

PRESENTATION TO COMMITTEE OF RTM RE: STONY CREEK QUARRY

I am pleased to be here this evening. The last several months have been difficult for myself, the Marcus Law Firm, and my family. We have all been subjected to half-truths, distortion of facts, and, in some cases, both vituperous and libelous statements. In that regard I reserve judgment as to how or if to proceed at some future time. I intend to present to the committee, in a thorough and clear fashion, all of the salient facts relating to the quarry, as well as to the DaRos incident. Exhibits have been provided to all of the committee members along with my comments so that you can follow all of the background information leading up to the present time. It is my understanding that you will also hear from Jim Finch, the First Selectwoman, Janice Plaziak, Phil Shook, and possibly from others. My comments and the exhibits will provide necessary background for the information to be provided to you by those of the other participants. I will answer any questions that the committee may have, but would hope that I could complete my presentation and then respond to any questions that may exist. There is a flow to the exhibits and I believe you will leave this evening with knowledge of the quarry, the background surrounding it, the attempts of several previous administrations to deal with the problems and issues of the quarry, and the positive efforts of the Morris Administration to resolve the preexisting problems of the quarry and permit all of us to move forward, particularly the Town of Branford, on a positive basis.

Let me start you with Exhibit 1.

It is a lease dated November 16, 1982. It covers 50 acres of land, it is for a 50-year time frame, and does not terminate until December 31, 2033. The annual rent was set at that time for \$1,000 with .10 cents paid as a royalty on each cubic foot removed. That lease was executed by then First Selectman Peter Ablondi.

Exhibit 2 is an assignment of that lease from Castellucci and Sons to Castellucci Stone, Inc. dated December 23, 1988 and is approved by Judy Gott as First Selectwoman.

Exhibit 3 is an assignment by Mittleman as Receiver of Castellucci Stone, Inc. to Castellucci Granite Company, LLC dated October 15, 1996 and that assignment was approved by First Selectman Bonacore. The fact that there had been a Receiver should, of course, have been an indication of problems that existed and were to ensue.

Exhibit 4 is entitled a Second Addendum to Lease; the First Addendum having cancelled a 1977 lease, and really has no affect on either the background or any occurrence. Nevertheless, the First Addendum is affixed as Exhibit A to Exhibit 4. The Second Addendum is signed by DaRos and witnessed by Penny Bellamy, who was then Town Counsel, dated December 30, 1999. The rent is now set at \$20,000 per annum and the royalty at .50 cents per ton removed. The Town is provided the right to take 500 tons of grout and crushed stone per annum without any cost. If the royalty is zero for four consecutive quarters the lessor can then elect to terminate the lease. In fact, that did occur in 2003, and will be set forth in Jim Finch's report which is attached as an exhibit. The lease did call for approval of any sublessees by the Town of Branford, measuring equipment, proper maintenance of the property and required the lessee commit no waste

and required a yearly audit to be submitted by the lessee. This requirement along with the others were basically ignored and not previously aggressively pursued.

The addendum, and this is an extremely major point, failed to call for a security deposit, bond, or letter of credit, providing the Town with any level of comfort in the event of default. Obviously, as previously indicated, Castellucci had been in receivership. (See Exhibit 3) and this should have red flagged the issue. A lease of this nature clearly mandated that the Town receive security relative to performance.

Exhibit 5 is an Estoppel Certificate dated December 21, 2000 signed by DaRos witnessed by Bellamy and provides Citizen's Bank with the right to lend up to \$2 Million to Stony Creek Granite Company, LLC formerly known as Castellucci Granite Company. This becomes significant in nature as the story unfolds.

Exhibit 6. On June 6, 2000, DaRos to accommodate a contractual agreement between the lessee and a company called Granicor executes another additional estoppel agreement. An estoppel agreement, incidentally, means that the town agrees that up to the point of execution of that document the lessee is in full compliance with all of its requirements under the lease, although that may or may not have been the case. Once the estoppel agreement was executed it legally became a fact.

Exhibit 7. Is yet another Estoppel Agreement executed on May 11, 2001 by DaRos, which permits the lessee to affect financial arrangements with Fleet Bank. There is no apparent consideration for the Town for any of the accommodations that were made by way of estoppel agreements. The estoppel agreement permitted Stony Creek Granite to borrow up to approximately \$4.5 M from Fleet. Where all the borrowed funds were going and what benefit was to accrue to the Town is unknown.

