

# SHAPIRO GETTINGER WALDINGER & MONTELEONE, LLP



JOHN H. GETTINGER ▽  
STEVEN E. WALDINGER ○  
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HEATHER R. GUSHUE △  
KAREN TOBIAS ○

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MONA D. SHAPIRO  
CHRISTOPHER DU P. ROOSEVELT  
COUNSEL

▽ Also Admitted in California  
○ Also Admitted in Connecticut  
△ Also Admitted in Florida

**VIA EMAIL**  
**AND OVERNIGHT MAIL**

October 3, 2022

Loretta Taylor, Chairperson, and  
Members of the Planning Board  
Town of Cortlandt  
1 Heady Street  
Cortlandt Manor, NY 10567  
[chrisk@townofcortlandt.com](mailto:chrisk@townofcortlandt.com)

Re: PB 2022-3 Application of James Connolly for Preliminary & Final Subdivision approval for a 2-lot minor subdivision of an approximately 1.49-acre parcel of property located at 49 Dutch Street and designated on the Town of Cortlandt Tax Maps as Section 54.12, Block 4, Lot 22 (the "Property").

Dear Chairperson Taylor and Members of the Planning Board:

We represent the applicant, James Connolly. This letter serves as Mr. Connolly's response to questions raised by the Planning Board, during a public hearing held on September 6, 2022, as well as a response to issues raised in a letter, dated September 23, 2022, from Gabriel E. Senor, P.C., an engineer retained by Mr. Connolly's neighbors.<sup>1</sup>

Mr. Connolly's neighbors have challenged his application since March 2022 based solely on their desire to restrict Mr. Connolly from accessing Sycamore Court although he has a legal right of access and to connect to a water main located on the roadway. Mr. Connolly requests that the Planning Board close the public hearing and approve his application after he has spent months demonstrating that the neighbors' challenges to his application are devoid of merit.

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<sup>1</sup> The neighbors are (a) Brian and Stacey Retalick, 5 Sycamore Court (Lot 24); (b) Gregory and Cynthia Martin (1 Sycamore Court (Lot 25); (c) Richard and Theresa Motko, 2 Sycamore Court (Lot 23); and (d) Jason and Therese Sinks, 7 Sycamore Court.

## **1. Ownership and Use of Sycamore Court.**

Mr. Connolly has satisfied all concerns raised by the Town and his neighbors concerning his ability to subdivide the Property and his rights of access to Sycamore Court.<sup>2</sup> The only outstanding item requested by the Town during the September 6, 2022 public hearing is proof from the owners of Sycamore Court that they consent to Mr. Connolly's proposed connection to the water main located within the roadway.

As explained in our letters, dated June 20, 2022 and August 24, 2022, Mr. Connolly obtained title reports from two separate Title Companies. These reports concluded that the "heirs at law of Edward J. McManus or the subsequent heirs at law of the original distributees" are the fee owners of Sycamore Court.

Mr. Connolly obtained affidavits from Mr. McManus's heirs<sup>3</sup> providing their consent and approval for Mr. Connolly to utilize Sycamore Court, together with rights of unhindered ingress and egress, to install infrastructure within Sycamore Court for the purpose of accessing a water main located on Sycamore Court and to modify the existing drainage infrastructure located on Sycamore Court and/or to install a new drainage infrastructure located on Sycamore Court. Copies of the Affidavits from Mr. McManus's heirs are collectively annexed as **Exhibit A**.

Accordingly, Mr. Connolly has provided sufficient proof that the owners of Sycamore Court approve his planned connection to the water main located on the roadway and respectfully requests that the Planning Board provide approval of the subdivision.

## **2. Local Law No. 5 and Access off McManus Road.**

Mr. Connolly is in agreement with Mr. Cunningham's interpretation of *Section Five – Standards of Local Law 5* that McManus Road would need to be improved if the Planning Board were to require Mr. Connolly to access Dutch Street from McManus Road rather than using Sycamore Court. However, requiring Mr. Connolly to improve McManus Road as a condition of providing approval would be unreasonable as such requirement would substantially impact the environment as opposed to permitting Mr. Connolly to make minor changes to connect a proposed driveway to Sycamore Court, to which he has a legal right of access.

