DOCKET NO. NNH-CV-17-6074630-S	:	**SUPERIOR COURT**
ROBERT G. WHEELER ET AL	:	**J.D. OF NEW HAVEN**
V.	:	**AT NEW HAVEN**
JAMES COSGROVE AS SELECTMAN OF THE TOWN OF BRANFORD ET AL	:	**JANUARY 27, 2020**

NOTICE OF FILING REDACTED MOTION

Pursuant to the Court's January 17, 2019 Order (No. 208.30), the undersigned defendants hereby file a redacted version of their Motion to Disqualify and supporting Affidavits and Memorandum of Law. The redacted documents are attached hereto as Exhibit 1.

DEFENDANTS

BARBARA SAGGESE AND BEACHCROFT, LLC

By: *\/s/ David S. Hardy*

David S. Hardy
Carmody Torrance Sandak & Hennessey LLP
707 Summer Street
Stamford, CT 06901
Tel: (203) 425-4200
Fax: (203) 325-8608
E-mail: dhardy@carmodylaw.com
Juris No.: 435512
Their Attorneys

CERTIFICATION

I certify that a copy of the foregoing was or will immediately be mailed or delivered electronically or non-electronically on this 27th day of January, 2020 to all counsel and self-represented parties of record as listed below and that written consent for electronic delivery was received from all counsel and self-represented parties of record who were or will immediately be electronically served.

Joel Z. Green, Esq.
Linda Laske, Esq.
Green & Gross, P.C.
1087 Broad Street, Suite 401
Bridgeport CT 06604
jgreen@gglaw.net and llaske@gglaw.net

Peter Berdon, Esq.
Berdon Young & Margolis PC
350 Orange Street
New Haven, CT 06511
peter.berdon@bymlaw.com

Edward V. O'Hanlan, Esq.
Robinson & Cole
1055 Washington Blvd
Stamford, CT 06901-2249
tohanlan@rc.com

Gerald Garlick, Esq.
Gfeller & Laurie LLP
977 Farmington Avenue, Suite 200
West Hartford, CT 06107
ggarlick@gllawgroup.com

William Clendenen, Esq.
Ben Levites, Esq.
Clendenen & Shea LLC
400 Orange Street
New Haven, CT 06511
whcj@clenlaw.com and bhl@clenlaw.com

Hugh F. Keefe, Esq.
Lynch Traub Keefe & Errante PC
52 Trumbull Street, P.O. Box 1612
New Haven, CT 06506
HKeefe@LTKE.com

James I. Glasser, Esq.
Wiggin and Dana LLP
One Century Tower, 265 Church Street
New Haven, CT 06508-1832
jglasser@wiggin.com

/s/ David S. Hardy
David S. Hardy

EXHIBIT 1

DOCKET NO. NNH-CV-17-6074630-S	:	**SUPERIOR COURT**
ROBERT G. WHEELER ET AL	:	**J.D. OF NEW HAVEN**
V.	:	**AT NEW HAVEN**
JAMES COSGROVE AS SELECTMAN OF THE TOWN OF BRANFORD ET AL	:	**JANUARY 15, 2019**

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISQUALIFY

Defendants Barbara Saggese and Beachcroft LLC respectfully move that the Court (Ozalis, J.) be disqualified from hearing this matter based on well-founded concerns over the appearance of impartiality. Under the facts set forth in the Affidavit of Barbara Saggese and the Affidavit of David S. Hardy, an objective observer – and certainly any litigant - would reasonably question Judge Ozalis's impartiality as it pertains to this case for two independently sufficient reasons. First, Judge Ozalis's interest in a decade-long controversy and associated action pending in [redacted] captioned, [redacted] would cause an objective observer to reasonably question her impartiality given the substantial and striking overlap of issues and party dynamics in this case. Second, Judge Ozalis's participation in settlement discussions among the parties held during a pretrial status conference on January 13, 2019 requires that she be disqualified from issuing further decisions in this matter.

A. Legal Standard

Practice Book § 1-22(a) provides, in relevant part, that, "[a] judicial authority shall, upon motion of either party or upon its own motion, be disqualified from acting in a matter if such judicial authority is disqualified from acting therein pursuant to Rule 2.11 of the Code of Judicial

Conduct." Rule 2.11(a) of the Code of Judicial Code in turn requires disqualification "in any proceeding in which the judge's impartiality might reasonably be questioned."

