

2. Prior to being elected mayor in 1994, and beginning in 1979, I have served at times and respectively as Greenport Community Development Supervisor/Code Enforcement Officer, Village Trustee and Planning Board Chairman. I am also presently a member of Suffolk County Steve Levy's Workforce Housing Commission, appointed to consider the housing crisis in the regional context. I have extensive personal knowledge of the proceedings and underlying facts relating to this matter and the facts that are alleged in this affidavit.

3. I submit this affidavit on behalf of the Village of Greenport and the Village Board of Trustees in support of the Petition for the Court's approval of the proposed KACE LI, LLC (KACE) annexation and in response to the affidavit previously filed with the court by Patricia A. Finnegan, Esq. Town Attorney for the Town of Southold ("Town").

4. During my twenty-seven years working for the village, I have been directly involved in the Greenport Community Development Department program to meet the housing needs of village residents, for whom median family income in 2000 was \$36,333.¹

5. In her affidavit, Ms. Finnegan would have the court believe that the village is perpetrating a "land grab" and a "sham" under which the Village tax base would be enhanced while

¹ 2000 Decennial Census

a developer makes a "windfall" profit by creating 64 units of affordable housing.

6. While it may be true that if the proposed annexation is approved by the court and the property is developed, the property owner will benefit and the Village tax base will grow, it is also true that the tax base of the Town will grow, because it collects a tax on all properties in the Town, including those in the Village, which should not be held against either the Village or the property owner. Is this not, after all, the American Way?

7. That this fundamentally democratic concept escapes Ms. Finnegan is manifest in her failure to grasp the essential strategy of the proposal: leverage the good zoning and utility infrastructure of the village to harness free-market forces to promote the desirable development of affordable housing, and then use minimal market intervention, along with good design, to insure the long-term affordability of the housing produced.

8. Ms. Finnegan asserts that the town has superior capacity to consider an affordable housing project, and determine the degree of public interest to be served by the KACE project.

9. Ms. Finnegan's condescending, hypocritical and bitter assertions are unsupported by the record and belied by the

Town's historically abysmal performance in the production of affordable housing for its constituents.

**THE TOWN HAS CONSISTENTLY FAILED
TO PROVIDE AFFORDABLE HOUSING**

10. The Town has produced no new affordable housing whatsoever in over 8 years and has a statistically meaningless record of performance historically.

11. I am informed that the sole housing program benefiting Town residents outside the Village is administered by the North Fork Housing Alliance in the form of US Dept. of HUD Existing Section-8 Rent vouchers for 120 families, in addition to some home improvement loans and grants.

12. The Section 8 program subsidizes a statistically insignificant 0.9% of the Town's total housing stock.

13. In a transparently cynical effort to create the appearance of performance, the Town recently enacted so-called "inclusionary" zoning. This is allegedly achieved by revising the Town's subdivision regulations to consider major subdivisions in one of two categories, Standard Subdivisions or Conservation Subdivisions.

14. The difference between them is profound as it relates to affordable housing and offers a stark and unflattering window on the true intentions of the Town: to promote the development of McMansions for second home owners who pay high taxes and

don't put children in local schools, not the affordable housing needed to serve local families struggling to raise children on North Fork incomes. The following is an explanation of this analysis:

a. Standard Subdivision - Treats subdivisions as in the past, but requires that 25% of new lots be set aside and sold at drastically reduced prices to buyers meeting certain income standards set by the Town, or in lieu thereof requiring developers to make payments into a housing fund to be held by the town.² Historically, review of a Standard Subdivision in the Town is a notoriously long process, often taking years, adding significantly to the cost of development, and making it difficult if not impossible to forecast market conditions in some unknown time in the future, a forecast on which developers assess their financial risk. Add to this the onerous financial imposition of a 25% set-aside and what results are major disincentives to elect the Standard Subdivision procedure. So-called "inclusionary" zoning offers no density bonus to the developer to offset what is effectively a confiscation of property rights for redistribution to others the Town professes to prefer.

b. Conservation Subdivision - Requires the developer

² As of this writing, I believe the fund to be virtually empty.

to give up the right to develop 70% or more of the land in exchange for reduced filing fees and expedited review and approval. These are two very significant incentives, as discussed in Par. a. above, that belie the Town's true intent: to promote development at a density so low that it effectively excludes all but the wealthy from homeownership in the Town.

15. This so-called "inclusionary" zoning is really nothing more than a new brand of **exclusionary zoning** (emphasis supplied) and a Trojan Horse for McMansions, under the mantra of affordable housing. This is a cruel and cynical means to achieve a perverse and discriminatory social end, which is the Town's true goal.

