

STATE OF NEW YORK : COUNTY OF ULMSTER

TOWN OF MARLBOROUGH ZONING BOARD

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In the Matter of

CHARLES GIAMETTA

#1500 Route 9W, Marlboro, New York 12542

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WORKSHOP MEETING TO REVIEW VARIANCE DECISION
FOR BALCHUNA'S AUTO

Date: March 8, 2018
Time: 7:00 p.m.
Place: Town of Marlborough
Town Hall
#21 Milton Turnpike
Milton, New York 12547

BOARD MEMBERS: WILLIAM GIAMETTA, CHAIRMAN
JEFF MEKEEL
DAVE ZAMBITO
LENNY CONN, Absent
GEORGE SALINOVICH

ALSO PRESENT:

THOMAS CORCORAN, JR. BUILDING INSPECTOR/CODE
ENFORCEMENT

REBECCA A. VALK, ESQ.

PENNY E. CASHMAN, ZONING BOARD SECRETARY

CHARLES GIAMETTA, APPLICANT

1 GIAMETTA - WORKSHOP MEETING

2 CHAIRMAN GIAMETTA: Welcome
3 to the March 8, 2018 meeting of the Zoning
4 Board of Appeals, Town of Marlborough. I
5 ask you to join me to the pledge of the
6 flag.

7 (Pledge of Allegiance)

8 CHAIRMAN GIAMETTA: Thank you
9 very much. Our last ZBA meeting was from
10 2017, August 29th, our minutes have come
11 forth, and board members, have you had a
12 chance to review them, and if so, are there
13 any changes needed?

14 MR. MEKEEL: No.

15 MR. ZAMBITO: No.

16 MR. SALINOVICH: No.

17 CHAIRMAN GIAMETTA: I'd ask
18 for an approval of those minutes.

19 MR. MEKEEL: I'll make a
20 motion that we approve the minutes from
21 August 29, 2017.

22 CHAIRMAN GIAMETTA: And a
23 second?

24 MR. ZAMBITO: I will second.

25 CHAIRMAN GIAMETTA: And a

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2 vote?

3 MR. SALINOVICH: Aye.

4 MR. MEKEEL: Aye.

5 MR. ZAMBITO: Aye.

6 CHAIRMAN GIAMETTA: And aye.

7 Approval of the minutes of the prior
8 meeting.9 We have a matter on the
10 agenda this evening, Charles Giametta. I
11 wish to disclose, for the record, I am a
12 relative of Mr. Giametta's, but I feel that I
13 could be fair and impartial about these
14 proceedings. And having said that, we
15 welcome Rebecca Valk, our attorney, Building
16 Inspector Corcoran here, and Secretary
17 Cashman, and Ms. Rosso.18 And Mr. Giametta, would you
19 briefly explain why you're here tonight?20 MR. GIAMETTA: Yeah, I made a
21 complaint about a neighboring use to my
22 property to Building Inspector Tom Corcoran,
23 and Tom replied to my complaint and cited a
24 couple of reasons why he felt that it was a
25 permitted change use and that site plan

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2 review is not required. And I disagree with
3 that finding, and that's why I'm here today.

4 CHAIRMAN GIAMETTA: Okay. I
5 would like to know if this matter has come
6 before the Zoning Board Appeals prior for
7 anything at all?

8 MS. CASHMAN: Not that I have
9 a record of.

10 CHAIRMAN GIAMETTA: Okay. I
11 see in the minutes of the planning board
12 reference to setbacks. Do you know, Mr.
13 Giametta, if that's come before, because I
14 wasn't here for it.

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2 CHAIRMAN GIAMETTA: Were you
3 present for that meeting?

4 MR. GIAMETTA: Yes, I was.

5 CHAIRMAN GIAMETTA: Okay.

6 And that was the Zoning Board of Appeals;
7 correct?

8 MR. GIAMETTA: Correct.

9 CHAIRMAN GIAMETTA: Okay. So
10 there should be findings on that meeting
11 somewhere.12 MR. GIAMETTA: There are
13 minutes.14 CHAIRMAN GIAMETTA: There are
15 minutes to that?

