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February 13, 2008

VIA HAND DELIVERY

Chairman Alan Weil &
Members of the City of Rye Board of Appeals
Rye City Hall
1051 Boston Post Road
Rye, New York 10580

Re: Hen Island (Kuder Island Colony), Site No. 27 (Gary Ederer)
Board of Appeals Case No. 07-61

Dear Chairman Weil & Members of the Board:

This office represents Kuder Island Colony, Inc. ("Kuder"), owner of Hen Island. Kuder supports the application of Gary Ederer for a variance from the regulations regarding non-conforming structures so that he can repair and upgrade his cottage on Hen Island.

Kuder supports Mr. Ederer's application in order to preserve the ability of all shareholders on Hen Island to repair and upgrade their cottages. Kuder is satisfied with the City's present, orderly procedure for approvals and variances. Those procedures assure Kuder that its shareholders comply with the law. Kuder fears that if the present procedures are changed that it will create unnecessary obstacles to maintaining the cottages, which in turn may lead to disincentives to repair the buildings, violations of the law, and a decrease in value of the cottages on Hen Island.

Hen Island is approximately 28 acres with thirty four (34) cottage sites, each cottage being the personal property of a shareholder. The cottages were constructed prior to 1952, the year that Kuder was incorporated. The shareholders enter into license agreements with Kuder that permit them to keep their cottages on the island. Kuder controls improvements to and construction of the cottages through its by-laws and rules and regulations, which provide, in substance that no material alteration maybe made without approval of Kuder's Board of Directors. Members of the Board are elected at an annual meeting of all shareholders. The Board thoroughly reviews each application for construction. The objective of the Board in considering an application is to preserve the undeveloped "character and spirit" of the island. The license agreements permit the cottages to be occupied only during the summer season.

Kuder's Board reviewed Mr. Ederer's application and approved it. The application included a written proposal accompanied by drawings and comments of neighboring cottage owners. In the Board's opinion his plans are environmentally sensitive and conform to all environmental requirements.

The present, two-part review procedure (an initial review by Kuder's Board followed by review of the Zoning Board) has been in place for many years and was used by other shareholders to re-build their cottages. For example, the Kuder Board approved the reconstruction of cottages of the following shareholders whose applications for variances were subsequently granted by the Zoning Board: Dina Santangelo (Appl. No. 1989-37); Edward A. Volpe (Appl. No. 1993-13); and, Martha and Peter Barotz (Appl. No. 1993-27). In each case, the Zoning Board found sufficient cause to grant a variance, a hardship if the variance was not granted, and no threat to public safety or any other public or environmental interest by granting a variance. (Copies of the decisions are attached as Exhibit "A.")

The only objection now to Mr. Ederer's application comes from another Kuder shareholder, Raymond Tartaglione. However, and with all due respect, Mr. Tartaglione's concerns are baseless. Indeed, his appearance before the Zoning Board is yet another attempt at shopping for a forum to express his unfounded and generalized dissatisfaction with Hen Island. For instance, in May 2007, he sued Kuder and its Board members, individually. The lawsuit (Tartaglione v. Kuder Island Colony, et al. Supreme Court, Westchester County (Index no. 9752/07)) was subsequently dismissed. In dismissing the lawsuit, Justice Orazio Bellantoni held, among other matters, that the existing water and sewer arrangements on the island do not violate the law. (A copy of the decision is attached as Exhibit "B.")

It is ironic that Mr. Tartaglione objects to Mr. Ederer's application because in the Supreme Court lawsuit he alleged that the Board acted improperly in permitting the cottage now owned by Mr. Ederer to fall into disrepair. The Board subsequently approved the sale of the cottage to Mr. Ederer so that its condition could be improved. However, now that the litigation is dismissed, Mr. Tartaglione has taken the exact opposite position, which is that the cottage should not be repaired.

Another irony of Mr. Tartaglione's objection to Mr. Ederer's application is that in 1998 Mr. Tartaglione applied for and obtained a building permit from the City to repair and upgrade his cottage on Hen Island without addressing the alleged problems of which he now complains. (See Permit No. 9004 2/20/98.)

Dissatisfied with the result in Supreme Court, Mr. Tartaglione complained to the Westchester County Health Department, which found that conditions on the island do not violate the County Health Code. (A copy of a letter from Leonard Myerson, Deputy Commissioner, Division of Environmental Health, Westchester County Department of Health addressed to Mr. Tartaglione, is attached as Exhibit "C.") (Justice Bellantoni refers to the letter of Deputy Commissioner Myerson in his decision.)

