

STATE OF NEW YORK : COUNTY OF ULSTER

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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PUBLIC HEARING FOR AN APPEAL OF CODE ENFORCEMENT
OFFICER'S DETERMINATION REGARDING SITE PLAN.

Date: January 10, 2019
Time: 7:11 p.m.
Place: Town of Marlborough
Town Hall
#21 Milton Turnpike
Milton, New York 12547

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

ALSO PRESENT:

THOMAS CORCORAN, JR. BUILDING INSPECTOR/CODE
ENFORCEMENT

REBECCA A. VALK, ESQ.

PENNY E. CASHMAN, ZONING BOARD SECRETARY

CHARLES GIAMETTA, APPLICANT

JOHN LYONS, ESQ., REPRESENTING APPLICANT

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1 GIAMETTA - PUBLIC HEARING

CHAIRMAN MEKEEL: The next

one will be Mr. Giametta. Dave, you want to read the notice of the public hearing on this one?

MR. ZAMBITO: Town of

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2 Town of Marlborough Town Code and the prior
3 site plan approval. The lands affected by
4 this application are located within the
5 highway district zoning district at 1500
6 Route 9W in the Town of Marlborough and
7 known as section block and lot number
8 102-1-2.15. A copy of the application is
9 available for public inspection at the
10 office of the Zoning Boards during regular
11 business hours. The meeting is open to the
12 public, dated November 26, 2018, Milton, New
13 York by order of the Zoning Board of Appeals
14 of the Town of Marlborough, By William
15 Giometta, Chairman.

16 CHAIRMAN MEKEEL: Thank you.
17 Okay.

18 MR. GIAMETTA: You want the
19 certifieds, Jeff?

20 CHAIRMAN MEKEEL: Yes,
21 please.

22 MR. GIAMETTA: (Handing) .

23 CHAIRMAN MEKEEL: Thank you.

24 MS. CASHMAN: How many do we
25 have?

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2 MR. GIAMETTA: 24 out, 17

3 back.

4 CHAIRMAN MEKEEL: None

5 refused?

6 MR. GIAMETTA: No, none

7 refused.

8 MR. LYONS: Mr. Chairman,

9 there was an affidavit that was submitted in
10 connection with our electronic submission.11 This is the original signed version for the
12 board for the record.

13 My name is John Lyons,

14 L-Y-O-N-S, my firm is Grant & Lyons, LLP and
15 I'm representing Mr. Giametta.

16 CHAIRMAN MEKEEL: Did you see

17 this?

18 MR. CONN: No.

19 CHAIRMAN MEKEEL: Can we get
20 a copy of this for the board members?21 MR. LYONS: I have a copy for
22 you.23 CHAIRMAN MEKEEL: You have
24 copies for everybody?

25 MR. LYONS: I was going to

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2 ask you, we submitted our material
3 electronically, and I didn't know whether
4 all of the board members had a chance to get
5 them, but I did bring paper copies this
6 evening, and that affidavit is attached as
7 Exhibit A to that.

8 CHAIRMAN MEKEEL: Is this in
9 there?

10 MR. LYONS: Yes, it is.

11 CHAIRMAN MEKEEL: Okay.

12 Thank you.

13 MR. ZAMBITO: 23 out, 17
14 back.

15 CHAIRMAN MEKEEL: 23 out, 17
16 back, okay.

17 MS. CASHMAN: He said 24 out.

18 CHAIRMAN MEKEEL: You want to
19 recount them. Just give us a second and
20 we'll go through these real quick.

21 MS. VALK: We should note for
22 the record that the property owners
23 submitted a request that the chairman recuse
24 himself on this application. He is not here
25 this evening to respond to that so it will

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2 have to be addressed at the future meeting
3 if the public hearing is held open.

4 MR. LYONS: For the record,
5 we would object to the recusal. If there is
6 a desire that the board gets briefed on the
7 issue, I believe that the standard that
8 applies for conflict of interest is whether
9 or not the chairman has a pecuniary interest
10 in the outcome of the appeal, which he does
11 not in this case. But if the board has any
12 questions about it, we would like to have
13 the opportunity to brief that issue with Mr.
14 Giometta. I believe at the last meeting the
15 Chairman said that he stated on the record,
16 and I wasn't there, so correct me if I'm
17 wrong, I believe he stated on the record
18 that he disclosed his relationship with the
19 applicant and stated that he could be fair
20 and impartial in connection with this
21 application. So, I'd like our objection
22 noted. And as I said, if there is a need to
23 brief it, we would like to do it.

24 MS. VALK: Okay. I think
25 we'll see how it goes. If this public

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2 hearing is kept open, the issue -- he's not
3 here this evening.

4 CHAIRMAN MEKEEL: Correct,
5 right.

6 MS. VALK: So it's somewhat
7 resolving itself, but, however, if the
8 matter is not resolved this evening, we will
9 revisit it at the end of the meeting, see
10 what the board's preference would be.

11 MR. CONN: I have 23.

12 MS. CASHMAN: That's what I
13 counted.

14 MR. GIAMETTA: I may have
15 miscounted.

16 CHAIRMAN MEKEEL: Okay. So
17 you guys want to give a brief explanation of
18 why you're in front of the board tonight?

19 MR. LYONS: Yes, sure. Mr.
20 Chairman, thank you.

21 CHAIRMAN MEKEEL: If you
22 don't mind, just state your name. I think
23 you did already.

24 MR. LYONS: Yes.

25 CHAIRMAN MEKEEL: But if

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2 everybody could say their name and whatever
3 when they speak.

