

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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## 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 Marlboro Zoning Board of Appeals, Notice of Public Hearing. Notice is hereby given that pursuant to the Town Law Section 267-a the Zoning Board of Appeals of the Town of Marlborough, New York will hold a public hearing on the 10th day of January 2019 at 7:00 p.m. or as soon thereafter as the matter can be heard that day at Town Hall, 21 Milton Turnpike, Milton, New York 12547 on the appeal of Charles Giametta, an applicant, upon the determination of Code Enforcement Officer, Thomas J. Corcoran, Jr., that THE property of Michael Property Holding, LLC, operating as New County Automotive is an allowed use and, further, is not operating in violation of the Town of Marlborough Town Code. Charles Giametta contends that the property owners are operating improper uses in violation of the

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

CHAIRMAN MEKEEL: Thank you.  
Okay.

MR. GIAMETTA: You want the certified, Jeff?

CHAIRMAN MEKEEL: Yes,  
please.

MR. GIAMETTA: (Hanging).

CHAIRMAN MEKEEL: Thank you.

MS. CASHMAN: How many do we  
have?

## GIAMETTA - PUBLIC HEARING

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MR. GIAMETTA: 24 out, 17

back.

CHAIRMAN MEKEEL: None

refused?

MR. GIAMETTA: No, none

refused.

MR. LYONS: Mr. Chairman,

there was an affidavit that was submitted in  
connection with our electronic submission.

This is the original signed version for the  
board for the record.

My name is John Lyons,

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

CHAIRMAN MEKEEL: Did you see  
this?

MR. CONN: No.

CHAIRMAN MEKEEL: Can we get  
a copy of this for the board members?

MR. LYONS: I have a copy for  
you.

CHAIRMAN MEKEEL: You have  
copies for everybody?

MR. LYONS: I was going to



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

CHAIRMAN MEKEEL: Is this in there?

MR. LYONS: Yes, it is.

CHAIRMAN MEKEEL: Okay.

Thank you.

MR. ZAMBITO: 23 out, 17 back.

CHAIRMAN MEKEEL: 23 out, 17 back, okay.

MS. CASHMAN: He said 24 out.

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

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

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1  
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 Giametta. 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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hearing is kept open, the issue -- he's not here this evening.

CHAIRMAN MEKEEL: Correct, right.

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

MR. CONN: I have 23.

MS. CASHMAN: That's what I counted.

MR. GIAMETTA: I may have miscounted.

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

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

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

MR. LYONS: Yes.

CHAIRMAN MEKEEL: But if

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everybody could say their name and whatever when they speak.

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

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

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



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1  
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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I believe Balchunas is the name of the operator of the property. The nature of the business that was being conducted on site at that time, according to Charles, changed and there was no longer -- the business was no longer focused on the retail sale of auto parts. It was an auto body repair business. The business had more much more of an off-site adverse impact on Charles and his quality of life at his house, because the building was -- the business was not being conducted solely within the building as it had been with Hondat. There were -- the doors were left open, there were grinders and noises from other tools. At some point along the way, there was a paint room added to the building, and then smells became something that Charles was aware of. There were also some vehicles being stockpiled in the back of the building, and we provided you as part of our packet with some photographs that were taken by Charles during that time. There was also some junk that was stored in the back as well.

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1  
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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property was automobile service repair and filling station, which is a use that is set forth in your zoning law. The -- if you take a look at your zoning law, you will find that the automobile service use is listed as a special use in the highway development district where this property is located, and the law is clear that it's a special use. It requires special use permit, and then further under the law, there is another section of the law that says all special uses also require site plan approval. So are -- sort of the crux of the main argument that we're making tonight is that this automobile service repair and filling station use on this property should be required to obtain a special use permit and also be required to undergo site plan approval, and we think that the code enforcement officer should have sent the business over to the planning board for those approvals as a result of Mr. Giametta's complaint.

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

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

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1  
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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and forth?

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

MS. VALK: Okay.

MR. LYONS: Couple of things. We have seen this document, which is Mr. Corcoran's offering as a special use permit, and this indicates that it expired on March 30th, 1996. We made a freedom of information request to the town, specifically looking for documentation of special permit, and there was no -- there were no documents that were returned to us with regard to that. So my contention to you would be that there is no documentary evidence to substantiate that a special use permit was issued for this business in the past.

With regard to the section that Mr. Corcoran is discussing, 155-31(b)(1)(c), what that section says exactly is site plan approval shall be required for change in use and expansion of a



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

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1  
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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determination were for cars to get from point A to point B.