Revealingly, and not satisfied with Mr. Myerson's response to his concerns, Mr. Tartaglione then attacked him by accusing the Deputy Commissioner of addressing issues in a manner that is "disappointingly inadequate... and misleading." The letter went on to allege that Mr. Myerson's "actions and your explanations are being controlled and dictated by

others in the County Administration.... I look forward to exposing the inaccurate and improperly motivated actions and statements your department has undertaken, in Court when my attorneys examine you, under oath." (A copy of Mr. Tartaglione's letter is attached as Exhibit "D.")

Mr. Tartaglione sent copies of his letter to various other public officials, as if he believed that additional pressure could be brought to bear upon the Deputy Commissioner to compel him to change his decision. Despite the accusations, the Health Department has not changed its position concerning Hen Island.

Mr. Tartaglione labors on in his ill-conceived endeavor to control Hen Island. He appealed to the media, which rejected his views after Justice Bellantoni issued his decision. (Copies of two, recent newspaper articles are attached as Exhibit "E.") He complained to the Long Island Sound Keeper, which found no environmental problems. He sued Kuder again, but this time in the Rye City Court (Tartaglione v. Kuder Island, Docket No. CV-2007-289). The case, which is still pending, alleges Mr. Tartaglione's disagreement with Kuder on financial issues. (In addition, before the Supreme Court and Rye City Court lawsuits, Mr. Tartaglione twice unsuccessfully sued Kuder in the White Plains City Court.)

In fact, the "bad blood" between Mr. Tartaglione and the Kuder Board has existed since 2002, when he was replaced as an officer and director of Kuder. The other shareholders did not welcome his plans to develop the island into a suburban subdivision. To be sure, if Mr. Tartaglione had his way Kuder would be forced to spend millions of dollars to bring municipal water and sewer service to Hen Island. Unfortunately, while such utilities might dramatically increase the value of the island, the environmental impact of constructing the water and sewer lines would make trivial the environmental effects of Mr. Ederer's proposed construction.

In summary, Kuder supports Gary Ederer's application as it is necessary to maintain the present procedure of applying to the City to repair and improve cottages on the island. It is Kuder's desire to conform to the requirements of the Zoning Board, the Building Department, and all other City, County, State and Federal agencies with jurisdiction over Hen Island. It is Kuder's view that only if the present approval process is continued will Hen Island remain the unspoiled and undeveloped paradise that it has been for many years.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'Ira S. Goldenberg', with a large, sweeping loop at the end.

Ira S. Goldenberg

cc.: Kuder Island Colony, Inc.
Building Department, City of Rye

CITY OF RYE
BOARD OF APPEALS

IN THE MATTER OF
THE APPLICATION OF

DINA F. SANTANGELO, Owner

APPLICATION NO. 89-37

PROPERTY LOCATION: Hen Island
TAM 159.05, Block 1, Lot 1

FINDINGS AND DECISION

This unopposed application concerns a camp cottage on Hen Island. Hen Island is an anomalous part of Rye, so much so that it is difficult to know how, or even whether, various provisions of the City Code should be applied. Indeed, we are told that this is the first time that a Hen Island cottage owner has been subjected to the requirement of obtaining a building permit.

Hen Island is owned by Kuder Island Colony, Inc. (hereinafter called "Kuder Corporation"). The island comprises 34 camp cottages, with appurtenances such as docks and storage sheds. The cottages are individually owned, each owner is a licensee of and a shareholder in Kuder Corporation. The board of directors of Kuder Corporation controls developments and improvements on Hen Island by means of provisions in its by-laws, rules and regulations. Hen Island has no electricity or gas supply, no water supply, no sewer, no municipal trash removal or sanitation service, no effective protection services, and very little connection with the rest of Rye.

Conversely, raising this Hen Island structure 6 feet or so would have an adverse impact on virtually all of Hen Island and on all those who look at Hen Island. As stated in the application, putting the cottage on stilts "would be obtrusive to its neighbors and the mainland and would have negatively affected property values."

Accordingly, the Board grants the relief requested and necessary to dispose of this application. A special exception is granted with regard to the expansion or extension of the non-conforming use and structure and a variance is granted with regard to the flood plain management requirement of raising the structure so as to comply with Section 100-5 (A) (2). A short environmental assessment form (SEQR form 13A-79) having been included in the record on this application, no further EIS is required in connection with this decision.

As provided in Section 100-8.A., the Board makes the following required findings:

- a) That there is good and sufficient cause for granting the variance.
- b) That the failure to grant the variance will result in exceptional hardship to the property owner in that such failure will deprive the owner of any reasonable use of his or her land or buildings and that the relief granted is the minimum necessary, considering the flood hazard, to mitigate the hardship.
- c) That the granting of the variance will not result in increased flood heights, additional threats to public safety or extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances or diminish the environmental benefits of natural floodplains, wetlands or environmentally sensitive areas or conditions.