4 MR. LYONS: Yes. My name is
5 John Lyons. I am land use lawyer, my firm
6 is Grant & Lyons in Rhinebeck, New York. I
7 am here this evening representing Charles
8 Giometta, who's sitting next to me. I'm
9 also joined this evening by Kim Garrison,
10 who is my associate. We -- several weeks
11 ago this appeal was originally filed by Mr.
12 Giometta and he appeared once before the
13 board, and the board at that time asked for
14 additional information from him to elaborate
15 and clarify his appeal, and so Mr. Giometta
16 got to be with us, and then we put together
17 a written document that was submitted
18 approximately two weeks ago which sets
19 forth, you know, more elaborate statements
20 of the case as Mr. Giometta asserts it
21 before the board. I don't know whether you
22 had a chance to read through the materials
23 that we submitted. I might defer to the
24 board members with regard to how much detail
25 you would like to hear this evening about

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2 the arguments that we put forth. I can
3 begin with a summary, and if you want us to
4 go further -- I am on your side of the table
5 fairly often, we represent a number of
6 boards. I know you're all volunteers, and I
7 know nobody wants to be here late into the
8 night, but I will, if you have questions or
9 you want more information on any particular
10 point, please let me know.

11 What brings us here,
12 basically, is Charles lives next door to the
13 property that is currently the home of a
14 business, New Country Automotive. Charles
15 has lived on his property for many, many
16 years. And the story begins in 1978, and at
17 that time, that's when the commercial use of
18 this property was first begun, and there was
19 a firm that wanted to do business. They were
20 called Hondat, and they were in the business
21 of retail sale of used car parts. And my
22 understanding of their business was they
23 dismantle vehicles on site within the
24 building, and then they had a counter for
25 customers to come and buy car parts, and they

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2 appeared -- they required back in 1978 site
3 plan approval, and they also required a
4 variance, and they appeared before the
5 Marlboro Planning Board and also the Zoning
6 Board of Appeals. And we have submitted, as
7 part of our packet, some copies of the
8 minutes of the planning board and ZBA
9 meetings back then just to show you that
10 there was some concern at that time,
11 particularly among the Zoning Board of
12 Appeals members that the Hondat operation not
13 have adverse impact off site, and there was
14 some discussion about that. They were
15 assured by the folks at Hondat that
16 everything would be -- all of their business
17 would be conducted within the building, and
18 the approvals were granted. And as it turned
19 out, the folks at Hondat were as good as
20 their word, and they conducted their business
21 next door to Charles for 25 years without
22 inharmony with each other.

23 Around 2000 Hondat closed and
24 the property changed hands and it was -- a
25 new business was opened on the property, and

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2 I believe Balchunas is the name of the
3 operator of the property. The nature of the
4 business that was being conducted on site at
5 that time, according to Charles, changed and
6 there was no longer -- the business was no
7 longer focused on the retail sale of auto
8 parts. It was an auto body repair business.
9 The business had more much more of an
10 off-site adverse impact on Charles and his
11 quality of life at his house, because the
12 building was -- the business was not being
13 conducted solely within the building as it
14 had been with Hondat. There were -- the
15 doors were left open, there were grinders and
16 noises from other tools. At some point along
17 the way, there was a paint room added to the
18 building, and then smells became something
19 that Charles was aware of. There were also
20 some vehicles being stockpiled in the back of
21 the building, and we provided you as part of
22 our packet with some photographs that were
23 taken by Charles during that time. There was
24 also some junk that was stored in the back as
25 well.

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2 Then recently, Charles filed
3 his appeal, and then more recently New
4 Country Automotive began operations on the
5 site, and I think Charles will be able to say
6 that they have run a little bit better of an
7 operation than Balchunas, but there are still
8 some off-site impacts, and there has been the
9 removal of some landscaping and other
10 buffering material in between the properties
11 that have impacted Charles's use of his
12 property.

13 And ultimately, what we're
14 really seeking here is, I want to be clear is
15 not -- is really just to make sure that this
16 business is sent to the planning board for
17 review for site plan on a special permit.
18 Your zoning -- the code enforcement officer
19 issued a determination in this case in
20 response to a complaint, which Charles made
21 with his office, and a copy of the -- Mr.
22 Corcoran's determination is attached as part
23 of the packet. And in that determination,
24 your code enforcement officer determined that
25 the business that was being conducted on that

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2 property was automobile service repair and
3 filling station, which is a use that is set
4 forth in your zoning law. The -- if you take
5 a look at your zoning law, you will find that
6 the automobile service use is listed as a
7 special use in the highway development
8 district where this property is located, and
9 the law is clear that it's a special use. It
10 requires special use permit, and then further
11 under the law, there is another section of
12 the law that says all special uses also
13 require site plan approval. So are -- sort
14 of the crux of the main argument that we're
15 making tonight is that this automobile
16 service repair and filling station use on
17 this property should be required to obtain a
18 special use permit and also be required to
19 undergo site plan approval, and we think that
20 the code enforcement officer should have sent
21 the business over to the planning board for
22 those approvals as a result of Mr. Giametta's
23 complaint.

24 Under your Marlboro Zoning
25 Law, and under the State Town Law, as the

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2 Zoning Board of Appeals, you have the
3 authority to step into the shoes of the
4 zoning and enforcement officer and do what
5 you think ought to have been done if you
6 don't agree with the determination that was
7 made by the zoning enforcement officer. And
8 so, as part of this appeal, we're asking you
9 to step into the shoes of the ZBA and to
10 issue a ruling in this case requiring a
11 special use permit and also site plan
12 approval.

13 CHAIRMAN MEKEEL: Okay.

14 Thank you.

15 MR. LYONS: Okay.

16 CHAIRMAN MEKEEL: Mr.

17 Corcoran, is that considered -- is that HD
18 right now?

19 MR. CORCORAN: It's HD right
20 now, but it wasn't at the time.

21 CHAIRMAN MEKEEL: It was R1?

22 MR. CORCORAN: Right. But
23 it's irrelevant. I agree with most of what
24 he said, but toward the end we're working
25 off the wrong concept of my determination.

