

TOWN OF CORTLANDT
PLANNING AND ZONING BOARDS

PLANNING BOARD MEETING

Town Hall
1 Heady Street
Cortlandt Manor, NY 10567
October 1, 2024
6:30 p.m. - 7:31 p.m.

October 1, 2024

MEMBERS PRESENT:

Steven Kessler, Chairperson

Thomas A. Bianchi, Vice-Chairperson

David Douglas, Member

Nora Hildinger, Member

Peter McKinley, Member

Jeffrey Rothfeder, Member

MEMBERS ABSENT:

Kevin Kobadsa, Member

ALSO PRESENT:

Chris Kehoe, AICP, Director of Planning

Michael Cunningham, Esq., Deputy Town Attorney

Heather LaVarnway, CNU-A, Planner

Chris Lapine, P.E., Engineer

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2 (The board meeting commenced at 6:30 p.m.)

3 MR. STEVEN KESSLER: So, but before we
4 do, I just want to make note of the passing of
5 John Klarl. He passed away very recently. John
6 was the assistant town attorney and was the
7 counsel for this board for almost I think 20
8 years, sat right where Jeff was sitting. And he,
9 you know, provided the counsel for many, many
10 years, as I said, for both the ZBA and the
11 planning board. So I just ask that after we do
12 the pledge, just please remain standing for a few
13 moments of silence in his memory. Thank you. So
14 please rise for the pledge.

15 MULTIPLE: I pledge allegiance to the
16 flag of the United States of America and to the
17 Republic for which it stands, one nation under
18 God, indivisible, with liberty and justice for
19 all. Thank you. Chris, roll please.

20 MR. CHRIS KEHOE: Ms. Hildinger?

21 MS. NORA HILDINGER: Here.

22 MR. KEHOE: Mr. Rothfeder?

23 MR. JEFFREY ROTHFEDER: Here.

24 MR. KEHOE: Mr. Kessler?

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2 MR. KESSLER: Here.

3 MR. KEHOE: Mr. Bianchi?

4 MR. THOMAS BIANCHI: Here.

5 MR. KEHOE: Mr. Douglas?

6 MR. DAVID DOUGLAS: Here.

7 MR. KEHOE: Mr. McKinley?

8 MR. PETER MCKINLEY: Here.

9 MR. KEHOE: Mr. Kobadsa noted as absent.

10 MR. KESSLER: Okay. We have one change
11 to the agenda this evening and it's planning
12 board case number 24-6, JAM Storage. And what
13 we'll be doing is setting a site inspection on
14 October the 27th to review that property. It was
15 on the agenda last month. And given the
16 complexities of that application, we think a site
17 visit at this time is, is warranted. So, can I
18 please have a motion to make that change to the
19 agenda?

20 MR. BIANCHI: So, moved.

21 MR. KESSLER: On the second, please.

22 MR. ROTHFEDER: Second.

23 MS. HILDINGER: Second.

24 MR. KESSLER: And on the question. All

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2 in favor?

3 MULTIPLE: Aye.

4 MR. KESSLER: Opposed? Okay. Can I
5 please have a motion to adopt the minutes of our
6 meeting of September the 10th?

7 MR. ROTHFEDER: So moved.

8 MR. KESSLER: So moved. Second, please.

9 MR. DOUGLAS: Second.

10 MR. KESSLER: And on the question. All
11 in favor?

12 MULTIPLE: Aye.

13 MR. KESSLER: Opposed? And so let's get
14 onto the agenda. The first item under
15 correspondence is a letter dated September 3,
16 2024 from John Bevegna regarding modifications to
17 the Holbrook Club Golf Club Annual Monitoring
18 Program. Nora?

19 MS. HILDINGER: I'd like to make a
20 motion to adopt resolution 11-24 with one
21 modification to number two, which would read,
22 regardless of the amount of rainfall, this will
23 meet the annual storm water testing requirement.

24 MR. KESSLER: Excellent. Thank you.

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2 Second, please.

3 MR. MCKINLEY: Second.

4 MR. KESSLER: And on the question. All
5 in favor?

6 MULTIPLE: Aye.

7 MR. KESSLER: Opposed? Next item is a
8 public hearing adjourned from the last meeting,
9 it's the public hearing, the application of K-B-
10 -- K-P-B properties for site development plan
11 approval and a referral from the town board of a
12 petition for a zoning text amendment for a
13 proposed four-story 75,000 square foot self-
14 storage facility located at 3 Locust Avenue,
15 drawings revised September 24th, 2024. Mr.
16 Steinmetz, good evening.

17 MR. DAVID STEINMETZ: Good evening, Mr.
18 Chairman, members of the board. Good to see you
19 all. Good to be back before you. I'm joined this
20 evening by my colleague Brian Sinsabaugh, who has
21 basically been running point on this application
22 as well as by one of our project consultants,
23 Michael Humphrey. We've made extensive
24 presentations to your board. This public hearing

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2 has been opened previously. I'm fairly certain
3 there is no one here to speak, but we do not have
4 anything further to affirmatively present. We
5 have attempted to respond to the comments that we
6 have received from Mr. Lapine and think we have
7 done so. We have surmounted the hurdles that were
8 presented by some of the other outside agencies.
9 I'm pleased to simply inform you that I got a
10 phone call from one of the I guess active
11 participants or organizers of the local Cortlandt
12 Little League asking me when this would be done.
13 And so I think there is support for the
14 continuation of the coexistence of the self-
15 storage and the, the ball field. So with that,
16 Mr. Chairman, we have nothing further to add. I'm
17 happy to sit and see if there are any further
18 public comments.

19 MR. KESSLER: Yeah, I, I think we talked
20 at the work session. There's a couple open issues
21 still there. I think one is lighting.

22 MR. KEHOE: Yeah. So you had mentioned
23 that we did review memos and your team responded
24 to the review memos. You know, they answered a

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2 lot of questions, noted some other things. We
3 still have a couple of technical things that we
4 would like to work out, both from planning and
5 engineering, but as we laid out at the work
6 session, that shouldn't stop you from taking your
7 next SEQR procedural step.

8 MR. STEINMETZ: Great.

9 MR. KESSLER: And again, at the work
10 session, there was some confusion as to the
11 actual height of the building. I, I guess the,
12 the, the, the question is from the road, given
13 the current height of the building, how much
14 higher is the proposed building compared to what
15 the current elevation is from the road?

16 MR. STEINMETZ: I'm going to let Mr.
17 Sinsabaugh answer that because he's going to be
18 more precise than I am. But I want to make sure
19 that we, we are answering the right question.

20 MR. KESSLER: Sure.

21 MR. STEINMETZ: The measuring point is
22 from the top of Toddville Elementary School to
23 the, to the parapet wall of, of the proposed
24 self-storage building. What is the differential?

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2 MR. KESSLER: Yes.

3 MR. STEINMETZ: That's the question?

4 MR. KESSLER: From, from Crompond Road,
5 yes.

6 MR. STEINMETZ: Again, you, you, when
7 you say from Crompond Road, you're now -- unless
8 I'm misunderstanding, Crompond Road should be
9 irrelevant to the question if the question is,
10 the building currently exists in time and space,
11 here it is.

12 MR. KESSLER: Yes.

13 MR. STEINMETZ: The new building will go
14 to this point.

15 MR. KESSLER: Right.

16 MR. STEINMETZ: What's the difference?
17 Whether it's from Crompond Road, whether it's
18 from the side street, Locust, whether it's from
19 the field, the building is the building.

20 MR. KESSLER: Okay.

21 MR. STEINMETZ: Got it?

22 MR. KEHOE: Well --

23 MR. STEINMETZ: I just want to make sure
24 I'm -- that's exactly, Steve, that's exactly why

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2 I asked my question to make sure I'm answering
3 the right one.

4 MR. KEHOE: I've never understood any of
5 this building height stuff, but Heather has a
6 better grasp on it. So let's see if --

7 MR. STEINMETZ: Okay.

8 MR. KEHOE: Go ahead.

9 MS. HEATHER LAVARNWAY: Yeah, no, I, I
10 think that how you characterize it there is
11 correct. Ultimately, the elevation at the top of
12 the building where will it be compared to where
13 it is?

