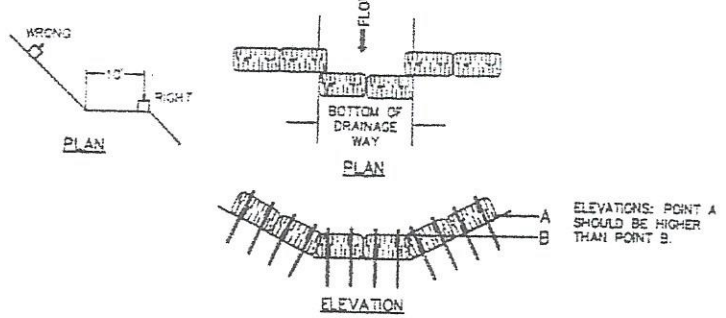
MULCHES	RATES PER 1000 FT	NOTES
STRAW OR HAY 1/2 - 2 TONS PER ACRE	70-90lbs.	FREE FROM WEEDS & COARSE MATTER. MUST BE ANCHORED SPREAD WITH MULCH BLOWER OR BY HAND

8. ANY HAY BALES OR SILT FENCE REMOVED DURING CONSTRUCTION SHOULD BE REPLACED EACH NIGHT.
9. ANY MATERIAL STOCK PILED SHOULD BE TEMPORARILY SEEDDED.



**TYPICAL HAY BALE INSTALLATION**

10. ALL ROAD SECTION EMBANKMENTS, EITHER CUT OR FILL, SHOULD BE STABILIZED AT THE TOE OF THE SLOPE BY STAKED HAYBALES OR SILT FENCE.
11. SWALES AND DIVERSION STRUCTURES SHOULD HAVE HAY BALES PLACED ACROSS THEM EVERY 100' IN ACCORDANCE WITH THE DETAIL BELOW.



# EXHIBIT 2

## GENERAL CONSTRUCTION SEQUENCE-COMMON DRIVEWAY & RAIN GARDEN

1. Secure all necessary permits. Notify "call before you dig" (1-800-922-4455) at least 72 hours prior to excavation. Schedule and attend a pre-construction conference with Town Staff.
2. Clearing limits will be flagged by engineer prior to work being done. Limit of work adjacent to wetlands will not be exceeded.
3. Remove trees, branches and brush within areas to be cleared, chip branches and brush for use as mulch.
4. Install construction exit (anti-tracking pad) and install sediment barriers along the limits of grading and at the limits of clearing for tree protection.
5. Check and repair E&S controls as necessary.
6. Grub stumps and remove brush
7. Strip and stockpile topsoil only in areas to be filled or graded and stockpile on site in an area not in way of construction, seed and mulch stockpile or cover with netting. Place and stake hay bales around stockpiles.
8. Rough grade common driveway.
9. Construct rain garden. Plantings recommended in the months of May or September.
10. Place gravel and pavement in common driveway.
11. Re-spread topsoil on shoulders and disturbed areas.
12. Fine grade, lime, fertilize and seed remaining lawn areas with formal grass seed mixture by June 1 or October 1 depending on actual construction schedule.
13. Remove erosion control devices upon authorization of town officials.

# EXHIBIT 2



GERAGHTY &  
BONNANO, LLC

## **Memo: English Harbour Asset Management, LLC lot 19, 21 lot line reivision and proposed 1 lot 23 Re-subdivision**

September 1, 2020

To: Gary Goeschel, Town Planner  
Victor Benni, PE  
William Mulholland, Zoning Official

From: Paul M. Geraghty


CC: Kristen Clarke, PE

Gentlemen:

Thank you for meeting with me yesterday. As a follow up to our conversation and to memorialize what was discussed with regard to the staff reviews, proposed plans, and revisions required I will go over our meeting in order of department comments.

First by way of background I explained that lots 19 and 21 are existing approved lots having been approved as part of the original subdivision in 2010. Those lots had received approval from the Planning Commission and the health department as well as the wetlands commission. We are proposing to modify the lot lines for lots 19 and 21. Because it is only a lot line revision the only compliance that need be demonstrated is zoning and health. Ledge Light Health District ("LLHD") has been to the site to

38 Granite Street, New London, Ct 06320  
T: 860-447-8077 F: 860-447-9833



review the test holes and perc tests. That has been recorded on a new map and will be submitted to LLHD for approval. This applies for all three lots.