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2 First, I presented to the Board, and I will
3 present to Mr. Giametta and his attorney,
4 that I got an affidavit from the previous
5 owners of Hondat saying that they did do
6 automotive repair, automotive sales, and
7 used car part sales since 1978. Attached to
8 that are pictures of the used car sales that
9 were out front of Hondat, also a picture of
10 their registered motor vehicle retail sales,
11 their dealer license sales, and a copy of
12 their DMV repair shop attached to the
13 building. So there is an affidavit from the
14 owner that was sworn and signed and
15 notarized by the owner that this was
16 happening since 1978. So Mr. Balchunas was
17 not the first person to do that. With that
18 said, the special use that he is talking
19 about, the special use permit was given.
20 The earliest one that I could find was 1995.
21 They have a copy of it, it was submitted to
22 you. I will submit to him, and also to you,
23 the copy of that special use permit that I
24 found the earliest one back from 1995 from
25 Mr. Coletta, who was the building inspector

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2 prior to me, before Mr. Salinovich and then
3 myself. So the special operating special
4 use was issued. I know since I have been on
5 board since 2003, I have kept up with that
6 special use permit. The special use permits
7 are charged and done with fire inspection on
8 a yearly basis. So a special use permit, I
9 can speak from personal experience, in 2003
10 to today, the last 15 years, special use
11 permit has been issued and also the fire
12 inspection has been issued.

13 Again, one, if I was to
14 concede that no business went on of used car
15 sales or automotive repair, which I do not
16 concede because I have the sworn affidavit
17 from Hondat, but if I was to concede that, it
18 would be irrelevant under 155-31 under site
19 plan review giving me the authority under
20 155-31(1)(c) under expansion and change of
21 use. If a change of use was to happen and,
22 again, I'm not conceding, but if I was, if
23 that business had automotive sales site plan
24 approval, and my determination was that the
25 change of use happened and it became a body

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2 shop and/or a used car facility, that it
3 gives me as the code enforcement officer such
4 determination to be made by me that it does
5 not have to go back to the planning board.
6 So I think what we're really here for,
7 without going back into the old site plan and
8 what happened before then and what happened
9 now, is that they're going to question
10 something here. It's going to be my
11 determination under 155-31(1) (c) saying that
12 I am incorrect in my determination, that the
13 change of use has more impact, and my
14 determination is that if that change of use
15 is to be determined and I do concede the
16 change of use, which I don't, but if I was to
17 concede the change of use, that the impact
18 would be less because the retail auto parts
19 store had customers coming and going on a
20 daily basis, maybe 25, 30 people at a time,
21 hundred people a day potentially, so there
22 was more traffic, there was more people,
23 there might have been more employees. With
24 the lack of the retail sale of the auto
25 parts, the automobile business of sale and

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2 repair would have less of an impact, less
3 traffic, less water, and that's my
4 determination if I was to concede strictly
5 change of use on the property.

6 CHAIRMAN MEKEEL: That is
7 155-31?

8 MR. CORCORAN: 1c, I believe
9 it is. It's expansion and/or change of use.
10 So, again, if I was to concede the change of
11 use from auto parts, strictly auto parts
12 sales, which is not the case because I have
13 a sworn statement from Hondat and a special
14 use permit, one I could find the furthest
15 one back '95 issued by Building Inspector,
16 Code Enforcement Officer Coletta, that those
17 car sales and those automotive repairs were
18 being done there since 1978.

19 CHAIRMAN MEKEEL: Okay.

20 MR. LYONS: May I be heard,
21 Mr. Chairman?

22 CHAIRMAN MEKEEL: Yes, you
23 can. Go ahead.

24 MS. VALK: Are you done with
25 your presentation before we start going back

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2 and forth?

3 MR. CORCORAN: At this point,
4 that's the question that I've answered to
5 the Chairman, yes.

6 MS. VALK: Okay.

7 MR. LYONS: Couple of things.
8 We have seen this document, which is Mr.
9 Corcoran's offering as a special use permit,
10 and this indicates that it expired on March
11 30th, 1996. We made a freedom of
12 information request to the town,
13 specifically looking for documentation of
14 special permit, and there was no -- there
15 were no documents that were returned to us
16 with regard to that. So my contention to
17 you would be that there is no documentary
18 evidence to substantiate that a special use
19 permit was issued for this business in the
20 past.21 With regard to the section
22 that Mr. Corcoran is discussing,
23 155-31(b)(1)(c), what that section says
24 exactly is site plan approval shall be
25 required for change in use and expansion of a

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2 use or a more intensive use. When such
3 change or expansion shall result in increased
4 water supply, sewage disposal, stormwater
5 runoff, management, parking needs or traffic
6 generation, such determinations to be made by
7 the building inspector. And I understand the
8 argument that he is making, that in his
9 discretion, there hasn't been a change. We
10 disagree with the factual argument on that
11 point. I would point out to you recently
12 that there has been grading done on one side
13 of the New Country site, which looks -- there
14 is a silt fence that has been erected, the
15 topsoil has been taken off, there was some
16 vehicles parked in that area for a while, and
17 we have photographs of that which are
18 included as part of our packet. The section
19 that we are talking about under the law
20 states that increased in parking needs and
21 traffic generation is one of the issues that
22 triggers the need for a new site plan
23 approval, and we submit that expanding the
24 parking to the extent that you will see in
25 the photographs, which is fairly large, meets

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2 the threshold for requiring a new site plan
3 approval under the section that is being
4 cited by the code enforcement officer.

5 MR. CORCORAN: Well, then I
6 will stipulate to that, that I don't believe
7 that is an increase in parking. The current
8 owner came to me and had asked me if he
9 could create an area to get from the
10 existing parking lot to the spray booth,
11 which Mr. Balchunas drove on the grass to
12 get to. Even during the winters, he would
13 plow the grass to get his cars to the spray
14 booth. The gentleman, current owner asked
15 me if he could do that, and he did. So, to
16 me, again, my determination, which, again,
17 is the only thing you're overriding here is
18 my determination that that is not a parking
19 area. There is pictures in there of the
20 parking area. There is no pictures of cars
21 parked in that area.

22 MR. GIAMETTA: We have some
23 of those pictures.

24 MR. CORCORAN: Again, my
25 determination is not a parking area. My

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2 determination were for cars to get from
3 point A to point B.