As explained by Mr. Connolly's engineer, Keith Staudohar of Cronin Engineering P.E., P.C. in his letter dated September 30, 2022, requiring Mr. Connolly to improve McManus Road to the standards of Sycamore Court would have significant negative impacts on the environment as compared to permitting Mr. Connolly to access Sycamore Court. Mr. Staudohar explains that 10

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<sup>2</sup> The neighbors previously submitted a letter from attorney Clifford Davis, Esq., arguing that Mr. Connolly did not have the right to access Sycamore Court pursuant to a Road Maintenance Agreement ("RMA"). However, Deputy Town Attorney, Michael J. Cunningham, Esq., in his memorandum dated August 29, 2022, concluded that the RMA is a "private agreement outside of the Planning Board's jurisdiction."

<sup>3</sup> The heirs of Mr. McManus are Mary McManus Sullivan, Nan Radzivila Downer, Richard Devir, Howard Pearlman, Eileen McManus Curinga, and J. Robert Radzivila.

trees would need to be removed to improve McManus Road as opposed to 3 trees for access to Sycamore Court. Additionally, there would be a 100% increase in land disturbance if the Planning Board required Mr. Connolly to improve McManus Road.

The Town Engineer, in his letter dated September 16, 2022, concurred with Mr. Staudohar and specifically provided what Mr. Connolly would need to do to modify McManus Road including, but not limited to, excavating the road, increasing the width of the road by a minimum of 20 feet, removing of eight to ten large diameter trees, and installing a “long water service” from Dutch Street to the proposed property.

The letter from the neighbor’s engineer did not address or contest the Town Attorney’s opinion that McManus Road would need to be improved, as required by Local Law No. 5. Nor did their engineer dispute the Town Engineer’s opinion that there would be a substantial environmental impact if the Planning Board required Mr. Connolly to improve McManus Road.

### **3. Drainage and Sight Concerns.**

The Planning Board requested that Mr. Connolly address two additional issues raised by his neighbors – potential drainage concerns from the proposed driveway to Sycamore Court and sight/visibility issues when entering Sycamore Court from the proposed driveway.

After the Town Engineer’s site inspection on September 15, 2022, he submitted his findings to the Planning Board. The Town Engineer provided stormwater calculations and concluded that the “increase in impervious area is negligible and the existing storm drainage system is sized adequately to handle it.” The Town Engineer concluded that Mr. Connolly should install a trench drain at the foot of the driveway, which has been added to revised plans submitted by Mr. Staudohar.

Moreover, Mr. Staudohar’s submission provides that there will be no sight distance issues from the right of the proposed driveway, and that any sight issues looking to the left will be mitigated by cutting and/or trimming weeds.

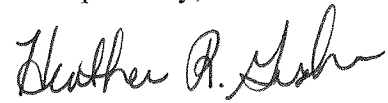
Mr. Staudohar addressed the remaining concerns raised by the neighbors’ engineer in his September 30, 2022 letter.

### **4. Conclusion.**

Mr. Connolly has met all the conditions needed for approval of his subdivision application pursuant to Chapter 264 of the Code of the Town of Cortlandt. The Planning Board cannot deny Mr. Connolly’s application solely based on “generalized community opposition.” *See Bower Assocs. v. Planning Bd.*, 289 A.D.2d 575, 575-576 (2d Dep’t 2001). Under these circumstances, any decision by the Planning Board to deny Mr. Connolly’s application would be arbitrary and capricious, and not supported by any evidence before the Planning Board. *See Matter of Bagga v. Stanco*, 90 A.D.3d 919, 921 (2d Dep’t 2011); *Bower Assocs.*, 289 A.D.2d at 575-576.

Accordingly, Mr. Connolly requests that the Planning Board close the public hearing and approve his application.

Respectfully,

A handwritten signature in black ink, appearing to read "Heather R. Gushue". The signature is written in a cursive style with a prominent loop at the end.

Heather R. Gushue

Enclosures

## EXHIBIT A

## AFFIDAVIT

MARY MCMANUS SULLIVAN, being duly sworn, deposes and says:

1. I submit this affidavit in support of the application of James Connolly for Preliminary & Final Subdivision approval for a 2-lot minor subdivision of property located at 49 Dutch Street, Montrose, New York 10548 (the "Application"). My mailing address is 55 East Pearson Street, #3304, Chicago, Illinois 60611.

2. I am an heir of Edward J. McManus. My father, Edward J. McManus, Jr., who is deceased, was the son of Edward J. McManus.

3. As an heir of Edward J. McManus, I am an owner of Sycamore Court f/k/a Radzivila Road located in the Town of Cortlandt, County of Westchester, State of New York along with the other living heirs of Edward J. McManus, who are Richard Devir, Nan Radzivila Downer, Jan R. Radzivila, Eileen McManus Curinga, and Howard Pearlman.