We are proposing the creation of a third lot from the land created by a lot line revision. This would constitute a one lot re-subdivision and would be the only lot subject to the Conservation By Design ("CBD") regulations similar to what was granted to Mr. Pazzaglia on July 27, 2020 by this commission.

#### ZONING:

Mr. Mulholland had in his review raised the issue of whether this application requires the permission of the Planning Commission to be submitted as a Conservation By Design ("CBD") subdivision. The land is less than 10 acres and the proposal is for less than 4 lots. Under the language of Section 23.3 of the zoning regulations it allows for the commission to require a CBD subdivision if it finds it would achieve the objectives of 23.1. It is our position that there is no prohibition from an applicant electing to proceed with a CBD subdivision voluntarily as evidenced by the recent one lot re-subdivision the Planning Commission approved for the Darrow's Ridge Subdivision on July 27, 2020. That is what my client has chosen to do. Moreover, this application achieves those objectives. The "conventional yield plan" submitted on March 3, 2020 showed the applicant could develop a minimum of four (4) lots by creating a cul de sac on what would be a town owned and maintained road. This application is taking the two existing lots and modifying the lot lines to allow for the creation of a third lot, the re-subdivision, and at the same time it protects the local ecology by allowing, as we have already done, adding the rear portion of the lots to open space, locating the house back from the street line, keeping it not only out of the wetlands but out of the buffer zone, and reducing the impervious surfaces from what was previously approved. The proposed new lot is bounded by open space on its rear property line, and eliminates the need for public infrastructure.

We therefore believe we have satisfied the issues raised in the zoning review.

#### PLANNING:

Mr. Goeschel raised five (5) in his email of August 6, 2020. Item one -, water supply and sanitation, which has been dealt with and we are awaiting approval from LLHD once the revised date is submitted on the plans to LLHD.

Item two: Signed and Sealed plans. These were delivered to the East Lyme Planning Department on July, 27, 2020.

Item Three: Yield Plan. That was submitted with the original application on March 3, 2020 and demonstrates a minimum of four lots is achievable.

Item Four: An erosion and Sediment Control Plan was submitted on the plans dated August 27, 2020.

Item Five: Construction sequence. Submitted on plans dated August 27, 2020

This plan proposes to use the existing open space as a buffer on the sides and rear from the existing subdivision. Additionally, the lots themselves may be used to satisfy the buffer requirement. Here the "new" lot meets or exceeds the buffer requirement for a CBD subdivision.

Waiver of Storm Water Management Plan: Section 6-8-7 exempts subdivision of three lots or less from storm water management plans or water quality reviews. Since two lots are preexisting and approved and only a third lot is being added, the applicant requested a waiver of having to prepare any report. Moreover, the revised proposal will actually decrease storm water runoff from the approved subdivision by eliminating one of the driveways and will direct all runoff to the rear where there is open space. No culverts are proposed, no streams or water courses are impacted. Having said this I would note that Section 6-8-7 mistakenly refers one to seek a waiver in accordance with Section 4-13 which is the ERT review Section. This section of the East Lyme Subdivision Regulations then goes on to allow an applicant to seek a waiver of Section 6-16 which does not pertain to this type of application. There appears to be nothing in the regulations under this section that requires a waiver on the part of the applicant .

Notwithstanding the foregoing if the commission deems a waiver may be required based on the revised application the applicant hereby requests a waiver under Section 6-8-7.

**Engineering Comments:**

Let me preface this that by saying that a number of the comments Mr. Benni resulted from the proposed rain garden adjacent to the abutting property (26 Upper Kensington Drive) which we have eliminated based on those concerns.



1. E&S Design by a CT licensed Engineer: Pursuant to Section 5-2-2G of the subdivision regulations the proposed activity will be disturbed less than ½ acre on the proposed new lot 23 and therefore is exempt from the requirement of providing E&S plans by a licensed engineer.
2. The submitted plans indicate on all pages that this plan is both a lot line revision of existing lots 19 & 21 and a one lot re-subdivision plan. In the discussion that Mr. Benni and I had he wanted this page to indicate that these would be the approved lot lines so there was no dispute by a potential home owner as to what were the approved lots boundaries. Because this is only a one lot re-subdivision I would propose a note on the plans as follows: "All legal descriptions shall be based on this map".
3. Label corners and angle points. See legend on plans dated 08/27/2020 which indicates which points are set and which are to be set.
4. Rain Garden has been removed so comment is no longer applicable.
5. Gutter drains have been removed so this comment is no longer applicable.
6. Utility and power lines are shown on the pending plans. See map reference 3 and note 7 on page 1 which refers to existing and recorded CL&P easement as well as page 3 of 4 which shows the limits of CL&P easement.
7. Rain Garden has been removed so this comment is no longer applicable.
8. See response to No. 5 above.
9. Applicant will provide a proposed grade for the common driveway.
10. Plans shall contain a statement that the building contractor shall prepare and E&S plan for actual construction plans.
11. See response in No. 11 above.
12. See response in No. 9 above.
13. Done.
14. Removed.
15. Exempt.