16. The information which I have obtained from sources within the Town indicates that there has been little or no interest in the Standard Subdivision process since the "inclusionary" zoning set-aside was enacted over a year ago and no new housing has been approved or built pursuant to its adoption.

17. The Town can offer nothing more than federal rent subsidies for a statistically insignificant 0.9% of the Town's total housing stock as evidence of its commitment, capacity and intent to produce affordable housing, and to justify its allegation of superior capacity to that of the Village to produce affordable housing.

**THE VILLAGE HAS AN EXTENSIVE RECORD OF
HOUSING PERFORMANCE OVER A 27-YEAR PERIOD**

18. The Village has taken major strides to address the need for affordable housing over a 27-year period and has done so with millions of dollars in federal funding from the United States Dept. of Housing and Urban Development through its Community Development Block Grant Program for Small Cities, combined with strong in-house capacity for performance, and consistent political support from the Village Board of Trustees and the community at-large as expressed in repeated Village elections over the 27-year process at issue.

19. The Village obtained its first Small Cities grant in 1981 and has applied successfully for funding in most of the ensuing years.

20. These funds have been used for activities ranging from demolition and clearance of slums and blight; to home improvement loans and grants; new construction for rental and homeownership; and public infrastructure and storm-water abatement improvements in blighted neighborhoods.

21. The Village, as an example of its commitment to affordable housing, is now completing its latest grant of \$400,000 to fund the creation of affordable accessory apartments in single-family homes and commercial structures in the Village.

22. These apartments are being created by private property owners pursuant to a zoning change enacted by the Village Board of Trustees in July 2002 that permits virtually any home in Greenport to be converted to a two-family as-of-right. It also permits apartments over stores in the business district.

23. This action was taken by the Village Board in response to rising housing prices and a finding that the rental housing stock was being diminished by a market trend under which many single-family homes that had been previously converted to two-family use were being sold to buyers intent on restoring them to their original one-family configuration. In 2000, the village had a total housing stock of 1,075 units.³

24. The following is a partial list of the accomplishments of the Greenport Community Development Program since its inception in 1979:

- a. Recognizing the need for a public role in the provision of safe and affordable housing for its residents, in the 1970's the Village successfully sought special legislation from the New York State Legislature for the establishment of the Greenport Housing Authority, an agency of village government authorized to carry out programs to assist low and moderate income families with safe, decent and

³ 2000 US Decennial Census

affordable housing.

- b. Construction of a 16-unit subsidized rental garden apartment complex.
- c. Construction of 17 new single-family homes sold to low and moderate income families.
- d. Federal funding to the Greenport Housing Authority for 87 units of Section 8 rent subsidies for existing housing.
- e. Support for the North Fork Housing Alliance (NFHA), a local not-for-profit housing agency, in securing 80 units of Section-8 rent subsidies for low-moderate income families living within the incorporated Village.
- f. Between the Village and NFHA programs, 183 of 348, 52.5% of all rental units in the village are subsidized.
- g. Support for the North Fork Housing Alliance in the acquisition and maintenance of 32 existing housing units in 14 properties located within the incorporated Village for low-moderate income families. (It is interesting to note that the NFHA, chartered to serve the housing needs of the entire Town, has no similar holdings outside the Village.)
- h. Funded the improvement of scores of housing units

with interest-free loans or grants for home improvement and weatherization.

- i. The Village has also employed progressive regulatory reform to respond to the problem. In 2002, with the formerly depressed housing market booming, the Village Board rezoned 90% of the residential districts for as-of-right two-family use and for apartments over stores downtown.
- j. Of special relevance to the Petition, in 2004 the Village board by resolution and memorandum (see Exhibit A) proposed to the Town to jointly study the concept of adjusting the Village boundary line to cause vacant lands currently outside the fully-developed Village to come under jurisdiction of the Village's existing high-density zoning and to cause public water and sewer services to be available in order to induce owners of affected lands to undertake development of affordable housing without massive public subsidy. The Town, in its wisdom, gave this proposal no serious consideration and no progress was made.
- k. The Petition is but the latest installment on the Village's consistent record over 27 years of comprehensive planning and performance through its

Community Development Program to meet the housing needs of low and moderate income families.

AN OBJECTIVE COMPARISON OF VILLAGE AND TOWN HOUSING PERFORMANCE CONFIRMS THAT GREENPORT HAS THE GREATER CAPACITY TO CARRY OUT HOUSING INITIATIVES

25. A statistical comparison of Town and Village performance in providing affordable housing using the data detailed in Paragraphs 10 - 24 above produces a stark contrast:

- a. The Town has preserved 120 affordable housing units out a total housing stock of 13,769 units, a performance measured as a percentage at 0.9%.
- b. The Village has created or preserved 232 affordable housing units out of a total housing stock of 1,075 units, a performance measured as a percentage at 21.5%.
- c. It is indisputable that the record and experience of the village in producing and preserving affordable housing is vastly superior to that of the Town, which has essentially done nothing.