4. Upon information and belief, James Connolly is the owner of certain real property in the Town of Cortlandt, Westchester County, State of New York, acquired by deed dated September 11, 2007 and recorded on November 28, 2007 in the Westchester County Clerk's Office under Control Number 473240707 located at 49 Dutch Street, Montrose, New York 10548 and described therein as Section 54.12, Block 4, Lot 22 on the Tax Map of the Town of Cortlandt, New York (the "Subject Property").

5. I grant permission to James Connolly, his heirs or successors and assigns forever to permit the Subject Property to utilize Sycamore Court, together with the rights of unhindered ingress, egress, and access over, through and across Sycamore Court, as follows:

a. To install infrastructure within Sycamore Court for the purpose of accessing a water main located on Sycamore Court;

b. To modify the existing drainage infrastructure located on Sycamore Court and/or to install a new drainage infrastructure located on Sycamore Court; and

c. To make any and all modifications to Sycamore Court as needed to connect a new driveway from the Subject Property to Sycamore Court including, but not limited to, modifying the existing conditions on Sycamore Court to support said driveway.

6. I agree to execute any and all documents that the Town of Cortlandt may require in providing approval to James Connolly concerning the Application.

Mary McManus Sullivan  
Mary McManus Sullivan

STATE OF Illinois )  
COUNTY OF Cook ) SS.:

On the 22 day of Sept in the year 2022 before me, the undersigned, personally appeared Mary McManus Sullivan, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



Patricia Germino  
Notary Public

**AFFIDAVIT**

NAN RADZIVILA DOWNER, being duly sworn, deposes and says:

1. I submit this affidavit in support of the application of James Connolly for Preliminary & Final Subdivision approval for a 2-lot minor subdivision of property located at 49 Dutch Street, Montrose, New York 10548 (the "Application"). My mailing address is P.O. Box 647, Eastham, MA ~~01642~~ <sup>02642</sup> (NRD)

2. I am an heir of Edward J. McManus. My mother, Anne McManus Radzivila, who is deceased, was the daughter of Edward J. McManus.

3. As an heir of Edward J. McManus, I am an owner of Sycamore Court f/k/a Radzivila Road located in the Town of Cortlandt, County of Westchester, State of New York along with the other living heirs of Edward J. McManus, who are Richard Devir, Mary McManus Sullivan, Jan R. Radzivila, Eileen McManus Curinga, and Howard Pearlman.

4. Upon information and belief, James Connolly is the owner of certain real property in the Town of Cortlandt, Westchester County, State of New York, acquired by deed dated September 11, 2007 and recorded on November 28, 2007 in the Westchester County Clerk's Office under Control Number 473240707 located at 49 Dutch Street, Montrose, New York 10548 and described therein as Section 54.12, Block 4, Lot 22 on the Tax Map of the Town of Cortlandt, New York (the "Subject Property").

5. I grant permission to James Connolly, his heirs or successors and assigns forever to permit the Subject Property to utilize Sycamore Court, together with the rights of unhindered ingress, egress, and access over, through and across Sycamore Court, as follows:



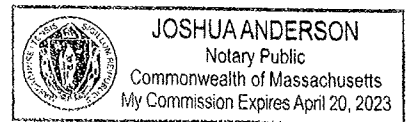
- a. To install infrastructure within Sycamore Court for the purpose of accessing a water main located on Sycamore Court;
  - b. To modify the existing drainage infrastructure located on Sycamore Court and/or to install a new drainage infrastructure located on Sycamore Court; and
  - c. To make any and all modifications to Sycamore Court as needed to connect a new driveway from the Subject Property to Sycamore Court including, but not limited to, modifying the existing conditions on Sycamore Court to support said driveway.
6. I agree to execute any and all documents that the Town of Cortlandt may require in providing approval to James Connolly concerning the Application.

*Nan Radzivila Downer*  
 Nan Radzivila Downer

STATE OF Massachusetts )  
 ) SS.:  
 COUNTY OF Barnstable )

On the 23<sup>rd</sup> day of September in the year 2017 before me, the undersigned, personally appeared Nan Radzivila Downer personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

*Josh Anderson*  
 Notary Public



**AFFIDAVIT**

RICHARD DEVIR, being duly sworn, deposes and says:

1. I submit this affidavit in support of the application of James Connolly for Preliminary & Final Subdivision approval for a 2-lot minor subdivision of property located at 49 Dutch Street, Montrose, New York 10548 (the "Application"). My mailing address is 3 Westerly Road, Apt. 420, Ossining, NY 10562.

