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***Electronically*** (sufluft@nycourts.gov)

Hon. Martha L. Luft
Supreme Court: Suffolk County
One Court Street - Room A-362
Riverhead, NY 11901

Re: *Incorporated Village of Head of the Harbor, et al v. Town of Smithtown, et al*
Index No. 608051/2022

Dear Justice Luft:

I am a partner in Ruskin Moscou Faltischek P. C. ("RMF"), attorney for petitioners in this Article 78 proceeding requesting that a finding statement adopted by the respondent Town of Smithtown Planning Board be annulled. I write in response to the letter to the Court dated June 3, 2022 from a non-party, Cameron Engineering & Associates, LLP ("Cameron Engineering").

Initially, a number of the statements in the Cameron Engineering letter are inaccurate. RMF has been retained by Cameron Engineering for two litigation matters in the last ten years, a contract dispute and a landlord/tenant action unrelated to this Article 78 proceeding. Cameron Engineering regularly utilizes numerous firms on Long Island for litigation. RMF has not been retained to provide any services that have anything to do with the issues in this Article 78.

Further, RMF has never acted as an attorney for either respondents Gyrodyne, LLC or Gyrodyne Company of America, Inc. (collectively "Gyrodyne"). Accordingly, to the extent Gyrodyne seeks to disqualify RMF they would not have standing under well settled law. *See e.g. A.F.C. Enterprises, Inc. v. New York City School Constr. Authority*, 33 A.D.3d 736, 823 N.Y.S.2d 422 (2d Dep't 2006).

In addition, this Article 78 only seeks relief against the Town Planning Board concerning a finding statement prepared by the Town Planning Department. No relief whatsoever is sought against Cameron Engineering, and this being an Article 78 proceeding, no testimony will be sought against the non-party; and the credibility of the non-party will not be challenged and is not at issue.

And, since the record in this proceeding consists of publicly filed documents, there is no chance that any client confidential information will be disclosed. Finally, no prejudice to anyone

has been identified if RMF is counsel to petitioners. The only parties that will be prejudiced are petitioners if RMF is disqualified.

New York law is clear that the burden on a movant to disqualify counsel is extremely high, and a showing of a concrete conflict as opposed to a theoretical one is required. *Olmoz v. Town of Fishkill*, 258 A.D.2d 447, 684 N.Y.S.2d 611 (2d Dep't 1999) (conclusory assertions that there is a conflict of interest are insufficient for disqualification); *Matter of Stephanie X*, 6 A.D.3d 778, 780, 773 N.Y.S.2d 756, 767 (3d Dep't 2004) ("In the absence of actual prejudice or a substantial risk thereof, the appearance of impropriety alone is not sufficient to require disqualification"); *Develop Don't Destroy Brooklyn v. Empire State Development Corp.*, 31 A.D.3d 144, 153, 816 N.Y.S.2d 424, 432 (1st Dep't 2006) ("the mere appearance of impropriety alone is insufficient to warrant disqualification"). New York Courts have also cautioned against motions to disqualify being used for tactical purposes and there is a strong public policy in allowing a party the right to use counsel of its own choosing. *See e.g. Matter of Voss v. 87-10 51st Avenue Owners Corp.*, 292 A.D.2d 622, 740 N.Y.S.2d 371 (2d Dep't 2002).

When the issue of this alleged conflict was raised over six weeks ago, RMF carefully reviewed the matter, disclosed the issue to petitioners and sought the advice of outside counsel. RMF determined that because Cameron Engineering is not a party in this Article 78, no relief is sought against it, no discovery involving Cameron Engineering is at issue, no client confidence will be disclosed, and there is no prejudice, no conflict exist.

As Cameron Engineering's counsel points out, there is no requirement for a pre-motion conference, and RMF will oppose any motion to disqualify.

Respectfully,

E. Christopher Murray

ECM:emr

cc: All Counsel (*Electronically*)