

6/29/2021

NORFOLK, ss.

SUPERIOR COURT DEPT.  
C.A. NO.

2182cv00603

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E STREET LLC

*Plaintiff*

v.

TOWN OF BRAINTREE, MAYOR CHARLES C.  
KOKOROS, INDIVIDUALLY, and MAYOR  
CHARLES C. KOKOROS, TRUSTEE OF  
PETERSEN TRUST

*Defendants*

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**AFFIDAVIT OF PAUL COKINOS**

I, Paul Cokinos state on oath as follows:

1. I have personal knowledge of the facts set forth in this affidavit unless I assert a fact upon information and belief.

2. I am the managing member of E Street LLC, a Massachusetts limited liability company and plaintiff in the above-captioned action.

3. I have a background in engineering, particularly in refrigeration which led me into the development of ice arenas. I currently own and operate Boch Ice Center in Dedham, a complex for which I oversaw development and construction.

4. I also developed and built the Bavis Arena in Rockland, the Canton Sportsplex in Canton, the Falmouth Ice Arena in Falmouth, and the Stow Vermont Ice Arena.

5. I have acted as consultant in many other similar projects. I have been connected to hockey as a player, coach and, for many years to the present, I have been operating a large youth hockey program out of Boch Ice Center.

6. In the summer of 2019, I became aware of an opportunity to take over a faltering development project of an ice arena and pool complex in Braintree.

Background Regarding the Petersen Pool

7. When doing due diligence concerning the project, I learned the following history:

8. On November 28, 1963, a Braintree resident named Captain August J. Petersen died testate in Braintree, MA.

9. Captain Petersen, through his will, bequeathed a portion of his estate, approximately \$65,000, to be held in a trust named The Petersen Memorial Pool Trust (the “Petersen Trust”) with income accumulating until sufficient to help fund a pool complex for the Town of Braintree.

10. In 1964 at its Annual Town Meeting, the Town of Braintree voted to accept Captain Petersen’s bequest.

11. As a result of a *cy pres* complaint filed by the Town of Braintree in Norfolk Probate Court, a judgment entered granting the mayor of Braintree the authority to oversee the construction of the pool intended by Captain Petersen.

12. By June 20, 2013, the Petersen Trust had accumulated at least \$1,500,000 from the original gift made by Captain Petersen. Some reports indicate the Trust corpus grew to over \$2,100,000.

13. The Town of Braintree proposed construction of a recreational facility that would include ice rinks and a swimming pool.

14. To facilitate the transition to a sports complex, it appears from public records that the Town sought approval by the Legislature (General Court) for a home rule petition for a design/build ice arena and swimming pool, which would be exempt from a fair bidding process.

The approval can be found in Chapter 151 of the Acts of 2011.

15. In 2015, Braintree Mayor Sullivan issued a Request for Proposals (“RFP”) from privately funding Developers to develop a sports complex which would feature both an ice arena and pool complex.

16. In the RFP, Developers would agree to fund the project privately in exchange for the right to manage the operations.

17. The Town committed to fund \$1,500,000 from the Petersen Trust.

18. The Town also agreed to supply a parcel of land of approximately 6 acres on the grounds of Braintree High School whereupon it would act as a co-developer of the project.

19. I also learned that the Petersen Trust called for the formation of a committee to oversee construction of the pool project. On information and belief, to date, no committee has been formed and Mayor Kokoros, with respect to the Petersen Pool project, acts without oversight.

The Town’s Agreements with Developer No. 1

20. I further came to learn that as a result of the RFP, the Town entered into a Lease and Developments Components Agreement dated April 15, 2015 (the “Development Agreement”) with 5 Capital Management of 52 Hope Street, North Attleboro and BSC Partners LLC of 1395 A Commerce Way, Attleboro, MA. 5 Capital Management and BSC Partners LLC will be referred herein collectively as “Developer 1.”

21. The Town and Developer 1 executed a Ground Lease dated February 28, 2018 (the “Ground Lease”) at which point, Developer 1 began seeking permits to construct the rink and pool. One such permit included was a stormwater discharge permit.

22. The Ground Lease has a term of fifty (50) years.

23. The Construction Agreement entered into by Developer 1 set forth certain

milestones for permitting and construction. It appears some of the permitting milestones were met and the Town of Braintree reimbursed Developer 1 for certain development and permitting-related expenses.

