I have had a look at Mr. Privatera's letter of February 8. I was stunned. It is 10 pages of shockingly dishonest misrepresentations of matters that have been addressed over and over, and which are the subject of final and definitive Court rulings that are the exact opposite of what Mr. Privatera claims. These points have been definitively settled. His latest letter is so brazenly dishonest that I am seriously considering filing a professional complaint. His continual and persistent misrepresentations cannot be allowed to go on.

I have attached a few items that sum up essential points.

Most fundamental is that the review and special use permit is NOT, NOT, **NOT** for the bulkhead repair. **It is for the dock operations in their entirety**. Accompanying that fundamental and settled point is the additional, also settled matter that at this point in time, Colarusso has NO right to carry on the dock operations. Any right they had to operate was as a non-conforming use--a right that terminated when they repaired or altered the site--and they now have NO right to operate unless they obtain a special use permit for the entire dock operation.

The **Decision and Order** established this in the plainest terms:

1) The final Decision and Order. Key quote from Judge Melkonian's Decision: "Here, respondents [the Planning Board] rationally concluded that the erosion repair project was one of the 'actions or events specified in Section D' *triggering* the **termination of petitioners' right to continue to operate the commercial dock** without conditional use permit and that **SEQRA review for continued commercial dock operations is necessary**." (Final & Amended Decision & Order, p. 8)

The Court also wrote: "To the extent petitioners contend that respondents' determination that SEQRA review is necessary for continued dock operations constitutes an unlawful 'second' SEQRA review process, the Court rejects such a contention." (Final & Amended Decision & Order, pp. 6-7)

2) That this is, and was always understood to be, the law is further made clear by the audio excerpt that I have also attached here. This is New York Department of State Senior Attorney William Sharpe--who helped to draft the law--explaining to the Hudson Common Council in 2011 how the zoning change that was about to be made (the enactment of section 325-17.1, as relevant here) would work. The audio lays it out very clearly: At the time the zoning change was enacted in 2011, the dock operations would be NONCONFORMING. They could continue, without modifications, as a **nonconforming**use. At any time at which any change, improvement, repair, or alteration (Mr. Sharpe notes that would encompass such things as minor as regrading) was made on the parcel, the owner/operator would be **required to obtain a special use permit for the entire property.**

Everyone on the PB needs to listen to this audio.

Just these two authoritative references--the Court Decision and Mr. Sharpe's explanation to the Common Council--are all that are really needed to completely refute the contrived, distorted, and dishonest nonsense Mr. Privatera submitted. They make the following things perfectly clear:
a) as of 2011, commercial dock operations could continue as a **nonconforming** use;
b) the right to operate as a non-conforming use **terminated** when they did the "***triggering***" act of working on the bulkhead;

c) now that the right to operate as a nonconforming use has been terminated by the triggering act, they need to get a special use permit for the entire operation in order to continue to operate. *(See the above quote from the Decision.)*
d) the Court said that "SEQRA review for continued commercial dock operations is necessary."

I can't seem to say it enough times: this special permit review is not *FOR* or *ABOUT*the bulkhead; this review and special permit application is for the overall dock operations, and was merely *triggered* by the work done on the bulkhead.

I have also attached the memo that I gave to the Planning Board in 2019. I presented personally to the PB and prepared the memo because there had been personnel changes on the Planning Board and in the position of Planning Board attorney, and I feared that Mr. Privatera would try to use the lack of background or familiarity with the past issues to bamboozle the newer people involved. It appears that he is going back to that tactic yet again.

Finally, I have attached my 2017 Memorandum of Law, which lays out the logic of the law in some detail.

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