

No. \_\_\_\_\_

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In The Supreme Court of the United States

Pulte Homes of New York LLC, Petitioner

v.

Town of Carmel, Town of Carmel Planning Board, Respondents

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**APPLICATION FOR EXTENSION OF TIME TO FILE  
PETITION FOR WRIT OF CERTIORARI**

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To the Honorable Ruth Bader Ginsburg,  
Associate Justice of the United States Supreme Court  
and Circuit Justice for the Second Circuit

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**TO the Honorable Ruth Bader Ginsburg, Associate Justice of the United States Supreme Court and Circuit Justice for the Second Circuit:**

Petitioner, Pulte Homes of New York, LLC ("Petitioner") respectfully requests an extension of time to file a petition for writ of certiorari. Sup. Ct. R. 13.5. The earliest deadline for Petitioner to file its petition is Thursday, September 11, 2018, which is ninety days from Wednesday, June 13, 2018, the date when the U.S. Court of Appeals for the Second Circuit issued an amended summary order affirming the District Court's dismissal of Petitioner's claims. For good cause developed below, Petitioner requests this deadline be extended by sixty days making the new deadline Monday, December 10, 2018.

### **BACKGROUND**

The gravamen of Petitioner's civil rights claims is Respondents' decade-long manipulation of the site plan process to Petitioner's disadvantage. The underlying civil rights action alleges violations of Petitioner's substantive and procedural due process rights. Respondents now unlawfully retain Petitioner's property--purported in-lieu-of development fees totaling \$749,000--despite a court order vacating and annulling such site plan conditions.

Respondents attempted to retain or, alternatively, condition the return of Petitioner's property despite losing the right to collect it in the first place. At impasse, Petitioner had no option but further litigation to resettle the state court's annulment order. It was then Petitioner's true and unlawful intentions manifested: to keep as much of Petitioner's property as possible despite the means employed.

Suddenly, respondent Town of Carmel Planning Board (the “Planning Board”) maintained it could reopen Petitioner’s amended final site plan approvals to assess the need for recreation space in the community, and then reaffirm or reevaluate the adequacy of their prior development fee assessments. It also argued that any refund to Petitioner would bar it from obtaining future building permits because Respondents would no longer recognize Petitioner’s site plan approval. This would cause a development standstill--and economic devastation--for Petitioner.

Respondents attempted to fabricate a “no-win scenario” attempting to keep as much of Petitioner’s property despite a contrary state court order. This motive threatens Petitioner’s substantive and procedural due process rights, in addition to warranting declaratory relief directing Petitioner’s property be returned without condition or further delay.

### **OPINIONS BELOW**

The Amended Summary Order of the United States Court of Appeals for the Second Circuit in *Pulte Homes of N.Y., LLC v. Town of Carmel*, 17-3747 is unreported and reproduced as Appendix “A”. The Second Circuit affirmed the Amended Opinion and Order of the United States District Court for the Southern District of New York rendered on October 27, 2017 (Docket No. 16-CV-8093 (VB) (S.D.N.Y. 2017), which modified on reargument the District Court’s Opinion and Order, dated September 5, 2017, granting in part and denying in part Respondents’ dismissal motion. These District Court opinions and orders are reproduced as Appendix “B”.

### **JURISDICTION**

This Court has jurisdiction under 28 U.S.C. § 1254(1).

## REASONS JUSTIFYING EXTENSION

Supreme Court Rule 13.5 provides that “[a]n application to extend the time to file shall set out the basis for jurisdiction in this Court, identify the judgment sought to be reviewed, include a copy of the opinion and any order respecting rehearing, and set out specific reasons why an extension of time is justified.” The specific reasons why an extension of time is justified are as follows:

1. Here, the Second Circuit’s Opinion and Order warrant this Court’s review because there is a sharp division of authority between the Circuit Courts on how the continuing violation doctrine applies to civil rights cases involving the deprivation of property rights. The Second Circuit took a more transactional approach inconsistent with the nature of Respondents’ conduct as a continuing tort and the nature of the ongoing harm to Petitioner. There is currently no cohesive and uniform test among the Circuit Courts to distinguish continuing violations from claims subject to different accrual and tolling theories. The authority is even more opaque in land use and development rights cases. Some Circuit Courts like the Second Circuit correlate accrual with discrete acts while discounting the broader narrative of discriminatory behavior, while others focus less on the resultant effects and more on the source of an ongoing ameliorative duty to prevent a wrong. Despite a rift among Circuit Courts, this Court has not yet had a clear opportunity to address or harmonize these issues.

2. My office was engaged to represent Petitioner in seeking a writ of certiorari to the Court on August 7, 2018, well into the ninety-day period following the Second Circuit's final amended opinion and order, dated June 13 2018.

3. Additionally, on July 1, 2018, I opened my own law practice, which, in turn, briefly diminished my preparedness and ability to focus all of my firm's resources on this application. My existing litigation workload and the immediate demands of other cases have occupied much of the time afforded by the rules to applicants considering an appeal.

4. This is my first application for a writ of certiorari to this Court. I am in the process of consulting with counsel well-versed in practice before the Court, which requires more time to familiarize with the underlying actions.

5. The requested extension also is necessary to accommodate pressing deadlines in Petitioner's counsel's other litigation matters.

6. Petitioner seeks a sixty-day extension to cope with these demands.

### CONCLUSION

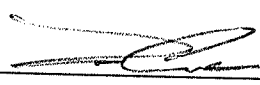
For the foregoing reasons and good cause shown, Petitioner respectfully requests that this Court grant this application for an extension of time to file a petition for writ of certiorari.

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Dated: Brewster, New York  
September 1, 2018

Respectfully submitted,

By: \_\_\_\_\_

  
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## CERTIFICATE OF SERVICE

MICHAEL V. CARUSO, an attorney duly admitted to practice law in the State of New York, affirms under the penalty of perjury as follows:

I am not a party to this action and I am over 21 years of age. I reside in Patterson, New York. On September 1, 2018, I served a copy of an Application for Extension of Time to File a Petition for Writ of Certiorari by First Class Mail by depositing the same in a wrapper, postage paid, by first class mail, by depositing a copy of the same in a wrapper, postage paid, in a regularly maintained official depository under the exclusive care and custody of the U.S. Post Office within the State of New York, properly addressed to:

Miranda Sambursky Slone Sklarin Verveniots  
The Esposito Building  
240 Mineola Boulevard  
Mineola, New York 11501  
Attn: Michael A. Miranda, Esq.

Dated: Brewster, New York  
September 1, 2018

  
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MICHAEL V. CARUSO