16 MR. GIAMETTA: Yeah.

17 CHAIRMAN GIAMETTA: Okay.

18 Now, beyond that, I understand the zoning
19 was changed along the way. Inspector
20 Corcoran, do you know when that zoning was
21 changed?22 MR. CORCORAN: It's in the
23 book. If you go to 155.12E, I believe it
24 is. E4A, right there, 2014. January 2014
25 by Local Law Number 1 -- 8/25/14, sorry.

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2 8/25/14 by Local Law Number 1.

3 CHAIRMAN GIAMETTA: So the
4 past use was residential, I understand?5 MR. CORCORAN: But it got a
6 variance though. 1978 it got a variance in
7 front of the planning board.8 MR. GIAMETTA: For the
9 record, I don't think the zoning was changed
10 in 2014. I think there was an amendment to
11 the zoning in 2014. The actual zoning was
12 changed from residential to higher
13 development, I believe, maybe back around
14 2000. I'm not sure of the date, but it was
15 prior to the amendment Tom is referring to.

16 CHAIRMAN GIAMETTA: Okay.

17 MR. GIAMETTA: And also, my
18 recollection is, there was a zoning board
19 matter back in 1978. And back then, when
20 you went for a variance, that was your site
21 plan, whatever the conditions of the
22 variance were was your site plan. There was
23 no second trip back to the planning board
24 back then. That's my recollection of it and
25 so, Tom is stating that there is or was site

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2 planning. I did FOIL the minutes back in
3 2007, the zoning board minutes, and I got a
4 copy from Kristy Lapolla back then, and I
5 got the entire minutes and that's all that
6 came back on my FOIL. But for somehow, some
7 way, when I asked Tom about the minutes, you
8 know, in connection with my complaint
9 recently, he layered in an additional
10 document that I've never seen before, and
11 that was a site plan, some handwritten site
12 plan. And I was part of all of the
13 proceedings back then, and this is the first
14 time that I've ever seen that document.

15 CHAIRMAN GIAMETTA: Is that
16 document here tonight?

17 MR. CORCORAN: You have it.

18 CHAIRMAN GIAMETTA: Is it
19 handwritten or hand typed?

20 MR. GIAMETTA: It's a site
21 plan. It's a one-page site plan.

22 CHAIRMAN GIAMETTA: It
23 wouldn't be this document?

24 MR. CORCORAN: That is the
25 planning board when they voted on the site

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2 plan. That is it. So it got planning board
3 approval, Hondat, September 7, 1978, right
4 around the time that you say it was a
5 variance. So you're calling it a variance,
6 I've got planning board approval. Hondat,
7 Mondello, Kramer, Diehl acreage on 9W.

8 MR. GIAMETTA: I guess, to
9 clarify, what I'm saying is on this site
10 plan, there was never this proposed storage
11 building forwarded into the site plan, and
12 I've never seen that before.

13 CHAIRMAN GIAMETTA: Let's ask
14 Attorney Valk to interject her thoughts.

15 MS. VALK: Yeah, I just want
16 to step in on the procedure. I understand
17 this evening is a workshop meeting, but the
18 one thing that's concerning me, we're
19 getting into some specific facts and the
20 property owner has not been notified yet of
21 this discussion and they have the right to
22 respond to everything. So procedurally,
23 what should be occurring is, as you're aware
24 Mr. Corcoran, is the first interpreter of
25 the code in these issues, and he's issued

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2 his interpretation. Mr. Giametta has now
3 submitted an appeal. It is now his burden
4 to convince this board that Mr. Corcoran's
5 decision is incorrect, and it's his burden
6 to gather the evidence and the other things
7 that are being talked about and presented to
8 you. You're acting in a quasi judicial
9 nature. And in that sense, instead of you
10 kind of asking, finding the documents, it
11 really is the burden of Mr. Giametta to
12 submit it. Mr. Corcoran can be in
13 attendance as well, and obviously, respond
14 if he feels anything is factually incorrect
15 and so on, and they will speak and the
16 property owner would be given notice of that
17 hearing and also have the opportunity to
18 interject in the matter.

