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**SENT BY E-MAIL ONLY**

Ms. Tracy Silvia  
Coastal Resources Management Council  
Oliver H. Stedman Government Center  
4808 Tower Hill Road; Suite 3  
Wakefield RI 02879  
tsilvia@crmc.ri.gov

Re: Applicant: East Meadow, LLC (c/o Paul Hooper)  
Location: #1391 Succotash Rd, South Kingstown (AP 88-4 Lot 6)  
CRMC File No.: D2021-09-084  
**Response to objection of Kimberly Keeton**

Dear Ms. Silvia:

Some general principles may lend perspective to Mrs. Keeton's objections. First and foremost, "two ancient and still vital doctrines of the law of this state, namely, the public-trust doctrine and the common-law right of riparian property owners to wharf out", govern regulation of the use of land below the mean high-water mark. *See Town of Warren v. Thornton-Whitehouse*, 740 A.2d 1255, 1259 (R.I. 1999). "Under the public-trust doctrine, 'the state holds title to all land below the high water mark in a proprietary capacity for the benefit of the public.'" *Id.* (quoting *Greater Providence Chamber of Commerce v. State*, 657 A.2d 1038, 1041 (R.I. 1995)). "However, it holds such title not as a proprietor but only in trust for the public to



preserve their rights of fishery, navigation and commerce in such waters.” *Nugent v. Vallone*, 91 R.I. 145, 152, 161 A.2d 802, 805 (1960).

The State’s ownership in trust exists side-by-side with a littoral owner’s common law right to “wharf out”, subject to reasonable regulation by CRMC and relevant federal authorities. Hence, “ ‘while the shore itself, and the space between the high and low water mark is public for passage, the riparian owner has a right of access to the great highway of nations of which he cannot be deprived.’ ” *Potter v. Crawford*, 797 A.2d 489, 493 (R.I. 2002) (quoting *Clark v. Peckham*, 10 R.I. 35, 38 (1871)). “Specifically, ‘the riparian land owner has the right to construct whatever wharf or dock is necessary to gain access to navigable waters, [—‘the great highway of nations’—] as long as such construction does not interfere with navigation or the rights of other riparian land owners.’ ” *Id.* (quoting *Thornton–Whitehouse*, 740 A.2d at 1260).

Second, Mrs. Keeton’s objections should be evaluated in light of the six requirements the Hoopers must satisfy to obtain a variance:

1. The proposed alteration conforms with applicable goals and policies of the Coastal Resources Management Program.
2. The proposed alteration will not result in significant adverse environmental impacts or use conflicts, including but not limited to, taking into account cumulative impacts.
3. Due to conditions at the site in question, the applicable standard(s) cannot be met.
4. The modification requested by the applicant is the minimum variance to the applicable standard(s) necessary to allow a reasonable alteration or use of the site.



5. The requested variance to the applicable standard(s) is not due to any prior action of the applicant or the applicant's predecessors in title. With respect to subdivisions, the Council will consider the factors as set forth in § 1.1.7(B) of this Part below in determining the prior action of the applicant.
6. Due to the conditions of the site in question, the standard(s) will cause the applicant an undue hardship. In order to receive relief from an undue hardship an applicant must demonstrate inter alia the nature of the hardship and that the hardship is shown to be unique or particular to the site. Mere economic diminution, economic advantage, or inconvenience does not constitute a showing of undue hardship that will support the granting of a variance.

650-RICR-20-00-1.1.7(A) (Westlaw, amended Jan. 4, 2022).

The Hoopers addressed each requirement through the design submitted, the narrative in their variance application, and the report from Avizinis Environmental Services. Their responses to Mrs. Keeton's objections are as follows:

1. **“One concern is that the proposed dock will cause a hazardous navigational difficulty when we enter or leave our dock area with our boats. The current is very strong on that point and it is difficult to maneuver boats as it is. Having a dock so close to our dock would cause great difficulty with docking our boats.”**

**Response:** Whether a “hazardous navigational difficulty” will occur is a question of fact, the answer to which requires expert testimony. Mrs. Keeton's opinion, labeled as a “concern”, isn't evidence. At best, it's a conclusion with no factual support. For instance, she says nothing about the velocity and direction of the current which changes day to day with the tide and the weather.