Exhibit 8 is dated June 22, 2000 and Castellucci Granite enters into a so-called Supply Agreement with a Canadian company called Granicor Inc. and the Town had agreed to that agreement by virtue of Exhibit 6. The Town received no consideration or warranties for its consent to this agreement and thought should have been given at that time to obtaining a guarantee from Granicor Inc. of the obligations of the lessee. The Town at this time still has absolutely no security of any nature to rely upon.

Exhibit 9 is simply an affidavit re the change of name to Stony Creek Granite Company in Affidavit of Facts dated December 26, 2000. Once again, DaRos and Bellamy sign off.

Exhibit 10 is a title policy, and we are not supplying you with copies of the encumbrances as recorded except as already provided, but obviously the debt on the property and we can simply take a look at the policy is substantial. In addition to what is shown on the policy there are two tax warrants that have now been filed on the Land Records by the Town of Branford in June of this year for \$19,798.05 and \$13,681.36 covering the time frame of '01 through '04. Those warrants are for personal property taxes that were not paid by the lessee.

Exhibit 11. When we became Town Counsel we did receive a file from Attorney Peter Berdon relating to the Stony Creek Quarry, but all it had within was the Complaint, which is attached, along with limited correspondence and a notice in 2004 indicating that insurance covering the town was about to be canceled; once again, another rather substantial red flag of problems. There was nothing contained within the file indicating what if anything had been done to attempt to resolve difficulties that obviously existed as set forth in the Complaint between the Town and the operator of the quarry.

Exhibit 12 is a rundown as to the status of that Complaint indicating that the last action taken was on November 14, 2003. The bottom line is that the Complaint just stayed in a state of limbo within the court system.

Exhibit 13 is a letter dated December 31, 2004 from Stony Creek Granite to Jim Finch and it refers to Fischer Excavating and J & J Blasting as subleases. The Town appears to have knowledge of their existence, although no where is there any indication of copies of the subleases or approval thereof by the Town.

Exhibit 14. In January 2006 I received a copy from Jim Finch of the royalty payment for the last quarter of 2005, which was \$565.75.

Exhibit 15 is a letter from Joe Faughnan, who represents Granicor, to Shelley Marcus dated February 6, 2006 asking where the rent check should be sent.

Exhibit 16 is my response to Joe Faughnan under date of February 7. After receipt of the quarterly report forwarded to the First Selectwoman by Jim Finch's office, it should be noted that we had been asked by the First Selectwoman to attempt to put together a file and review whatever documents we could locate, none of which had previously been provided other than the Complaint.

Exhibit 17 is a letter from Joe Faughnan under date of February 15 responding to my letter of February 7th.

Exhibit 18 (a) is another letter from Joe Faughnan providing documents, which we had never seen before, and which were not in the file that we inherited.

Exhibit 19 is a letter from Faughnan enclosing the rent check and agreeing to a meeting. There appeared to be no reason as to why the check was received from Granicor as opposed to the Stony Creek Quarry, and that of course raised additional issues and questions.

Exhibit 20 is a letter from Faughnan setting up a meeting on March 15 at 9:00 a.m.

Exhibit 21 is my letter to the First Selectwoman enclosing the check, confirming the 9:00 a.m. meeting on March 15th.

Exhibit 22 is a letter sent on March 8th to the First Selectwoman in anticipation and preparation for the March 15th meeting.

Exhibit 23 is the report referred to previously from Jim Finch on the royalty history, and note should be taken that in 2003 no monies were received for either rent or royalties. Jim obviously is the appropriate person to respond to questions relative to his report.

The meeting did occur with Granicor on March 15, which included representatives of Granicor, Joe Faughnan, and the attorneys representing Provident Bank, the assignee of Citizen's Bank who told us at that time that the loan from Stony Creek Quarry was in default and that they were waiting for instructions to proceed to foreclose on the leasehold interest that they held as security. I believe that both the First Selectwoman and Janice Plaziak will report on that meeting which was quite informative in nature.

Exhibit 24 is a letter from the Marcus Law Firm dated April 6 to Jim Byrne of Tyler Cooper who represented the mortgage holder indicating that unless they were to commence foreclosure the Town was considering eviction proceedings. That letter further indicates the concern of Town officials as to the condition of the premises and also refers to the interest of the Branford Police Department.