19 So I would limit how much
20 into the nitty gritty you're getting this
21 evening, because I don't want to be in a
22 position where the property owner is claiming
23 that they didn't have a full opportunity to
24 address all of these concerns.

25 CHAIRMAN GIAMETTA: Okay. I

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2 see. So the property owner is a critical
3 part of the matter?

4 MS. VALK: Yes, they are a
5 necessary party to this proceeding. So I
6 understand this was set for a workshop
7 tonight, and I think there has been some
8 discussion of what the issues and concerns
9 are, but I think everything needs to be
10 reorganized and presented in an orderly
11 fashion at your next meeting, and then the
12 property owner would obviously be given
13 notice that the hearing is going to be held
14 on that application on that date.

15 MR. GIAMETTA: Okay. Let me
16 say then why I disagree with the finding.

17 MS. VALK: Okay. But just so
18 you know, you have to repeat this at the
19 next meeting.

20 MR. GIAMETTA: I get it. So
21 anyway, Tom has said that this is -- the
22 change of use from what the use of the
23 property used to be, which was, it was a
24 retail auto part store, and the nursery
25 changed from a retail auto part store to a

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2 auto body shop, a new car sales lot and a
3 junkyard.

4 MR. ZAMBITO: Can I ask you a
5 question?

6 CHAIRMAN GIAMETTA: Yes.

7 MR. ZAMBITO: You're talking
8 about Eddie Kramer?

9 MR. GIAMETTA: Eddie Kramer,
10 Hondat.

11 MR. ZAMBITO: Eddie Kramer
12 did everything that you just listed or no?

13 MR. GIAMETTA: No, Eddie
14 Kramer, he did the auto parts store only.

15 MR. ZAMBITO: So he
16 disassembled?

17 MR. GIAMETTA: He
18 disassembled cars inside the building,
19 and --

20 MR. ZAMBITO: Sold parts?

21 MR. GIAMETTA: Sold parts.

22 MR. ZAMBITO: Is it okay for
23 me to ask?

24 MS. VALK: I was just going
25 to say, also the property owner should be

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2 given voluntarily a copy of the minutes
3 tonight so they are fully aware of what was
4 discussed and can respond to it.

5 CHAIRMAN GIAMETTA: Are we
6 going too far without the property owner
7 here?

8 MS. VALK: Well, they may
9 claim there was too much of a discussion,
10 and has swayed your opinion. So to the
11 extent that you state the grounds for your
12 objection, I think that is fair. But I
13 think all of these questions should be asked
14 in the hearing format where we have all
15 three -- when I say all three parties, the
16 property owner, Mr. Giametta and Mr.
17 Corcoran in attendance.

18 MR. ZAMBITO: So tonight the
19 main thing is Mr. Giametta stating his case
20 and that's it?

21 MS. VALK: Yes, I would say
22 so because it wasn't scheduled for a
23 hearing. You go through a hearing with
24 appeals just like you would an area or use
25 variance.

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2 MR. ZAMBITO: It's almost
3 kind of a waste of the meeting. I mean, I
4 hate to say it, but I've been up for two
5 days, I wasn't even coming tonight, and if I
6 would've known this, I wouldn't have come.

7 MR. GIAMETTA: Well, not a
8 public hearing night, we can say that. It's
9 a workshop. It's not a public hearing
10 night.

11 MR. ZAMBITO: I would have
12 liked to have gained a little more
13 information for myself so at the next
14 meeting I am more -- I would've liked to
15 interject a little bit and ask questions,
16 datewise, what the previous owner did, what
17 the new owner is doing. You know, it would
18 have been a little more --

19 MS. VALK: I understand.

20 MR. GIAMETTA: I think I can
21 generically state my case and it might shed
22 light on why I disagree with Tom's finding.