Her complaint about the proximity of the Hooper dock lacks merit on several objective grounds. The proposed design locates the Hooper float sixty-three feet from Mrs. Keeton's float at its closest point. An aerial photograph shows several docks on the opposite side of the channel much closer to the Keeton dock than the Hooper dock would be. A copy of that aerial is attached as Exhibit A.

“Red Book” policies further undermine Keeton’s contention. One provides that “[r]esidential and limited recreational boating facilities shall not intrude into the area within twenty-five (25) feet of an extension of abutting property lines[.]” 650-RICR-20-00-1.3.1(D)(1)(a). The geometry dictated by that rule requires placement of docks on adjoining littoral lots at least fifty feet from each other. The Hooper dock will lie at a greater distance from the Keeton dock.

The Army Corps. of Engineers (“ACE”) conditionally approved the Hoopers’ dock plan on June 28, 2023, requiring that “[t]he floating dock shall be fitted with chock stops or collar ties to ensure that it always remains 18-inches above the substrate. This condition is intended to minimize disturbance to benthic habitat used by fishery resources as forage habitat.” The ACE grants such permits “based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest.” Navigation is one of the impacts it considers. 33 C.F.R. § 320.4(a)(1). The local harbor master approved as well.

ACE approval of the Hoopers’ permit constitutes, or reflects, an expert opinion that their proposed dock won’t negatively impact navigation in the channel. It’s not conclusive as it may be rebutted by contrary expert testimony, but it can’t be rejected



without it. *See New Castle Realty Co. v. Dreczko*, 248 A.3d 643, 645-46 (R.I. 2021) (zoning board may not arbitrarily reject DEM wetland and OWTS approvals absent competent scientific evidence). In contrast, the Keetons ask the Council to deny the Hoopers’ application based on nothing more than a “concern” about “a hazardous navigational difficulty” based solely on their subjective belief. And “personal beliefs and concerns are not evidence[.]” *St. Myers v. Dignity Health*, 257 Cal. Rptr. 3d 341, 354 (Ct. App. 2019) (quoting *McRae v. Dept. of Corrections & Rehab.*, 48 Cal. Rptr. 3d 313, 327 (Ct. App. 2006)); *County of York v. Tracy*, 558 N.W.2d 815, 824 (Neb. Ct. App. 1996) (“The neighbor also testified he had concerns about the ground water. The neighbor’s concerns are not evidence or proof that Tracy’s business operation has contaminated the ground water.”).

Absent competent evidence from a qualified expert, Keeton’s “concerns” fail to rebut the ACE’s opinion that the Hoopers’ dock entails no navigational issues.

**2. “If the proposed dock were put in front of our cottage it would block the beach area, water area and sandbar that our children, grandchildren and great grandchildren play, walk and swim in. Having a dock there would make it very difficult for us to access the water area in front of our cottage that we have been using for over 55 years.”**

**Response:** A “beach”, technically, is the area between the high-water mark and the beginning of the uplands. *Rowland Family Trust v. Pelletier*, 673 A.2d 1081, 1084 (R.I. 1996). Hence, if Mrs. Keeton’s referring to “beach” beyond her boundary line, she and her family members have no right to go there as they’d be trespassing



on someone else's land. Otherwise, they have no special or unique right to access the "water area and sandbar" referred to as the State owns that area for the benefit of the public. *See Potter*, 797 A.2d at 493 (space between the high and low water mark is public for passage) (quoting *Clark*, 10 R.I. at 38).