24. However, on information and belief, Developer 1 did not timely begin construction of the project pursuant to the milestones set forth in the Ground Lease and Construction Agreement.

25. Accordingly, in April 2019, the Town declared a default under its agreement with Developer 1.

26. The Town and Developer 1 then sought to assign the development rights to a successor developer.

27. For its initial permitting efforts, the Town approved payments to Developer 1 of over \$1,000,000 of the funds from the Trust, but curiously, a substantial portion was in payment of a development fee and construction management fee. In my experience as a developer, it is unusual and quite unconventional to pay over to a developer a large percentage of a development fee during permitting and at the same time pay to the same entity a construction management fee prior to construction commencing. I could envision a developer receiving fees for actual out of pocket costs and perhaps a small fee for the time spent on permitting but, in this project, in my estimation, it would not have exceeded \$350,000.

#### E Street Takes Over as Developer 2

28. E Street negotiated a take-out of Developer 1 culminating in several agreements in August through September of 2019 which, in effect, modified the original agreements between the Town of Braintree and Developer 1.

29. Specifically, E Street (“Developer 2”) and the Town of Braintree entered into (1) a

Ground Lease Modification Agreement dated September 26, 2019 (the “Modification Agreement”); and (2) a Lease Development Agreement Components Modification Agreement. In addition, Developer 1, E Street, and the Town of Braintree entered into an Assignment and Assumption Agreement (“Assignment Agreement”).

30. In the Modification Agreement, while the original Ground Lease was to remain in full force and effect, certain language changes were made to reflect new timelines. One such change was in defining construction completion timelines.

31. The Modification Agreement redefined the completion date for the project to be not later than 15 months from the project start date, defined as “the latest date beyond applicable appeal periods of the required permits unless extended pursuant to Section 3.1(b)(Original Ground Lease) due to the occurrence of an Unavoidable Delay or for other reasons described in this Ground Lease.”

32. As a result of these agreements, Developer 2 acquired real property rights being holder of a 50-year lease with extension rights. Developer 2 also acquired the right to erect a sports complex it would be able to operate at a profit.

33. Developer 2 diligently performed the customary tasks to keep the project progressing to the next phase.

34. Developer 2 also worked to secure a pre-committee approval letter from a bank as this was a requirement under the Lease. Developer 2 had a previous relationship with Main Street Bank, which had a mortgage on Boch Ice Center, and in the fall of 2019, received a written pre-committee commitment to fund the project. The letter was timely delivered to the Town, which receipt has been has acknowledged.

35. Despite receiving a preapproval letter, I as the main source of equity for Developer

2, elected to self-fund the early development costs out of my own resources. I believed that by self-funding the early stages, Developer 2 could move more quickly. Having reviewed Developer 1's plans, I anticipated the need to make one or more amendments to Developer 1's design which was, in some respects, not economical or efficient.

#### Events Causing Unavoidable Delays

36. Despite its diligence, Developer 2 experienced events beyond its control in 2020 that caused Unavoidable Delays which, in turn, automatically extended the construction completion deadline for the period of Unavoidable Delays as set forth in the Ground Lease, as modified.

37. The Unavoidable Delays related to (1) the COVID-19 pandemic; and (2) necessary modifications to the stormwater management system and site elevations.

38. In March 2020, Gov. Baker declared a Public Health Emergency due to the outbreak of a worldwide pandemic, COVID-19. As a result of said Orders and Directives, Developer 2 was forced to stop work indefinitely. The Pandemic caused an Unavoidable Delay as that term is defined in the Ground Lease, Section 3, the effect of which was to automatically extend the construction completion date for the period in which construction could not occur.

39. More specifically, Unavoidable Delays as set forth in the Ground Lease:

“shall include but not be limited to delay, obstruction or interference resulting from: (i) an act of god, landslide, lightning, earthquake, fire, explosion, flood, sabotage or similar occurrence, acts of a public enemy, war, blockage, or insurrection, riot or civil disturbance; (ii) any legal proceeding commenced by any party seeking judicial review of this Agreement, or any government approvals, or any restraint of law, (e.g. Injunction, court or administrative orders, or moratorium imposed by a court, or administrative or governmental authority; (iii) the failure of any utility or governmental entity required by law to provide and maintain utilities, services, water, and sewer lines and power transmission lines to the premises, which are required for the construction of the project or for other obligations of the Tenant; (iv) any unexpected or unforeseen subsurface condition at the construction site inconsistent with