**Commented [A1]:** Jeff, I am looking at one set of plans which shows the easement boundary but not the box as is reflected on the most recent plan you gave me so I am not sure what Benni has been looking at.

Please confirm this is your understanding and we will submit a revised set of plans promptly.

# EXHIBIT 3

## Paul Geraghty

---

**From:** Victor Benni <vbenni@eltownhall.com>  
**Sent:** Wednesday, September 2, 2020 11:09 AM  
**To:** Paul Geraghty; Gary Goeschel; Bill Mulholland  
**Cc:** Jennifer Lindo; Kristen Clarke  
**Subject:** RE: Memo to Staff09.01.20 Final..docx

Gary,

Per Mr. Geraghty's September 1, 2020 memo:, under his "Engineering Comments" section:

Item #2: The requirement that we discussed was that a "Subdivision Plan" be submitted by the Applicant. This Subdivision Plan shall be prepared by a Licensed Land Surveyor. The drawing set provides no clarification as to the accuracy of the proposed boundary lines. Refer to "Notes – 1) E." , on Sheet 1 of 4 of the drawing set, which states, "The intent of this map is to depict existing conditions of the property".

Under the "Notes - 1) A.", on Sheet 1 of 4 of the drawing set, there is a reference to , "Type of Survey: Topographic Survey". There has been no reference made to the Vertical Accuracy on the Topographic Survey.

Item #6: As discussed, the plans depict a common drive which will be shared by all three lots; therefore, appropriate language and identification of a right-of-way/easement area needs to be included on the Subdivision Plan.

- Access rights over Lot 21 in favor of Lot 19, and
- Access rights over Lot 19 in favor of Lot 21, and
- Access rights over Lots 19 & 21, in favor of Lot 23.

I fully understand that CL&P has an Easement and it is depicted on the plans and referenced in the notes. I do not believe that this CL&P easement encompass other utilities, such as cable TV, telephone, internet, & etc. A "common" easement for all utilities should be considered. As we discussed, it is also rational to include utility easements over each Lot 19 and 21, in favor of each other. With this, we intend to provide the utility companies the option to provide one set of utilities thru the access strips, then parcel off the utilities at a common junction to each of the three lots.

- Utility easement over Lots 19 & 21, in favor of Lot 23,
- Recommended utility easement over Lot 19 in favor of Lot 21, and
- Recommended utility easement over Lot 21 in favor of Lot 19.

Item #15: If waiver requested, then the Applicant would provide information for Engineering Department review to satisfy conditions under Section 6-8-7 (A) 1. & 2.

Regards,

**Victor Benni, P.E.**  
Town Engineer

Town of East Lyme  
(860) 691-4112

**From:** Paul Geraghty <pgeraghty@geraghtybonnano.com>  
**Sent:** Tuesday, September 01, 2020 3:59 PM  
**To:** Gary Goeschel <ggoeschel@eltownhall.com>; Victor Benni <vbenni@eltownhall.com>; Bill Mulholland <billm@eltownhall.com>

**Cc:** Jennifer Lindo <jlindo@eltownhall.com>; Kristen Clarke <kristentclarke@gmail.com>

**Subject:** Memo to Staff09.01.20 Final..docx

Gentlemen, please see the memo I have prepared based on our meeting of yesterday. I believe it covers those issue we discussed and how they would be addressed with some slight variation on Victor's comments which I am happy to discuss. Please confirm you are in agreement and I will have the plans updated to reflect the comments and discussion.

The plans that I showed you yesterday had a number of the comments addressed in terms of the additional info sought either actually on the plan or penned in so we can turn that around quickly.

With that I would request the commission hold a special hearing later this month either the week of the 14<sup>th</sup> or 21<sup>st</sup>.

Regards Paul.

# EXHIBIT 4

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF CONNECTICUT (New Haven)

---

In re:

Case No. BK-02-33699(LMW)

NEW ENGLAND NATIONAL, LLC

CHAPTER 11

Debtor

---

New England National, LLC

Plaintiff

v.