Rule 2.11(a) requires disqualification when a judge's impartiality is "reasonably" questioned. For this purpose, it is well-established that the reasonableness standard is an objective one, and "not the judge's subjective view as to whether he or she can be fair and impartial in hearing the case." *St. Germain v. LaBrie*, 108 Conn. App. 587, 595-96 (2008). In applying the standard, "the question is . . . whether a reasonable person would question the judge's impartiality on the basis of all the circumstances." *Rosado v. Bridgeport Roman Catholic Diocesan Corp.*, 292 Conn. 1, 20 (2009); *Papa v. New Haven Fed'n of Teachers*, 186 Conn. 725, 744-46 (1982) ("The question is not whether the judge is impartial in fact."). Thus, even in the absence of actual bias, disqualification is required "if a judge's impartiality might reasonably be questioned because the appearance and the existence of impartiality are both essential elements of a fair exercise of judicial authority." *Rosado*, 292 Conn. at 20.

Maintaining the appearance of impartiality is just as important as actual impartiality because the appearance of impartiality engenders "public confidence in the administration of justice" and promotes the integrity of the judicial system. *Id., citing* R. Flamm, Judicial Disqualification (1996) § 5.4.1, p. 150. *See also, Abington Ltd. P'ship v. Heublein*, 246 Conn. 815, 822-24 (1998). Accordingly, in ruling on a motion to disqualify, the courts have warned against "drawing all inferences favorable to the honesty and care of the judge whose conduct has been questioned," because it could "collapse the appearance of impropriety standard into a demand for proof of actual impropriety." *Id.; Rosado*, 292 Conn. at 21 ("Judges who are asked to recuse themselves are reluctant to impugn their own standards. Likewise, judges sitting in review of others do not like to cast aspersions.").

With respect to a judge's participation in settlement discussions, Connecticut has adopted a bright-line rule requiring disqualification in court cases "in order to eliminate any appearance of impropriety and to avoid subtle suspicions of prejudice or bias." *Krattenstein v. G. Fox & Co.*, 155 Conn. 609 (1967). "When a judge engages in discussions looking to the settlement of a case in which he will be called upon to decide issues of liability and damages… it is impossible to avoid questions as to whether the judge can disregard matters disclosed in the conference and whether a preliminary judgment, formed at the conference, and predicated on unsubstantiated claims of proof, may have some subtle influence on a final judgment after a full hearing." *Carvalhos Masonry, LLC v. S and L Variety Contractors*, LLC, 180 Conn. App. 237, 240-41 (2018) (internal quotations omitted). Thus, "[w]hen a judge engages in pretrial settlement discussions of a court case, he should automatically disqualify himself from presiding in the case…" *Timm v. Timm*, 195 Conn. 202, 203 (1985) (citing Canons 2, 3 C.(1) Code of Judicial Conduct)). The rule of automatic disclosure reflects concern for, among other things, "the dangers often associated with a settlement judge presiding over the trial, such as the potential revelation during settlement discussions that would not be admissible at trial and may prejudice one of the parties". *Carvalhos Masonry, LLC*, 180 Conn. App. at 242.

B. Argument

1. Knowledge of Judge Ozalis's personal interest in the [redacted] controversy and the associated [redacted] litigation would cause an objective observer to reasonably question her ability to act impartially in this case.

The case of [redacted] was a decade-long litigation concerning the extent of public rights in portions of [redacted] in [redacted] The specific controversy at issue in [redacted] was the right of the public to use the portion of [redacted] above the low water mark, in which beachfront

property owners claimed title. Judge Ozalis owns a home in [redacted] Numerous non-waterfront property owners in the [redacted] who had become accustomed to unrestricted use of the beach ("the Backlot Owners") intervened in the [redacted] case and asserted public interests adverse to the beachfront owners. Judge Ozalis did not personally intervene in the case. The [redacted] ultimately ruled in favor of public rights just over three months ago. *Id.* The facts set forth in the Affidavit of Barbara Saggese reveal that Judge Ozalis, regardless of her lack of party status, has had an unavoidable personal interest in the long-running [redacted] controversy and the associated [redacted] litigation. Judge Ozalis did not disclose her interest in these matters at the outset of her assignment to this case. Upon request by counsel for Beachcroft and Saggese, Judge Ozalis confirmed the predicate fact of her ownership of a [redacted] backlot at the status conference held on January 13, 2020. Hardy Aff. ¶¶ 19, 20.

The issues and party dynamics in the [redacted] case are strikingly similar to those in this case. By way of example, the Petition filed by the Interior Lot Owners in this case alleges that historically Crescent Bluff Avenue "provided a significant public recreational resource as well as public access between Pine Orchard Road and the shore of Long Island Sound… [that] [t]he residents of Crescent Bluff Avenue, as well as the general public, have long enjoyed free and unencumbered public access to the Avenue… as well as convenient access to public boat moorings located just offshore… [and that] Beachcroft's efforts to exercise sole control over access… poses a substantial risk to many residents of Crescent Bluff Avenue and constitutes a substantial loss to the public of … a valuable recreational resource." (Petition, No. 100.30).