typical background conditions of a similar site, which shall prevent construction, or require a material redesign or change in the construction of, or materially adversely affect the completion schedule for , the project, such determination to be made by a qualified engineer; (v) any unexpected or unforeseen subsurface environmental conditions on or from or otherwise affecting the Premises but not reasonably identifiable by visual inspection and which originated from the premises; (vi) strikes, work stoppages, or other substantial labor disputes; (vii) the failure or inability of any subcontractor or supplier to furnish supplies or services if such failure or inability is itself caused by an Unavoidable Delay and/or could not have been reasonably prevented and the affected party cannot reasonably obtain substitutes therefore; (viii) a change in Tenant Financing which could not have been reasonably anticipated by Tenant; or (ix) any unreasonable delay which is caused or created by a board or officer of the Town from whom a Required Permit (as defined in Section 3.3 ) is sought, provided that the Tenant shall have timely complied with the reasonable requests and requirements of any governmental authority. The time or times for performance under this Agreement shall be extended for the period of the Unavoidable Delay, and in calculating the length of the unavoidable Delay, there shall be considered not only actual work stoppages but, also, any consequential delays resulting from such stoppages as well. “Unavoidable Delay shall mean any delay, obstruction, or interference resulting from any act or event whether affecting the project or the premises, which has a material adverse effect on the Tenant’s rights, or duties, provided that such act or event is beyond the reasonable control of the Tenant after pursuing all diligent efforts to remedy the delaying condition in an expedient and efficient manner and was not separately or concurrently caused by any negligence or willful act or omission of the Tenant or could not have prevented by reasonable actions on the Tenant’s part.”

40. There is no dispute that the COVID-19 pandemic triggered an Unavoidable Delay of the construction of the project for the period that construction was shut down due to Governor Baker’s Orders.

41. One of the first steps Developer 2 undertook when it assumed development rights was to ask for design amendments which it received approval for in the fall of 2019.

42. Having worked diligently to redesign the building, in the late fall of 2019, Developer 2 received permission from the Conservation Commission to install erosion controls and start initial site preparation. In the middle of February 2020, with the site having been prepared with erosion controls, tree cutting, and safety fencing, site work commenced.

43. Developer 2 intended to utilize the permits already received by Developer 1 but anticipated that some would need modification as the project proceeded. One such permit which became an issue later in the development was the stormwater management system design and approval. The engineer who had designed the Stormwater Management and Drainage Plan as approved with the Town, depicted a piping system which was calculated to deliver water runoff to and into a nearby swamp. I had concerns about the design being inadequate in large measure because, in my experience, a building the size of this sports complex would discharge a large volume of water during a heavy rain and this particular parcel had few areas in which to channel stormwater. I could not substantiate my concerns however, until I was able to see how the site absorbed water during a period of heavy rain.

44. In early April of 2020, heavy rains caused extreme flooding to the site whereupon it became very apparent that the stormwater drainage design, which called for installation of an 18-inch pipe and use of tanks to divert water to the swamp, was wholly deficient and would need to be reworked.

45. Site work had to stop in April 2020 due to the drainage problems and could not resume until the stormwater drainage design was re-engineered and approvals of the new design were obtained by all applicable government authorities. Approvals were needed from Braintree Planning Board and Braintree Conservation Commission.

46. The requirement to seek a new stormwater discharge permit triggered an Unavoidable Delay under the Ground Lease which automatically extended the 15-month construction timeline in the lease modification agreement.

47. In connection with the redesign of the stormwater management system, Developer 2 engaged a site contractor to dig test pits in many locations on the site to establish the correct

water table height. The testing revealed that the water table was much higher than what was previously reported by Developer 1's engineer.

48. Developer 2 determined that not only would the system have to be totally redesigned to have greater capacity but also the surface area would have to be lifted (in-filled) up to five feet.

49. Developer 2 filed an application for a new stormwater drainage plan in summer 2020.

50. In between the application and approval of the new stormwater plans, the Town held hearings concerning the need to switch to a new stormwater design. The Town subjected Developer 2's engineer's plan to a peer review study. Upon approval of the new stormwater discharge design, Developer 2 was required to seek and receive approval by the Conservation Commission to restart site work under new conditions.

51. After the Town approved a new stormwater discharge permit, the Conservation Commission heard the parties and issued new Orders of Conditions in the last week of March 2021.