14 MR. STEINMETZ: Got it.

15 MR. KEHOE: It's not a building height
16 calculation.

17 MR. KESSLER: Right.

18 MR. STEINMETZ: Correct. Correct.

19 MR. KESSLER: It's visual.

20 MR. STEINMETZ: Understood.

21 MR. KESSLER: From the current ground
22 level or from the proposed ground level?

23 MR. STEINMETZ: Do we have an answer?

24 MR. SINSABAUGH: Yes.

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2 MR. STEINMETZ: Hang on. It's going to
3 be a sealed answer. So wait momentarily.

4 MR. BRIAN SINSABAUGH: All right. Good
5 evening. Chairman, members of the board, Brian
6 attorney with Zarin and Steinmetz. With regard to
7 the height, and I know this is a somewhat
8 confusing question. I think that part of it goes
9 back to what we'd stated in terms of the
10 calculation, and I guess what you're comparing is
11 what the definition of height is versus actual
12 height. Is that? I, I'm just --

13 MR. KEHOE: I don't think we're
14 interested in the definition.

15 MR. SINSABAUGH: Yeah, but so you want
16 to know just --

17 MR. KESSLER: It's a visual question.

18 MR. SINSABAUGH: Yeah, yeah, visual
19 question. I mean, to give you exact answer, I'd
20 have to give you to Joe Neitzel, who's on as well
21 as Mark Pallotta, who's our engineer. So I can
22 give you a more precise answer. I don't want to
23 give you an approximation.

24 MR. KEHOE: Who, who, would be better?

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2 Joe?

3 MR. SINSABAUGH: Mark.

4 MR. KEHOE: Okay, Mark.

5 MR. STEINMETZ: And let's make sure Mark
6 knows what he's answering.

7 MR. BIANCHI: Oh, again, I'm not sure if
8 I, I understand. The question is where are we
9 measuring it from? Is it the ground level or the
10 proposed ground level? The current ground level
11 or the proposed?

12 MR. KEHOE: I think that doesn't matter.

13 MR. BIANCHI: It doesn't matter?

14 MR. KESSLER: Right. Because ultimately
15 it's --

16 MR. STEINMETZ: Let me listen to this.

17 MR. BIANCHI: Well, it's going to be
18 higher if it's from the proposal level, isn't it?

19 MR. KESSLER: No. As David said --

20 MR. BIANCHI: Oh, you're talking about
21 the difference. I'm sorry.

22 MR. KESSLER: The building's the
23 building, wherever they put it, whether it's --

24 MR. BIANCHI: You're talking about the

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2 difference in the height. That's all.

3 MR. KESSLER: -- 12 feet below ground or
4 12 feet above ground.

5 MR. BIANCHI: Okay.

6 MR. STEINMETZ: Exactly. Steve
7 understands what I said.

8 MR. BIANCHI: I retract that, okay.

9 MR. KESSLER: which is a first.

10 MR. KEHOE: Mark, can you hear us?

11 MR. MARK PALLOTTA: Yes. Can you hear
12 me?

13 MR. STEINMETZ: Yes. Mark, did you hear
14 the question that came from the chairman as, as I
15 tried to make sure we all understood it?

16 MR. PALLOTTA: I, I think I understand
17 it. We want to know, so the elevation in relation
18 to where it is today, is that correct?

19 MR. STEINMETZ: Correct. Yes. And I, I
20 stay away from the word elevation because
21 elevation connotes a, a measuring point from
22 somewhere around the perimeter or something.

23 MR. PALLOTTA: Okay.

24 MR. STEINMETZ: This is literally, if

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2 you and I are standing on the roof of the
3 existing Toddville Elementary School and we put
4 our hand on the highest point of that building,
5 and then Mike Humphrey comes along and
6 superimposes the proposed self storage right on
7 top. What's the differential of the top of that
8 to my hand?

9 MR. PALLOTTA: It is four feet, seven
10 inches approximately.

11 MR. STEINMETZ: Okay.

12 MR. PALLOTTA: And if you look at sheet,
13 if you look at our, our second sheet, which is
14 C1A, where it talks about the, the heights of the
15 existing and the proposed, it, it gives a roof
16 elevation of the proposed and a roof elevation --
17 when I say elevation, the actual elevation of the
18 roof. Yep. If you go to that sheet there, right.

19 MR. KESSLER: Where, where on the sheet?
20 Oh, I see. On the left side?

21 MR. PALLOTTA: Yeah. So that middle,
22 that's the proposed. So you see it says the roof
23 elevation is 427.58. Okay.

24 MR. KESSLER: Yeah. And if you, if you

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2 take that and you subtract it from the existing,
3 which is the one below --

4 MR. KESSLER: Twenty-three.

5 MR. PALLOTTA: -- which is 424.33. That
6 gives you a, a difference of 4.58 feet.

7 MR. KESSLER: Okay. But, and, but
8 looking from Crompond Road, that would be the
9 South Elevation?

10 MR. PALLOTTA: Yes. Well, no. So this is
11 -- so that's why we're trying to clarify the
12 question as to what it is you want. Now, looking
13 from Crompond Road, the -- if you were looking
14 from Crompond Road, at the existing building, the
15 right side of it is approximately, you would see
16 39 feet of building facades and approximately 38
17 feet on the left.

18 MR. STEINMETZ: And pause there, Mark
19 for a moment. The reason, Mr. Chairman and
20 members of the board that he, he reacted much
21 like I did, the minute you go to Crompond Road,
22 now you're asking for a post-construction
23 condition. And you're looking from a, from a
24 measuring point, Crompond Road, we're changing

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2 the grading around the existing building. So
3 that's going to change the visual.

4 MR. KESSLER: Right. And that's, that's
5 all I'm asking. I, I understand you're doing all
6 that. When someone stands on Crompond Road and
7 looks at the at the building, they see a certain
8 height. And the question is, wherever you're
9 doing with your excavation and everything else,
10 what's the new height? That's all I'm asking.

11 MR. STEINMETZ: Got it. Okay. So then
12 it's 4.7 feet.

13 MR. KESSLER: But he said that was the
14 north side.

15 MR. PALLOTTA: No, so that's not -- no,
16 no, no, no. David. So if it, the way the
17 chairman, the way I understand the chairman's
18 question is he wants to know how much facade
19 you're seeing, not the elevation.

20 MR. STEINMETZ: Steve?

21 MR. PALLOTTA: Is that, is that --

22 MR. STEINMETZ: Steve? I don't think
23 that's what he just said. I don't think -- Steve,
24 I thought you reiterated the question.

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2 MR. KESSLER: If, right now, if you
3 stand on Crompond Road and you look up, you see a
4 building that's, let's call it 37 feet high. When
5 you're done with your construction and I stand on
6 Crompond Road, I'm going to see a building with,
7 where the roof height is X. What is -- solve for
8 X.

9 MR. STEINMETZ: Okay. That's a different
10 question than what we were ask, we, we were
11 attempting to answer a moment ago, because now
12 you are asking a post-construction visual based
13 upon elevation and grade.

14 MR. DOUGLAS: No.

15 MS. LAVARNWAY: I actually, can I just
16 interject and say, I think the way that you
17 explained it earlier, like pretend you're
18 standing on the roof --

19 MR. STEINMETZ: Yes.

20 MS. LAVARNWAY: -- of an existing
21 building.

22 MR. STEINMETZ: Yes.

23 MS. LAVARNWAY: And then pretend someone
24 is standing on the roof of the new building,

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2 who's higher, and by how much? I believe the new
3 building, the person standing on the roof of the
4 new building is standing roughly four and a half
5 feet higher in space.

6 MR. STEINMETZ: Correct.

7 MS. LAVARNWAY: Than the person standing
8 on the roof --

9 MR. STEINMETZ: Heather, that's
10 definitely my understanding. And, and that four
11 point, that four feet, seven inches may not
12 correlate directly to what you're going to
13 visually get from Crompond Road post-construction
14 based upon the grade change.