Similarly, in the [redacted] litigation, the Backlot Owners alleged that "for decades the public has used [redacted] for a variety of ocean-based activities…Nobody… asked

for, or thought they needed to ask for, permission from beach front owners to engage in ordinary recreational activities such as walking, swimming or beach games…" (Saggese Aff. Ex. C Partial Judgment, p. 7)

The Interior Lot Owners in this case have complained that Beachcroft "has posted private road signs" seeking to limit access to its property and Long Island Sound and "complain[ed] to the police about alleged trespassers." (Petition) Similarly, the Backlot Owners in the [redacted] case alleged "[s]everal beach-front owners in recent years had placed no trespassing signs on or about their property." (Saggese Aff. Ex. C Partial Judgment, p. 7) Accordingly, for all intents and purposes, the interests of Backlot Owners in the [redacted] case are identical to the Interior Lot Owners in this case, *i.e.* fundamentally adverse to the private property interests of the waterfront owners.

As it pertains to Judge Ozalis, although she did not seek to intervene in the [redacted] case as a party, over 200 of her Backlot neighbors, including her neighbor located at [redacted] sought to formally intervene to vindicate public rights in [redacted] (Saggese Aff. Ex. C) The issue of full public rights in [redacted] was a matter of both personal and economic concern to the Backlot Owners. The court in [redacted] noted that "[a]ccess to the entire beach is the major attraction for renters, who are members of the general public. Advertising materials used to attract renters emphasize access to the entire Beach." Consistent with the court's observations, Judge Ozalis herself offered her Backlot property for rent and advertised its access to [redacted] as a principal selling point. (Saggese Aff. Ex. D). Thus, although Judge Ozalis did not seek to intervene in the [redacted] case, her personal and economic interests were unavoidably and directly at stake in that litigation.

The collective experience of our courts throughout history and in this particular controversy[1] demonstrate beyond any doubt that disputes over property bring out intense personal passions and resolve among affected owners. An objective observer – and certainly any litigant in the position of Beachcroft and Saggese- would therefore reasonably question whether a judge with a personal interest of the type held by Judge Ozalis in the [redacted] case could set aside any influence, prejudice or bias that may have developed during ten years of neighborhood consuming litigation between backlot owners and waterfront owners, and impartially preside over a property rights case presenting the same fundamental party dynamics and issues. Accordingly, even if Judge Ozalis is satisfied that her personal interest in the [redacted] controversy has not affected, or will not affect, her rulings in this case, any objective observer would reasonably question her ability to impartially preside over it. Connecticut's Code of Judicial Conduct embodies the principle that maintaining the *appearance of impartiality* is just as important as actual impartiality because the appearance of impartiality engenders "public confidence in the administration of justice" and promotes the integrity of the judicial system. Disqualification is therefore required under the foregoing facts and circumstances.

2. *Judge Ozalis's participation in settlement discussions would cause an objective observer to reasonably question her ability to remain impartial in this case.*

As set forth in the Affidavit of David S. Hardy submitted herewith, the Court participated in and was privy to detailed and time-consuming settlement discussions held among the parties in her chambers on January 13, 2020. Our courts have sensibly adopted a rule of automatic disqualification where a judge participates in settlement discussions in a court case given the

[1] Litigation over Crescent Bluff Avenue dates back over 100 years. *See Fisk v. Ley*, 76 Conn. 295 (1903).

revelations and concessions that may be made for settlement purposes and the resulting unavoidable "questions as to whether the judge can disregard matters disclosed in the conference" or "whether a preliminary judgment, formed at the conference… may have some subtle influence on a final judgment." *Carvalhos Masonry, LLC, supra.* This rule applies to this case since it is the judge that is charged with the responsibility of final decision-making.