4 MR. LYONS: Well, and I
5 understand that --

6 MR. CORCORAN: And back in
7 the day that the retail business would have
8 required probably 20 to 30 parking spots,
9 which were probably parked -- I will make a
10 guesstimate on that, that -- those cars were
11 parked all over the road. They were parked
12 all over the grass, and they were parked
13 everywhere else. So the -- so there was no
14 increase in parking under my determination.

15 MR. LYONS: So, there is a
16 site plan out there that will discuss the
17 parking, I want the record to reflect, and
18 Charles if there is something factual that
19 you don't agree with, you should speak up
20 and put it on the record.

21 MR. GIAMETTA: There is a few
22 things that I would like to say. You can
23 look at the Balchunas's pictures of the
24 building and the cars that are around the
25 building, and you can clearly see from the

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2 type of business that Dennis used to run
3 that it was a very clean low key operation
4 compared to the junkyard pictures that have
5 been submitted tonight. And also Dennis
6 originally applied for a single use
7 business, which was a dismantling business
8 behind closed doors and to sell the auto
9 parts. It could be, in fact, that Dennis at
10 a later time added those other features like
11 selling cars and maybe auto repair. We
12 never saw -- Dennis was very low key, low
13 operation business. I disagree with Tommy's
14 characterization that there was any kind of
15 traffic like Tom is representing. I lived
16 there the whole time. This is the type of
17 business that Dennis had (indicating
18 photograph), and he was a single use
19 business. If, in fact, Dennis made it a
20 multiple use business, more than a single
21 use business, then that may have been the
22 beginning of the threshold of that business
23 needing to go back to the planning board
24 to -- mixed use businesses are automatically
25 required to go back to the planning board.

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2 It never has, whether it's while Dennis had
3 the property or these later operations,
4 Balchunas and so on. One thing is a fact,
5 that Dennis never did auto body work.

6 MR. LYONS: Yes. That's what
7 I was going to say, and this affidavit
8 doesn't say --

9 MR. GIAMETTA: That he did.

10 MR. LYONS: -- that he did
11 auto body work.

12 MR. GIAMETTA: And clearly in
13 the zoning, you can read it, it says mixed
14 use businesses or special uses require site
15 plan approval, and I have no objection to
16 someone going back to this business model or
17 clean business that's similar to this. My
18 problem is that my issues have never been
19 addressed by Tom. I've told him that I had
20 unsightliness, I had to build the fences
21 around the property because of the
22 unsightliness of the junkyard at my expense.
23 And I have told him about noise, operating
24 day and night. They used to work on stock
25 cars at night, Balchunas's kids did, and

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2 they would be revving stock cars Friday
3 night, Saturday night 8:00, 9:00 at night,
4 and so the noise complaint. Also, when I
5 mow my lawn and I'm driving over by the
6 Hondat, I smell acetone from the cars being,
7 you know, wiped down and worked on and the
8 paint and the spray booth, and it's
9 interesting to me that Tom is standing on
10 every law he can find to deny me going to
11 the planning board, but he's never addressed
12 a single issue. And what am I paying taxes
13 for? I don't get it.

14 MR. LYONS: Let's keep to the
15 issue.

16 MR. GIAMETTA: Okay.

17 MR. LYONS: The point that is
18 being made is that there have been concerns
19 raised that haven't been addressed, and all
20 that Charles is really looking for here, he
21 feels that if this were to undergo site plan
22 and special use permit review, and we've
23 briefed in the piece that we gave to you.
24 So the highway development district in your
25 zoning law, there is a statement about what

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2 the purpose of the district is, okay, and it
3 says that the -- it says that the purpose of
4 this district is to encourage orderly
5 functioning and expansion of the town's
6 transportation related activities in such
7 fashion as to be harmonious with adjacent
8 land uses. And what Charles is really after
9 here, he doesn't want to close the business
10 down or anything like that, he just wants a
11 review by objective boards of the town to
12 see if there can be some elements of special
13 use permit and a site plan that will allow
14 this business to exist harmoniously with his
15 residential use, which is next door.

16 I agree with what Charles is
17 saying, that the affidavit that has been
18 offered by the Code Enforcement Officer does
19 not specify auto body, and that is definitely
20 a piece of what's being done under Balchunas
21 and for the New Country business. We're
22 going to submit also, these are photographs
23 of -- that you will see over here on the
24 side, is that area that's been scrapped for a
25 new parking lot, and you will see there are

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2

some vehicles that are parked over there.

3

The other thing that I want to say is that,

4

with due respect to the Code Enforcement

5

Officer, if you take a look at that area

6

that's been scrapped over there, that's not a

7

little track to get from one part of the site

8

to the other. It wraps all the way around

9

the side of the building and it's actually

10

quite large. And you don't have to take our

11

word for it, there are pictures of it that

12

are in the -- attached to our packet.

13

MR. GIAMETTA: It's a 50 by

14

100 parking area. It's not a driveway that

15

goes around the building.

16

MR. LYONS: Yes, and Mr.

17

Corcoran, your Code Enforcement Officer is,

18

part of his job is to make discretionary

19

decisions, but part of his job is also to

20

follow the law as it's written in Marlboro.

21

And the reason that your board exists is

22

that it was determined that there needs to

23

be somebody that you can go to if you don't

24

agree with the Zoning Enforcement Officer,

25

and there has to be a board that's created

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2 that has the authority to overturn his
3 decisions because -- and this is not an
4 inspersion on Mr. Corcoran, but Code
5 Enforcement Officers are not always right.
6 And so there is a mechanism for challenging
7 decisions that have been made and I would
8 submit to you that if you take a look at
9 that parking area, the idea that it's just a
10 place to get from one part of the site to
11 the other doesn't really hold water.