CITY OF RYE
ZONING BOARD OF APPEALS

IN THE MATTER OF THE APPLICATION

OF

EDWARD A. VOLPE, Owner

APPLICATION NO.
93-~~2~~13

PROPERTY LOCATION: Hen Island
Rye, New York

T.A.M. 159.05, Block 1, Lot 1 (20 of 35)

Mr. Edward Volpe is the owner of a cottage on Hen Island. The application is unopposed and seeks to replace and reconstruct a cottage destroyed by the storm of December 11, 1992.

As stated in an earlier decision of this Board, in In Re Santangelo (89-37, Decision dated November 9, 1989): "Hen Island is an anomalous part of Rye, so much so that it is difficult to know how, or even whether, various provisions of the City Code should be applied."

The Santangelo opinion stated further:

Hen Island is owned by Kuder Island Colony, Inc. (hereinafter called "Kuder Corporation"). The island comprises 34 camp cottages, with appurtenances such as docks and storage sheds. The cottages are individually owned, each owner is a licensee of and a shareholder in Kuder Corporation. The board of directors of Kuder Corporation controls developments and improvements on Hen Island by means of provisions in its by-laws, rules and regulations. Hen Island has no electricity or gas supply, no water supply, no sewer, no municipal trash removal or sanitation service, no effective protection services, and very little connection with the rest of Rye.

Accordingly, the Board grants the relief requested and necessary to dispose of this application. A variance is granted with regard to the flood plan management requirement of raising the structure so as to comply with Section 100-5 (A) (2). A short form environmental assessment form (SEQR form 14-16-4 92/87)) has been included in the record on this application, and no further EIS is required in connection with this decision.

As provided in Section 100-8.A., the Board makes the following required findings:

(a) That there is good and sufficient cause for granting the variance.

(b) That the failure to grant the variance will result in exceptional hardship to the property owner in that such failure will deprive the owner of any reasonable use of his or her land or buildings and that the relief granted is the minimum necessary, considering the flood hazard, to mitigate the hardship.


(c) That the granting of the variance will not result in increased flood heights, additional threats to public safety or extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances or diminish the environmental benefits of natural floodplains, wetlands or environmentally sensitive areas or conditions.

(d) That the variance, as granted, will not result in any increase in flood elevations in the City of Rye during the occurrence of the base flood discharge.

In accordance with Section 100-8.B., the Board notes that

"The construction of a structure below the elevation of the base flood will result in increased premium rates for flood insurance up to amounts as high as twenty-five dollars (\$25.00) for one hundred (\$100.00) of insurance coverage and will increase the risk to life and property."

Dated: Rye, New York
August 5, 1993


Annette L. Guarino
For The Board of Appeals

CITY OF RYE
ZONING BOARD OF APPEALS

IN THE MATTER OF THE APPLICATION

OF

MARTHA BAROTZ and PETER BAROTZ, Owners

APPLICATION NO.
93-27

PROPERTY LOCATION: Hen Island
Rye, New York

T.A.M. 159.05, Block 1, Lot 1 (25 of 35)

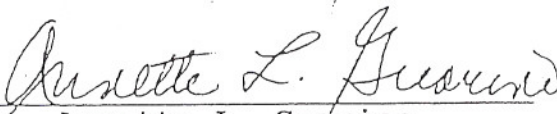
Mr. and Mrs. Barotz are the owners of a cottage on Hen Island. The application is the second application arising out of the storm of December 11, 1992, seeking to replace and reconstruct a cottage destroyed by the storm. This Board recently allowed a variance on essentially the same facts as presented here, in In Re Volpe (93-22, Opinion dated August 5, 1993).

This matter was presented at the Board's meeting held on August 5, 1993. Testimony and evidence were submitted in support of the application, without opposition. Members of the Board thereafter inspected the property.

It was testified that the applicants have owned the cottage for several years. It was also testified that the applicants' cottage had been an approximately 710 square feet one story structure. After the storm of December 11, 1992, essentially nothing of the structure of the cottage remained except debris. The applicants have limited their request to replacement of the exact footprint of the former structure at 15 feet above the high water mark rather than the 18 feet required by Code Section 100-5.

the base flood will result in increased premium rates for flood insurance up to amounts as high as twenty-five dollars (\$25.00) for one hundred (\$100.00) of insurance coverage and will increase the risk to life and property."