This case is brought under an archaic statute that provides the for the appointment of a committee in the first instance to find whether a proposed highway is of common convenience and necessity and if so to estimate damages sustained by persons affected by it. Conn. Gen. Stat. § 13a-63. The statutes and the relevant Practice Book rules provide however that the court may accept or set aside the committee's report. *See* Conn. Gen. Stat. §§ 13a-64, 13a-65, 13a-67. *See also*, P.B. §§ 19-14 (bases for objecting to committee report), 19-16 (entry of judgment on report), 19-17 ("If the court finds that the committee… has materially erred in its rulings or that there are other sufficient reasons why the report should not be accepted, the court shall reject the report…"). In addition, the statutory scheme in this proceeding provides aggrieved parties with an *option* to move for the empaneling a jury to reestimate damages if the court accepts the finding of the committee as to common convenience and necessity, and further provide that the court may set aside the report of the jury if one is empaneled. *Id.* B

Here, Beachcroft and Saggese will challenge any finding of common convenience and necessity for the taking of their private property (and seek to uphold a finding to the contrary), such that the merits of the committee's finding will be subject to final review, approval and/or rejection by this Court.[2] They therefore have well-founded concerns that concessions or

[2] In analogous circumstances, Appellate Judges that discuss settlement with parties during pre-argument conferences do not sit on the panel that hears the merits of the appeal at issue.

positions expressed for settlement purposes could influence or prejudice the final merits determination on both the issues of common convenience and necessity as well as damages ultimately handed down by the Court. Accordingly, the principles underpinning the bright-line recusal rule apply here, but even if there were room for debate on characterizing this proceeding as a court case, the Court must err on the side of recusal to "eliminate any appearance of impropriety and to avoid subtle suspicions of prejudice or bias" and to ensure "public confidence in the administration of justice."

C. Conclusion

Defendants Barbara Saggese and Beachcroft LLC therefore respectfully move that the Court (Ozalis, J.) be disqualified from hearing this matter.

DEFENDANTS, BARBARA SAGGESE AND BEACHCROFT, LLC

By: 

David S. Hardy
Carmody Torrance Sandak & Hennessey LLP
707 Summer Street
Stamford, CT 06901
Tel: (203) 425-4200
Fax: (203) 325-8608
E-mail: dhardy@carmodylaw.com
Juris No.: 435512
Their Attorneys

CERTIFICATION

I certify that a copy of the foregoing was or will immediately be mailed or delivered electronically or non-electronically on this 15th day of January, 2019 to all counsel and self-represented parties of record as listed below and that written consent for electronic delivery was received from all counsel and self-represented parties of record who were or will immediately be electronically served.

Joel Z. Green, Esq.
Linda Laske, Esq.
Green & Gross, P.C.
1087 Broad Street, Suite 401
Bridgeport CT 06604
jgreen@gglaw.net and llaske@gglaw.net

Peter Berdon, Esq.
Berdon Young & Margolis PC
350 Orange Street
New Haven, CT 06511
peter.berdon@bymlaw.com

Edward V. O'Hanlan, Esq.
Robinson & Cole
1055 Washington Blvd
Stamford, CT 06901-2249
tohanlan@rc.com

Gerald Garlick, Esq.
Gfeller & Laurie LLP
977 Farmington Avenue, Suite 200
West Hartford, CT 06107
ggarlick@gllawgroup.com

William Clendenen, Esq.
Clendenen & Shea LLC
400 Orange Street
New Haven, CT 06511
whcj@clenlaw.com

David S. Hardy

State of Connecticut Judicial Branch
Superior Court E-Filing

Attorney/Firm: CARMODY TORRANCE SANDAK & HENNESSEY LLP (435512) **E-Mail: clee@carmodylaw.com** Logout

Hide Instructions

You have successfully e-filed!

Instructions: The information about the item you filed is on this confirmation page. You must print a copy of this page for your records. Choose **Print This Page** at the top of the page to print your copy.

Choose **E-File Another Pleading/Motion/Other on this Case** to go back to the **Select a Motion** page to choose another document name and file another document.

Choose **Return to Superior Court E-Filing Menu** to go back to the menu page.

Choose **Return to Case Detail** to look at the documents filed in this case or to file a reclaim in this case.

Print This Page

Confirmation of E-filed Transaction (print this page for your records)

Docket Number:	NNH-CV-17-6074630-S
Case Name:	WHEELER, ROBERT G. Et Al v. COSGROVE, JAMES, AS SELECTMAN OF THE TOWN OF BRANF Et Al
Type of Transaction:	Pleading/Motion/Other document
Date Filed:	Jan-15-2020
Motion/Pleading by:	CARMODY TORRANCE SANDAK & HENNESSEY LLP (435512)
Document Filed:	209.00 MEMORANDUM IN SUPPORT OF MOTION to Disqualify (Entry No. 208.00)
Date and Time of Transaction:	Wednesday, January 15, 2020 9:03:10 AM