12 MS. VALK: If I could jump in
13 here for a moment to the board.

14 CHAIRMAN MEKEEL: Yes,
15 please.

16 MS. VALK: You have a lot of
17 information in front of you and a lot of
18 facts that you're being asked to digest, and
19 for purposes of guiding you as you continue
20 to hear evidence, I want to give you a
21 brief, I think, flowchart on the issues
22 you're looking at, especially what you're
23 looking -- what you're being asked to
24 determine is whether or not the current use
25 does or does not fit within the use that was

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2 approved in 1978. What I am not quite
3 seeing in the record yet, because the
4 minutes from 1978 don't seem to be fully
5 clear on it, is what was the use in 1978,
6 how is that defined in 1978, and as the code
7 has been amended over the years, does this
8 use continue -- fit within the definition or
9 not fit within the definition of what was
10 approved. If it does, if you find that it
11 does fit within the use as approved in 1978,
12 then the next question is whether or not
13 they are exceeding their site plan. And if
14 you find it does not fit within the use
15 within 1978, then the determination would be
16 to send them over to the planning board and
17 go over the rule with the code enforcement
18 officer's determination.

19 So those, I think, are the
20 primary key issues, and then your two
21 sub-issues, depending on how you determine
22 the first issue.

23 MR. ZAMBITO: Understood.

24 CHAIRMAN MEKEEL: And we
25 don't have anything from the site plan from

1 GIAMETTA - PUBLIC HEARING

2 '78 or anything like that right now?

3 MR. CORCORAN: They don't do
4 them like today.5 MR. ZAMBITO: They didn't
6 keep records back then like they do now.7 MR. GIAMETTA: And that is
8 part of the issue also that there really
9 wasn't any good site plan approval back
10 then. I'm not looking to prohibit this
11 business either. I'm just looking for some
12 of the impacts to my property to be
13 mitigated, and there is things that can be
14 done. There is landscaping that can be put
15 in, some of the lighting could be directed
16 away from my property. The floodlights have
17 been put out and around the business that
18 are shining toward my property, and they
19 have new technology now that they call no
20 trespass lighting. Lighting could be put in
21 that's not trespassing my property.
22 Something can be done to mitigate the
23 smells. Balchunas illegally put in the
24 paint spray room and never put in a good
25 ventilation system that goes with that. If

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2 it was in front of the planning board, the
3 planning board would say if you're going to
4 have this business, you have to put in a
5 good ventilation system, make sure there is
6 no impact to the neighbors. And another
7 thing, the back doors of the business face
8 directly toward my property with little
9 change in orientation on the business. They
10 could actually orient the business to the
11 new parking area that he just built and it
12 could really turn the impact away from my
13 property, which is going back toward my
14 front yard, and face the impacts toward
15 Route 9W. And in that case, if there was no
16 impact to me, I would have no objection to
17 it. So, I don't have an objection to the
18 business and, in fact, I do have to say that
19 they're a lot better than Balchunas, but
20 there are still quite a few things that need
21 to be reviewed by current standards. Our
22 planning board now is very sophisticated and
23 very fair, and I think that if were to get
24 in front of the planning board, a lot of
25 these impacts could be mitigated. The

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2 noise, the smell, the sight, and instead of
3 adding to a buffer zone they, in an effort
4 to expand, already they unfeathered. They
5 don't have a plan that they're going with,
6 so they already cut down the buffer zone.

7 Instead of adding to the buffer zone, they
8 cut down the buffer zone because they don't
9 have the site plan. They have something on
10 a piece of paper from 1978, and it's not a
11 good site plan to -- for the impact, and the
12 impacts haven't been improving. It's proven
13 that this is a menace to me and nothing is
14 being done to mitigate it. And, in fact,
15 I'm just being denied every time I make a
16 complaint about it. I'm told to go home.
17 And instead, I'd like to see something done
18 about it. Like just go in front of the
19 planning board and guide this business so it
20 could be a good neighbor.

21 MR. CORCORAN: One thing I
22 want to say is I think, in your original
23 paperwork, Mr. Giametta stated that Hondat
24 did not do any used car service or repair.

25 CHAIRMAN MEKEEL: Okay.

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2 MR. CORCORAN: But I think
3 tonight he admitted that they have, but on a
4 smaller level than what's happened recently.

5 MR. GIAMETTA: Excuse me,
6 what I am saying --

7 CHAIRMAN MEKEEL: One at a
8 time.

9 MR. CORCORAN: So that was in
10 your paperwork. Mr. Giometta has a
11 timeline, and in that timeline it says
12 Hondat did not do any used car sales or
13 repairs at that site. And when Mr.
14 Balchunas got there, he did that. So I
15 think tonight, not only did we provide
16 pictures and a sworn affidavit from Hondat,
17 Mr. Giometta admitted maybe there was car
18 sales there. The pictures are eminent, but
19 at a smaller level. So ultimately, the used
20 car sales were being done since '78, the
21 registered repair signs were on there, the
22 registered used car sales were on the
23 building. And, then again, my
24 determination, if we want to take everything
25 that has been talked about tonight, I think

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GIAMETTA - PUBLIC HEARING

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the only thing this board is really reviewing is 155-31(1)(c) under the change of use. I don't believe it's a change of use, but if you believe it's a change of use from the original site plan in 1978, which again, is very limited, which is very instantiated exactly what was to be done or not done, then you got to go with my determination of a change of use. And then when it comes down to that parking section that he is talking about, the wording in there is parking needs. My determination is that the new business, parking needs were not any more impactful. I don't care if he created a parking lot that was a thousand by a thousand. If the parking lot is being created, or to improve the site or doing something, the code book says -- the wording is "parking needs." Stormwater runoff, management, and parking needs, or traffic. No increased traffic, no increased parking needs. Not because he created the parking lot, but my determination is the business that's there now does not create any more

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1 GIAMETTA - PUBLIC HEARING

2 parking need. That's the wording in the
3 book. Parking needs, not the creation of
4 parking area. So if you make the
5 determination when you go up there and see a
6 parking area of 40 by 80, 40 by 100, one
7 acre by one acre, if the parking needs of
8 the business are not more impactful than the
9 original business, then I deem them to be
10 less because it was a retail business. That
11 is what the code book is talking about is
12 the parking needs of the business, not the
13 parking lot or the parking area created.