23 MS. VALK: Well, at this
24 point, I think that's something that you
25 need to put in at the hearing. We have to

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2 schedule this for a full hearing. It's an
3 evidentiary hearing, it's going to be done
4 in an orderly fashion, and based upon your
5 preference, either Mr. Corcoran will respond
6 or the property owner will respond to those
7 comments. He would then reply to anything
8 that he disagreed with these individuals,
9 but because, you know, there is a
10 significant property interest for these
11 individuals that you're claiming they don't
12 have a legal possession to, so they really
13 need to be a part of this proceeding.

14 MR. ZAMBITO: Understood.

15 CHAIRMAN GIAMETTA: Okay.

16 Now, when we meet, we normally meet for
17 workshops and public hearings. You're
18 stating that a hearing is different then a
19 public hearing?

20 MS. VALK: No, it's a public
21 hearing. You would notice it the same way
22 under your code, and it's not limited to
23 these individuals, another neighbor could
24 come out and speak about what their
25 recollection of the past is, or what they

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2 know to have been the use in 1978 because
3 they were here.

4 CHAIRMAN GIAMETTA: I hope we
5 have enough facts to review before that
6 public hearing.

7 MS. VALK: Well, see, I don't
8 think you're going to be making a decision
9 that evening because I think you're going to
10 be given a lot of facts that evening that
11 you're going to need to weed through, you
12 may need my assistance in doing that in some
13 part and that evening you may have some
14 decisions to make as to, you know,
15 occasionally you will have speakers that
16 kind of go off point and you need to reign
17 them in, but it needs to be done in a full
18 due process hearing fashion.

19 CHAIRMAN GIAMETTA: Okay.
20 That sounds like our legal advise.

21 MS. VALK: Now, do you
22 normally do a workshop, then a hearing
23 meeting; is that your normal custom and
24 practice?

25 CHAIRMAN GIAMETTA: Yes, we

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2 normally do because this is all new to the
3 board.

4 MS. VALK: Yeah.

5 CHAIRMAN GIAMETTA: This
6 particular matter.

7 MS. VALK: Then I also agree
8 with Dave, we could have just gone right to
9 a public hearing if we can't talk about the
10 matter.

11 CHAIRMAN GIAMETTA: Yeah, see
12 for your typical variances, getting a little
13 bit of background probably isn't a bad
14 thing, but when you're -- this is
15 adversarial right from the start, that's the
16 difference with this appeal. And that's my
17 concern about having too much discussion
18 without the property owner present, or the
19 property owners, at least ability to be
20 present. I can't guarantee they're going to
21 show up at the hearing, that's their
22 decision, however, they need to be on
23 notice.

24 MR. GIAMETTA: And can we
25 talk about zoning in general?

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2 MS. VALK: Yeah, I mean, if
3 it's not specific to this application to the
4 extent -- I mean, if it's zoning code
5 issues. I don't know what this board would
6 have the authority to do, other than making
7 recommendations back to the town board. So
8 I guess it depends on what your comment is
9 and then I will be able to say whether or
10 not I think it's something the board has the
11 authority to address.

12 MR. GIAMETTA: Yeah, okay.

13 You tell me then. Tom has said that this is
14 a principal permitted use in the HD Zone.

15 MR. CORCORAN: No, I didn't.

16 MR. GIAMETTA: Well, why did
17 you highlight that (indicating)?

18 MS. VALK: I mean, that I can
19 answer because it's in the documents. Also
20 when we sent to the property owner a copy --
21 have they received a copy of your
22 determination, the property owner?

23 MR. CORCORAN: No.

24 MS. VALK: Okay. They need
25 to get a copy of that with the notice.

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2 MR. CORCORAN: Okay.