52. Thus, the new plan was not finally approved such that site work could resume until late March of 2021, when the Braintree Conservation Commission signed off.

53. Within five days of the final approval, Developer 2 restarted site work.

54. Because of the previous engineer's miscalculation regarding the water table height, the site had to be lifted five feet.

55. The effect of raising the site is significant. Not only did site costs increase significantly, but also the foundation design could not be drawn until the new site surface dimensions were set, which in turn would determine the new depths of footings.

56. As a result, the change in site conditions caused a delay in seeking the building permit.

57. In a design/build project such as this one, the first step in obtaining the building permit is obtaining a foundation permit.

58. The design of a foundation had to be delayed until footing depths could be established, only after the site surface lifting work was substantially completed.

59. The site lifting work required mobilization of many hundreds of truckloads per day of fill, moving the fill in place and building retention basins. This undertaking took place between April 2021 and the present, and it delayed permit applications for 8-12 weeks.

60. In terms of funding the new site work, I on behalf of Developer 2 decided to continue to self-fund the more expensive site work until I could better understand how the new stormwater system would perform in a heavy rain.

61. In my mind, if the newly constructed stormwater drainage system did not divert water adequately during a heavy rain, it would undermine confidence the bank would have underwriting a loan to Developer 2 as more modifications to the plan would be necessary. The site has limited capacity to direct water because there is upland on three sides.

62. I, on behalf of Developer 2, have spent or incurred approximately \$1,200,000 between the time site work resumed and the current date. To date, the site has been lifted to the appropriate height, the catch basins were constructed, and the drainage has been partially installed.

#### The Town Issues a Notice of Default

63. On or about April 16, 2021, the Town, through its Town Solicitor, Nicole Taub, sent a Notice of Default alleging Developer 2 had defaulted by failing to meet previously established construction milestones.

64. The April 16, 2021, notice alleged Developer 2 failed to provide “proof of financing necessary to proceed with the project, payment of outstanding balances for work performed, the pursuit of required permits to commence construction and the production of construction and architectural plans necessary to obtain the same”.

65. Mayor Kokoros further alleged that “a substantial amount of time has passed without significant progress towards the construction of the facility.”

66. This statement was obviously false or misinformed as Developer 2 had made substantial progress in the face of the COVID-19 pandemic and the inherited problems resulting from Developer 1’s engineering and planning.

67. With regard to financing, the Town alleged that Developer 2 had failed to obtain a financing commitment and submit proof to the Town by December 24, 2019. This allegation was provably false, as Developer 2 had submitted written documentation to City Solicitor Taub within 60 days of signing the Ground Lease Modification. In fact, in the month preceding the April 16 Notice of Default, City Solicitor Taub had asked Developer 2 for an update regarding financing and Developer 2 responded to that request.

68. The allegation that Developer 2 failed to obtain a financing commitment is misleading, as Developer 2 had been self-funding the work that had been done to date and was prepared to continue self-funding until the project was in a position to be presented to a lender for financing. Notably, most of the work that Developer 2 was self-funding was work required to correct the mistakes of Developer 1 such as raising the site and the redesign of the stormwater discharge system and related permitting.

69. With regard to “payment of outstanding balances for work performed,” this referred to two subcontractors who had claims for payment.

70. Developer 2 had an issue with Carney Environmental (“Carney”), the original site contractor. Carney began taking the reusable loam off the top layer of soil. Carney removed over 14,000 yards from the site and, upon information and belief, processed it and sold it as loam at a profit. Carney did not have authority to do that and as a result, Developer 2 is entitled to a set-off against Carney’s invoice.

71. Metro Equipment Corp. (“Metro”) was hired to install a long-line drainage system consisting of two 18-inch pipes as well as tanks with manholes. Metro installed pipes incorrectly, causing silt to wash into the nearby swamp which triggered an EPA investigation. Developer 2 was ordered to correct the deficiencies and seeks a set off for the costs resulting from Metro’s errors.

72. The Ground Lease does not have default provisions for failure to pay a disputed invoice but does have a procedure that obligates the developer to ensure that any disputed bills do not result in a mechanics lien or other lien against Town land. To date, there are no legal claims that have been initiated against E Street and thus no liens on Town land. There is no provision in the Ground Lease that gives the Town the right to default Developer 2 because contractors are seeking payment of disputed invoices. Regardless, Developer 2 is negotiating to resolve their payment claims and set offs.