14 MS. VALK: What section are
15 you referring to?

16 MR. CORCORAN: 155-31(b)(1)(c)
17 which is on the complaint. And I will put
18 on record, that over the last 15 years as
19 code enforcement officer, I might have
20 gotten five or six complaints from Mr.
21 Giametta, not one of them being a noise
22 complaint. And if you could provide them to
23 me, I would greatly like to see them.
24 Because we're talking about -- you're
25 telling me that I haven't addressed your

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2 needs, I've blown you off. You've come in
3 numerous times. Well, numerous times over
4 15 years. I will give you five. I can
5 recall three, four complaints, maybe. Not
6 one has been under noise, and I don't handle
7 noise complaints. They are done strictly
8 through the police department. If there is
9 a noise complaint, you pick up the phone,
10 you call the police, they come down, they
11 have the meter, they register the meter, and
12 they have the needs and wherewithal to take
13 care of the noise complaints. I do not take
14 care of those.

15 CHAIRMAN MEKEEL: Okay. That
16 is fine.

17 MR. CORCORAN: I've never
18 gotten a noise complaint.

19 MR. LYONS: That's besides
20 the issue. Can I just say a couple of
21 things?

22 CHAIRMAN MEKEEL: Just one
23 more, because I want to ask the board --

24 MR. LYONS: Okay. There are
25 some things I want to say in response to the

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2 code enforcement officer's statement. When
3 I do it, I don't care, but if I could just
4 get an opportunity to say it.

5 CHAIRMAN MEKEEL: Okay. I
6 will give you another minute.

7 MR. LYONS: Okay. It's just
8 to say, for the record, we're not conceding
9 anything with regard to this affidavit. You
10 know, whether we just got -- we need an
11 opportunity to take a look at that. I would
12 say also that, you know, most of the time
13 building a parking lot means you have
14 greater parking needs. People don't spend
15 money to create a parking lot without
16 parking needs. The other thing is, this
17 board is, you have been told this probably
18 by your lawyer, you're a quasi judicial
19 board, okay, and so you have to make your
20 decisions based on evidence in the record.
21 Mr. -- a lot of what Mr. Corcoran is saying
22 today, there is no evidence to support what
23 he is saying. He is just saying that he
24 made that determination saying with regard
25 to parking needs. There is no evidence in

1 GIAMETTA - PUBLIC HEARING

2 the record to support that. Also, with
3 regard to the site plan for Hondat, the
4 evidence of that -- of what that site plan
5 entails is in the minutes of the meeting,
6 and we've submitted those to you.

7 CHAIRMAN MEKEEL: Okay.

8 MR. LYONS: And, again, this
9 affidavit, the one piece of this affidavit
10 that we can't speak to tonight since they
11 weren't doing auto body. Thank you for your
12 courtesy, Mr. Chairman.

13 MR. CORCORAN: Just going
14 back to the minutes that were presented, the
15 minutes that were presented to that building
16 that is the 50 by 60 steel building was
17 never built. If you look at the map that
18 was here, the Hondat building was here
19 (indicating), and then there is a proposed
20 storage building that is 50 by 60, that
21 storage building was never built. I believe
22 that was potentially when there was a
23 comment by one of the residents there saying
24 they didn't want to see anything outside,
25 and Mr. Kramer responded that we wouldn't

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2 have anything outside. That was for the
3 proposed storage building, the 50 by 60
4 storage building. That was never built on
5 the property.

6 CHAIRMAN MEKEEL: And that
7 was approved back in the day?

8 MR. CORCORAN: It's part of
9 the minutes. I can't tell if it's approved
10 or not approved.

11 CHAIRMAN MEKEEL: Okay.

12 MR. CORCORAN: But it's
13 talking about a new building, 50 by 60 steel
14 building for a storage of parts, and that
15 building was never built. It's on the map,
16 but it was never built.

17 CHAIRMAN MEKEEL: Okay. The
18 board, Lenny, do you have any questions or
19 comments?

20 MR. CONN: I'd like to hear
21 if there is any more public discussion from
22 any of the other people in attendance.

23 CHAIRMAN MEKEEL: Let me
24 check with the board. Dave, anything?

25 MR. ZAMBITO: I'm ready to

1 GIAMETTA - PUBLIC HEARING

2 hear from the public.

3 CHAIRMAN MEKEEL: George?

4 MR. SALINOVICH: Not at this
5 time, no.

6 CHAIRMAN MEKEEL: All right.

7 So I will open the public hearing so anybody
8 from the public that would like to speak,
9 please stand, tell us your name.10 MS. VALK: Where are we
11 asking them to -- should they come up and
12 stand?13 CHAIRMAN MEKEEL: They can
14 stay where they are. It's a small enough
15 room.16 MS. VALK: So stand wherever
17 they are if they wish to make a comment.18 CHAIRMAN MEKEEL: Anybody?
19 Please stand and state your name.20 MR. AARON: My name is Robert
21 Aaron, A-A-R-O-N, and I'm the current owner
22 of New Country Collision, New Country
23 Automotive, Michael Property Holding, LLC.24 CHAIRMAN MEKEEL: Where is
25 that located?

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2 MR. AARON: New Country

3 Collision is in Poughkeepsie. New Country
4 Automotive is in Marlboro.

5 CHAIRMAN MEKEEL: Okay.

6 MR. AARON: I bought my shop
7 in Poughkeepsie about ten years ago, and the
8 business has grown dramatically. I passed
9 by Dave Balchunas' shop for years and kind
10 of hit it off with him and decided to buy
11 his property. I did know there was an issue
12 with his neighbor. And I said, Well, you
13 know, I do things very ethically by the
14 book, and I don't -- I do things with
15 integrity. And I said, I won't have a
16 problem with anybody because it's not how I
17 am. I'm a good neighbor, I'm a good friend
18 and I'm a good businessman. Fifty people
19 sit down every night with what I can bring
20 to the table. That's all my employees, two
21 that are here, and all of their spouses and
22 all of their children. I feel I could bring
23 something to the Town of Marlboro. I've
24 cleaned the building up dramatically. I
25 don't think anyone would drive by and go,

1 GIAMETTA - PUBLIC HEARING

2 Oh, what a mess this is. I have done
3 everything but paint the place. The biggest
4 eyesore is the fence that's on the right of
5 way. To be honest with you, that's the
6 biggest eyesore, and I don't even own it. I
7 would like to grow the business. I'm on six
8 acres. I didn't buy it to operate just off
9 one quarter of one acre and get stuffed into
10 four parking spots. So I would like to grow
11 the business, like I've done with my other
12 shop, and I've already brought four jobs to
13 Marlboro and I hope more. These people buy
14 lunch, cigarettes, they buy fuel, and
15 they're buying stuff in Marlboro, so it's
16 good for the town.