**3. "Another concern involves the closeness of the dock to our front door. We would lose the privacy that we currently have. Dock traffic of renters coming and going at all hours would affect our privacy."**

**Response:** This is a non-issue even if CRMC had the authority to consider it. The public – including the Hoopers and their renters – already have the right to walk in the water "at all hours" below the mean high-water mark directly in front of the Keeton property. A dock located much further away should hardly be a privacy concern. This appears to be another complaint based on subjective desires.

**4. "Having a dock placed right in front of our cottage would affect the value of our property greatly."**

**Response:** This concern isn't relevant because it doesn't fall within the standards to grant or deny a variance. Even if it was, an expert would need to back up Mrs. Keeton's claim. Her own lay opinion about value isn't competent evidence. *Wordell v. Wordell*, 470 A.2d 665, 667 (R.I. 1984).

**5. "Another concern would be during hurricane season. We have experienced some damage to our dock during Hurricane Sandy that was costly. Having another dock so close to us on that point with such strong currents could be catastrophic. During Hurricane Sandy our ramp was**



**pulled down into Potters Pond and had to be retrieved and rebuilt. Having a dock so close with the probability that pieces from the proposed dock would ram into our dock would cause costly damage.”**

**Response:** Other existing docks are closer as previously discussed. And, depending on the tide and the direction of a hypothetical storm, the Keeton dock could pose just as much of a danger to other docks in the area, including the Hooper dock.

**6. “Having a new dock put in involves drilling which will pull up sand and rocks that will settle under our dock affecting the water levels so that we may not be able to dock our boats due to the misplacement of sand and rock.”**

**Response:** This concern reflects a misunderstanding of how dock construction occurs and as a result has no validity.

**7. “Another concern is that the proposed dock will be cutting directly in front of our cottage affecting our view and access to the water.”**

**Response:** Access to the water in this case concerns navigability which the Hooper dock won't impact per the ACE permit. The effect on her view isn't relevant as it's unrelated to the standards to grant or deny a variance. Generally, no one has a right to a particular view absent a view easement, and Mrs. Keeton's property doesn't benefit from one over the Hoopers' land. *See Musumeci v. Leonardo*, 77 R.I. 255, 260, 75 A.2d 175, 177 (1950) (“Under the common law as it is generally applied in America an adjacent proprietor has no right to light and air coming to him across the land of his neighbor.”).



8. “Lot 5 (1381 Succotash Road) owned by Mr. and Mrs. Hooper already has a dock on the right of way on the northwest side of the island. In the past, Lot 5 had docks located on the sandbar that went into the water facing Galilee on the southeast side of the island. This is the waterfront and beach area that Lot 5 has access to.”

**Response:** This contention lacks merit because the “Mr. and Mrs. Hooper” referred to are John and Hilda Hooper. 1391 Succotash is owned by East Meadow, LLC, of which Paul and Kim Hooper are the members. 1381 Succotash Road is a separate property of record under different ownership and control.

9. “Lot 6, (1391 Succotash Road) the newly acquired rental property has waterfront property in front of their cottages which could also support a dock. They may have to extend their dock plans to reach deeper water.”

**Response:** We’re not sure what Mrs. Keeton’s driving at here. The property at issue is 1391 Succotash Road.

Feel free to contact us if you have any questions or need further information.



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# Exhibit A

SiriusXM - Favorites | 802 Partners, LLC v. Coastal Reso | gishost.cdmsmithgis.com/webgis

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My Account | Kelly's calendar | Other bookmarks

Town of South Kingstown Web GIS

1397 succotash

\*Advanced Search >>

Parcel Boundaries as of 03/28/2023  
Ownership Information as of 05/08/2023

Search Results		Selection Results	
Clear	Zoom to results	Export	
Parcel ID ▲	Address ▲	Owner ▲	
88-1:1	1397 SUCCOTASH ROAD	KEETON SHIRLEY S	

RECEIVED  
8/25/2023  
COASTAL RESOURCES  
MANAGEMENT COUNCIL