Adv. Pro. No.

Town of East Lyme

Defendant

---

**COMPLAINT AMENDING AND SUBSTITUTED FOR DEBTOR'S OBJECTION TO  
PROOF OF CLAIM 13 FILED BY THE TOWN OF EAST LYME**

Plaintiff, **New England National, LLC** (the "Plaintiff" or "NEN") respectfully complains against Defendant, **Town of East Lyme, Connecticut** (the "Defendant" or "Defendant") as follows:

**INTRODUCTION**

1. In this Complaint which represents a continuation of the counterclaims first asserted against Defendant in Plaintiff's Amended Objection to the Proof of Claim of the Town of Defendant (Claim No. 13) that became an adversary proceeding pursuant to the Order entered by the United States Bankruptcy Court for the District of Connecticut (New Haven Division), the Plaintiff asks this Court to enter a judgment against Defendant based on its negligence in having hired or appointed Ledge Light Health District ("Ledge Light" or the "Contract Sanitarian") and having failed to supervise and retained the following significant persons within the meaning of this Complaint, among others: Margaret M. Parulis ("Parulis"),

George Calkins ("Calkins"), Edward O'Connell ("O'Connell") and Waller, Smith & Palmer, P.C. ("Waller"). In addition, Plaintiff seeks a judgment against Defendant, which is vicariously liable for the negligent acts and omissions of its officials and employees.

### **PARTIES, JURISDICTION AND VENUE**

2. Plaintiff is the reorganized Debtor and a limited liability company having its principal place of business at, and a mailing address of 1890 Palmer Avenue, Suite 303, Larchmont, New York, 10538.

3. Defendant is a public body corporate and politic, which has its principal place of business at, and a mailing address of 108 Pennsylvania Avenue, Niantic, Connecticut, 06357. Paul Formica ("Formica") is the First Selectman of Defendant at this time. As First Selectman, Formica serves as the Chief Executive of Defendant and is an officer of Defendant upon whom service may be made pursuant to F.R.C.P. 4(h) made applicable to this adversary proceeding by F.R.B.P. 7004 if Defendant refuses to waive service.

4. This adversary proceeding is being brought in connection with Plaintiff's pending chapter 11 case to recover monetary damages against Defendant, which asserted the Tax Claim against Debtor and the bankruptcy estate.

5. This Court has jurisdiction over the subject matter of this adversary proceeding under 28 U.S.C. §§ 157 and 1334.

6. The cause of action asserted pursuant to Code Section 542 is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (C), (E), and (O).

7. Venue is proper under 28 U.S.C. § 1409.

### **OTHER SIGNIFICANT PERSONS**

8. The following current or former officials and employees of Defendant are

significant persons because their lack of competence and fitness for the positions held by them and their negligent acts and omissions in the performance of the duties, obligations and responsibilities owed Plaintiff form the basis of this Complaint against Defendant: Paul Formica, Wayne Fraser, Beth Hogan, Robert Wilson, Robert Klien hans, Rose Ann Hardy and Mark Nickerson.

### **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

9. On information and belief, Defendant is a public body corporate and politic and a political subdivision of the State of Connecticut (the "State").

10. Defendant acts and can act only through its elected and appointed officials, employees and independent contractors for whose acts it is vicariously responsible.

11. The First Selectman is the de facto and functional Chief Executive Officer of Defendant and is responsible for the proper administration of the business and affairs of the town.

12. The State abrogated the sovereign immunity of municipalities and towns with respect to claims arising from the negligence of Defendant and its officials and employees.

13. At all times material to this Complaint, Plaintiff and its affiliates engaged in the business of real estate development for profit in Defendant.

14. Defendant regulated and regulates the development of real estate within the town through a matrix of ordinances and regulations administered by its officials and employees.

15. As conceded by officials and employees of Defendant, Defendant had a duty to administer its land use ordinances and regulations capably, competently, even-handedly, fairly, impartially, properly and in a timely manner and the manner required by law and refrain from imposing conditions on Plaintiff beyond those within the scope of the Development Rules and



Process to avoid damaging, harming or causing loss to Plaintiff in the pursuit of its business activities.