17 I want to address this tree
18 issue. There are -- cars are parked on the
19 back of my property that I have seen from, as
20 far as I remember, since knowing Dave. They
21 are pine trees. If anyone knows anything
22 about cars, pine trees are lethal. The trees
23 had to come down. There is a couple of maple
24 trees that have to come down. I just ran out
25 of the funds. Maple sap and pine sap will

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GIAMETTA - PUBLIC HEARING

2 ruin all of my new paint. They have to go.

3 I didn't do it out of spite or out of hurt, I
4 didn't do it to insult anybody, but if I'm
5 going to operate a car painting, and an auto
6 repair, those trees had to go. So that was
7 my reasoning. No one asked me why, but --8 The other thing is really I
9 just want to be left alone. Whatever the
10 rules are, I will obey them. If I need a new
11 site plan, I will get one, but I don't want
12 go through endless discourse about what I'm
13 doing and get chased around my property with
14 cameras, have trespassers on my property
15 taking pictures. I'm not going to stand for
16 it. I don't want it. I want to be left to
17 my own avail and I will follow every rule you
18 guys come up with, because that's how I
19 operate. I own eight properties in five
20 counties, I do everything by the book, and I
21 will do this by the book, but I need to be
22 left to my own avail. I feel like I'm being
23 harassed. Thank you.

24

CHAIRMAN MEKEEL: Thank you.

25

Well, I think we need to determine, you

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2 know, read these documents and see if it
3 does fit in the code. I mean, if it's been
4 approved, you know, we really need to sit
5 down and review this.

6 MS. VALK: Just for purposes
7 of both sides, I -- this is all public
8 information -- I'm probably going to see
9 what we can obtain from the code from 1978.
10 The code that was in existence at the time
11 in comparison to these minutes. And do we
12 have a site plan in the file? I know it's
13 not --

14 MR. CORCORAN: What you have
15 there is the extent of what the site plan is
16 that exists. That little map with Hondat
17 and the storage building that was proposed,
18 the few little spots and them talking about
19 the variance, take down some rock.

20 MS. VALK: That's not
21 attached to his submission.

22 MR. CORCORAN: It should've
23 been in all of that.

24 MS. VALK: Oh, it's attached
25 to the permit, okay. But just to the extent

1 GIAMETTA - PUBLIC HEARING

2 that we look at the code definitions from
3 1978, I'm just putting that out there so
4 that way --

5 CHAIRMAN MEKEEL: Right.

6 MS. VALK: I would recommend
7 at this point that the public hearing stay
8 open. There has been a lot of information
9 thrown from both sides. I would like to
10 give everybody a full and fair opportunity
11 to respond.

12 MR. LYONS: Can we get a copy
13 of the permit that you are referring to
14 because we made a freedom of information
15 request?

16 MS. VALK: Yeah. I saw it
17 was not -- I actually have not seen that
18 before this evening, so if you can make me a
19 copy, Penny, as well, I'd appreciate it.

20 MS. CASHMAN: Sure.

21 MR. GIAMETTA: Can I be heard
22 for a minute?

23 CHAIRMAN MEKEEL: Sure, go
24 ahead.

25 MR. GIAMETTA: I just wanted

1 GIAMETTA - PUBLIC HEARING

2 to respond to a couple of things that Tom
3 said. I did make complaints that --

4 CHAIRMAN MEKEEL: I don't
5 want to have a, you know, a battle between
6 you two.

7 MR. GIAMETTA: I want to
8 submit actual information to the board.

9 MR. LYONS: There is a real
10 reason for this, because if the code
11 enforcement officer is going to be offering
12 testimony with regard to substance, there
13 isn't any document to back it up, then
14 credibility of testimony is an issue.

15 MR. GIAMETTA: And I did make
16 complaints about more than just noise and,
17 in fact, this is a comment that I made in
18 August of 2010, Tom was building inspector
19 then, and my complaint was that this
20 business was changed. It changed the
21 permitted use to a use not permitted in the
22 highway development zone, and this illegal
23 entity has become an obnoxious nuisance.
24 Number one, noise, high speed grinders,
25 hammers. Number two, smells, very noxious

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2 odors, thinners, lacquer, et cetera. And
3 number three, that the property has become a
4 junkyard, very unsightly and illegally
5 overcrowded out the driveway, and I have a
6 copy for each of the board members
7 (handing).

8 MR. CORCORAN: Was there a
9 response to that? Where is the response to
10 that?

11 MR. GIAMETTA: You never did.
12 That is my issue, you never did.

13 MR. CORCORAN: No, I did.

14 MR. LYONS: No, you didn't.

15 MR. CORCORAN: All right. I
16 will find it. So eight years ago, you gave
17 me one complaint.

18 MR. GIAMETTA: Well, you just
19 admitted that I made about five complaints
20 over the years and I have. In fact, one
21 time, Tom, I made a verbal complaint in your
22 office. In fact, I think it was a follow-up
23 to this complaint about you not responding
24 to this complaint. And when I was in your
25 office, if you recall, over on 9W where you

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2 and George had two desks pushed together.

3 MR. CORCORAN: Oh, that's
4 when you assaulted me and had to go to the
5 police department. I forgot that one. I do
6 remember that one.