73. With regard to “pursuit of required permits to commence construction,” when the stormwater discharge permit had to be rescinded and reissued as a result of the redesign of the system, this automatically extended the timeline for obtaining permits, the first of which is the foundation permit.

74. With regard to “the production of construction and architectural plans,” the delay resulting from raising the site and the redesign of the stormwater discharge system necessarily

delayed production of construction plans as the site levels had to be established before the plan could be completed.

75. Accordingly, the Town's notice of default was unsupportable and there is no factual or legal basis for the Town lawfully terminating Developer 2's contracts.

76. Upon receiving the default notice, knowing that I had not failed on behalf of Developer 2 to meet milestones indicated in the Ground Lease, I reviewed the Ground Lease to determine what rights I had to get Mayor Kokoros to withdraw the default notice.

77. In the lease under Section 16.20: Dispute Resolution, it states, "All claims, disputes, and other matters in question between the Town and the Tenant arising out of or relating to this Ground Lease or the breach thereof, shall be submitted for resolution to a court of competent jurisdiction in Norfolk County, Massachusetts, unless otherwise agreed to by the parties. Notwithstanding the forgoing, the parties agree to negotiate in good faith any claims, disputes, or other matters, in question during the term of this Ground Lease before resorting to such litigation."

78. I caused my attorney to seek a dispute resolution meeting so we could attempt to resolve the dispute regarding the default notice prior to the Town's stated deadline.

79. In the Town's Notice, it states that as of May 16, 2021, if Developer 2 did not cure the alleged defaults, the lease would terminate and "all tenant improvements and any design, engineering, architectural, and other plans relating to the facility shall immediately vest in the Town and shall be surrendered." The result of such a surrender would be the Town receiving the benefit of over one million dollars' worth of work and improvements that Developer 2 has invested in the project.

80. My attorney made several attempts to reach out to Town Solicitor Nicole Taub to schedule a meeting to discuss the Default Notice. Many of the attempts to communicate with the

Town were unsuccessful as the Town was not responding.

81. Finally, attorney Taub agreed that we could meet with Mayor Kokoros on Monday May 10, 2021 and we had the meeting at the office of Mayor Kokoros. At the meeting between attorney Kelley, me, Mayor Kokoros, and Town Solicitor Taub, Mayor Kokoros expressed frustration with the fact that the public had no confidence that a sports complex would be built and that he was frustrated that a building permit showing the building had yet to be filed.

82. While both parties reserved their rights with regard to the alleged April 16, 2021, Notice of Default, we discussed the changes in circumstances due to the COVID-19 pandemic, the need to redesign the stormwater drainage plan, and the need to raise the site as a result of the water table.

83. Attorney Kelley and I explained that a building permit could not be sought until the site was lifted the full five feet as, only then would we be able to apply for the foundation permit. In this design-build project, this would be the only permit required at first.

84. Attorney Kelley and I made it clear that we disputed Mayor Kokoros' notice of default position, believed it to be in bad faith, and were prepared to go to court to seek a preliminary injunction to stop his arbitrary actions. Mayor Kokoros expressed interest in resolving the matter in a way that would avoid litigation.

85. We were willing to work with the Town and establish some milestones to show progress with the construction.

86. Mayor Kokoros insisted that I be capable of showing the public a building they could see, at least in plan form. Mayor Kokoros seemed more focused on how things appeared to third parties as opposed to what was actually happening with the project.

87. I believed the time frame was tight but on behalf of Developer 2 agreed to meet the

milestone target of June 15, 2021, for completing the lifting of the site, having a foundation permit filed and enough of a full building plan as to show a building even if modifications to it would be needed.

88. Mayor Kokoros then turned his attention to the default notice and said he wanted us to cure the items alleged by June 15 as well. Attorney Kelley and I stated that we disputed his allegation of breaches of the Ground Lease and we were instead prepared to litigate them in court.

89. Having reserved Developer 2's rights to litigate the issue of the default allegations and cure demands, we agreed to attempt to obtain bank financing approval for Developer 2. We agreed to show a good faith effort in resolving any issues with creditors. We discussed and both parties understood that due to the slow bank underwriting process, I would seek financing by June 15, 2021, and update Mayor Kokoros' office on the progress with any outstanding invoices. Attorney Kelley made it clear that the process to obtain financing was complicated by the changes to the work and the increasing costs resulting from the COVID-19 pandemic.