3 MS. VALK: I believe he
4 highlighted 4A, which is a special permitted
5 use; is that correct?

6 MR. GIAMETTA: Right.

7 MR. CORCORAN: Yes.

8 MR. GIAMETTA: And you're
9 stating, from how I read your reply to my
10 complaint here, you're saying that it's a
11 permitted use.12 MR. CORCORAN: Not only is it
13 a permitted use, but it has site plan
14 approval, and under 155.31 any change of use
15 is my determination, whether it's an
16 additional impact or not, whether it was a
17 used parts store and became a restaurant, it
18 would be my determination whether it went to
19 the planning board or not. It doesn't
20 automatically go.21 MR. GIAMETTA: Right. So why
22 is this highlighted the automobile service
23 repair and filling station?24 MR. CORCORAN: Just to let
25 them know it's a special use now.

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2 MR. GIAMETTA: Right. And
3 special uses are -- site plan review is
4 required for special uses.

5 MR. CORCORAN: It has one.
6 And also -- because, after it goes to
7 155.12, it goes to 155.31 under site plan
8 review, give immediate authority under
9 change of use that doesn't have to do it --

10 CHAIRMAN GIAMETTA: Hondat
11 was not an automobile service repair
12 station.

13 MR. CORCORAN: Excuse me?

14 MR. GIAMETTA: The previous
15 use was not an automobile service repair
16 station.

17 MR. CORCORAN: Well, that is
18 your determination, mine isn't. I've
19 frequented that place. So it was an
20 automobile service repair, even though it
21 was for the owner, there is no additional
22 impact. He did repair, he did auto body, he
23 did car sales.

24 MR. GIAMETTA: No, he did
25 not.

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2 MR. CORCORAN: If Dennis
3 Diehl shows up, then we will see what he
4 says.

5 MR. GIAMETTA: It's in the
6 minutes what he did and what he does.

7 MR. CORCORAN: No, it was in
8 the minutes what he said they were going to
9 do. What he did there and got approval for,
10 and what the use was was automotive repair,
11 automotive service, automotive sales, with
12 automotive --

13 MS. VALK: I'm sorry, I'm not
14 trying to cut you off. So, this is one
15 issue I think that can help narrow the
16 board's focus. This is one dispute that's
17 occurring between the two individuals. Mr.
18 Corcoran has determined that it fits within
19 that definition under section 4A and Mr.
20 Giametta is disagreeing. So just -- and
21 separately, because it's an attorney/client,
22 I can provide the board with an outline of
23 where I see the questions you need to be
24 looking at for this appeal.

25 CHAIRMAN GIAMETTA: Please

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2 do.

3 MS. VALK: Yeah.

4 CHAIRMAN GIAMETTA: Yeah,

5 because, you know, it's multifaceted it
6 seems, and we have to, like you stated,
7 focus on the matter at hand to come to a
8 conclusion.9 So beyond that, is there
10 something general, not specific, that you may
11 want to bring up?12 MR. GIAMETTA: I guess it can
13 really wait until the public hearing. I
14 don't think there is really too much we can
15 go into tonight without creating some kind
16 of legal issue, so maybe it's best for all
17 that we wait for the public hearing and make
18 our presentation then.

19 CHAIRMAN GIAMETTA: Okay.

20 Ms. Valk, does that sound okay?

21 MS. VALK: Yes.

22 CHAIRMAN GIAMETTA: Go into a
23 public hearing?24 MS. VALK: What would be the
25 date that you would probably --

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2 MS. CASHMAN: April 12th.

3 MS. VALK: I just want to
4 make sure that I'm available.5 CHAIRMAN GIAMETTA: That may
6 be short. Attorney is checking her
7 calendar.8 MS. VALK: Yeah, that's fine
9 for me, and there is nothing improper if you
10 want to make a written submission in advance
11 to summarize your argument.

12 MR. GIAMETTA: Sure.

13 MS. VALK: That would be
14 shared with the property owner and Mr.
15 Corcoran in advance if you feel that would
16 help the board focus in on what your
17 concerns are.