15 MS. LAVARNWAY: And I'm, I don't know if
16 Steve, if you're asking how much reveal of the
17 building --

18 MR. STEINMETZ: Exactly.

19 MS. LAVARNWAY: -- or how high up in
20 space?

21 MR. KESSLER: How high up it is.

22 MS. LAVARNWAY: Yeah.

23 MR. STEINMETZ: Okay.

24 MS. LAVARNWAY: So it's 4.4 --

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2 MR. STEINMETZ: Fair enough. If, if it's
3 not reveal and it's just, what's the exact height
4 --

5 MS. LAVARNWAY: Yeah.

6 MR. STEINMETZ: -- in time and in space.

7 MR. KESSLER: And is that consistent all
8 around the building?

9 MR. STEINMETZ: Mark?

10 MR. KESSLER: No,

11 MR. MCKINLEY: No.

12 MR. PALLOTTA: No. Well, yeah, the
13 elevation is consistent. The, the roof is -- I
14 mean, it, it pitches back, so there is a little
15 bit of elevation loss towards the back, towards
16 the, I think it's the west, right? So it's very
17 minimal from front to back. But the highest point
18 would be the four and a half feet that we just
19 said.

20 MR. KESSLER: The highest point would be
21 four and a half feet.

22 MR. PALLOTTA: The difference between
23 existing and proposed is approximately four feet,
24 seven inches, yes. Now --

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2 MR. MICHAEL CUNNINGHAM: And we're
3 talking about the difference in measurement,
4 we're talking about above sea level. So if it's
5 at X above sea level, then it's four and a half
6 feet, a little over four and a half feet more
7 above sea level.

8 MR. STEINMETZ: I like that. I like
9 that, that, that's similar to my hand, that --

10 MR. CUNNINGHAM: That, that's what
11 we're, that's sort of the absolute value and
12 range --

13 MR. STEINMETZ: Exactly.

14 MR. CUNNINGHAM: -- that we're talking
15 about with that, if that clarifies at least that
16 question.

17 MR. STEINMETZ: David, Are you good with
18 that? Because I know you thought I can, I --

19 MR. DOUGLAS: I, no, I, that's, that's
20 right.

21 MR. STEINMETZ: Okay. We're together
22 four -- four feet, seven inches, Mr. Chairman.

23 MR. KESSLER: Is the answer, okay. Any,
24 the revised plan has, has taken out the

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2 concession stand?

3 MS. LAVARNWAY: I don't know, yes.

4 MR. KESSLER: Yes? Okay.

5 MR. KEHOE: Yes. And has put a concrete
6 pad there.

7 MR. STEINMETZ: Yes.

8 MR. BIANCHI: Yeah.

9 MR. KESSLER: And that'll be a food
10 truck. Is that what's going to happen?

11 MR. STEINMETZ: There'll be the
12 opportunity for a food truck, ice cream truck,
13 food truck.

14 MR. KESSLER: Whatever.

15 MR. KEHOE: Go ahead.

16 MR. KESSLER: Any other --

17 MR. KEHOE: Yeah, we have another --

18 MR. KESSLER: Yeah, sure.

19 MS. LAVARNWAY: About this or --

20 MR. KEHOE: About the elevation.

21 MS. LAVARNWAY: Oh, just, I, I believe
22 we had asked and then --

23 MR. KEHOE: The architect.

24 MS. LAVARNWAY: Right, the Architectural

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2 Review Board was inquiring about getting some,
3 some color elevations from the public streets. So
4 I don't know if those are in the works.

5 MR. STEINMETZ: We will get -- Brian,
6 are those in the works? Are we -- Mark, maybe you
7 can answer that better than anybody.

8 MR. PALLOTTA: We submitted colored
9 elevations. Are you talking about colored
10 elevations or renderings, like perspective
11 renderings?

12 MS. LAVARNWAY: Yeah, prospective
13 renderings. Yep.

14 MR. PALLOTTA: Okay.

15 MR. KEHOE: Right. And, and that, once
16 again, that doesn't necessarily slow down the
17 SEQR discussion.

18 MR. KESSLER: Right.

19 MR. STEINMETZ: Understood.

20 MR. KEHOE: But as you can see, the mass
21 of the building and this, this height issue, for
22 lack of a better term, we're still all grasping
23 with. So we have the elevations, but we don't
24 really have a perspective. And that I think is

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2 something that Art Clements has mentioned. He
3 hasn't finalized the ARC's comments yet, but
4 that's one thing that I think he's looking for.
5 And, and we think it would be a good idea too.

6 MR. STEINMETZ: Mark, are you okay
7 generating that? Do you need to know exactly from
8 where the perspective is being rendered?

9 MR. PALLOTTA: Yeah. So that wouldn't be
10 me. That would be Joe Neitzel.

11 MR. STEINMETZ: Right. I'm sorry.

12 MR. PALLOTTA: I can speak with him.

13 MR. STEINMETZ: That's right.

14 MR. PALLOTTA: Yeah. I think I could
15 speak for him in, in saying that, you know, we
16 can prepare those.

17 MR. KEHOE: Right. And it should be
18 compared to what's there now too.

19 MR. PALLOTTA: I think is, I think it is
20 --

21 MR. KEHOE: An existing condition
22 perspective and a new perspective.

23 MR. STEINMETZ: Got it.

24 MR. PALLOTTA: Got you. Okay.

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2 MR. STEINMETZ: We'll, we'll get you a
3 comparative perspective. I would assume something
4 kind of west, westbound on Crompond Road would be
5 like a primary point of focus. That's really
6 where you're going to see the building most
7 prominently. Okay. Got it.

8 MR. KESSLER: Any other comments from
9 the site visit on the site plan?

10 MR. STEINMETZ: We appreciate it.
11 Appreciate the time and the patience everybody's
12 put in on this.

13 MR. KESSLER: So I think we're
14 adjourning the public hearing and we're going to
15 have a neg dec for the next meeting prepared.

16 MR. KEHOE: Correct.

17 MR. KESSLER: And we'll, we will adjourn
18 this public hearing on the site plan and, and get
19 to your neg dec so the town board can act.

20 MR. STEINMETZ: Terrific.

21 MR. KESSLER: So with that, David?

22 MR. DOUGLAS: Okay. So I make a motion
23 that we adjourn the public hearing to the
24 November meeting, that we direct staff to prepare

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2 a neg dec and wait for the town board.

3 MR. KESSLER: Excellent. Second please.

4 MS. HILDINGER: Second.

5 MR. KESSLER: Second. And on the
6 question. All in favor?

7 MULTIPLE: Aye.

8 MR. KESSLER: Opposed? The next item is
9 another public hearing, a new public hearing.
10 It's the application of Briga Enterprises and
11 Bilotta Realty of Westchester for amended site
12 plan approval of a 24,000 (SIC) square foot --
13 oh, I'm sorry. Was there anybody else that from
14 the public that wanted to comment on the previous
15 application? I forgot it was a public hearing.
16 No. Okay, good. Saved. For amended site plan,
17 approval of a 2,400 square foot storage building,
18 located at 2099 Albany Post Road, drawings dated
19 March 11, 2024. Good evening again, Mr.
20 Steinmetz.

21 MR. STEINMETZ: Good evening, Mr.
22 Chairman, members of the board, David Steinmetz
23 from the law firm of Zarin and Steinmetz here
24 representing Briga, Dakota, Bilotta, the various

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2 entities and, and most importantly, my client Jay
3 Bilotta is sitting here with me this evening,
4 along with my colleague Brian Sinsabaugh. You
5 will all recall that we were previously before
6 your board with regard to a request by Mr.
7 Bilotta to construct a 60 by 40 storage
8 structure, largely an open air shed building,
9 made out of metal approximate and adjacent to his
10 existing masonry yard toward the front of the
11 property along 9A.

12 We processed that application. Your
13 board granted an approval. The structure was
14 constructed and subsequent to its construction, a
15 neighbor raised an issue about whether or not the
16 planning board had A) submitted the application
17 to the county under Section 239M of the GML and
18 B) whether you had conducted a public hearing on
19 the, what we would all, at least what I would
20 deem a fairly minor site plan amendment. An
21 action was commenced by this neighbor against
22 your board for the action you took -- naming my
23 client as well. That action is pending in
24 Westchester County Supreme Court.

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2 Based upon the filing of that action, I
3 reached out to the town and the deputy town
4 attorney. And Mr. Cunningham, if I, if you didn't
5 want me to preempt on this, I'm happy to -- all
6 right. I reached out and suggested that we needed
7 to come up with a, a solution. The building's
8 built, it's there. It's designed lawfully to
9 provide storage for garden supplies and
10 miscellaneous items associated with the masonry
11 yard, things that were otherwise outside or now
12 inside, can be inside.