7 CHAIRMAN MEKEEL: Okay.

8 We're not here to --

9 MR. GIAMETTA: I'd like to
10 finish my statement. You had me wait while
11 Tom was talking, I'd like Tom to wait while
12 I'm talking, and yes, there was an assault
13 involved. I went to confront Tom about why
14 my complaints weren't being addressed and
15 why this entity was not being forced to
16 clean up by him and Tom was in the office, I
17 was in the office, very tight quarters, and
18 Tom said to me, I don't have to listen to
19 this crap, and you went to walk by me and
20 knocked me over the top of his desk. I went
21 back to the police department to file an
22 assault complaint and the chief then came
23 out to me and said, Please think about what
24 you're doing, it's going to have adverse
25 consequences in the future, and please

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2 consider not filing your assault complaint.
3 And I did take the chief's advice and did
4 not file a complaint.

5 CHAIRMAN MEKEEL: Okay.

6 MR. GIAMETTA: Fact of the
7 matter is, I made many, many complaints and
8 the items are right here in black and white
9 and Tom has not done a single thing to
10 address these complaints. Even if he would
11 just say, This should go to the planning
12 board and get site plan approval, and I
13 think New Country really has no objection to
14 site plan approval either. I'm not being
15 unreasonable. If they can mitigate impacts
16 to me, and I don't have to suffer impacts,
17 they will never hear from me again. Like
18 Dennis never heard from me in all of the
19 years that he was there.

20 CHAIRMAN MEKEEL: Okay.

21 MR. GIAMETTA: One final
22 point is that I do not concede that Dennis's
23 business was a multiple use business. When
24 he -- if you review the minutes from the
25 planning board and the zoning board in 1978,

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2 Dennis proposed a single use business.

3 CHAIRMAN MEKEEL: Well,
4 that's what we're going to do, we are going
5 to go through the paperwork, and we're
6 going --7 MR. GIAMETTA: I just really
8 want to make the point that he proposed a
9 dismantling business and to sell used car
10 parts. It could be that at a later time he
11 started layering in different uses to this
12 business, and my contention is that this
13 started off as a single use business
14 proposed site plan, single use business, and
15 it has gone to multiple use business, and
16 clearly in the zoning it says, if an entity
17 is changed from a single use to multiple
18 use, it's a special use and requires site
19 plan approval.

20 CHAIRMAN MEKEEL: Okay.

21 MR. GIAMETTA: Thank you.

22 MR. CORCORAN: For the
23 record, I will finish this because I'm not
24 going to let him go off like that. For the
25 record, he's a liar. He assaulted me in my

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2 office. The door said do not enter,
3 employees only, he entered my office like a
4 maniac. He came in screaming and yelling at
5 me. When I -- he assaulted me, he pushed
6 me, I went by him. He did go to the police
7 department. I was in with the police chief.
8 They asked me if I wanted to press charges
9 against him because he came in my office
10 uninvited, and I said, No, I wasn't going to
11 press charges against him. So what he is
12 saying is absolutely wrong, for the record.

13 MS. VALK: For the record,
14 this board isn't going to make a factual
15 decision on what did and didn't happen. You
16 both said your peace. I would just ask that
17 we put that issue behind us.

18 CHAIRMAN MEKEEL: Yes.

19 MS. VALK: Unless there is
20 anybody in the public who would like to
21 respond to anything, I would recommend that
22 you move to adjourn the public hearing to --
23 would it be February 14th your next meeting?
24 Off the record.

25 (Discussion off the record)

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2 MS. VALK: Okay. So we'll go
3 back on the record. I would just ask that
4 you make a motion to adjourn this to
5 February 13th at 7:00 p.m.

6 CHAIRMAN MEKEEL: Do we have
7 a motion?

8 MR. ZAMBITO: I will make a
9 motion to adjourn the meeting until February
10 13th, 2019.

11 MR. CONN: Second.

12 CHAIRMAN MEKEEL: All in
13 favor?

14 MR. SALINOVICH: Aye.

15 MR. ZAMBITO: Aye.

16 MR. CONN: Aye.

17 CHAIRMAN MEKEEL: And aye.

18 MS. VALK: I would ask,
19 because we have a lot of information, that
20 any additional submissions of writings, if
21 we can have them in by January 31st to Ms.
22 Cashman, I think that would be good to allow
23 the board an opportunity to review.

24 MR. LYONS: I have a request
25 that is sort of connected to that.

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2 CHAIRMAN MEKEEL: Okay.

3 MR. LYONS: So we don't have
4 access to the '78 version of the code. If
5 you end up getting access to that, can you
6 please share that with us?7 MS. VALK: Yes, and I will
8 share to everybody. I will give it to Ms.
9 Cashman so anybody from the public who is
10 observing that may wish to have it can
11 obtain a copy.

12 MR. LYONS: Okay. Great.

13 MS. VALK: Now, with that
14 being, I believe, the only other item that
15 you have on the agenda.16 CHAIRMAN MEKEEL: That is
17 correct, yes.18 MS. VALK: Absent any desire
19 of the board to have an attorney/client
20 meeting with me to discuss any advice that
21 you would like from what happened this
22 evening, you would be free to adjourn. You
23 also have the right, after we digest this a
24 little bit, we can have an attorney/client
25 session at the next meeting. I just want to

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2 provide that opportunity for the board
3 members, whatever your preference is.

4 MR. ZAMBITO: I would like to
5 do that.

6 MS. VALK: Tonight or at the
7 next meeting?

8 MR. SALINOVICH: We can do
9 tonight.

10 MR. ZAMBITO: It's up to you
11 guys.

12 MS. VALK: Okay. You would
13 make a motion to go into executive session
14 for the purposes of the attorney/client
15 privilege, not anticipating any decisions,
16 and we'll come out of executive session.
17 The public does have the right to stay until
18 the point that you actually leave executive
19 session.

20 CHAIRMAN MEKEEL: Do we have
21 a motion?

22 MR. CONN: I will make a
23 motion to go into executive session.

24 MR. SALINOVICH: I will
25 second.

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2 CHAIRMAN MEKEEL: All for it?

3 MR. SALINOVICH: Aye.

4 MR. ZAMBITO: Aye.

5 MR. CONN: Aye.

6 CHAIRMAN MEKEEL: Aye.

7 (The Board went into executive session at 8:09 p.m.)

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10 (Time noted: 8:45 p.m.)11
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