E-File Another Pleading/Motion/Other document on this Case

Return to Civil / Family Menu | Return to Case Detail

DOCKET NO. NNH-CV-17-6074630-S	:	**SUPERIOR COURT**
ROBERT G. WHEELER ET AL	:	**J.D. OF NEW HAVEN**
V.	:	**AT NEW HAVEN**
JAMES COSGROVE AS SELECTMAN OF THE TOWN OF BRANFORD ET AL	:	**JANUARY 15, 2019**

MOTION TO DISQUALIFY

Pursuant to Practice Book §§ 1-22 and 1-23, defendants Barbara Saggese and Beachcroft LLC respectfully move that the Court (Ozalis, J.) be disqualified from hearing this matter. As set forth in the attached Affidavit of Barbara Saggese and Affidavit of David S. Hardy, facts exist that would cause an objective observer to reasonably question the Court's appearance of impartiality as it pertains to this case. A memorandum of law and a certificate of good faith are filed herewith.

DEFENDANTS

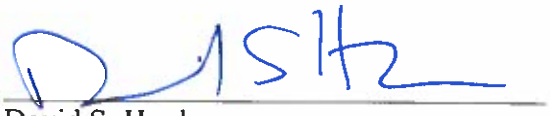
BARBARA SAGGESE AND BEACHCROFT, LLC

By: 

David S. Hardy
Carmody Torrance Sandak & Hennessey LLP
707 Summer Street
Stamford, CT 06901
Tel: (203) 425-4200
Fax: (203) 325-8608
E-mail: dhardy@carmodylaw.com
Juris No.: 435512
Their Attorneys

CERTIFICATE OF GOOD FAITH

The undersigned counsel of record to Barbara Saggese and Beachcroft LLC hereby certifies that the foregoing Motion to Disqualify is made in good faith.



David S. Hardy

CERTIFICATION

I certify that a copy of the foregoing was or will immediately be mailed or delivered electronically or non-electronically on this 15th day of January, 2019 to all counsel and self-represented parties of record as listed below and that written consent for electronic delivery was received from all counsel and self-represented parties of record who were or will immediately be electronically served.

Joel Z. Green, Esq.
Linda Laske, Esq,
Green & Gross, P.C.
1087 Broad Street, Suite 401
Bridgeport CT 06604
jgreen@gglaw.net and llaske@gglaw.net

Peter Berdon, Esq.
Berdon Young & Margolis PC
350 Orange Street
New Haven, CT 06511
peter.berdon@bymlaw.com

Edward V. O'Hanlan, Esq.
Robinson & Cole
1055 Washington Blvd
Stamford, CT 06901-2249
tohanlan@rc.com

Gerald Garlick, Esq.
Gfeller & Laurie LLP
977 Farmington Avenue, Suite 200
West Hartford, CT 06107
ggarlick@gllawgroup.com

William Clendenen, Esq.
Clendenen & Shea LLC
400 Orange Street
New Haven, CT 06511
whcj@clenlaw.com

David S. Hardy

DOCKET NO. NNH-CV-17-6074630-S	:	**SUPERIOR COURT**
ROBERT G. WHEELER ET AL	:	**J.D. OF NEW HAVEN**
V.	:	**AT NEW HAVEN**
JAMES COSGROVE AS SELECTMAN OF THE TOWN OF BRANFORD ET AL	:	**JANUARY 14, 2020**

AFFIDAVIT OF BARBARA J. SAGGESE

The undersigned, Barbara J. Saggese, being of lawful age and duly sworn according to law, depose and state to the best of my personal knowledge and belief as follows:

1. I am over the age of eighteen years and I understand the obligations of an oath.

2. In connection with research I have conducted concerning this case I have come to understand the following:

   a. Judge Ozalis and her husband have owned property in [redacted] since 2000. A true and correct copy of the relevant and publicly available assessor's property card is attached hereto as Exhibit A.

   b. [redacted] is within walking distance of a coastal section of [redacted] known as [redacted]. A map depicting the relevant area is attached hereto as Exhibit B.

   c. The ownership and use of property at [redacted] has been in dispute since 2009. Specifically, until October of 2019, litigation styled [redacted] had been pending among the State of [redacted] the so-called "Backlot Owners" and the "Beachfront Owners" concerning the use of [redacted]. In the [redacted] litigation, the Beachfront

Owners sought a judicial declaration limiting the rights of the public in the use of [redacted] Relevant published judicial decisions and pleadings from the [redacted] case are attached hereto as Exhibit C.