13 It was constructed pursuant to a
14 building permit issued by your building
15 department with drainage structures that were
16 reviewed by the town. I kind of thought this was
17 somewhat unfortunate. I'll choose my word
18 carefully, if not substantially unnecessary that
19 somebody would bring this action against the
20 town.

21 Nonetheless in an attempt to be
22 pragmatic, I discussed with Mr. Cunningham the
23 GML issue where your planning department can
24 refer materials to the county. We could do a do

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2 over. So with Mr. Bilotta's consent, I agreed to
3 resubmit to your board for amended site plan
4 approval, making sure this time that there is a
5 submission that is made to Westchester County
6 under 239M. We can have a public hearing in front
7 of your board, which I guess we're having this
8 evening. And, in my opinion, and we have already
9 stated this clearly to the judge, it's a do over.
10 We're here to make sure that the process is done.

11 Now, having said that, I'm going to
12 presuppose that the neighbor who raised these
13 concerns and is here this evening, is going to,
14 as he or she may choose to, appear at tonight's
15 public hearing. So I'm going to make a couple of
16 preemptive statements.

17 This town, your town has been sued three
18 or four times by the neighbor over a variety of
19 different issues associated with this property.
20 In each instance, the town has won and the
21 neighbor is lost. In one instance, the neighbor
22 actually brought a nuisance action and insisted
23 upon a trial for damages, which based upon a
24 conflict existing here in Cortlandt, got

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2 transferred to Croton. The case was tried in
3 Croton and dismissed. So I'm here to say that
4 Mr. Mastramonaco has unsuccessfully attempted to,
5 in my words, not anyone else's, harass the town
6 and my client for a number of years.

7 Having said that, nonetheless, we
8 pragmatically decided to refile and come back
9 before you and do it again. We are here tonight
10 on one thing and only one thing. We are here
11 tonight on an open air shed on the property in
12 the HC9A Zone, which is a lawful structure. It's
13 built. It was permitted. You're going to hear, I
14 suspect, depending upon what you are willing to
15 listen to, you are going to listen to some high
16 and mighty, high handed and irrelevant
17 information this evening. I hope you don't have
18 the patience to listen to it. Four judges have
19 kicked it. It's really, really unfortunate that
20 someone who would move into a zone and proximate
21 to a light industrial use would have, and this is
22 going to be a technical legal term, I apologize,
23 the, chutzpah to bring multiple legal actions
24 against this town and my client. It's absurd.

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2 And with that, Mr. Chairman, we have
3 nothing further to submit other than we
4 appreciate what your board has done previously.
5 We look forward to the closing of the public
6 hearing, and we are so proud that Bilotta and its
7 various entities can continue to successfully
8 conduct business in the town of Cortlandt.

9 MR. KESSLER: Anything to add Michael?

10 MR. CUNNINGHAM: Oh, sure. Just not to
11 belabor the point too much. I've researched all
12 the cases myself. I looked at index number
13 1076/2018, which was Mastramonaco versus Town of
14 Cortland ZBA, and the various Dakota entities
15 index number 1956/2019, Mastramonaco versus the
16 ZBA and also various Dakota entities. And I also
17 reviewed index number 1573/2020 Mastramonaco
18 versus the planning board and the various Dakota
19 entities or various Bilotta entities.

20 And based on what I've read, because I
21 know there've been a lot of sort of memos already
22 written, this board has no power to ask for an
23 interpretation from the ZBA. It's very clearly
24 circumscribed under town law when you could do

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2 that and there's no current issue that allows it
3 to go to the ZBA for an interpretation and also
4 too it's really just a focus on the proposed
5 2,400 square foot storage building.

6 And with that being said, it's Chris
7 Lapine can do a very thorough review of this. We
8 want to make sure it's built correctly. It's,
9 it's a full site plan amendment for that specific
10 issue. But what I'm basing that on too is Mr.
11 Mastramonaco brought a litigation, the index
12 number 1573/2020 to try to overturn the 2003
13 planning board decision, which granted site plan
14 approval. And that was dismissed.

15 So I think if you were to open up the
16 whole site for this review, it's circumventing
17 the the prior decision. And I will note too,
18 because probably Mr. Mastramonaco noted that
19 right now we're waiting -- Mr. Mastramonaco filed
20 an appeal, we're awaiting oral argument before
21 the Appellate Division Second Department.

22 But based on the fact that this case
23 still stands, we're just focused on the one
24 building and all the site planning issues related

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2 to the one building.

3 MR. KESSLER: Okay. Thank you, Michael.
4 Alright, it is a -- before we start a public
5 hearing, any other comments? If not, it's a
6 public hearing. Anybody wish to comment on this
7 application? Mr. Mastramonaco?

8 MR. RALPH MASTRAMONACO: Good evening.
9 Just to clarify, this latest lawsuit --

10 MR. KESSLER: Just, just the name and
11 address of the record, please.

12 MR. MASTRAMONACO: Oh, I'm sorry. I'm
13 Ralph Mastramonaco, Montrose, New York. I'm 700
14 feet away from the plant. Just to clarify, Mr.
15 Steinmetz, there were a series of lawsuits and
16 the reason the lawsuits were filed was because
17 the town would take no action, could not get the
18 town out to inspect, could not get anything out
19 of the town staff on this site.

20 Mr. Cunningham said the game's not over.
21 There's a -- we filed an appeal to the Second
22 Department. It's been there for three years, I
23 believe, three years. I expect that to come down
24 into my favor. I, I don't see any reason why it

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2 wouldn't. Secondly, out of all these lawsuits
3 that he's claiming that I lost, I won this one.
4 We're here because I won this particular lawsuit.
5 We are waiting for the court to make a
6 determination because I very kindly gave them the
7 extension. I could have -- and I did ask for a
8 determination that -- see, they never responded.
9 They -- I, I filed a lawsuit. They just didn't
10 respond. So I filed that. We get a determination
11 that the game's over on this particular case, I
12 win.

13 MR. KESSLER: Just a question, Ralph.
14 The, the latest lawsuit I thought was over the
15 process, you know.

16 MR. MASTRAMONACO: Yes. And I won it.

17 MR. KESSLER: The public hearing and --

18 MR. MASTRAMONACO: I basically won it. I
19 don't --

20 MR. KESSLER: But, but, but, but isn't
21 it now --

22 MR. MASTRAMONACO: That's why we're
23 here.

24 MR. KESSLER: But --

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2 MR. CUNNINGHAM: Just to be clear,
3 there's been no decision on that part.

4 MR. KESSLER: I know, but isn't it moot
5 now, now that the process is continuing as, as
6 you wanted?

7 MR. MASTRAMONACO: No. No.

8 MR. KESSLER: Why?

9 MR. MASTRAMONACO: No. They think it's
10 moot. They're trying to get the court to consider
11 this moot. But let me just explain. I, I'm not a
12 lawyer, as you know. But I do know a lot about
13 this. When you have an application that needs to
14 go to the county planning board, it's not just
15 sending, oh listen, we got an application. Great.
16 You have to send a complete full application to
17 the county. In other words, you can't leave off
18 as -- well, I'll get to it in a few minutes. You
19 can't leave off parts of the site plan and say,
20 well, we're just, you know, we just want you to
21 look at this one little corner, you know, pay no
22 attention to the rest of the site. You can't do
23 that. The law is clear. It has to be a full
24 application to the county. I don't know if this -

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2 - I think I heard Chris, did you say you had
3 already sent this referral to the, to the county?

4 MR. KEHOE: Yes.

5 MR. MASTRAMONACO: Okay. And they
6 already came back?

7 MR. KEHOE: Yes.

8 MR. MASTRAMONACO: Okay. The, the
9 problem is you did not send them the full
10 application. I'll get -- the full application --
11 I'll get to that. Again, it's open again to
12 challenge, because under the law it must be a
13 full application, so. But in any case, if Chris
14 can put up the site plan, can you have their site
15 plan?

16 MR. KEHOE: Well, I'm going to be
17 putting up the drawings that they submitted for
18 the 2,400 square foot building.