Exhibit 25 is a letter from Jim Bryne dated April 10 asking for forbearance by the Town until April 21 until it was known whether or not Provident Bank had assigned its position.

Exhibit 26 is a letter from the Marcus Law Firm dated April 11 to the First Selectwoman forwarding Jim Byrne's letter suggesting prudence would indicate that we wait until April 21.

Exhibit 26 (a) is the report from Stony Creek Quarry for the first quarter of '06 providing the Town with a royalty check of \$218.25.

Exhibit 27 Notice is received on May 3rd that on April 21 the Provident Mortgage originally held by Citizens had been sold to Down City Capital Partners. The assignment became a permissible event and not a default in the lease since consent of the Town was normally required under the lease for any mortgage, however, as a result of the Estoppel Agreement entered into by the Town in 2000 it was not a default.

Exhibit 28 is a memo dated April 24th from Shelley Marcus in the Marcus Law Firm to Monica Schoenbaum an attorney at the Marcus Law Firm, indicating that Dick and Cheryl had visited the quarry on April 21 and found it in deplorable condition. The purpose of the memo was to kick the legal process into higher gear.

On April 26th a meeting, at the First Selectwoman's request, took place at the First Selectwoman's office attended by myself, Chief Gill, Duncan Ayre, Janice Plaziak, the first selectwoman, the fire marshal and possibly other town officials. The First Selectwoman may have a more accurate complete list of attendees. The point of the meeting was to determine what the health and safety issues were at the quarry and to see

if it could be determined as to whether or not the town is being shortchanged on its royalties. One of the ways of making that determination was to locate people who dealt with the quarry; determine whether or not they had been shipped or provided granite from the quarry, and in turn whether or not the quarry recorded receipts of funds from those people on their books.

Pictures of the quarry were shown at that meeting which indicated all types of safety hazards (they will be shown to the committee by either the First Selectwoman or Janice Plaziak); shot up old cars, an inoperable weighing machine and the like. Chief Gill placed Duncan Ayre in charge of the police inquiry. I should also say that for whatever reason until the Morris administration no department head had been in charge of the quarry. It was a file totally within the control of the first select person's office with no supervision from any department head. It is my understanding that Janice Plaziak had been placed in charge of the quarry at some time prior to or at the April 26th meeting.

Exhibit 29 is a memo from myself to Monica Schoenbaum dated April 27th asking her to withhold any further legal action until we receive the police report. The memo clearly indicates my understanding that Duncan Ayre was not only in charge of the investigation but was to check who went in and out of the quarry in an attempt to look at the quarry books to see who they dealt with.

Exhibit 30 we had decided after discussing same with the First Selectwoman and meeting with other members of the Marcus Law Firm to seek a receiver in view of the conditions that existed, and my memo to Monica indicated that we needed a title search, a police report and a report from Janice Plaziak before we could proceed to institute an eviction action and attempt to obtain a receiver. That memo is dated May 2.

Exhibit 31. This is what has now become, I suppose, the infamous police report which presumably you have all read. What had occurred is the following:

a) I received a telephone call from Duncan Ayre on April 28 at 4:02 p.m. We had previously exchanged telephone calls and it appeared as if the police department viewed the Marcus Law Firm, as town counsel, as the party to deal with relative to the inquiry and/or investigation.

b) Islander East had become an urgent issue and I had asked Trista Clyne to locate any documents that might exist on the file. No file had been turned over to us relating to Islander East.

c) Trista called me to tell me that she had located some information in the attic and I agreed that I would meet with her at 4:30 in her office on Friday, April 28th. I returned Duncan Ayre's call and told him that I was going to the selectman's office to pick up the Islander East papers – we agreed to meet there. It was my understanding that Duncan was going to update me as to the status of his inquiry/investigation.

Prior to that time Mike Milici had dropped off photographs showing substantial granite located on the property of DaRos. The granite was, incidentally, in clear view for anyone to see who drove past or walked past the DaRos place of business. Anyone driving to Stony Creek could clearly see its existence. Its existence was not a secret.