2. I am an heir of Edward J. McManus. My mother, Elizabeth McManus Devir, who is deceased, was the daughter of Edward J. McManus.

3. As an heir of Edward J. McManus, I am an owner of Sycamore Court f/k/a Radzivila Road located in the Town of Cortlandt, County of Westchester, State of New York along with the other living heirs of Edward J. McManus, who are Mary McManus Sullivan, Nan Radzivila Downer, Jan R. Radzivila, Eileen McManus Curinga, and Howard Pearlman.

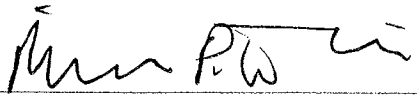
4. Upon information and belief, James Connolly is the owner of certain real property in the Town of Cortlandt, Westchester County, State of New York, acquired by deed dated September 11, 2007 and recorded on November 28, 2007 in the Westchester County Clerk's Office under Control Number 473240707 located at 49 Dutch Street, Montrose, New York 10548 and described therein as Section 54.12, Block 4, Lot 22 on the Tax Map of the Town of Cortlandt, New York (the "Subject Property").

5. I grant permission to James Connolly, his heirs or successors and assigns forever to permit the Subject Property to utilize Sycamore Court, together with the rights of unhindered ingress, egress, and access over, through and across Sycamore Court, as follows:

*[Faint, illegible text, possibly a signature or stamp]*

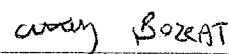
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- b. To modify the existing drainage infrastructure located on Sycamore Court and/or to install a new drainage infrastructure located on Sycamore Court; and
- c. To make any and all modifications to Sycamore Court as needed to connect a new driveway from the Subject Property to Sycamore Court including, but not limited to, modifying the existing conditions on Sycamore Court to support said driveway.

6. I agree to execute any and all documents that the Town of Cortlandt may require in providing approval to James Connolly concerning the Application.

  
 Richard Devir

STATE OF NEW YORK )  
 ) SS.:  
 COUNTY OF WESTCHESTER )

On the 22<sup>ND</sup> day of SEPTEMBER in the year 2022 before me, the undersigned, personally appeared RICHARD Devir, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
 Notary Public  
**Anthony Bozeat**  
 Notary Public of New York  
 I.D. 01B06417066  
 COMMISSION EXPIRES 05/03/2025

**AFFIDAVIT**

HOWARD PEARLMAN, being duly sworn, deposes and says:

1. I submit this affidavit in support of the application of James Connolly for Preliminary & Final Subdivision approval for a 2-lot minor subdivision of property located at 49 Dutch Street, Montrose, New York 10548 (the "Application"). My mailing address is 285 Furnace Dock Road, Cortlandt Manor, NY 10567.

2. I am an heir of Edward J. McManus. My late wife, Sheila McManus Pearlman, was the daughter of Robert P. McManus, who is deceased and was the son of Edward J. McManus.

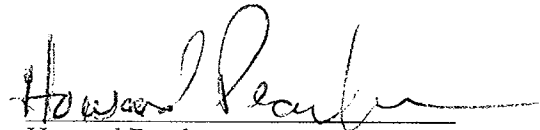
3. As an heir of Edward J. McManus, I am an owner of Sycamore Court f/k/a Radzivila Road located in the Town of Cortlandt, County of Westchester, State of New York along with the other living heirs of Edward J. McManus, who are Richard Devir, Nan Radzivila Downer, Jan R. Radzivila, Eileen McManus Curinga, and Mary McManus Sullivan.

4. Upon information and belief, James Connolly is the owner of certain real property in the Town of Cortlandt, Westchester County, State of New York, acquired by deed dated September 11, 2007 and recorded on November 28, 2007 in the Westchester County Clerk's Office under Control Number 473240707 located at 49 Dutch Street, Montrose, New York 10548 and described therein as Section 54.12, Block 4, Lot 22 on the Tax Map of the Town of Cortlandt, New York (the "Subject Property").

5. I grant permission to James Connolly, his heirs or successors and assigns forever to permit the Subject Property to utilize Sycamore Court, together with the rights of unhindered ingress, egress, and access over, through and across Sycamore Court, as follows:

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- c. To make any and all modifications to Sycamore Court as needed to connect a new driveway from the Subject Property to Sycamore Court including, but not limited to, modifying the existing conditions on Sycamore Court to support said driveway.