d. Approximately 200 Backlot Owners who own property in the [redacted] intervened in the [redacted] litigation asserting prescriptive easement and easement by custom rights to engage in recreational activities on the beach. (Ex. C)

e. Judge Ozalis's home at [redacted] is located in the [redacted] (Ex. A), and the 200 Backlot Owners who intervened in the [redacted] litigation include at least one individual who owns property at [redacted] The interests of the Backlot Owners were aligned with the interests of the [redacted] and [redacted] who are advocated for public rights against the private property interests of the Beachfront Owners. (Ex. C)

f. As a Backlot Owner, Judge Ozalis had a direct personal and economic interest in the [redacted] litigation even if the she did formally intervene in that case as a party. Upon information and belief, the Judge Ozalis offers [redacted] for lease as a vacation rental advertising its close proximity to [redacted] o prospective renters. A publicly available advertisement for the rental of [redacted] is attached hereto as Exhibit D.

g. Decisions made in favor of the Beachfront Owners in the [redacted] case over the past 10 years had the potential to negatively impact Judge Ozalis's interests, such that her interests as a Backlot Owner were naturally adverse to the interests of the Beachfront Owners.

3. The dynamics of the [redacted] case are strikingly similar to the dynamics of this case.

4. As the owner of a waterfront home in this case, I am defending claims initiated and asserted by Interior Owners (Back Lot Owners) with access rights to the water which were defined by the Connecticut Supreme Court Decision: *Mcburney vs. Paquin, 302 Conn. 359 (2011)* who are seeking to expand their use and access by making portions of my waterfront property open to the public. Similar to the [redacted] case, the Town of Branford and Pine Orchard Association are representing the interests of the public and the Interior Lot Owners on Crescent Bluff Avenue.

5. The Interior Lot Owners for all intents and purposes have the same personal and economic interest in making my property public that Judge Ozalis and her fellow Backlot Owners had in the judicial establishment of public rights in [redacted] in [redacted] In the [redacted] case, the backlot owners were looking to expand their rights to use the beach.

6. The foregoing facts have caused me to reasonably question the Court's appearance of impartiality as it pertains to this case, and I believe that such information would cause any objective observer to reasonably question the same. I also question why this information was not disclosed to the parties at the outset of this case.

7. I completed my research on the foregoing matters and sent it to my counsel at the end of December 2019 when he was out of state for the holidays, and asked him to bring this information to the Court at the next available opportunity to attempt to confirm its accuracy.

Barbara J. Saggese

STATE OF CONNECTICUT)
) ss.: Monroe
COUNTY OF FAIRFIELD

SUBSCRIBED AND SWORN TO before me this 14th day of January, 2020.

Danielle Figueroa
Notary Public
My Commission Expires: 6/30/23

DANIELLE FIGUEROA
COMMISSION EXPIRES
NOTARY
PUBLIC
JUNE 30, 2023
CONNECTICUT

EXHIBIT A

EXHIBIT B

EXHIBIT C

[redacted]

EXHIBIT D

[redacted]

[redacted]

Discover the joy and serenity of [redacted]

HOME RENTAL HOMES ABOUT US CONTACT US THINGS TO DO

[redacted]

This beautiful [redacted] is a two minute walk to the beach. [redacted]

[redacted]

[redacted]

[redacted]

Discover the joy and serenity of [redacted]

[redacted]

- Home
- Rental Homes
  - Two Bedroom Cottages
    - [redacted]
  - Three Bedroom Cottages
    - [redacted]
  - Four Bedroom Cottages
    - [redacted]
  - Five Bedroom Cottages
    - [redacted]
- About Us

- Contact Us
- Things To Do

[redacted]

[redacted]

+-

© Mapbox © OpenStreetMap Improve this map

This beautiful [redacted] is a two minute walk to the beach. [redacted]

[redacted]

[redacted]

DOCKET NO. NNH-CV-17-6074630-S	:	**SUPERIOR COURT**
ROBERT G. WHEELER ET AL	:	**J.D. OF NEW HAVEN**
V.	:	**AT NEW HAVEN**
JAMES COSGROVE AS SELECTMAN OF THE TOWN OF BRANFORD ET AL	:	**JANUARY 15, 2020**

AFFIDAVIT OF DAVID S. HARDY

The undersigned, David S. Hardy, being of lawful age and duly sworn according to law, depose and state to the best of my personal knowledge and belief as follows:

1. I am over the age of eighteen years and I understand the obligations of an oath.

2. My firm is counsel to defendants Barbara Saggese and Beachcroft, LLC.

3. On December 31, 2019, the Court (Ozalis, J.) scheduled "a status conference and/or pretrial conference" for January 13, 2020 at 2:00 p.m. A true and correct copy of the notice is attached hereto as Exhibit A.