90. The meeting ended on a good note. I knew that to meet the milestones and get a full building design completed and a foundation permit completed would be a large undertaking in the brief time Developer 2 had committed to do it. I immediately went to work to complete the milestones so Mayor Kokoros could have something to display to his constituents.

91. As a result of the meeting, I caused the site contractor to work diligently to continue to raise the surface the five feet so my foundation designer could finish design work and get the foundation application filed by June 15. I caused my architect to finish steel drawings and lay out the building in sufficient detail to be capable to present to the Townspeople of Braintree a 3D depiction of the outside and inside of the building. I spent over \$400,000 in additional self-funding between May 10, 2021, when we left Mayor Kokoros' office and the present date.

92. On May 18, 2021, attorney Taub sent an email to my attorney stating: “Paul was supposed to provide the pre-committee letter by May 17, 2021. No such letter has been received and instead Paul indicated that he was partnering with Brian xxxx” (name withheld).” She went on to state “Please provide an update of the financing commitment as previously agreed.”

93. On May 24<sup>th</sup>, 2021, my Attorney responded to the email stating as follows: “I spoke to Paul”: “E Street has continued to work the site and Paul continues to self-fund. He worked with Main Street bank to obtain a funding commitment, but the issue is material costs have gone up so much that the deal can no longer be underwritten based on the assumptions about hockey and other programs fees. Also, in order to redo the pool revenue projections Paul will need to get with a pool company which is coming out of covid to ensure that price escalations can be absorbed by customers as Paul does not know that business. To mitigate against the cost escalations Paul proposed that he partner that Developed rinks in other markets the benefits being to give Paul a comfort level in the amount of equity he needs to invest in case the cost escalations force the investors to have to infuse more cash into the deal. So for timing, Paul will continue to finish the site prep for foundations and storm water. He will have the foundation and enough of a draft architectural to display a building. Paul will self-fund these expenses. However, he will need additional time to redo a proforma operation budget that will be used and compared with building cost budget that will surely be at least 30 percent higher than expected. The additional partner will bring strength to the lender side. I envision a preapproval letter by the deadline of the 15<sup>th</sup> with committee approval by the end of July”.

94. Mayor Kokoros never responded to the update.

95. On June 14, 2021, Town attorney Taub wrote, “as you know the agreement expires tomorrow please update on the status.” The same day my attorney replied: “Paul is filing the

foundation permit and enough of the building permit as was required in the agreement by tomorrow. Given the rise in building costs the project has gone up 5 million. Paul needs additional time to address this with the bank. He intends to take on a partner but needs time to finalize. He will show the town that he is investing another million of his own money to get through foundations so there is no risk of a gap in construction time. Lets see what your response is to the drawings then we can discuss next steps.”

96. Mayor Kokoros never responded to my attorney’s email.

97. On June 15, 2021, as promised, I met the milestone whereupon I caused to be filed, with the Building Inspector for the City of Braintree, an application for a foundation permit, the design and dimensions of which were laid out by a professional who knows how to do so compliantly. Based on my experiences having built or consulted on many ice arenas, the foundation drawings were adequate to be awarded a foundation permit or the modifications, if any, would be minimal.

98. On June 15, 2021, as promised, I met the milestone whereupon I caused to be filed with the application for a foundation permit a full lay out of the proposed building in sufficient detail to be capable to present a 3D depiction of the outside and inside of the building. I knew that the design and dimensions of the building were laid out by a professional architect who knows how to do so compliantly. Based on my experiences having built or consulted on many ice arenas, the plan depicting the building was in sufficient detail to meet Mayor Kokoros’ expectations that he be able to display basically what the finished project would look like.

99. In a separate email, I informed the Town’s attorney that I had made several attempts to resolve the claims Developer 2 had with contractors who worked the site and that, for one vendor, a written offer to settle was made.

100. On June 15, 2021, as promised in the May 24 email my attorney sent to the Town, I caused to be filed a pre-approval bank commitment from the Main Street Bank with expectation that I could receive final committee level approval by the end of July as set out in the May 24 email.

101. Despite meeting the milestones and Mayor Kokoros' requests to cure the alleged defaults we disputed ever existed, Mayor Kokoros decided to issue a press release that stated in effect he was throwing me off the site and terminating the lease.