Dated: Rye, New York
September 9, 1993



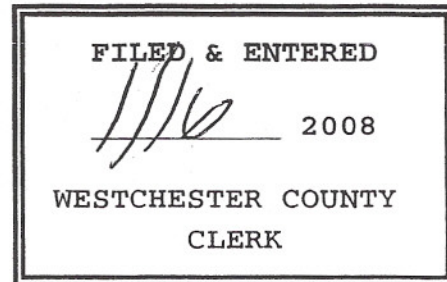
Annette L. Guarino
For The Board of Appeals

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

P R E S E N T:

HON. ORAZIO R. BELLANTONI
JUSTICE OF THE SUPREME COURT



RAYMOND TARTAGLIONE, individually and
as a shareholder of KUDER ISLAND
COLONY, INC. suing on behalf of himself
and on behalf of all the shareholders
thereof similarly situated,

Plaintiff,

- against -

SHORT FORM ORDER

Index No. 9752/07

Motion Date: 8/1/07

KUDER ISLAND COLONY, INC., BEN MINARD,
in his individual capacity and as
president of KUDER ISLAND COLONY, INC.,
JASON ANDERSON, in his individual
capacity and as vice-president of KUDER
ISLAND COLONY, INC., JOANN MOLLOY, in
her individual capacity and as treasurer
of KUDER ISLAND COLONY, INC., MARTIN
EDERER, in his individual capacity and as
secretary of KUDER ISLAND COLONY, INC.,
LORRAINE VOLPE, in her individual capacity,
as director and as past president of KUDER
ISLAND COLONY, INC., MARGARET JOHNSON, in
her individual capacity and as director of
KUDER ISLAND COLONY, INC., and HELEN
CUNNINGHAM, in her individual capacity and
as director of KUDER ISLAND COLONY, INC.,

Defendants.

Plaintiff moves for an order directing defendants to comply with the applicable law, the license agreements, and the rules and regulations of Kuder Island Colony, Inc. to (a) ensure and enforce compliance by all shareholders-licensees with the potable drinking water requirements of the Westchester County Sanitary Code; (b) ensure and enforce compliance by all shareholders-licensees with the discharge of sewerage and drain water requirements of the Westchester County Sanitary Code; (c) repeal the recently enacted ban on insect and mosquito spraying and retain a licensed contractor to obtain the requisite permits to

allow proper, appropriate and lawful mosquito control on Hen Island; and (d) maintain a low grass height on all grass areas to avoid harborage and resting areas for the adult mosquito as well as maintain a level degree of inclination of the contours of the land so as to avoid breeding sites for the Culex species (the West Nile Virus Carrier).

Defendants cross-move for an order, pursuant to CPLR 3211(a)(7), dismissing the complaint; pursuant to CPLR 3211(c), granting summary judgment; vacating the temporary restraining order issued by this Court on May 31, 2007 that directed cross-movants to create and implement a mosquito control program and maintain a low grass height on the grounds that same has now been complied with and/or is moot; and granting costs, disbursements and reasonable attorney fees in bringing this motion.

The following papers were read:

Order to Show Cause - Affirmation of Steven H. Gaines, Esq.	1-21
- Affidavit of Raymond Tartaglione - Affidavit of William Canavan - Affidavit of Wallace Terrill - Annexed Exhibits A-P	
Plaintiff's Memorandum of Law in Support	22
Notice of Cross-Motion - Affirmation of Ira S. Goldenberg, Esq. - Affidavit of Lorraine Volpe - Affidavit of Joann Locascio Molloy - Affidavit of Margaret Johnson - Affidavit of Martin Ederer - Affidavit of Adrienne Esposito - Affidavit of W. Charles Utschig, Jr. - Annexed Exhibits 1-15	23-45
Defendants' Memorandum of Law	46
Affidavit of Raymond Tartaglione - Affirmation of Steven H. Gaines, Esq. - Reply Affidavit of William Canavan - Reply Affidavit of Wallace Terrill - Affidavit of Claudio Iodice - Annexed Exhibits A-G	47-58
Plaintiff's Reply Memorandum of Law	59
Reply Affidavit of Lorraine Volpe - Reply Affidavit of Benjamin Minard - Annexed Exhibits A-C	60-64
Defendants' Reply Memorandum of Law	65
August 31, 2007 Letter of Leonard S. Meyerson, P.E.	66
September 25, 2007 Letter of Leonard S. Meyerson, P.E.	67

Upon the foregoing papers it is hereby ORDERED that defendants' cross-motion is granted and plaintiff's motion is denied as moot.