4. The status conference was scheduled at the request of counsel for the Selectmen of the Town of Branford advising the Court by letter dated December 17, 2019 that the Town and Beachcroft, LLC were engaged in discussions concerning a transaction that "would resolve most, if not all, issues that the Petitioners have raised in bringing this action." The Town requested that the Court schedule a status conference for among other things "the purpose of seeing how these negotiations have advanced at that time."

5. Pursuant to the foregoing order, my client, Barbara Saggese (individually and as member of Beachcroft, LLC) was available by telephone during the scheduled date and time of the conference.

6. The status conference was held off the record in chambers. The conference began with counsel for the Town of Branford reviewing with the Court the details of the transaction under discussion with Beachcroft, LLC, the steps that had been taken by the parties to inform those discussions and the fact that the parties were scheduled to meet again on January 15, 2020 to continue discussions toward a possible resolution.

7. In the course of those discussions, Judge Ozalis asked how far apart the parties were, what were the probabilities of reaching an agreement on monetary terms, and what the positions of the parties were on monetary terms.

8. The Court stated that it would hold another status conference on Wednesday, January 22, 2019 at 3 p.m. to allow the Town and Beachcroft to further report on the status of settlement discussions following their January 15, 2020 meeting.

9. The discussions then expanded to a discussion of whether, if the transaction contemplated between the Town and Beachcroft were agreed upon, or a mechanism for resolving the final terms of the transaction could be agreed upon, whether the remaining issues presented by this case and asserted by the petitioners and the Pine Orchard Association could also be resolved, along with all of the claims pending among the same parties in the related private property rights case, *Wheeler v. Beachcroft, LLC*, No. X07-HHD-CV-09-5034089-S. That case is pending in the Judicial District of Hartford and scheduled to begin evidence on February 3, 2020.

10. I asked counsel for the petitioners and the Pine Orchard Association if they had a specific settlement proposal for resolving the issues that would remain in this case and the related private rights case, assuming the Town and Beachcroft were able to resolve the issues as between them.

11. In response, counsel for the petitioners and the Pine Orchard Association laid out a detailed set of specific settlement terms that would be acceptable to those parties. I asked for clarification on some of the terms and took written notes of their settlement proposal.

12. Judge Ozalis then asked me to call my client to review the settlement proposal that had been offered and to report back.

13. I called my client at 3:05 p.m. to review and discuss the settlement terms that had been proposed. According to my I-Phone, that phone call lasted for 34 minutes.

14. Following that call, I spoke with counsel for fellow intervening defendants Roger Lowlicht and Kay Haedecke who had also left chambers to discuss the proposed settlement terms with his clients on the phone.

15. We then returned to Judge Ozalis's chambers with counsel for all parties to discuss my client's response to the settlement proposal presented by the petitioners and the Pine Orchard Association. Counsel for Roger Lowlicht and Kay Haedecke also responded with his clients' position with respect to the proposed settlement terms.

16. I identified and explained to counsel for the parties and Judge Ozalis my clients' points of concern and/or disagreement with specific terms included in the settlement proposal that had been presented.

17. In response, counsel for the petitioners and the Pine Orchard Association asked Judge Ozalis if they could leave chambers to discuss issues among themselves, which they proceeded to do.

18. While waiting for counsel for the petitioners and the Pine Orchard Association to return, I stated in chambers to Judge Ozalis, counsel for the Town and counsel for Roger Lowlicht and Kay Haedecke that while I was encouraged that we were discussing settlement,

that Judge Ozalis's participation in these discussions raised concerns on my part with respect to her ability to further preside over the case if the parties were unable to reach a settlement.

19. I also stated to Judge Ozalis that my client had asked me to bring to her attention information that my client had gathered concerning Judge Ozalis's possible interest in the beach rights litigation described in the Affidavit of Barbara Saggese to determine if that information was correct.

20. In response Judge Ozalis confirmed her ownership of the home in [redacted] but stated that she was not a party to that litigation, that it had been resolved by the [redacted] in October of 2019, and that the issues in that case differed from the issues in this case.

21. When counsel for the petitioners and the Pine Orchard Association returned to chambers, Judge Ozalis stated she wanted to cease the settlement discussions given the questions that had been raised as to her continuing jurisdiction over the case.

22. The parties then discussed the fact that hearing management orders that had been proposed to the Committee by Beachcroft and Barbara Saggese and that a conference call had been held among the Committee and the parties to discuss hearing management and procedures.

23. Judge Ozalis stated that she would hold a hearing on January 15, 2019 at 10:00 a.m. to hear the parties on hearing management issues and thereafter issue her own orders to the Committee.