**SOUTHOLD'S DIRTY LITTLE SECRET:
CONCENTRATE LOW AND MODERATE INCOME AND
MINORITY FAMILIES WITHIN THE EXISTING VILLAGE BOUNDARY**

26. The unofficial policy of the Town of Southold has always been to concentrate low and moderate income and minority families within the Village, which is accomplished by the Town's

exclusionary zoning and intentional failure to address the need for affordable housing. Demographic data tells the story:⁴

- a. In the Town, minority residents of all types constitute 11.2% of an overall population of 20,599.
- b. In the Village, minority residents of all types constitute 41% of an overall population of 2,048.
- c. Median family income in the Town is \$61,108
- d. Median family income in the Village is \$36,333
- e. Percentage of families living in poverty in the Town is 4.1%
- f. Percentage of families living in poverty in the Village is 21.2%

27. It is clear from this data that the village is impacted with a starkly disproportionate share of the minority and low-income residents living within the Town. Given these facts and the Town's regulatory bias toward development of expensive housing as discussed in Paragraphs 13 - 16 above, and the Town's utter refusal to even consider boundary line adjustments when first proposed by the Village in 2004, it is easy to conclude that the Town would like to contain the socio-economic diversity of the Village to within the confines of its existing boundary.

⁴ All data taken from the 2000 US Decennial Census

**USE MARKET FORCES TO INDUCE THE PRIVATE
SECTOR TO PROVIDE AFFORDABLE HOUSING
WITHOUT MASSIVE PUBLIC SUBSIDY**

28. The project relies on high-density development that is typically blocked by NIMBYism, the "not in my backyard" syndrome that has become synonymous with political paralysis in response to the housing crisis on Long Island and elsewhere in the region. With high-density development of affordable units, and the separate project component providing for 64 open-market units, KACE has been induced to risk private capital to fund the development. This approach preserves scarce public resources for use in addressing other pressing needs.

29. The project makes efficient use of the Village's existing utility infrastructure and residential zoning, which comports with a pattern of development in the Village featuring one-and-two family homes on 50' X 100' lots, or 8 - 16 housing units per acre, that dates back to the Village's 1838 founding. The project proposes 8 units per acre, at the lower end of this range. It is the availability of suitable zoning regulations and utilities that have induced KACE to propose the project and assume the significant financial risks appurtenant thereto.

**USE MINIMAL MARKET INTERVENTION AND
GOOD DESIGN TO PROMOTE FUTURE
AFFORDABILITY NATURALLY**

30. The housing economy of the North Fork, encompassing both the Town and the Village, has a major structural flaw:

prices are dictated by second-home buyers who earn much higher incomes in places like New York City than do full-time local residents who earn much lower incomes in the weak local economy.

31. Because prices in the housing market are tied directly to incomes, local buyers are rendered impotent and are largely excluded from the market. For Greenport, this market failure is exacerbated by a complete lack of vacant land available for development within the Village and a lack of suitable zoning and utility infrastructure in the Town to support affordable housing development on lands located outside the Village.

32. Census data illustrates this market failure in bold relief: 68% of all new homes sold in Southold Town between 1990 and 2000 were sold to second-home buyers.⁵

33. This condition is also reflected in the fact that in 2000, 33.8% of all homes in Southold Town, excluding Greenport, were identified as "vacant", which refers to housing occupied by parties who choose to report to the census in other jurisdictions.⁶ In Greenport in 2000, 29.7% of all housing units were identified as "vacant" for the same reason.

34. This data confirms a market paradox: owners of seasonal homes in both the Town and the Village are a distinct

⁵ 2000 US Decennial Census

⁶ 2000 US Decennial Census

minority of the population overall but enjoy a virtual monopoly on the housing market.

35. To address this market failure, we propose a very simple yet powerful solution: restrict by deed covenant the sale now and forever of the housing to be created to people who live or work in the Town, including the Village, according to a fair and thorough test administered by a governmental agency, such as the Greenport Housing Authority.

36. By so doing, I estimate that the wealthiest 60% of the housing market will be disqualified, allowing the remaining market to freely set future prices at levels that are always reflective of the local economy and the wages it produces, thereby rendering such prices inherently affordable in any market with only minimal ongoing regulatory involvement.