16. At all times material to this Complaint, First Selectmen and other officials and employees have acknowledged and admitted that Defendant has a duty and obligation to conduct its business and affairs in accordance with effective, prudent and sound business practices, such as establishing hiring policies, preparing job descriptions and policy and procedure manuals, limiting the scope of their authority and reviewing their performance on a regular basis and complaints when received by an official or department head and that mistakes were made with respect to Plaintiff. Instead, Defendant has hired incompetent and unfit employees, failed to supervise their acts and omissions, promulgate job descriptions or even institute the guidelines, policies or procedures for governing, monitoring or evaluating their performance or disciplining employees who fail or neglect to perform their duties, failed to investigate complaints including those made by Plaintiff and permitted and suffered officials' and employee's negligent acts.

#### **FIRST CLAIM FOR RELIEF**

#### **NEGLIGENT MANAGEMENT AND SUPERVISION OF EMPLOYEES AND INDEPENDENT CONTRACTORS**

17. Plaintiff re-alleges, reiterates and incorporates herein by reference each and every allegation made in the preceding and succeeding paragraphs hereof including, without limitation, 10 through 16, inclusive, and 18 through 24, inclusive and 37-40, inclusive, and 42-44, inclusive.

18. At all times material to this Complaint, Defendant had and has a duty to manage the business of the town in a prudent, sound and business-like manner to avoid damaging, harming or causing losses to Plaintiff and to administer and apply its land use ordinance and regulations (the "Development Rules") through capable, competent and fit officials, employees

and independent contractors (collectively, "Employees" and "Independent Contractors") to ensure that the Development Rules were reasonably and fairly applied to Plaintiff and its real estate development business to prevent damage, harm and loss to Plaintiff based on misinterpretations and misapplications of the Development Rules or the use of an unreasonable process to hear, approve or deny permits needed by Plaintiff in a timely manner and compliance with law (the "Development Process") and prevent damage, harm or loss to Plaintiff.

19. Defendant knew or should have known that it can act only through its Employees and Independent Contractors, such as Parulis and her staff, Calkins, O'Connell and Waller and that its ability to satisfy its duty to administer reasonably the Development Rules and Process was, and is a function of (i) the capabilities, competence and fitness of its Employees and Independent Contractors involved in the process, (ii) their knowledge of the Development Rules and Process, including the substantive and procedural Rules they were expected to administer, (iii) their understanding of the scope and limitations of their jobs or functions and the nature and extent of the authorities and powers and privileges with respect to the Development Rules and Process.

20. Among other things, Defendant:

a. Has failed and continues to fail to maintain a written policies or procedure manuals for its Employees and Independent Contractors providing guidance and rules for the proper performance of their jobs and duties.

b. Has failed and continues to fail to provide its Employees and Independent Contractors with written job descriptions or contracts or written engagements outlining their duties, obligations, responsibilities and tasks.

c. Has repeatedly employed Attorney Edward O'Connell and the law firm

Waller, Smith & Palmer P.C. without engagement letters or any assurance that the firm did not have conflicts of interest that would embroil Defendant in litigation with Plaintiff and others.

d. Has failed and continues to fail to supervise and oversee the performance of Employees and Independent Contractors or institute performance, personnel and contract review procedures reasonably designed and implemented to ensure that Defendant identified and understood acts, actions and omissions being taken in its name and on its behalf by Employees and Independent Contractors, correct improper performance and discipline effectively Employees and Independent Contractors that engaged in negligent and other misconduct.

e. Has failed to investigate reasonably the oral and written complaints made by Plaintiff and others regarding Employees and Independent Contractors' failures to properly perform their duties, obligations and responsibilities or take appropriate actions to correct or remedy their negligence and misconduct.

f. Created, suffered and suffers a culture in which Defendants' Employees and Independent Contractors routinely failed to perform their duties, obligations and responsibilities properly and in the manner required by law through its systemic failure to manage and supervise its employees as if they are responsible to no one for damage, harm and loss caused by them.

21. For example, Defendant allowed, suffered or permitted the following acts, actions and omissions of employees, Margaret M. Parulis ("Parulis") represented by Waller Smith damaged Plaintiff despite the duty of reasonable care owed Plaintiff by repeatedly failing to administer the Development Process in a fair and timely manner and in accordance with Connecticut law by, among other things:

a. Delaying the distribution and submission of plans to other departments for review in order to create a delay in the hearing of subdivision applications.

b. Contacting abutters to 'encourage' their opposition to the Nottingham Hills Subdivision, allegedly as a favor to a friend of Margaret Parulis, who lives on Upper Pattagansett Road directly across the street from the subdivision's entrance.

c. Filing without reasonable justification or cause a cease and desist order which created as a cloud on the title of Nottingham Hills Subdivision Phase I lots preventing sales and creating damages as a result of the unnecessary incurrence of interest and other costs as a result of alleged "silt" in an off-site drainage swale left unmaintained by the Town for a period of exceeding 20 years.

d. Forcing Plaintiff to incur unnecessarily and unreasonably legal, engineering and construction costs relating to the "drainage swale" issue.

e. Delaying unnecessarily and often for no legitimate reason hearings on applications for approvals and permits by withholding comments on subdivision plans until the day of Planning Commission hearings, a tactic which effectively prevented the Debtor and its professionals from preparing responses or revisions to the application plans creating further delay.

f. Delaying the review of applications for public improvement bond returns and reduction and Planning Commission hearings on the applications.