24. Following the foregoing chambers proceedings, the Judge Ozalis went on the record and provided a high-level summary of issues discussed in Chambers during the status conference and the next court events that had been scheduled. Further dialogue then ensued

among the Court and counsel, including on the possibility of grounds for recusal, and the Court ordered that any motion for recusal be filed by January 24, 2020.

David S. Hardy

STATE OF CONNECTICUT)
) ss.: New Haven
COUNTY OF NEW HAVEN)

SUBSCRIBED AND SWORN TO before me this 15th day of January, 2020.

Notary Public
My Commission Expires:

MARY D. DANA
NOTARY PUBLIC
MY COMMISSION EXPIRES APRIL 30, 2024

EXHIBIT A

JDNO NOTICE

NNH-CV-17-6074630-S WHEELER, ROBERT G. Et Al v. COSGROVE, JAMES, AS SELECTMAN OF THE TOWN OF BRANF Et Al

Notice Issued: **12/31/2019**

Court Address:
CLERK, SUPERIOR COURT
JUDICIAL DISTRICT OF NEW HAVEN
235 CHURCH STREET
NEW HAVEN, CT 06510

Notice Content:
Notice Issued: **12/31/2019**
Docket Number: **NNH-CV-17-6074630-S**
Case Caption: **WHEELER, ROBERT G. Et Al v. COSGROVE, JAMES, AS SELECTMAN OF THE TOWN OF BRANF Et Al**
Notice Sequence #: **2**

JDNO NOTICE

01/13/2020 AT 2:30PM

ROOM ASSIGNMENT: PLEASE REPORT DIRECTLY TO THE CIVIL CASEFLOW OFFICE (4TH FLOOR, ROOM 446)

AS REQUESTED BY COUNSEL OR ASSIGNED BY THE COURT, THIS MATTER HAS BEEN ASSIGNED FOR STATUS CONFERENCE AND/OR PRETRIAL AT THE ABOVE-INDICATED DATE AND TIME.

COUNSEL W/AUTHORITY AND SELF-REPRESENTED PARTIES MUST ATTEND. CLIENTS MAY BE AVAILABLE BY PHONE AT THE PRETRIAL.

COUNSEL MUST IMMEDIATELY REVIEW CASE & EXCHANGE UNDISCLOSED INFORMATION WITH OPPOSING COUNSEL. ANY PARTY CLAIMING DAMAGES MUST BRING A PRETRIAL MEMO (PB SEC.14-13). IF THERE ARE MULTIPLE
INSURANCE CARRIERS, EVERY EFFORT MUST BE MADE TO RESOLVE PERCENTAGE OF CONTRIBUTION BEFORE
PRETRIAL.

ALL CONTINUANCE REQUESTS MUST BE FILED AT LEAST 7 DAYS BEFORE THE PRETRIAL. FAILURE TO COMPLY WILL RESULT IN ENTRY OF NONSUIT OR DEFAULT.

INQUIRIES MAY BE DIRECTED TO THE CIVIL CASEFLOW OFFICE: 203-503-6806.(JDNO 56)

State of Connecticut Judicial Branch
Superior Court E-Filing

Attorney/Firm: CARMODY TORRANCE SANDAK & HENNESSEY LLP (435512) **E-Mail:** clee@carmodylaw.com Logout

Hide Instructions

You have successfully e-filed!

Instructions: The information about the item you filed is on this confirmation page. You must print a copy of this page for your records. Choose **Print This Page** at the top of the page to print your copy.

Choose **E-File Another Pleading/Motion/Other on this Case** to go back to the **Select a Motion** page to choose another document name and file another document.

Choose **Return to Superior Court E-Filing Menu** to go back to the menu page.

Choose **Return to Case Detail** to look at the documents filed in this case or to file a reclaim in this case.

Print This Page

Confirmation of E-filed Transaction (print this page for your records)

Docket Number:	NNH-CV-17-6074630-S
Case Name:	WHEELER, ROBERT G. Et Al v. COSGROVE, JAMES, AS SELECTMAN OF THE TOWN OF BRANF Et Al
Type of Transaction:	Pleading/Motion/Other document
Date Filed:	Jan-15-2020
Motion/Pleading by:	CARMODY TORRANCE SANDAK & HENNESSEY LLP (435512)
Document Filed:	208.00 MOTION FOR DISQUALIFICATION OF JUDICIAL AUTHORITY PB 1-23 with Affidavits of Barbara Saggese and David S. Hardy
Date and Time of Transaction:	Wednesday, January 15, 2020 9:00:45 AM

E-File Another Pleading/Motion/Other document on this Case

Return to Civil / Family Menu | Return to Case Detail