

STATE OF NEW YORK
SUPREME COURT

COUNTY OF CLINTON

PLATTSBURGH BOAT BASIN, INC.,

Petitioner/Plaintiff,


-against-

CITY OF PLATTSBURGH, COMMON COUNCIL OF THE CITY OF PLATTSBURGH,
JAMES CLANON, as Mayor of the City of Plattsburgh,


Respondents/Defendants.

STIPULATION OF DISCONTINUANCE
Index No.: CV17-0037

It is hereby stipulated and agreed, by and between the attorneys of record for the parties to the above entitled action, that whereas no party hereto is an infant or incompetent person for whom a committee has been appointed and no person not a party has an interest in the subject matter of the action, the above entitled action be, and the same hereby is discontinued, without costs to either party as against the other. This stipulation may be filed without further notice with the Clerk of the Court.


Matthew D. Norfolk, Esq.
Briggs Norfolk, LLP
Attorneys for Plaintiff
2296 Saranac Avenue
Lake Placid, New York 12946

Dated: January 22, 2018


Dean C. Schneller, Esq.
Attorney for Defendants
121 Bridge Street
Plattsburgh, New York 12901

Dated: 1-16-18, 20



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Recorded: 02/02/2018 at 10:21:04 AM
Fee Amt: \$210.00 Page 1 of 1
Clinton, NY
John H. Zurlo County Clerk

File **2017-00000037**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF CLINTON

PLATTSBURGH BOAT BASIN, INC.,

Index No. CV17-0037

Petitioner/Plaintiff,

against

CITY OF PLATTSBURGH, COMMON COUNCIL
OF THE CITY OF PLATTSBURGH, JAMES
CALNON, as Mayor of the City of Plattsburgh,



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Recorded: 02/02/2018 at 10:20:13 AM
Fee Amt: \$210.00 Page 1 of 7
Clinton, NY
John H. Zurlo County Clerk

File **2017-00000037**

Respondents/Defendants.

SETTLEMENT AGREEMENT

This Settlement Agreement is entered on the date of execution indicated below between Petitioner/Plaintiff Plattsburgh Boat Basin, Inc. (hereinafter referred to as "Petitioner") and the above-named Respondents/Defendants (hereinafter collectively referred to as "Respondents").

WHEREAS, Petitioner commenced the above-captioned Article 78 proceeding bearing Index Number CV17-0037 by filing a Notice of Petition/Summons and Petition/Complaint seeking the following relief: (1) annulment of a negative declaration of the environmental impact of a proposed expansion of the City of Plattsburgh Marina allegedly made pursuant to State Environmental Quality Review Act ("SEQR"); (2) annulment of a resolution passed by Common Council of the City of Plattsburgh making certain findings with respect to the environmental impacts of a proposed expansion of the City of Plattsburgh Marina; (3) annulment of a resolution passed by Common Council of the City of Plattsburgh authorizing City of Plattsburgh Mayor to execute and issue pursuant to SEQR a negative declaration of the environmental impacts of a proposed expansion of the City of Plattsburgh Marina; (4) an injunction enjoining City of Plattsburgh from expanding the

City of Plattsburgh Marina on grounds that the City of Marina is unlawful as it was not approved by the local planning and zoning boards and the code enforcement officer of the City of Plattsburgh and that it will adversely impact Petitioner; (5) an injunction enjoining Respondents from operating and utilizing the City of Plattsburgh Marina and its existing dock system, piers and moorings as they were not approved by the local planning and zoning boards and the code enforcement officer of the City of Plattsburgh and also because it is in noncompliance with SEQR and will adversely impact Petitioner; (6) an order directing the removal of said existing dock system, piers and moorings at the City of Plattsburgh Marina; (7) an award in favor of Petitioner for incidental damages, costs, disbursements, and attorneys' fees allowable by law; and, (8) such other and further relief as may be just and fair; and,

WHEREAS, Respondents joined issue by service of an Answer; and, filed an Answer with Counterclaims and an Affirmation in Opposition seeking the following relief: (1) dismissal of the Petition/Complaint based on a failure to exhaust administrative remedies, failure to rely on a final administrative action, and for commencing certain causes of action beyond the applicable statute of limitations, and other procedural defenses; (2) a declaratory judgment that Petitioner's fuel dock encroaches on Respondent's property, including its littoral rights; and (3) an order granting injunctive relief enjoining Petitioner from installing any docks, equipment, or infrastructure so as to encroach upon Respondent's littoral rights; and

WHEREAS, Petitioner and Respondents wish to compromise and fully settle all issues and claims between them and thereby obviate the further need for the parties to incur additional expenses and proceed with litigation.