The Westchester County Department of Health issued a health advisory to Kuder Island Colony, Inc. See the August 31, 2007 letter of Leonard S. Meyerson, P.E., Deputy Commissioner, Division of Environmental Health. While noting that "several residences on Hen Island ... have constructed cisterns to collect water from precipitation and that some of the cisterns have been

connected to sink faucets" (id), the County does not have any regulations prohibiting this practice. Said advisory further states that "[a]lthough our interviews with and observations of residents indicated that cistern water is not being used as a source of potable water, as a precaution we are asking that Kuder Island Colony: 1. remind all residents of Hen Island that consumption of this stored water may be hazardous to health and any use of such water for drinking should be discontinued; and 2. arrange to have a copy of the enclosed warning notice visibly posted above any faucets conveying such water." Id. Following department representatives' personal investigation of conditions on the island, however, same had no other concerns as to potable water.

Moreover, the sewer disposal systems on the island pre-exist the County's Sanitary Code. As such, said systems are violative of the Code only if they seep or overflow. See the September 25, 2007 letter of Leonard S. Meyerson, P.E., Deputy Commissioner, Division of Environmental Health. With respect to same, the Health Department's position is that the existing systems on the island do not show any signs of failure, and that the present system is adequate, given the soil on the island, the use of the island for only part of the year, the limited number of islanders actually occupying it and the brevity of their visits. Id. It is Health Department policy not to require a sewage system to be rebuilt or abandoned unless there has been a total, irredeemable failure, which has not been found here.

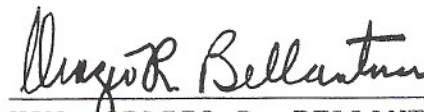
Finally, as to the methods of deterring West Nile Virus by controlling the Culex mosquito, the Health Department stated that it is unnecessary to do so as said mosquito does not generally breed in salt water marshes as are found around the island. Id. Based upon Health Department inspections conducted on July 17, August 7, and August 27, 2007, "[t]he mosquito species that breeds [on the island] is predominantly *ochlerotatus sollicitans*, and while they are a nuisance to humans, the species is part of the natural eco-system in salt marshes and has not been associated with the spread of West Nile virus and, thus, is not the focus of the Health Department's attention." Id. "[T]he failure to abate the mosquito population present at Hen Island is not a violation of [the Westchester County] Sanitary Code[, specifically the 'elimination' clause of §873.831(7)]. In order to limit further mosquito breeding, the Department typically advises that the open containment of stagnant ponded water be avoided." Id.

This Court notes that no other shareholder, including the members of plaintiff's 'beautification committee,' have expressed any objections to the mosquito control and mowing plans put in place since the issuance of the May 31, 2007 temporary restraining order.

Accordingly, the complaint is dismissed in its entirety.

Settle judgment on ten (10) days notice within thirty (30) days hereof.

Dated: *January 15, 2008*
White Plains, New York


HON. ORAZIO R. BELLANTONI
Justice of the Supreme Court

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Environ +



Andrew J. Spano
County Executive

Department of Health

Joshua Lipsman, M.D., J.D. M.P.H.
Commissioner

September 25, 2007

Mr. Ray Tartaglione
101 Westmoreland Avenue
White Plains, NY 10606

Re: Hen Island
Rye, New York

Dear Mr. Tartaglione:

Please accept this letter in response to your letter dated August 3, 2007 that was addressed to both myself and Mr. Vince Tamburro, the Building Inspector for the City of Rye.

As you are aware, representatives of the Westchester County Department of Health conducted inspections at Hen Island on July 17, 2007, August 7, 2007 and August 27, 2007. Your August 3, 2007 letter raises a number of concerns regarding potential public health and building code violations at Hen Island, however, I will respond only to the issues that you have raised which are within the jurisdiction of the Department of Health and will defer the remaining issues to the Rye Building Department. Specifically, I will address your concerns about mosquitoes, septic and sewage issues, and potable water.

Based upon the inspections that have been conducted, the mosquito population at Hen Island is what you would expect to find in a location adjacent to salt marshes. The mosquito species that breeds in this environment is predominantly *ochlerotatus sollicitans*, and while they are a nuisance to humans, the species is part of the natural eco-system in salt marshes and has not been associated with the spread of West Nile virus and, thus, is not the focus of the Health Department's attention.