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

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

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

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

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1  
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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1  
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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1  
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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1  
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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1  
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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1  
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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1  
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



## GIAMETTA - PUBLIC HEARING

1  
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

## GIAMETTA - PUBLIC HEARING

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

## GIAMETTA - PUBLIC HEARING

1  
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.

## GIAMETTA - PUBLIC HEARING

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

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

CHAIRMAN MEKEEL: One at a time.

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



## GIAMETTA - PUBLIC HEARING

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



## GIAMETTA - PUBLIC HEARING

1  
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

## GIAMETTA - PUBLIC HEARING

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

CHAIRMAN MEKEEL: Okay. That is fine.

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

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

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

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

## GIAMETTA - PUBLIC HEARING

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

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

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

## GIAMETTA - PUBLIC HEARING

1  
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

## GIAMETTA - PUBLIC HEARING

1  
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



## GIAMETTA - PUBLIC HEARING

hear from the public.

CHAIRMAN MEKEEL: George?

MR. SALINOVICH: Not at this  
time, no.

CHAIRMAN MEKEEL: All right.  
So I will open the public hearing so anybody  
from the public that would like to speak,  
please stand, tell us your name.

MS. VALK: Where are we  
asking them to -- should they come up and  
stand?

CHAIRMAN MEKEEL: They can  
stay where they are. It's a small enough  
room.

MS. VALK: So stand wherever  
they are if they wish to make a comment.

CHAIRMAN MEKEEL: Anybody?  
Please stand and state your name.

MR. AARON: My name is Robert  
Aaron, A-A-R-O-N, and I'm the current owner  
of New Country Collision, New Country  
Automotive, Michael Property Holding, LLC.

CHAIRMAN MEKEEL: Where is  
that located?

## GIAMETTA - PUBLIC HEARING

1  
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,

## GIAMETTA - PUBLIC HEARING

1  
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

## GIAMETTA - PUBLIC HEARING

1  
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

## GIAMETTA - PUBLIC HEARING

1  
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



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1  
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

## GIAMETTA - PUBLIC HEARING

1  
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

## GIAMETTA - PUBLIC HEARING

1  
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

## GIAMETTA - PUBLIC HEARING

and George had two desks pushed together.

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

CHAIRMAN MEKEEL: Okay.  
We're not here to --

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

## GIAMETTA - PUBLIC HEARING

1  
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,



## GIAMETTA - PUBLIC HEARING

Dennis proposed a single use business.

CHAIRMAN MEKEEL: Well, that's what we're going to do, we are going to go through the paperwork, and we're going --

MR. GIAMETTA: I just really want to make the point that he proposed a dismantling business and to sell used car parts. It could be that at a later time he started layering in different uses to this business, and my contention is that this started off as a single use business proposed site plan, single use business, and it has gone to multiple use business, and clearly in the zoning it says, if an entity is changed from a single use to multiple use, it's a special use and requires site plan approval.

CHAIRMAN MEKEEL: Okay.

MR. GIAMETTA: Thank you.

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

## GIAMETTA - PUBLIC HEARING

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

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)

## GIAMETTA - PUBLIC HEARING

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

CHAIRMAN MEKEEL: Do we have a motion?

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

MR. CONN: Second.

CHAIRMAN MEKEEL: All in favor?

MR. SALINOVICH: Aye.

MR. ZAMBITO: Aye.

MR. CONN: Aye.

CHAIRMAN MEKEEL: And aye.

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

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

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CHAIRMAN MEKEEL: Okay.

MR. LYONS: So we don't have access to the '78 version of the code. If you end up getting access to that, can you please share that with us?

MS. VALK: Yes, and I will share to everybody. I will give it to Ms. Cashman so anybody from the public who is observing that may wish to have it can obtain a copy.

MR. LYONS: Okay. Great.

MS. VALK: Now, with that being, I believe, the only other item that you have on the agenda.

CHAIRMAN MEKEEL: That is correct, yes.

MS. VALK: Absent any desire of the board to have an attorney/client meeting with me to discuss any advice that you would like from what happened this evening, you would be free to adjourn. You also have the right, after we digest this a little bit, we can have an attorney/client session at the next meeting. I just want to

## GIAMETTA - PUBLIC HEARING

1  
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.



## GIAMETTA - PUBLIC HEARING

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CHAIRMAN MEKEEL: All for it?

MR. SALINOVICH: Aye.

MR. ZAMBITO: Aye.

MR. CONN: Aye.

CHAIRMAN MEKEEL: Aye.

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

oOo

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