22. For example, Defendant allowed, suffered or permitted the following acts, actions and omissions of employee, George Calkins who later became an employee of Contract Sanitarian, which damaged Plaintiff despite the duty of reasonable care owed Plaintiff by, among other things: requiring the "preparation" of ledge controlled septic systems in the Darrow's Ridge Subdivision as a precondition to subdivision approval at a cost of at least \$302,000, as a condition to subdivision approval, a requirement which contradicted and exceeded those imposed by the Connecticut State Health Code and the Town of East Lyme's subdivision regulations relating to preparation of ledge controlled septic systems without legal

authority and the negligence and other misconduct described in sample communications putting the Town on notice of Mr. Calkins' misconduct dated June 3, 2005 and June 27, 2005.

23. Defendant also damaged Plaintiff by:

a. Failing to timely obtain an Army Corp of Engineers permit which delayed unnecessarily and unreasonably the cost of completing the approved public improvements relating to the Mostow Road realignment and the Darrow's Ridge subdivision.

b. Adopting a subdivision moratorium which constitutes a taking under State law and interferes with the NEN plan transactions contained in the confirmed plan of reorganization. Town counsel Waller Smith knew and advised Parulis and others that the Planning Commission had and has no legal authority to have enacted or adopt the subdivision moratorium. The adoption of the moratorium forced the Debtor to file a proceeding in the New London Superior Court to invalidate the moratorium causing the Debtor to incur unnecessary attorney's fees and other costs and expenses and damage.

c. Negligently causing the Town of East Lyme's Conservation Commission to authorize a cease and desist order against the Debtor to prevent the Debtor from constructing the trail required by the Nottingham Hills Phase II and III Subdivision approvals in accordance with the requirements of those approvals, which imposed additional costs on the Debtor and delayed the implementation of the Plan.

d. Negligently filing a Complaint against the Debtor in the New London Superior Court seeking an injunction without the official approval of the Board of Selectmen.

e. Retaliating against the Debtor for challenging the validity of the subdivision moratorium by filing the case and desist order and the complaint.

f. Instituting a storm water management regulation which Waller, Smith & Palmer know violates Connecticut and Federal Law

24. Plaintiff regularly and repeatedly complained to both Defendant and Employee

orally and in writing that Employee failed or neglected to perform Employee's duties, obligations and responsibilities to Plaintiff in a capable, competent, prudent and responsible manner in keeping with the land use ordinances and regulations and standard of care imposed by State law and that the failure or neglect had caused and would cause Plaintiff damage, harm and loss by delaying the development process and making the process unnecessarily and unreasonably expensive.

25. Despite the fact that Defendant knew or should have known of Employee's regular and repeated failures and neglect and having the ability, right and duty to supervise Employee, correct Employee's failures and neglect and prevent further failures and neglect, Defendant failed to supervise Employee or take any action to ensure that Employee would perform Employee's duties, obligations and responsibilities in a proper and timely manner and allowed or permitted Employee to continue to cause damage, harm and loss to Plaintiff.

26. Defendant failed to supervise Employee in the performance of employee's duties and obligations and responsibilities to Plaintiff without lawful excuse, justification or privilege.

27. Defendant knew or should have known that real estate development is a capital intensive business conducted in cyclical markets in which development cost and time are critical factors.

28. Defendant knew or should have known that Employee's failures and neglect would incur unnecessary cost and expense and that delay in the development process would increase the cost of capital and that such failures and neglect would cause Plaintiff to sustain damage, harm and loss.

29. Among other things, the failure of Defendant to supervise Employee caused Plaintiff to sustain damages, harm and loss including, without limitation, the incurrence of unnecessary costs and expenses during the Development Process, unnecessary legal fees and

the depreciation of the value of the real estate owned by Plaintiff over the longer than necessary Development Process.