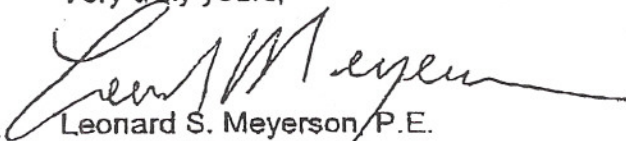
Mr. Tartiglione
September 25, 2007
Page 2

Your letter also makes reference to Section 873.831(7) of the Westchester County Sanitary Code. To our knowledge, the "elimination" clause of this provision has never been applied to mosquitoes and the failure to abate the mosquito population present at Hen Island is not a violation of our Sanitary Code. In order to limit further mosquito breeding, the Department typically advises that the open containment of stagnant ponded water be avoided.

With respect to your concerns about sewage systems on the Island, during the Health Department's visits to the site, several of the sewage disposal systems on the island were inspected. The systems inspected pre-exist the County's Sanitary Code and appear to be used infrequently. As the systems predate the Sanitary Code, said systems are violative of the Code only if the systems seep or overflow. As the County inspectors did not find any evidence of sewage seepage or overflow, there were no violations of the county's sanitary code that would prompt our intervention.

The connection of water stored in cistern tanks to residential faucets is an issue of potential concern even while our observations of and interviews with residents indicated awareness that such water is not potable. While the County does not have any regulations prohibiting this practice, as a precaution we provided a health advisory to the owner of the island (Kuder Island Colony Inc.) which agreed to recommend that residents post a notice at all faucets connected to cisterns stating that the water is not safe to drink.

Very truly yours,



Leonard S. Meyerson, P.E.
Deputy Commissioner
Division of Environmental Health

cc: Vince Tamburro
City of Rye Building Inspector

October 27, 2007

Dear Commissioner Meyerson:

Reference is made to your letter to me dated September 25, 2007. My schedule has not permitted an earlier response. For the reasons set forth below, I believe your response is disappointingly inadequate, misleading and not in the best interest of the residents of Westchester.

MOSQUITO CONTROL

Your state that "the mosquito species that breeds in this environment is predominately *ochlerotatus sollicitaris* not associated with the West Nile virus." That is, you concede there exists, at Hen Island, other types of mosquitoes which do carry West Nile virus, although you maintain they are outnumbered by the non West Nile virus carriers. That is, your statement confirms the existence of mosquitoes on Hen Island that could carry the West Nile virus. Your failure to protect the residents and guests of Hen Island from these potentially deadly mosquitoes is still unexplained and, quite frankly, shameful.¹

In addition, the fact that your department has never applied "the elimination clause" to mosquitoes is simply no excuse or justification not doing so, when you admit there are present, at Hen Island, a population of mosquitoes you concede are potential carriers of West Nile virus.

SEWAGE DISPOSAL

To begin, your statement that "several systems were inspected"², again reveals the inadequacy of your Department's inspections. How many were actually "inspected" and why did you not inspect all, when there are only 34 such systems? Furthermore, your statement that those few systems you inspected "pre-exist the . . . Code" is simply inaccurate and you know it. To begin, 5 of the cottages were recently rebuilt and were, just last year, issued Certificates of Occupancy. Furthermore, many, if not all of the other cottages (which have no Certificates of Occupancy) have undergone major renovations or repairs, including changing the then existing sewage disposal systems. These renovations were all completed during the last 15 years; well after the Code was enacted in 1959. You know this to be true. Finally, in 1989 there were eleven

¹ Revealingly, your Department has woefully failed to do any trappings, nor did it take any larval samples, type samples or test counts at any of the so-called "inspections". Furthermore, your statement that *ochlerotatus sollicitaris* "has not been associated with West Nile virus" is inaccurate and misleading. Rather, recent studies, as you evidently are unaware, reveal this species capable of transmitting the deadly virus, although other species more often do so. Finally, the "predominant species" of mosquito on Hen Island you speak of are also known to harbor and transmit other harmful arboviruses. Your failure to even comment on this is also regrettable.

² Your reference to a sewage "system" is also clearly a misnomer, as these so-called systems are largely comprised of hand-dug holes in the ground with pipes leading from the cottages.

outhouses on Hen Island. Today there remains only one. The other ten outhouses were removed, after 1989, and replaced with different non-compliant polluting systems, all without the required Health Department inspection and approval. Your excuse for not requiring compliance based upon "pre-dating the Code" is factually without basis and again, shameful.

Furthermore, your statement that "systems are violative only if the systems seep and overflow" and "inspectors did not find any evidence of sewage seepage or overflow" is an interpretation of the Code that finds no support in law, logic or common sense. As you know, it is a violation of the Code to erect or maintain a sewage disposal system without a permit. None of the sewage disposal systems, including those few your department inspected, have such a permit.