19 MR. MASTRAMONACO: They have some sort
20 of rudimentary site plan.

21 MR. ROTHFEDER: It is on page four.

22 MR. MASTRAMONACO: That might be it.
23 Okay. This is nothing like a site plan that I've
24 ever seen before. And the, the biggest problem is

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2 it doesn't show what is required to show and that
3 are the uses on that plan. What are the uses?
4 There, ongoing on that site is a construction
5 debris waste recycling center. Doesn't show
6 anywhere on the site plan, but it's there. How,
7 how you -- are required -- you can't, in other
8 words, you can't approve a site plan under the
9 code unless it shows all the uses. Where does it
10 show that? If you want to, you know -- to show
11 you how bad this is and how you could possibly
12 even think of approving this, how does the public
13 get to the store? Anyone? Any idea? Chris, Mr. --
14 the engineer? Any idea?

15 MR. CUNNINGHAM: Ralph, you just, you
16 just give your presentation. They don't have to
17 answer the question like That.

18 MR. MASTRAMONACO: Well the reason no
19 one would know, is because there's no parking.
20 Where does, where do people park on this site?
21 How do you get in there? It doesn't show. If you
22 want to zoom in, Chris, on the building. All
23 right, now, ordinarily on the site plan, you
24 would show where the parking is. You would show

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2 how -- apparently just judging from that site
3 plan, the people who enter, the public that
4 enters this site, has to cross over the debris
5 waste recycling area where they're crunching up
6 chunks of concrete. There's no place to park.
7 There's no place -- they, they're running through
8 this dust field to get to the building. You would
9 think that that would be shown on a site plan.
10 It's a very simple thing here, but you'd think --
11 this is so far from being a complete application
12 that you could send to the county planning board.
13 It's, it's light years away.

14 My problem with this is that I have been
15 awakened by the noises coming from this site. The
16 noises from the, from the debris, the, the
17 construction debris, waste recycling processing
18 area, which is not permitted in any zone in the
19 town, and which is not represented on the site
20 plan. You know what they do? They take chunks of
21 concrete, they slam 'em with a hydraulic hammer,
22 and somehow it gets crunched into powder.

23 So I don't know how you could really
24 look at this site plan and say, well, yeah, it's

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2 just some minor building. No, it's not a minor
3 building. What you are approving is the entire
4 site plan, not just one little corner. You have
5 to approve everything.

6 Now, Chris, could you go down to the end
7 of the, the end of the driveway? No, the other
8 way to the -- keep going. Okay, now, if you zoom
9 in, you'll notice on the right side of that
10 driveway, now suddenly there -- this plan is
11 showing a half a dozen trucks parked along the
12 side of the road. What, what is the point of
13 that? What, what, what's going on there? Does
14 anyone know? No. You don't know what's going on
15 there. You want to approve this site plan. This
16 is what you're approving.

17 It's a joke. Where is the landscaping?
18 There is no landscaping. There was landscaping on
19 the original site plan, but it's not on this
20 plan. Where is it? And most importantly, in
21 2003, when your board approved the concrete
22 plant, you made a fatal mistake. You did not ask
23 for a special permit. And I have been going to
24 court on that issue. It is very clear in the code

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2 manufacturing in the M1 zone requires a special
3 permit. There is no special permit. I don't know
4 how you can, you know, I don't know how you could
5 even consider sending this to the county so far
6 from being a, a valid site plan.

7 So I don't know, right now, maybe you
8 can tell me, but I submitted on September 5th a
9 letter. I don't know, did all of the board
10 members get a copy of that letter? Did -- I hope
11 you got it and I hope you read it. Then when the
12 applicant resubmitted, then I submitted another
13 letter, a second letter. I believe that was
14 September 27th or something like that. I, I,
15 excuse me, while I find -- September 27th, I
16 submitted another letter. I hope your board --

17 MR. KESSLER: We have them.

18 MR. MASTRAMONACO: -- have that. I hope
19 that --

20 MR. KESSLER: It was the September 5th
21 was the first one.

22 MR. MASTRAMONACO: September 5th is the
23 first one, right.

24 MR. KESSLER: And then, and the 27th we

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2 have as well.

3 MR. MASTRAMONACO: Right. So I, I mean
4 I, you know, I went over all of the issues that
5 are the horrible issues involved in this site
6 plan. And if you haven't read the letter, I don't
7 think you should be voting yet. I think you
8 should look at what I have done here. And you
9 make a determination as to whether or not -- I
10 mean, do you feel like you're being pressured to,
11 to, to approve this? Because you're really not.
12 You're under no pressure to approve this. I mean,
13 you're not allowed to approve a site plan that
14 does not show all of the uses. You're not allowed
15 to. It's not, it's not --

16 MR. KESSLER: Ralph, Ralph -- and I, I
17 talked with Chris earlier that this is an amended
18 site plan. You're not diff- -- are you saying
19 there's no difference between an amended site
20 plan and a site plan in terms of what's required?

21 MR. MASTRAMONACO: The code doesn't
22 make, doesn't make any distinction for an amended
23 site plan, it says site plan. So if there's, if
24 there's no distinction, then doesn't that leave

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2 the board to have some leeway?

3 MR. MASTRAMONACO: No, because you're
4 approving a site plan. And the site plan has to
5 show the amended plan --

6 MR. KESSLER: How about approving a
7 amended site plan.

8 MR. MASTRAMONACO: If you, if you, yes,
9 they added a building on the corner.

10 MR. KESSLER: Right.

11 MR. MASTRAMONACO: But they, what
12 they're, what you're approving is the entire site
13 plan. You're not approving the corner. You're
14 approving the whole site plan. Because on that
15 site plan, they've changed things from the
16 original site plan. If nothing changed on from
17 the original site plan, you might have a point.
18 But everything changed. They added construction
19 debris, waste recycling. They've changed all the
20 parking. They carved out a mountain over there to
21 put more trucks. There are retaining walls
22 everywhere. Retaining walls have to be shown on a
23 site plan. They're not shown. You don't see them.
24 What's the height?

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2 So you may take your cue from Mr.
3 Steinmetz or whatever, and I don't know, you've
4 put the, the town in an awful position of having
5 to defend these people. Mr. Cunningham has to
6 defend this. It's crazy. So I believe that all of
7 the problems with this should be settled at this
8 forum, in this place. That's where they should be
9 settled. I shouldn't have to go to court. I've
10 spent thousands of dollars trying to get the town
11 to listen. They won't even listen.

12 And you talk about getting -- there are
13 certain things there that are enforcement issues,
14 yes. But I will tell you, this town will not go
15 out on that site and look to see if there are
16 violations. They won't even go out on the site.
17 Ask yourself why. I don't know. I have an idea,
18 but that's for another day. You can all call me
19 at my office. I'll tell you the reason. This is a
20 problem. So I -- Chris, if you could go to
21 chapter -- okay. So who's ever right, I, I see.

22 MR. KEHOE: Well, they, they have that.

23 MR. MASTRAMONACO: Chapter 307.

24 MR. KESSLER: What, what, what, what are

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2 you looking at, Ralph?

3 MR. MASTRAMONACO: I just, I submitted
4 chapter 307 zoning.

5 MR. KESSLER: Dated with --

6 MR. MASTRAMONACO: which -- it's this --
7 it's just a copy of the zoning code.

8 MR. KESSLER: The September 30th one?

9 MR. MASTRAMONACO: Yeah. Well, no, it
10 was recently, yeah.

11 MR. KESSLER: Yeah, it's dated -- your
12 letter dated September 30th, is that the one?

13 MR. MASTRAMONACO: No, I submitted
14 separately.

15 MR. DOUGLAS: It's attached to that.

16 MR. KEHOE: It's attached.

17 MR. MASTRAMONACO: Yeah, at the end.

18 MR. KESSLER: Is that the one with the
19 red box around.

20 MS. HILDINGER: Mm-hmm.

21 MR. KESSLER: Yeah.

22 MR. MASTRAMONACO: Correct.

23 MR. KESSLER: Right. Well, this is, yes,
24 this is the zone, you gave us chapter 307.

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2 MR. MASTRAMONACO: Yes. Okay, so I
3 highlighted, but again --

4 MR. KESSLER: But again, this was, this
5 is my question from before. This deals with site
6 development plan approval and doesn't discuss
7 amended site development plan approval.

8 MR. MASTRAMONACO: Because

9 MR. KESSLER: Our, our counsel, our
10 attorney here is saying that we should focus on
11 the building on the site that's within our
12 purview right now.