Milici had told me that he had a friend who also happened to be a PI who at Mike's request was going to photograph the granite. My belief is that the photos were provided as an accommodation and were taken from a public thoroughfare. The purpose of taking the photos was to have visual evidence that the granite existed in the anticipation that it had been received from the Stony Creek Granite Company and hence a way of checking whether or not Stony Creek Granite properly recorded, if that were the case, sales which may not have been credited for the account of the Town. The bottom line is the photos were photos of what anyone in this room could have seen by just walking or driving by the DaRos place of business and were taken by a individual who also had a PI license, but who, to my knowledge, did nothing but act as a photographer. In the event that it turned out that Stony Creek Quarry had not recorded sales, if they existed, the pictures could have been utilized for evidentiary purposes in our attempt to install a receiver.

Anyone could have taken the pictures. The bottom line is the Town did not pay for the photographs; they were supplied by a private citizen who had every right to do so.

To the best of my knowledge and belief I incidentally have never met the individual who took the pictures, and if you were to ask what his name was I couldn't tell you. I might very well at some point a number of months ago been told his name, but I'm not even certain of that, because it was of no interest to me at that point in time. I have no recollection of even that being the case. It doesn't make any difference who took the photographs. There was nothing improper about them and nothing improper with turning them over to the police officer to do whatever that officer chose to do with them. How the police department was to proceed in their query or investigation...call it what you will...was their call.

d) I met Ayre at the selectman's office (Cheryl was out ill) (there is no office for town counsel at town hall) and I asked Trista if we could use the conference table in Cheryl's office and she said it was okay to do so. That incidentally is the only time that I have ever been in the First Selectwoman's office without her being present.

e) I met with Ayre as a client, since he is part of the police department who we represent, and hence, must consider what he told me as a privileged communication. I need to point out that Detective Ayre in the police report uses the words that I "requested" that he inquire about receipts. My recollection was that the word "suggest" was used, and that it was clearly anticipated that all contractors dealing with the quarry would be similarly interviewed and their information then checked against quarry records if they existed. I at no time directed Ayre to do anything, nor does his report utilize the word "direct". The police commission has now interviewed both the Chief and Detective Ayre and it is now my belief that no member of the police department indicated, at any

time, that I had directed any member of the police department to take any action. And the fact is I did not.

f) Ayre makes it clear that I alleged no improprieties against DaRos, and that in fact is absolutely unequivocally so.

g) My intent as town counsel was to simply aid in providing Ayre with a beginning point, which unfortunately became the end of any further input from the police department and evidently terminated their investigation which has been called a query rather than an investigation by the chief.

h) Hindsight provides 20/20 vision. If I were able to redo what occurred what I would have done is the following:

A) I would not have met with Duncan Ayre without a third party being present. In this regard I was, for one of the few times in my legal career, naive and assumed our meeting was on a lawyer-client basis. I will not get into a I said, he said situation – any communication with Ayre is privileged – for non-lawyers that mean that I cannot ethically further comment on a discussion which, incidentally, did not last more than 20 minutes more or less.

B) I would have shown the photos before meeting with Ayre, if I met with him at all, to both the First Selectwoman and the Chief. On the other hand, the bottom line is that it was, in fact, the chief's call as to whether or not the photos were to be utilized as part of any further inquiry –not mine. I assume that Ayre was at all times under the direction of the Chief.

I have read with a degree of amazement DaRos being called a political rival of mine. Nothing could be further from the truth. I have possibly had 6 or 7 conversations with him in over 30 years of residing in Branford. And in fact believe that Jill and myself held a fundraiser for him in one of his races for first selectman.

I believe we need to move forward and I now intend to move into additional exhibits relating to the quarry.

Exhibit 32. On May 3rd letter was received from Greg Pepe representing Stony Creek Quarry.

Exhibit 33. Both of my letters of May 10th indicated we have been authorized to take action against Stony Creek Quarry and sets forth the various breaches.

Exhibit 34. On May 10th a Certificate of Insurance is received.

Exhibit 35 Is a Citation issued by Phil Shook and Jarowey's response.

Exhibit 36. A letter from Greg Pepe dated May 19th re: a meeting of the parties.

Exhibit 37. Marcus Law Firm response to Pepe under date of May 22nd and it encloses the letter of May 10th.

Exhibit 38. Marcus Law Firm letter of May 23rd to Pepe summarizes our May 22nd meeting.

Exhibit 39. Marcus Law Firm fax to Pepe re: picking up the records.

The First Selectwoman, assisted by the Marcus Law Firm, is currently in discussions, which are privileged in nature, with a potential new lessee of the quarry, which, if the first selectwoman is successful, will enhance the Town's position and alleviate the problems that have existed.