30. An ordinary person in the position of Defendant, knowing what Defendant knew or should have known, would have anticipated that damage, loss and harm of the general nature suffered by Plaintiff was likely to result from Defendant's failure to manage and supervise its employees and independent contractors, and that, as a matter of public policy, Defendant's responsibility for its negligent conduct and the consequences thereof should extend to the damage, harm and loss sustained by Plaintiff.

31. Plaintiff and Plaintiff's business and financial interests are within the zone to be protected by requiring Defendant to properly manage and supervise its employees and independent contractors to prevent damage to Plaintiff and Plaintiff's interests.

32. The harm, loss and damage sustained by Plaintiff are within the scope of the foreseeable risk created by Defendant's negligent conduct complained of herein.

33. A causal relationship exists between the damage, harm and loss sustained by Plaintiff and Defendant's failure to properly manage and supervise Defendant's employees and independent contractors.

34. Defendants' failure to supervise Employee was the actual and proximate cause of the damage, harm and losses sustained by Plaintiff as a result of the failures and neglect of Employee.

**WHEREFORE**, Plaintiff requests this Court to enter a judgment against Defendant based on its failure to supervise Employee and as a party vicariously liable for the negligence of Employee under State law which (i) awards Plaintiff damages equal to the damage, harm and loss caused by the negligence of Defendant and (ii) grants Plaintiff any other relief sought in this Complaint and (ii) such further relief as may prove to be equitable and fair or lawful.

## SECOND CLAIM FOR RELIEF

### NEGLIGENT RETENTION

35. Plaintiff re-alleges, reiterates and incorporates herein by reference each and every allegation made in the preceding and succeeding paragraphs hereof including, without limitation, 10 through 16, inclusive, and 18 through 24, inclusive and 37-40, inclusive, and 42-44, inclusive.

36. "Negligent retention ... occurs when, during the course of employment, the employer becomes aware or should have become aware of problems with an employee that indicated his unfitness, and the employer fails to take further action such as investigating, discharge or reassignment."

37. Plaintiff and others repeatedly advised Defendant and its First Selectmen, including Paul Formica, that Parulis and other members of her staff, Calkins were unfit and unwilling to perform their duties, obligations and responsibilities to Plaintiff and others in a proper and timely manner as required by State law and that their continued employment would cause damage, harm and loss.

38. Defendant knew or should have known from the oral and written complaints made by Plaintiff and others that Parulis and members of her staff and Calkins had failed, neglected and refused to perform the duties, obligations and responsibilities in the manner required by law and that they would not do so in the future.

39. Defendant knew that the misconduct of Parulis and members of her staff and Calkins had damaged, and would continue to damage Plaintiff and others if Defendant failed to take reasonable action to prevent him from continuing his negligent performance of his duties, obligations and responsibilities and misconduct as Sanitarian.

40. On information and belief, Defendant took no action to investigate the complaints



made by Plaintiff and others, discharge, re-assign, limit the authority of Parulis or members of her staff or Calkins or prevent future negligence or misconduct by them.

41. Plaintiff suffered damage, harm and loss as a result of Defendant's failure to investigate reasonably the complaints made against Parulis and members of her staff and Calkins, remedy the damage, harm and loss caused by them and remove them or take disciplinary actions against them reasonably likely to ensure the proper and timely duties failures to perform his duties, obligations and responsibilities in the manner required by law including, without limitation, the incurrence of unnecessary costs and expenses during the Development Process, unnecessary legal fees and the depreciation of the value of the real estate owned by Plaintiff over the longer than necessary Development Process.

42. Defendant instead continued the employment of Parulis and members of her staff and Calkins for years.

43. In the case of Calkins, Defendant permitted Calkins to retire early from his position as Sanitarian knowing that he would receive a town pension approved by the East Lyme Board of Selectmen specifically for him and one other individual despite non compliance with East Lyme's standard retirement policy and then be employed by Ledge Light Health District ("Ledge Light") for which he would perform the same duties, obligations and responsibilities that he had failed or neglected to perform for Defendant in the manner required by law for years.

44. Permitting Parulis and members of her staff and Calkins to remain in Defendant's employ was an actual and proximate cause of the damages, harm and losses sustained by Plaintiff.

45. An ordinary person in the position of Defendant, knowing what Defendant knew or should have known, would have anticipated that retaining Calkins, Parulis and members of

her staff, and Waller in Defendant's employ would likely result in damage, loss and harm of the general nature suffered by Plaintiff and that, as a matter of public policy, Defendant's responsibility for its negligent conduct and the consequences thereof should extend to the damage, harm and loss sustained by Plaintiff.