13 MR. MASTRAMONACO: They would love that.
14 Yes.

15 MR. KESSLER: They what?

16 MR. MASTRAMONACO: They would love that.

17 MR. KESSLER: They, who?

18 MR. MASTRAMONACO: Them.

19 MR. KESSLER: Well --

20 MR. CUNNINGHAM: I mean, Ralph, that's
21 just not --

22 MR. KESSLER: He's not them.

23 MR. CUNNINGHAM: No, I mean, really
24 that's just my position, because I had to look

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2 back through every decision that was done before
3 this meeting. And that's, that's how I came to
4 that when I read through the case again, because
5 --

6 MR. MASTRAMONACO: There is only site
7 plan approval, there was no such thing as amended
8 site plan approval. It's not a separate issue.
9 There's only a site plan approval. You can go in
10 for an amendment, but you have to approve that
11 site plan. That's what they submitted, that site
12 plan.

13 Now, what this chapter 307 says is,
14 there is legal information that shall be
15 submitted. Shall, there's no going back from
16 shall, shall means you got to. Okay. We all know
17 that. Under C, there is a, a list of items that
18 have to be submitted for a site plan. Now, I
19 don't see any of these here. I don't see any, any
20 of these items have been actually submitted. Item
21 11 is the proposed use or uses of land and
22 buildings and proposed locations of buildings,
23 including proposed grades. It's an absolute shall
24 requirement that the proposed uses be shown on

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2 the site plan.

3 MR. KESSLER: Okay. And, and do you
4 agree that the original site plan had those
5 things when we approved it back in 2003?

6 MR. MASTRAMONACO: Yes. Okay. So the
7 site plan was approved. And again, we're, we're
8 getting into the semantics about amended --

9 MR. MASTRAMONACO: Well, it showed
10 different things. It didn't show waste recycling
11 in the area where they're doing waste recycling.
12 It just said storage of equipment or something
13 like that. That's all it said. It was profitable
14 to make this change and to avoid the restrictions
15 of the zoning code because it's a profitable use.
16 But it's an illegal use. There's no -- it's just
17 not permitted in the zone. You can check that
18 yourself. Mr. Cunningham can check too. I, I
19 don't care. It's, it's -- I've done it.

20 But it's an absolute requirement that
21 you show the uses on the site plan. No uses are
22 shown on that site plan at all. So I would
23 challenge the submission to the county planning
24 board. It was not done. If it was done with this

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2 site plan, it was not done accurately or, or,
3 with integrity. I would challenge that again. If
4 this board Approves A site plan without the uses
5 I would challenge that again. Call them lawsuits,
6 whatever you want to call them.

7 Somebody -- this is the place to resolve
8 these issues. I don't want to have to go to
9 court, but when you tell me that I'm wrong, what
10 am I going to do? You say, oh, okay. You're
11 right, I'm wrong. No, I'm right. I know I'm
12 right. I've read the code and I've been doing
13 this for almost 40 years. I think I know what I'm
14 talking about.

15 So, there is another section here. It's
16 307 zoning. The planning board shall, again,
17 shall, take into consideration the public health,
18 safety and general welfare, the comfort and
19 convenience of the public in general, and the
20 residents of the immediate neighborhood. That's
21 me. Your board has to listen to me. Your board
22 has to take my concerns as a resident, as a
23 neighbor into account.

24 Now, I don't know what -- you said that

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2 at the meeting that you were going to hold this
3 hearing open, which is fine. I believe October,
4 in a couple, the 3rd, I think we have another
5 meeting with the court. We have a -- I will tell
6 the court that there, there's no quick resolution
7 for this. They can say whatever they want, but I
8 don't see a quick resolution for this. How are
9 they going to resolve the issue of the special
10 permit for the concrete plant? How's that going
11 to be resolved between now and October 3rd when
12 the -- I don't see it.

13 So, and I will just look over this, oh
14 yes. How are you doing SEQR on this project? Have
15 you, has anyone advised the board on what SEQR is
16 here? That site plan is 10.8 acres. This, the
17 environmental form that was submitted to you was
18 coincidentally 9.8 acres. Why is that important?
19 Well, 10 acres is a cutoff between a DEIS or no
20 DEIS. This project is in a CEA. It's over 10
21 acres.

22 Why would they make it 9.8 acres? Well,
23 you, you, you, you can answer that yourself. But
24 I believe this is a type one action. I don't know

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2 if you've done anything on this matter yet. I
3 don't know if there, if there's a lead agency
4 designation. I don't know if you've done any of
5 that yet. It should be.

6 The reason this is such a problem is
7 because you didn't provide a special permit. Had
8 you done a special permit in 2003, there would've
9 been restrictions on hours of operation. Do you
10 know why I'm here? Because when I first moved
11 into the townhouse 700 feet away, I was awakened
12 at 3:00 in the morning. The whole building was
13 shaking. Well, what the heck is going on here? I
14 found out that they were delivering sand to the
15 concrete plant at 3:30 in the morning, giant
16 trucks. And they would put their brake on right
17 in front of the townhouse. I looked into it, and
18 that's why we're here. I looked into it. I found
19 that there was virtually nothing legal about this
20 operation.

21 I do have a question about the town
22 engineers. Mr. Lapine, I'm sorry. Okay.

23 MR. LAPINE: Yes, correct.

24 MR. MASTRAMONACO: Were you here in

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2 February?

3 MR. LAPINE: I was not.

4 MR. MASTRAMONACO: Okay. Who was here in
5 February?

6 MR. LAPINE: Joe Fusillo, from our
7 office.

8 MR. MASTRAMONACO: Joe Fusillo, okay.

9 MR. LAPINE: This was, the review was
10 conducted by DOTS.

11 MR. MASTRAMONACO: Did you have a
12 review? Did you submit a review of this
13 application?

14 MR. LAPINE: I did.

15 MR. MASTRAMONACO: I never saw it. I
16 never saw -- we, we submitted foil requests.

17 MR. LAPINE: I, I submitted a review
18 this morning on this application.

19 MR. MASTRAMONACO: Oh, no, no. I'm
20 talking about back in February, your, your
21 office.

22 MR. LAPINE: This, this plan was
23 reviewed by the Department of Technical Services.
24 It was not reviewed by the consultant Engineer.

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2 MR. MASTRAMONACO: Right, but it was
3 reviewed after the approval.

4 MR. LAPINE: I can't speak to that.

5 MR. MASTRAMONACO: Yeah. Okay. Well,
6 somebody sat here while Mr. Steinmetz was saying
7 that there's no site work for this building, this
8 little building. There's no site work, there's no
9 electricity. You know, I mean, you were
10 hoodwinked. I'll tell you that. Very importantly,
11 the Construction and Debris Waste Recycling
12 Center, the Regional Center for Waste Recycling
13 produces powdered concrete. I've brought this to
14 the attention that that is flowing off the
15 property, out onto the roads. I had a car in the
16 parking lot. It needed a brake job. I didn't want
17 to get rid of the car. I liked the car so much. I
18 just left it in the parking lot for about six
19 months. There was that much dust all over it. I
20 took copies of that dust. We had dust. We had a
21 concrete sample from the pile. I brought it to my
22 friend, my golf partner who works in electron
23 microscopy. He said it's the same stuff. The
24 stuff from that pile of junk was on my car, 700

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2 800 feet away.

3 Do you know what that stuff is? It's
4 airborne silica dust. That is cancer causing.
5 silica dust is cancer causing. OSHA, years ago,
6 about three or four or five years ago, OSHA
7 changed the rules on cutting concrete. Now
8 everybody has to wear a mask. It's considered
9 cancer causing, You know, I don't know. None of
10 this was reviewed. And, and I, you know, talk
11 about getting hoodwinked at the end of my first
12 report, well, I, I don't know if you've seen
13 this.

14 These are all violations on the site.
15 They have in the HC zone, there's junk piled up
16 all over in the front yard, completely illegal.
17 There's an overlap between the contractor's yard
18 and the HC zone. There's piles of stuff all over
19 the place. Then, of course, I made kind of a joke
20 out of Mr. Steinmetz calling this a small
21 building. It's not a small building. I gave you a
22 nice picture of what the small building, you
23 know, of. These are things that somebody has to
24 say well, what's going on here?