6. I agree to execute any and all documents that the Town of Cortlandt may require in providing approval to James Connolly concerning the Application.

  
 Howard Pearlman

STATE OF NEW YORK )  
 ) SS.:  
 COUNTY OF WESTCHESTER )

On the 16 day of Sept in the year 2022 before me, the undersigned, personally appeared Howard Pearlman personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

M. JILL DAVIS  
 NOTARY PUBLIC-STATE OF NEW YORK  
 No. 01DA5051203  
 Qualified in Westchester County  
 My Commission Expires 10-29-2025

  
 Notary Public

**AFFIDAVIT**

EILEEN McMANUS CURINGA, being duly sworn, deposes and says:

1. I submit this affidavit in support of the application of James Connolly for Preliminary & Final Subdivision approval for a 2-lot minor subdivision of property located at 49 Dutch Street, Montrose, New York 10548 (the "Application"). My mailing address is 2078 Albany Post Road, Unit 204, Montrose, NY 10548.

2. I am an heir of Edward J. McManus. My father, Robert P. McManus, who is deceased, was the son of Edward J. McManus.

3. As an heir of Edward J. McManus, I am an owner of Sycamore Court f/k/a Radzivila Road located in the Town of Cortlandt, County of Westchester, State of New York along with the other living heirs of Edward J. McManus, who are Richard Devir, Nan Radzivila Downer, Jan R. Radzivila, Mary McManus Sullivan, and Howard Pearlman.

4. Upon information and belief, James Connolly is the owner of certain real property in the Town of Cortlandt, Westchester County, State of New York, acquired by deed dated September 11, 2007 and recorded on November 28, 2007 in the Westchester County Clerk's Office under Control Number 473240707 located at 49 Dutch Street, Montrose, New York 10548 and described therein as Section 54.12, Block 4, Lot 22 on the Tax Map of the Town of Cortlandt, New York (the "Subject Property").

5. I grant permission to James Connolly, his heirs or successors and assigns forever to permit the Subject Property to utilize Sycamore Court, together with the rights of unhindered ingress, egress, and access over, through and across Sycamore Court, as follows:



**AFFIDAVIT**

J. ROBERT RADZIVILA, being duly sworn, deposes and says:

1. I submit this affidavit in support of the application of James Connolly for Preliminary & Final Subdivision approval for a 2-lot minor subdivision of property located at 49 Dutch Street, Montrose, New York 10548 (the "Application"). My mailing address is P.O. Box 295, Montrose, NY 10548.

2. I am an heir of Edward J. McManus. My mother, Anne McManus Radzivila, who is deceased, was the daughter of Edward J. McManus.

3. As an heir of Edward J. McManus, I am an owner of Sycamore Court f/k/a Radzivila Road located in the Town of Cortlandt, County of Westchester, State of New York along with the other living heirs of Edward J. McManus, who are Richard Devir, Nan Radzivila Downer, Mary McManus Sullivan, Eileen McManus Curinga, and Howard Pearlman.

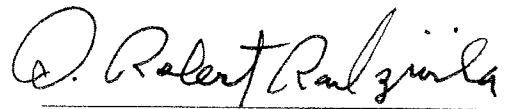
4. Upon information and belief, James Connolly is the owner of certain real property in the Town of Cortlandt, Westchester County, State of New York, acquired by deed dated September 11, 2007 and recorded on November 28, 2007 in the Westchester County Clerk's Office under Control Number 473240707 located at 49 Dutch Street, Montrose, New York 10548 and described therein as Section 54.12, Block 4, Lot 22 on the Tax Map of the Town of Cortlandt, New York (the "Subject Property").

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- c. To make any and all modifications to Sycamore Court as needed to connect a new driveway from the Subject Property to Sycamore Court including, but not limited to, modifying the existing conditions on Sycamore Court to support said driveway.

6. I agree to execute any and all documents that the Town of Cortlandt may require in providing approval to James Connolly concerning the Application.



J. Robert Radzivila

STATE OF NEW YORK                    )  
   ) SS.:  
 COUNTY OF WESTCHESTER        )

On the 27<sup>th</sup> day of September in the year 2022 before me, the undersigned, personally appeared J. Robert Radzivila, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



JENNIFER CATALANOTTO  
 Notary Public, State of New York  
 No. 01CA5032261  
 Qualified in Putnam County  
 Commission Expires Aug. 22, 20 26