18 MR. GIAMETTA: Sure.

19 MS. VALK: So that they have
20 time to review that and because there has
21 been concerns about how much information may
22 come in, that would be helpful, but there is
23 no requirement.24 MR. GIAMETTA: No, I'd like
25 to do that. Thank you.

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2 MS. VALK: So how many days
3 in advance of the meeting would you like
4 that, if he would like to make a written
5 submission?

6 CHAIRMAN GIAMETTA: Well, our
7 certified's go out when, Penny?

8 MS. CASHMAN: They have to be
9 out like 10 days before.

10 MR. CORCORAN: Ten days
11 prior, 500 feet.

12 CHAIRMAN GIAMETTA: Okay. So
13 we're looking approximately five weeks ahead
14 from tonight, more or less?

15 MS. CASHMAN: No, one month
16 from today. So it's the second Thursday of
17 the month is the meeting.

18 CHAIRMAN GIAMETTA: Can you
19 have those comments and questions in, say,
20 ten days, two weeks?

21 MR. GIAMETTA: Two weeks.

22 CHAIRMAN GIAMETTA: Is that
23 okay, Attorney Valk?

24 MS. VALK: Yes, that will
25 give the board time to be familiar with it.

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2 So we're saying, today is the 8th, so we're
3 saying he will have it in around the 22nd,
4 two weeks from today.

5 MR. GIAMETTA: Sure.

6 CHAIRMAN GIAMETTA: Okay.

7 Ms. Valk will get a copy, of course.

8 MR. GIAMETTA: Yes.

9 CHAIRMAN GIAMETTA: And the
10 building department and whomever.

11 MR. GIAMETTA: And then, I
12 guess, the property owner should be notified
13 of my complaint that I made and Tom's
14 response?

15 MS. VALK: Yes. I mean, I
16 would recommend that they should get the
17 complaint, Tom's response, a copy of
18 tonight's minutes, is that going to be
19 available by the end of this month?

20 (Addressing court stenographer)

21 STENOGRAPHER: Yes.

22 MS. VALK: And I would send
23 that all out to them and notify them that
24 there is a hearing on a complaint that's
25 been filed.

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2 CHAIRMAN GIAMETTA: Any

3 comments, board members?

4 MR. MEKEEL: No.

5 MR. ZAMBITO: No.

6 MR. SALINOVICH: Inspector

7 Corcoran, anything else?

8 MR. CORCORAN: No.

9 MR. SALINOVICH: I got

10 something to say, but I don't know if I want
11 to say it now or wait.12 MS. VALK: Well, I was going
13 to ask if the board wants to do an
14 attorney/client session with me separately
15 if you have any procedural questions to ask,
16 because I know appeal applications are not
17 common here in Marlborough. I would be
18 happy to offer attorney/client advice that I
19 can offer for tonight. You would go into
20 executive session for that purpose if you
21 feel you need it. I'm just offering it
22 since I'm here.23 MR. SALINOVICH: Might make
24 things go quicker next time.

25 MR. ZAMBITO: I think you're

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2 right.

3 CHAIRMAN GIAMETTA: Let's
4 disclose for the record that there is going
5 to be a meeting attorney/client.6 MS. VALK: Entering into
7 executive session for the purpose of an
8 attorney/client meeting.9 CHAIRMAN GIAMETTA: Okay.
10 Thank you.11 MR. GIAMETTA: Thanks for
12 everyone's time.13 (Entering executive session for the purpose of
14 attorney/client discussion)

15 (Time noted: 7:25 p.m.)

16 (Discussion off the record)

17 MR. MEKEEL: I'll make a
18 motion to close the meeting.

19 MR. ZAMBITO: I'll second.

20 MR. SALINOVICH: And I'll
21 third.22 CHAIRMAN GIAMETTA: Thank
23 you. The meeting is now closed.

24 (Time note: 7:55 p.m.)

25