102. On or about June 16, 2021, I began receiving calls from people asking if it was true that my involvement in the project was to be terminated. I had to search the internet and find that there was press coverage saying that I was being thrown off the site, but no notice was received that day by me or my attorney.

103. On June 17, 2021, my attorney received a notice that the Town was terminating the lease. It was alleged in the notice that as grounds: we "identified significant numerous deficiencies in both the plans, which are wholly insufficient to support the issuance of a foundation or structural frame permit and in the letter that purports to be indicative of a financing commitment sufficient to commence and complete construction."

104. Surprised to learn that the plans were being dubbed as wholly deficient, I immediately sent the Building Inspector the steel drawings as it was mentioned that those were missing. No one, even the Building Inspector, said they needed to be filed with the Foundation Permit application.

105. I instructed my attorney to respond to the Town attorney that we needed to discuss the issues with the Building Inspector before we could be in a position to address Mayor Kokoros' allegations.

106. I have personal knowledge that my attorney informed Town attorney Crystal Huff that I needed to discuss her allegations that the plans were deficient with the Building Inspector before we could respond to the latest accusations that Mayor Kokoros had good legal grounds to terminate the Ground Lease.

107. I have made numerous attempts to call the Building Inspector and to email him as well asking for an explanation concerning Mayor Kokoros' termination notice. I have received no communication from the Building Inspector in response.

108. On June 21, 2021, Mayor Kokoros caused a written Stop Work Order to be posted at the site. When Developer 2's site superintendent inquired if he could discuss the matter with Town officials, most notably the building inspector, he was informed that Mayor Kokoros has informed all town officials that they are not to discuss the Petersen Pool project with Cokinos or his team.

109. Upon information and belief, Mayor Kokoros has harbored an intent to close down the project in response to a petition that was sent to the Massachusetts Attorney General by a group identified as the "Petersen Pool Advocates." Specifically, these advocates brought to the attention of the Attorney General the apparent mismanagement of funds during the dealings with Developer 1.

110. I have diligently pursued this project despite being slowed by a worldwide pandemic and extensive flooding which forced Developer 2 to refile for a new stormwater system, I have met all milestones.

111. The only construction deadline set out in the Ground Lease and construction components agreement is a construction completion date of 15 months after all permits are obtained. With automatic extensions issued in the Ground Lease for events constituting

Unavoidable Delays, at the earliest, the date the foundation permit was filed would have signified the date the clock would have started running on the 15 months. However, because the Town issued a Stop Work Order, it has created another Unavoidable Delay.

112. I stand ready, willing, and able to obtain funding to complete the project. I have the experience building ice arenas. I have enough personal funds to proceed with at least a million dollars in additional construction work. I know how to build and operate ice arenas to raise additional equity from outside investors if needed to complete a capital stack of debt and equity and complete the project.

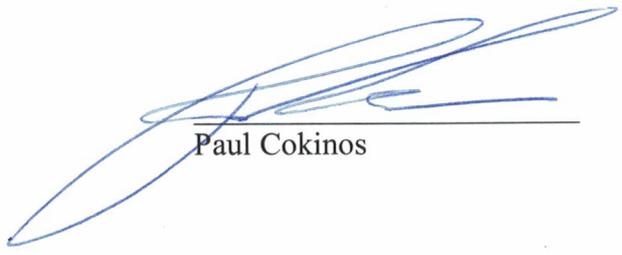
113. While building material costs will continue to be an issue, I have caused new revenue assumptions to be built into a pro-forma budget and I have confidence that the spending public will absorb the new building costs in the ice and pool fees.

114. If Mayor Kokoros gets his wish to shut down this project, ostensibly to stop the Attorney General from asking questions about mismanagement issues, Developer 2 will be out over \$1,200,000, will be deprived of an interest in real property which rights include a 50-year lease which can be extended, plus the rights to profits from operating a sports complex. This is harm that is irreparable.

115. If Mayor Kokoros gets his wish to enforce the termination of the project, then immediately, it will cause irreparable harm to the Town and to the project because with unfinished drainage as is the case currently, water runoff is expected to begin washing away the surfaces until the site becomes unrecognizable. The water and soil runoff are likely to spill onto the nearby parking facilities of the Braintree High School.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY ON THE DATE SET FORTH BELOW.

Dated: 6/30/2021

  
\_\_\_\_\_  
Paul Cokinos