Revealingly, your department's "inspections" did not include conducting any of the dye tests which are performed as a normal protocol of your Department when they are attempting to determine whether there is leakage or seepage. Nor were those cottages you inspected occupied at the time of your inspection. Nor was any sewage system inspected while the system was in use. How could you possibly determine whether the few sewage systems your department "inspected" did leak or seep when your department neglected to perform any test or witness their operation? Why did you choose not to do so? Why did your Department not follow protocol? Why did your department's "inspections" consist of only a visual inspection of the outside portion of a few of the offending sewage systems?

Also, you totally fail to address my concerns regarding the fact that some of these systems are within 15 feet of the shoreline or are located under the cottage and/or within 10 feet of neighboring cottages. Each of these conditions exists and are clear violations of the Code.

I agree with your statement "the connection of water stored in cistern tanks to residential faucets is an issue of concern." I do not agree that your department should sit idly by, recommending only the "advisory" that notices be posted to the effect that the water is not safe to drink. This response to this obvious health "issue of concern" is, quite frankly, puzzling and inadequate. You are aware the water in these cisterns was tested and found to have an E coli and other contaminants from bird droppings in it. Is it safe to shower or bathe in? Is it safe to wash dishes or clothes in? Is it safe to brush your teeth in? Do you expect children who cannot read to obey such a written notice? In the event you truly believe your department, although "concerned", should do nothing to prevent the obvious health hazards associated therewith, at least a referral to the appropriate agency would be less negligent.

In conclusion, Mr. Meyerson, I am disturbed by the content of your response as I believe the other residents of Hen Island and the citizens of Westchester County should be. Furthermore, I believe your actions and your explanations are being controlled and dictated by others in the County Administration for reasons unrelated to the merits of the conditions existing on Hen Island. I look forward to exposing the inaccurate and improperly motivated actions and statements your department has undertaken, in Court when my attorneys examine you, under oath.

As always, I remain available to further discuss my concerns for the safety, health and welfare of the residents and guests of Hen Island and the Westchester community of citizens at large.

Very truly yours,

Raymond Tartaglione

P.S. Below I quote from Robert F. Kennedy Jr's recent writings and ask you to consider these words as they relate to our situation on Hen Island.

"Around the world, water supplies face relentless threats from industrial waste, agricultural pollution and poor sewage treatment. The battle to protect water purity must be fought not just by national governments but also in every town and village on the planet. Even in the U.S., which has some of the toughest environmental laws, safeguarding rivers and reservoirs is a constant struggle. While many companies obey the rules, others still try to use waterways as dumpsites. American environmental-enforcement officials have been bombed, shot, run over and sued while trying to perform their duties. But the most demoralizing blows invariably come from their employers: the Governor or commissioner who wants to shield a political contributor or recruit polluters to the state by shutting down environmental enforcement."

cc: Attorney General Andrew M. Cuomo
Prosecutor Hugh Mclain
Public Integrity Unit – Office of AG
Senator Charles C. Schumer
County Executive Andrew J. Spano
Robert F. Kennedy Jr. – Waterkeeper Alliance
Alex Matthiessen - Riverkeeper
Terry Backer – Long Island Sound Keeper
Ron Gatto – Westchester County ESU
Vincent Tamburro – Rye Building Dept.
City of Rye Conservation Commission
Mayor Steven Otis
Comm. William Connors
Elizabeth Maclin – Eastern Conservation

Enc: Letter 9/25/07
Letter 8/3/07

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The Rye Sound Shore Review

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Hen Island lawsuit dismissed

Alleged health and environmental violations thrown out

By Christian Falcone

A lawsuit filed by a resident of Hen Island against its governing board, citing environmental wrongdoings, was recently dismissed after the court found the allegations unsubstantiated.

On January 27 State Supreme Court Judge Orazio Bellantoni ruled against Raymond Tartaglione, an island shareholder, in finding that the sewage systems utilized on the island were in accordance with Westchester County's health codes. The ruling also favored the island's governing board's previous institution of a ban on pesticide spraying for mosquitoes.

Hen Island is a 26-acre island privately-owned by Kuder Island Colony Inc., a corporation made up of seven island residents. The seasonal islet serves as a summer home to a sparse number of inhabitants off

"He's disgruntled... It appears that if there is a disagreement he will seek to sue to get his ends."

- Martin Ederer, Hen Island Board Trustee

the coast of the City of Rye's Milton Harbor lying along the Long Island Sound.

"We applaud the judge's decision," Ben Minard, President of the Kuder Island Colony's Board of Directors, said in a prepared

statement. "The judge found...that there are no violations of any county health ordinance taking place on this island."