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2 I did make a cute little reference to
3 the integrity of this application by going
4 backwards in time a little bit. When Mr. Bilotta
5 was talking to one of the neighbors at a public
6 hearing, and there was other things here, but he
7 said -- the neighbor said, will this concrete
8 plant make noise? And Mr. Bilotta was here. He
9 says, are you experiencing any, any noise now?
10 No. Well, you're going to hear less noise. This
11 is the type of, this is the type of application
12 that you have here. It's so full of holes, it's
13 so wrong that I really hope that somebody would
14 see the light here and see what's going on.

15 If you have any questions for me, happy
16 to answer them, but I think I've said my piece
17 for now. The last I'll leave you with, I hope
18 this can be settled at this forum rather than
19 having to go to court. It would be, it would be
20 better for everybody. I don't think that will
21 happen, but I'm certainly open to it. Thank you.

22 MR. KESSLER: Thank You. anybody else in
23 the public wish to comment?

24 MR. STEINMETZ: I, I apologize that I'm

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2 standing up in rebuttal, but I have no choice.
3 I'll be very brief. I, I'm going to start by
4 saying something. You should know that the first
5 thing I did when Mr. Mastramonaco started this
6 latest episode was call him up and ask him to sit
7 down and have lunch with Mr. Bilotta and his
8 neighbors try to talk through whatever his issues
9 have been. My suggestion of an attempted
10 neighborly discussion, rather than another
11 application and another litigation was, was
12 rejected.

13 I want to just correct a couple of
14 things. While I don't want to go backwards, I
15 have no choice In light of the fact that you all
16 permitted him the latitude to talk about history
17 and, and his objections of what happened and he
18 referred a lot to the zoning board, but I want to
19 just make sure the, the record is clear.

20 He commenced an Article 78. That was
21 dismissed in 2021. That's the one that's on
22 appeal. That was against your board. That was,
23 that action was filed against the planning board,
24 alleging that the planning board's site plan

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2 approval, the approval resolution from 2003, and
3 I'm saying 2003, was ultra vires, beyond your
4 board's authority.

5 That action was dismissed by the court.
6 And in the decision, the court dismissed it,
7 saying the statute of limitations had run 17
8 years earlier. So that if there were some issues
9 and concerns about what your board had done,
10 about what permits and were granted, and what
11 review was conducted should have been done 17
12 years earlier. And the court further noted, and
13 this again, I feel like it's particularly
14 relevant in a neighborly situation like this. The
15 court further noted in the decision that
16 Mastramonaco only began leasing his residence
17 where he is, I guess today, in 2016. It was sort,
18 sort of unusual as a litigator to have the court
19 say, you brought an action alleging that the
20 government did something wrong 17 years ago, and
21 you kind of moved into the property in 2016.

22 There's a doctrine in the law called
23 coming to the nuisance. Now, I'm not conceding my
24 client's property is a nuisance, but as some of

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2 you are certainly aware, there's a well
3 acknowledged doctrine in the law that if you move
4 into a situation and you know the situation's
5 there, you're kind of accepting what you're
6 moving into.

7 Having said that, parking, I have gone
8 to Mr. Bilotta's masonry yard, I was able to
9 safely navigate my way there, park my vehicle,
10 walk inside the retail store, come outside and
11 find my vehicle and exit the place safely. There
12 is parking. It's a contractor's facility. It's
13 not a paved parking lot at Wal-Mart. But there's
14 more than adequate parking, let alone parking
15 associated with this small storage structure.

16 Mr. Chairman, I do agree with your
17 assessment of amended site plan approval. Courts
18 have said that for SEQR purposes, what you're
19 really looking at is what are the changes. The
20 only change that's before you is the fact that
21 there's a 2,400 square foot metal storage
22 facility on this 9.8, 10.8 acre site. It is a
23 small building compared to everything going on in
24 this HC9A and this light industrial zone.

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2 He made a point of, of looking at your
3 code and brought you to 307.71C11. I just want to
4 note that that section that he had you looking at
5 about uses during that part of his discussion
6 about the unlawful uses, all it says is the
7 proposed use or uses of lands and buildings. The
8 proposed use at issue here is a storage facility
9 and we are allowed to lawfully store, store
10 garden supplies and other materials in the HC9A
11 zone under the column marked HC9A, there's a p
12 next to that type of storage.

13 So all the other uses, the preexisting
14 uses, if you look at what he put in front of you,
15 there are a lot of sections that require existing
16 as well as proposed. As far as use goes, use is
17 just what's proposed, what's new, what's
18 different. There were no uses shown on the site
19 plan. Well, the only use that needed to be shown
20 on this site plan was this particular change.

21 He did say at the end there was nothing
22 legal about this operation, and he knows what
23 he's talking about. All I could say is this. As
24 he himself explained, he's been riding the town

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2 for years, years now, and it's not your board's
3 job to play the role of code enforcement. You
4 know that. And your counsel will make that clear.

5 So if your code enforcement officers
6 have decided that there is no noise violation,
7 there is no dust violation, there is no zoning
8 violation, that's kind of not for you to sit in
9 judgment. You are here because we have a 2,400
10 square foot storage shed. The code enforcement
11 hasn't found that he knows what he's talking
12 about. The courts haven't found that he knows
13 what he's talking about.

14 I'm not happy that I'm here doing this.
15 Mr. Mastramonaco knows that. I, I called him. I
16 tried to avoid the fifth sixth litigation.
17 Whatever's coming is the seventh litigation.
18 We'll do what we need to do. Again, we're asking
19 you to simply allow us to address Mr. Lapine's
20 issues. I understand you're going to hold the
21 public hearing open. No objection. We understand
22 it. We were notified that. We're well aware of
23 that.

24 There were a couple of comments in Mr.

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2 Lapine's memo about some drainage issues that he
3 wanted clarified. Our, our architect and engineer
4 will clarify that. I hope we will satisfy
5 planning and engineering. We look forward to
6 coming back next month. We would like at next
7 month, I hope you will close the public hearing
8 and proceed summarily to a negative declaration
9 on this rather modest and simple application.

10 I -- it's, it's not for me to apologize
11 because I didn't do this. But I wish you didn't
12 have to go through this. It is what it is.
13 Someone else brought this. Mr. Bilotta wishes you
14 didn't have to go through this. And, as I said
15 earlier, I'm going to, I'm going to conclude with
16 we appreciate the fact that he and his companies
17 can continue to operate lawfully, productively
18 and legally in the zone HC9A in the light
19 industrial zone. Thank you.

20 MR. JAY BILOTTA: David?

21 MR. STEINMETZ: Yeah? You want to say
22 something? Go ahead.

23 MR. BILOTTA: Jay Bilotta, it's my
24 property we're talking about. In reference to

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2 what Ralph said tonight, he said a lot of good
3 stuff. Okay. Which mostly false, all false. My,
4 my, my business has been running now for over 20
5 years over there. We are monitored by the Board
6 of Health, Westchester County Board of Health. We
7 are monitored by the DEC. Okay. We've had code
8 enforcement there to take a look at stuff. We've
9 had the Board of Health there individually, four
10 to five times to take a look at stuff. We have
11 sprinklers, we have this, we have everything we
12 have there to make it safe for our workers and
13 safe for anybody who comes over there and safe
14 for the community. I just want to put that into
15 the record. Thank you.

16 MR. KESSLER: Okay. Ralph?

17 MR. MASTRAMONACO: Okay. So, I got a
18 second -- I get a second step, a second shot. You
19 know, David Steinmetz, he, he mentioned something
20 that's really quite important. We were talking
21 about Section 11 that requires the proposed uses
22 to be on the site plan. And he said, well, there
23 are existing uses. Well, on the original site
24 plan, there was no construction debris, Waste

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2 Recycling Regional Center. There was none. For
3 this site plan, it is proposed. It is a proposed
4 use because it's never been shown before in a
5 site plan. And without showing those uses, I
6 don't know how you could approve. I don't know
7 how you could approve this site plan. I just
8 don't see it. And I think it would be open to --
9 very easily open to challenge. Again, I don't
10 want to have to due to it's nonconforming with
11 the, with the zoning and if it go that way. But
12 if, if they, if they can't resolve this here, it
13 will go that way, unfortunately. Thank you.