37. In addition to this market intervention strategy, the project will utilize good design to minimize price inflation. By creating small living spaces, ranging from as little as 700 square feet, the project will discourage the interest of affluent buyers whose preference is for larger living spaces.

38. The Village will require KACE to covenant that merger of contiguous units will be forever barred, thereby ensuring that the small-scale configuration and the natural market brake it exercises are preserved.

39. By restricting buyers to people living and or working

full-time in the Town, and by creating modest small-scale housing, the market for the housing created will reflect the limitations of the local economy, resulting in natural price moderation. The playing field for local families hoping to buy homes will be leveled by operation of market forces without massive public subsidy or complex, unmanageable regulatory schemes.

**THE VILLAGE OR THE NYS DEPT. OF ENVIRONMENTAL
CONSERVATION SHOULD BE DESIGNATED LEAD AGENCY
FOR THE PURPOSE OF CONDUCTING
ENVIRONMENTAL QUALITY REVIEW**

40. Inasmuch as the Town prematurely denied the Petition prior to completion of the environmental review required pursuant to the State Environmental Quality Review Act, it is incumbent on the parties to complete the required environmental quality review ("SEQRA") before the petition is decided.

41. With both the Village and Town declaring themselves lead agency in the matter, the dispute must be resolved by the Commissioner of the Department of Environmental Conservation ("DEC") and that resolution is pending.

42. The foregoing recitation of the vastly superior capacity of the Village over the Town to consider, plan and implement affordable housing programs, and the Village's clear standing as the entity likely to experience most of the environmental impacts of the proposed project and best suited to

evaluate and asses them, make clear that the Village should be appointed lead agency.

43. However, recognizing the need to resolve the dispute, and the superior capacity of the DEC to evaluate environmental impacts, the village will support a decision by DEC to appoint itself lead agency, if it so chooses.

44. Given the Town's poor history on the housing issue and its clear bias against high-density development, appointing the Town as lead agency would be putting the "fox in the henhouse".

45. In the event DEC chooses not to declare itself lead agency, the Village asks that it be so appointed.

SUMMARY

46. The Village is faced with two choices in responding to the critical need for new affordable housing: it can grow up (vertically) by raising the height limits for construction thereby altering the intimate scale of the Village, half of which is listed on the Federal Register of Historic Places, a characteristic that fuels the tourism that has helped revitalize the Village economy. Or it can grow horizontally as proposed in the Petition

47. The absence of any vacant land for horizontal growth within the existing village boundary gives rise to the Village's interest in annexing vacant lands outside the Village, like the

KACE property, upon which affordable housing can be developed if sewer service and village zoning are made available.

48. It is beyond dispute that high-density development is required to promote the development of affordable housing at the scale needed to keep low and moderate income families living in Greenport, on the North Fork, and in the region for that matter.

49. It is beyond dispute that high-density development cannot occur unless a public sewer connection is available.

50. The only public sewer system on the North Fork is the Greenport Sewer System and capacity exists with which to serve the KACE project.

51. The Village denies that KACE is entitled to a sewer connection other than as a discretionary act, because the property is presently located outside the Village, and a 1996 stipulation of settlement providing for a connection is obsolete and void.

52. It is manifest that the actual effect of the Town's zoning policies over a long period of time has been to concentrate low and moderate income families and minorities within the Village.

53. The Village is proud of its diversity and is actively interested in expanding the supply of affordable housing but seeks to do so in a way that enhances and does not destroy the physical character of the Village that, in addition to its

socio-economic diversity, distinguishes Greenport as a vibrant American small town.

54. It is reasonable for a Village struggling to thrive, while accommodating the housing needs of a diverse population, to collect tax revenues that accrue from development that can only occur with a connection to the Village sewer system, and with the availability of other village services and resources

55. The Village cannot collect taxes on the KACE project unless it is annexed.

56. Municipal Boundary line adjustments can and should be considered an important tool for meeting the housing needs of a diverse society.

57. The Petition should be approved by the court as a novel but reasonable strategy to address an intransigent and critical public policy dilemma: the provision of affordable housing without massive public subsidy in a way that strengthens rather than weakens a community that agrees to bear the burden of servicing such housing; in this case, the Village of Greenport.

58. Either the Village or the NYS DEC should be designated lead agency for the purpose of compliance with SEQRA.

WHEREFORE it is respectfully requested that the Court grant the Petition and vacate the Order and Determination, determine that the Annexation Petition should be approved, and in the alternative, determine that the Village of Greenport be appointed lead agency for purposes of SEQRA in this matter.

David E. Kapell

Sworn to before me this
Day of February, 2006