The lawsuit had alleged that the owners of the island, which does not have electricity or running water and is only accessible by boat, had neglected to properly control a mosquitoes infestation along with a lack of proper sanitation, all aiding in polluting the Long Island Sound and improper sewage and living conditions. However, Board Trustee Martin Ederer says this type of action has been a pattern of Tartaglione's ever since he was ousted as Board President several years ago. He claims that Tartaglione has tried, in vain, to sue the island's board on three separate occasions. "He's disgruntled," Ederer added. "[But] from our perspective it's not personal. It appears that if there is a disagreement he will seek

to sue to get his ends."

In dismissing the case, the judge cited a county department of health advisory letter from August 31, 2007 that stated systems by which certain residents collect rain water, into cisterns as it falls off their roofs and down their gutters after rainstorms, do not violate county health regulations. He also relied on a September 25, 2007 letter attesting to the adequacy of the sewage systems utilized by island inhabitants.

"The people who own cottages on the island, the ones whose children play on its beaches and swim in its waters have a greater interest than anyone in ensuring that the island remains as clean and as beautiful as ever," Minard continued. "No one on this island would do anything to damage this

Please See **Hen Island**, page 13

Hen Island

Continued from page 1

wonderful place."

Contesting claims of a mosquito infestation was the court's ruling that "the failure to abate the mosquito population at Hen Island is not a violation of the Westchester County Sanitary Code." The court also took into consideration an August report from the county's health department which found no evidence of species of mosquito carrying the West Nile Virus on the island. The board's reasoning behind prohibiting spraying on the island is that the area is tidal wetlands thus making illegal to spray pesticides, according to Ederer. "The Board of Directors did not want spraying," he explained. "It's a wetlands area; that was our reason for turning down his request to spray and that is what started this whole suit. We don't want to pollute the sound." The area in question had been previously

viewed by Rye's Building Department, the county and their environmental police over the course of last year.

"Both my client and I are extremely disappointed not only in the decision but the content of the decision and reasoning of the court," Attorney Steven Gaines, who represents Tartaglione, said. "The decision relies solely on content of two hearsay letters which were a violation of the judge's own rules which is indeed regrettable."

Gaines argues that he and his client did not have an opportunity to respond to two letters submitted by the attorneys for the defendants [Kudor Island Colony Inc.]. The attorney also claims that those submissions came after a court imposed submission deadline had elapsed. In light of that, Gaines has already filed a notice of appeal and is "confident that the court's ruling is going to be overturned for substantive reasons, it was wrong," he says, "and for procedural reasons."

January 30, 2008

Court rules Hen Island waste system is adequate

Theresa Juva
The Journal News

RYE - A state Supreme Court justice ruled that the waste-removal system on Hen Island, 26 acres of privately owned land dotted with summer cottages near Rye's Milton Harbor, is not in violation of the county's sanitation code, according to court documents released yesterday.

In a suit filed in state Supreme Court in White Plains in August, Raymond Tartaglione, a shareholder of Kuder Colony Inc., accused the 33 other owners of failing to properly dispose of waste.

The lawsuit depicted the island as a place with an archaic waste-removal system that allowed sewage to seep into Long Island Sound. Tartaglione also claimed that trash disposal was inadequate, questioned the safety of using storm-drain water for showering and washing dishes, and criticized the board's ban on insecticides to combat mosquitoes.

Justice Orazio R. Bellantoni referred to letters from a county environmental health inspector, which stated that examinations of the island determined the septic systems showed no signs of failure.

"The present system is adequate, given the soil on the island, the use of the island for only part of the year, the limited number of islanders actually occupying it and the brevity of their visits," Bellantoni wrote in his decision. Bellantoni also ruled that because county Health Department inspections concluded West Nile virus did not pose a threat to island residents, owners had a right to refuse insecticide spraying.

White Plains attorney Steven Gaines represents Raymond Tartaglione and said he was "very disappointed" with the decision.

"The decision was based upon documents that we were not provided an opportunity to respond to," he said, explaining that letters from the environmental health commissioner were submitted to the justice after the evidence deadline at the beginning of August.

He said he plans to appeal the decision.

Benjamin Minard, president of the board of directors of Kuder Island Colony Inc., said the decision was a victory.

"As far as I'm concerned, we took an important step by the Supreme Court of New York agreeing with us," he said. "I would have preferred not to be in a lawsuit, but we do what is necessary to protect the island and the rights of the shareholders."

Minard said that Tartaglione's removal from the board may have triggered the suit and that the suit has damaged Hen Island's image.

"He's a disgruntled shareholder. He is an angry man," Minard said. "I've been on the island for 60 years, and we've never had a problem. We are good neighbors to the people in Rye and Greenhaven."