NOW, THEREFORE, the parties hereto, intending to be legally bound, and in consideration

of the mutual covenants and other good and valuable consideration set forth below, do hereby agree as follows:

(1) Respondents acknowledge and accept that the current position of Petitioner's fueling dock, as depicted on the attached map, dated November 12, 2013 and prepared by Robert M. Sutherland, P.C., is located in its entirety on and within the boundary of Petitioner's real property having an address of 5 Dock Street, Plattsburgh, New York, bearing Tax Map No. 207.20-1-3, and more particularly described in a deed recorded with the Clinton County Clerk's Office in Book 966, at Page 154 (hereinafter referred to as "Petitioner's Property"), with no part of said fueling dock being on or over Respondents' real property having an address of 2 Dock Street, Plattsburgh, New York, bearing Tax Map No. 207.20-2-31, and more particularly described in a deed recorded with the Clinton County Clerk's Office as Instrument No. 2006-192813 (hereinafter referred to as "City Property");

(2) Respondents acknowledge and accept as true and accurate the location of the northern boundary line of Petitioner's Property, as depicted on the attached map, dated November 12, 2013 and prepared by Robert M. Sutherland, P.C., and shall not challenge the location or whereabouts of said northern boundary line of Petitioner's Property.

(3) Respondents shall not temporarily or permanently place, maintain, construct, erect, install, build or permit any structures, including but not limited to docks, piers, moorings, mooring anchors, boat ramps, boathouses, and buildings, nor any vessels of any type on or above City Property within ninety feet (90') of the northern boundary line of Petitioner's Property. For clarification, this section does not apply to vessels actively navigating Lake Champlain or to vessels or equipment performing any emergency function to repair or prevent damage to persons or property.

(4) So long as Petitioner or its successors or assignees operate a marina at Petitioner's Property, Respondents shall not place, dock, moor nor permit the placement, docking or mooring of any vessel of any type that is thirty-three feet (33') or more in length, inclusive of any accessories, such as a swim deck, dinghy, bow pulpit or anchor, in or at the first five existing boat slips, closest to the western shoreline and located on the southernmost dock or pier of the City of Plattsburgh Marina (on City Property).

(5) Petitioner shall convey to City of Plattsburgh an easement to permit the installation of underground electrical lines to be provide electricity to the City of Plattsburgh Marina, which shall have conditions obligating City of Plattsburgh to restore Petitioners' Property to its original condition after the electrical lines are installed or anytime the lines need repair or maintenance and obligating City of Plattsburgh to install and maintain the electrical lines in a safe and unlawful manner.

(6) In exchange for the electrical line easement to be conveyed by Petitioner, City of Plattsburgh, working and collaborating with Petitioner in good faith, shall address as soon as reasonably possible the issues involving the sewer line and pump-out system issues located near the parties' properties in order to have the sewer line and pump-out system operating and functioning properly and with no seepage, overflows or spills.

(7) Respondents shall withdraw any pending permit requests for the expansion or alterations of the City of Plattsburgh Marina which are more particularly described and set forth in Phase 2, Phase 3A, Phase 3B, Master Plan 4A and Master Plan 4B of City of Plattsburgh's conceptual drawings and plans for a proposed expansion of the City of Plattsburgh Marina and which are attached to Petitioner's Petition/Complaint filed in the above-captioned proceeding as Exhibit C.

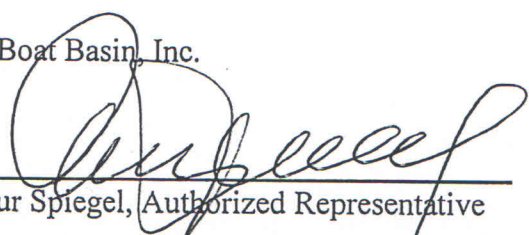
(8) The parties shall by and through their respective attorneys enter into a stipulation of discontinuance with prejudice to discontinue the above-captioned proceeding with no costs to either party as against the other and said stipulation shall be filed with the County Clerk's Office promptly after this Settlement Agreement is fully executed.

(9) The parties shall exchange general releases promptly after this Settlement Agreement is fully executed.

(10) This Settlement Agreement shall be recorded in the Clinton County Clerk's Office by Respondents against the parties' respective properties and shall run with the land and shall be binding upon the parties' successors and assignees.

The parties hereby signify their agreement to the above terms by their signatures below.

Plattsburgh Boat Basin, Inc.

By: 
Arthur Spiegel, Authorized Representative

City of Plattsburgh and Common Council of the City of Plattsburgh

By: 
Colin Read, Mayor

FLORIDA
STATE OF ~~NEW YORK~~)
COUNTY OF ~~CLINTON~~) ss:
COLLIER

On the 26 day of JANUARY, 2018 before me, the undersigned, a Notary Public in and for said State, appeared **ARTHUR SPIEGEL**, personally known or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.



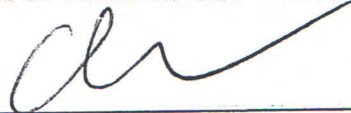


NOTARY PUBLIC

STATE OF NEW YORK)
COUNTY OF CLINTON) ss:

On the 11th day of January, 2018 before me, the undersigned, a Notary Public in and for said State, appeared **COLIN READ**, personally known or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

DEAN SCHNELLER
Notary Public, State of New York
No. 02SC6196165
Qualified in Clinton County
Commission Expires Nov. 3, 2022



NOTARY PUBLIC

RMS

ROBERT M. SUTHERLAND P.C.
ENGINEERS - PLANNERS - SURVEYORS
SOIL & MATERIAL TESTING

JOB Plattsburgh Boat Basin

SHEET NO. 5 OF 7

CALCULATED BY AAF DATE 11/12/13

CHECKED BY AJO DATE 11/12/13

SCALE 1" = 250'