46. Plaintiff and Plaintiff's business and financial interests are within the zone to be protected by requiring Defendant to properly manage and supervise its employees and independent contractors and terminate or stop retaining those who fail to perform their duties, obligations and responsibilities properly and in a timely manner as required by State law to prevent damage to Plaintiff and Plaintiff's interests.

47. The harm, loss and damage sustained by Plaintiff as a result of Defendant's failure and neglect is within the scope of the foreseeable risk created by Defendant's negligent conduct in continuing to retain Parulis and members of her staff, Calkins, Ledge Light and Waller.

48. A causal relationship exists between the damage, harm and loss sustained by Plaintiff and Defendant's failure to properly manage and supervise Defendant's employees and independent contractors.

49. Defendants' failure to terminate or stop retaining Parulis and members of her staff, Calkins and Waller was an actual and proximate cause of the damage, harm and losses sustained by Plaintiff.

**WHEREFORE**, Plaintiff requests this Court to enter a judgment against Defendant based on its failure to supervise Employee and as a party vicariously liable for the negligence of Employee under State law which (i) awards Plaintiff damages equal to the damage, harm and loss caused by the negligence of Defendant and (ii) grants Plaintiff any other relief sought herein and (ii) such further relief as may prove to be equitable and fair or lawful.

### THIRD CLAIM FOR RELIEF

#### NEGLIGENT HIRING OF LEDGE LIGHT HEALTH DISTRICT AND CALKINS

50. Plaintiff re-alleges, reiterates and incorporates herein by reference each and every allegation made in the preceding and succeeding paragraphs hereof including, without limitation, 10 through 16, inclusive, and 18 through 24, inclusive and 37-40, inclusive, and 42-44, inclusive.

51. Negligent hiring occurs where a plaintiff was damaged by an employer's failure to exercise reasonable care in selecting and hiring employee who was fit and competent to perform the job in question and that the damage resulted from the employee's unfitness or incompetence at work.

52. Ledge Light and Defendant entered into an agreement pursuant to which Ledge Light would become the contract sanitarian for Defendant (the "Sanitation Agreement").

53. On information and belief, the Sanitation Agreement gave Defendant control over how Ledge Light performed and fulfilled its duties under the Sanitation Agreement or had substantial control over the personnel and methodology to be employed by Ledge Light.

54. Defendant knew or should have known that Ledge Light would hire Calkins, who would continue perform the same duties, obligations and responsibilities for Defendant as he had in the past, but as an employee of Ledge Light.

55. Defendant knew or should have known that Calkins was unfit to perform the duties, obligations and responsibilities of Sanitarian as its employee and would continue to be, and proved to be unfit to perform them as an employee of Ledge Light.

56. Defendant knew or should have known that Ledge Light would be unit to perform the duties, obligations and responsibilities as contract Sanitarian as long and to the extent that it would discharge those duties, obligations and responsibilities through Calkins in whole or in

part.

57. Without having taken any corrective or remedial actions against Calkins, Defendant permitted Calkins to resign as Sanitarian knowing that he would receive a town pension and be employed by Ledge Light Health District ("Ledge Light") for which he would perform the same duties, obligations and responsibilities that he had failed or neglected to perform for Defendant in the manner required by law for years.

58. Ledge Light's and Calkins' failure and neglect to perform his duties, obligations and responsibilities as Sanitarian and the employee of Ledge Light, the contract sanitarian, continued to cause Plaintiff damage, harm and loss.

59. The negligent retention of Ledge Light was an actual and proximate cause for the damage, harm and loss that occurred during the period in which Ledge Light acted and acts as Defendant's Sanitarian through Calkins in whole or in part.

**WHEREFORE**, Plaintiff requests this Court to enter a judgment against Defendant based on its failure to supervise Employee and as a party vicariously liable for the negligence of Employee under State law which (i) awards Plaintiff damages equal to the damage, harm and loss caused by the negligence of Defendant and (ii) grants Plaintiff any other relief sought herein and (ii) such further relief as may prove to be equitable and fair or lawful.

Respectfully submitted,

DATED: October 24, 2011

/s/ William S. Gannon  
William S. Gannon, Esq., BNH 01222

Attorney for

NEW ENGLAND NATIONAL, LLC

WILLIAM S. GANNON PLLC  
889 Elm St., 4th Fl.  
Manchester NH 03101  
PH: 603-621-0833