14 MR. KESSLER: Any comments from board,
15 staff at this point? You look like you want to
16 say something?

17 MR. BIANCHI: I think what's being asked
18 of us is to rescind the previous decision that we
19 made in 2003 regarding this application. And I
20 don't see any precedent for that. I don't see any
21 reason for that at this point. I'm going to focus
22 for one on what our counsel has advised, on the,
23 the shed and, and that alone. I'm not going to go
24 back and relive or redo the application that was

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2 put before us then, which we approved.

3 MR. KESSLER: Any, any additional
4 comments? Anything from staff at all?

5 MR. LAPINE: I just want to note for the
6 record that I read Mr. Mastramonaco's letter and
7 in it he indicated that the town engineer's
8 comments were outstanding from his review in
9 February. There are files on record that they
10 were responded to by the applicant's architect
11 and engineer, and they were in the open gov file.

12 MR. KESSLER: Okay. Thank you. So if --

13 MR. BIANCHI: One more, one more
14 comment.

15 MR. KESSLER: Sure, go ahead.

16 MR. BIANCHI: Is there any, I, I don't
17 want to, you know, rehash any of this, but is
18 there any -- do we have a record of our code
19 enforcement people going out to the site and
20 getting an inspection done? And then do they, did
21 they have any issues?

22 MR. CUNNINGHAM: We can get a report
23 before the next meeting to you --

24 MR. BIANCHI: Yeah.

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2 MR. CUNNINGHAM: -- if that's what
3 you're asking for. That's not a big deal. Not
4 that I, you know, I think it's just, just good
5 for us to have that too.

6 MR. ROTHFEDER: And, and the question of
7 the different uses. How, how do I, I I don't know
8 whether that's accurate or not yet, but how do,
9 how would we address that? What, that's sort of
10 an issue if someone comes back to us to, again,
11 build something on a site that's already been
12 approved and there are changes though to the use
13 there, don't we usually look into that?

14 MR. CUNNINGHAM: As, normally what
15 happens is if if there's a use issue, it has to
16 go through code enforcement and because our
17 building well, our director of code enforcement,
18 we don't have a building inspector per se, we
19 have a director of code enforcement. And he's the
20 one who issues interpretations about actual uses.
21 So he, he had reviewed the building permit
22 application.

23 MR. ROTHFEDER: But wouldn't we get that
24 as, as part of a review memo to be able to

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2 determine what we're actually looking at and
3 making a decision about?

4 MR. CUNNINGHAM: We, so are you asking
5 for the original? Are you asking for this --

6 MR. ROTHFEDER: I don't know, I mean
7 again -- I, I don't know. I mean again, I, I know
8 there have been times when, you know, somebody is
9 going to change a site a little bit, not even a
10 lot, just change, change use of a building or, or
11 the size of a building. And, and there's, and so
12 there's some usage change from the original that,
13 that we had approved. And we do talk about that
14 during those times, from my experience. So I
15 guess I'm just asking, so, you know, we're, we're
16 clear on this because there, if, if there is a
17 different use on that site, wouldn't that be
18 something we need to know?

19 MR. KESSLER: And, and that's why I
20 think the code enforcement report is important
21 because they would --

22 MR. ROTHFEDER: Okay.

23 MR. KESSLER: -- they would see that or
24 note that.

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2 MR. ROTHFEDER: Right. Okay. exactly. So
3 I --

4 MR. KESSLER: I agree with you.

5 MR. ROTHFEDER: Yeah. Okay. I, I'd like
6 to --

7 MR. CUNNINGHAM: So we'll get, we'll get
8 a history of the code enforcements inspections of
9 the property.

10 MR. ROTHFEDER: Okay.

11 MR. KESSLER: Anything further from,
12 from the board. So as you said, we'll adjourn
13 this. So Jeff?

14 MR. ROTHFEDER: I, I move we adjourn the
15 public hearing to November and refer back to
16 staff.

17 MR. KESSLER: Okay. And that'll be when
18 is it? November 7th. Okay. Second please.

19 MR. BIANCHI: Second.

20 MR. KESSLER: And on the questions? All
21 in favor?

22 MULTIPLE: Aye.

23 MR. KESSLER: Opposed? Alright, thank
24 you all. Alright, final item this evening is the

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2 application of Elrac LLC, doing business as
3 Enterprise Rent-a-Car for amended site plan
4 approval for removal of an existing carport and
5 the construction of an 875 square foot enclosed
6 wash bay at the Enterprise Rent-a-Car Center,
7 located at 2077 East Main Street, drawings dated
8 September 24, 2024. Good evening.

9 MR. SINSABAUGH: Hi, good evening,
10 Chairman, members of the board. My name's Brian
11 Sinsabaugh. I'm an attorney with Zarin and
12 Steinmetz, here with partner of David Steinmetz,
13 as well as John Petri and the engineer of record,
14 for the applicant. We did make another submission
15 responding to some of the comments that we
16 received from your board at the last meeting, as
17 well as from the engineer. The comments, I'm just
18 going to briefly run through some of the changes
19 that we had and the comments that we made.

20 The, with regard to the comments, we
21 addressed decibel level, that was one of the
22 comments and concerns that the board did have,
23 utilizing actual numbers provided from the
24 manufacturers of the equipment that's being used

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2 on the site. We obtained maximum, maximum decibel
3 levels that are right next to the equipment
4 without any buffering. And we did note within our
5 application that this is being fully enclosed.
6 It's not fully enclosed. Now, this is the same
7 equipment that's being used on the site. Maximum
8 decibel level of the equipment standing within
9 five feet of the equipment is, five to 10 feet,
10 is 80 feet or 80 decibel. As noted on our plan,
11 this is over 15 feet from those, from the
12 boundary and it's going to be fully enclosed. So
13 we don't see any issue with us complying with the
14 noise ordinance, which is a maximum of 65 at the
15 boundary line.

16 We do ask that the board conduct a site
17 visit and we would like to have a public hearing
18 scheduled as well. We did make an application at
19 the ZBA, as another update, and we do have a
20 public hearing scheduled for that on the 17th.
21 And that's with regard to our setback, for the
22 rear yard setback.

23 MR. KESSLER: Very persuasive. We're
24 going to do exactly that.

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2 MR. SINSABAUGH: Awesome. So, who's got
3 this is it.

4 MR. BIANCHI: I got it.

5 MR. KESSLER: Oh, you got it. I'm sorry.

6 MR. BIANCHI: Mr. Chairman, I'll move
7 that we set a site visit for this application on
8 October of 27th at 9:00 a.m., and that we

9 MR. KESSLER: Just before you, before
10 you do that, which one are we going to go to
11 first? We have two that day.

12 MR. DOUGLAS: Got two.

13 MR. KEHOE: Let's go to this one first.

14 MR. KESSLER: Okay.

15 MR. KEHOE: I, well, I'm --

16 MR. KESSLER: So this will --

17 MR. KEHOE: I think this will be
18 quicker, if you want to -- that's up to you, but
19 I think --

20 MR. KESSLER: So we'll do this at 9:00
21 then.

22 MR. KEHOE: Okay.

23 MR. KESSLER: Okay.

24 MR. BIANCHI: Okay. And I'll move we

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2 refer this back to staff for further work --

3 MR. KESSLER: No, set a public hearing.

4 MR. BIANCHI: I'm sorry. And set a
5 public hearing for our next meeting.

6 MR. KESSLER: November 7th. Okay. Second
7 please.

8 MR. DOUGLAS: Second.

9 MR. KESSLER: And all the questions. All
10 in favor?

11 MULTIPLE: Aye.

12 MR. KESSLER: Opposed? You'll let the
13 other people know that we'll go there.

14 MR. KEHOE: Yeah, we're meeting with
15 them tomorrow morning.

16 MR. KESSLER: Okay, fine. So Nora?

17 MS. HILDINGER: It's 7:31, meeting is
18 Adjourned.

19 MR. KESSLER: Thank you.

20 (The public board meeting concluded at
21 7:31 p.m.)

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CERTIFICATE OF ACCURACY

I, Claudia Marques, certify that the foregoing transcript of the Planning Board meeting of the Town of Cortlandt on October 1, 2024 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By

Handwritten signature of Claudia Marques in cursive script.

Date: October 18, 2024

GENEVAWORLDWIDE, INC
228 Park Ave S - PMB 27669
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