TOWN OF KENT
AMENDMENT TO
CHAPTER 77 OF THE KENT TOWN CODE

BE IT ENACTED by the Town Board of the Town of Kent, Putnam County, New York, as follows:

Section 1. Chapter 77 Entitled "Zoning", is hereby amended to add the following provisions.

§ 77-40.1 Prohibited Uses in Certain Districts.

A. Purpose. In order to safeguard the health, safety and welfare of the residents of the Town of Kent, it is necessary to prohibit certain uses which, by the very nature in which they are conducted, have the potential to significantly impact the environment, pose a risk to human health and safety, or disturb or interfere with reasonable community expectations regarding odors, noise, light, traffic and water quality.

B. Prohibition. In any use district except for the Industrial-Office-Commercial District ("IOC District"), the production of concrete, the operation of a concrete products plant, or the manufacture in any form of concrete is hereby expressly prohibited.

C. Amortization. Any individual or business that is lawfully engaged in the production of concrete, the operation of a concrete products plant or the manufacture in any form of concrete, in any use district except for IOC District in the Town of Kent, upon the effective date of this subsection, shall become engaged in a legal nonconforming use and that use shall terminate by amortization no later than 2 years immediately following the effective date of this subsection.

D. Extension. The Zoning Board of Appeals may extend the two-year amortization period for a limited period of time if the individual or business that is engaged in a legal nonconforming use, pursuant to subsection C, applies to the Zoning Board of Appeals for an extension of time. The application for an extension of time must be made at least 180 days before the date on which the use must terminate. The applicant must demonstrate that (i) it has made a substantial financial expenditure in the real property at issue prior to the enactment of this law; (ii) that the financial expenditure has not been substantially recovered by the end of the two-year amortization period; and (iii) the financial expenditure is not otherwise recoverable without engaging in the legal nonconforming use described herein. Nothing herein shall allow for an extension past the minimum period of time to allow for such recovery. Any decision on an extension application by the Zoning Board of Appeals may be appealed to the Town Board of the Town of Kent by the applicant or any other interested party within 30 days of the date of the entry of the extension decision in the office of the Town Clerk.

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Our File No.
27999-102

December 4, 2017

Via Federal Express and Fax at (845) 306-5282

Supervisor Maureen Fleming and Members of the Town Board
Town of Kent
25 Sybil's Crossing
Kent Lake, New York 10512

Re: Submission of Titan Concrete Inc. in Opposition to the Proposed Revised Local Law Amending the Zoning Code to Restrict the Production Of Concrete
Town Board Public Hearing Date: December 5, 2017

Dear Supervisor Fleming and Members of the Town Board of the Town of Kent:

Our firm represents Titan Concrete Inc., ("**Titan**"), the tenant at property located at 301 Route 52, Carmel, NY (the "**Premises**"). We submit this correspondence to the Town of Kent Town Board ("**Town Board**"), as a supplement to my correspondence, dated October 5, 2017 and November 13, 2017, which are incorporated herein by reference. All three letters, as well as our comments made at the public hearings held by the Town Board, are submitted in opposition to the above-referenced proposed revised local law ("**Proposed Revised Law**"). The administrative record of the public hearings demonstrate that the Proposed Revised law is ill-conceived and is patently unconstitutional and unlawful.

As you well know, under its lease with Kent Investors, LLC ("**Kent Investors**"), the owner of the Premises, Titan leases the concrete plant located at the Premises. This concrete plant has been operating at the Premises since at least 1949 pursuant to a use variance issued by the Town of Kent Zoning Board of Appeals ("**ZBA**") in 1948. This use variance was confirmed in a decision, dated July 17, 2017, in which the ZBA ruled the 1948 variance was a use variance for the concrete plant, the use variance runs with the land, and the use variance continues to apply to the Premises. Therefore, Titan and Kent Investors have constitutionally protected vested rights in the use of the Premises as a concrete plant.

Rather than challenge the ZBA July 17th decision in a court of law, the Town Board engaged in a course of improper and illegal conduct to try to coerce the ZBA to reverse its decision. The ZBA,

to its credit, refused to buckle to the will of the Town Board, and ended up resigning *en masse*, in protest to the Town Board's inappropriate actions.

Having been stymied by the ZBA and by statutory and case law that prohibits the ZBA from rehearing its decision, the Town Board continues to press its unlawful goal of putting the Titan concrete plant out of business via the Proposed Revised Law. The author of the Proposed Revised Law, Councilman Denbaum, admitted at the public hearing held on November 28, 2017, that this proposal is solely aimed at Titan's concrete plant. This admission wholly demonstrates that the assertion by Mr. Denbaum and other Town Board members that the Proposed Revised Law applies to all zoning districts (except IOC) is a sham.

Contrary to spurious comments made at the public hearings by members of the general public and members of the Town Board, this concrete plant has been operating at the Premises for 70 years. In fact, in a court-ordered settlement agreement entered into in 2005, the Town acknowledged that the concrete plant was operating at the Premises, and further acknowledged it was a lawfully permitted use. There can be no dispute that the concrete plant has been operating for decades before the subdivisions in which the few vocal opponents live were constructed and has continued to operate after these developments were built. The few town residents that commented at the public hearing in support of the Proposed Revised Law admitted that they each moved into their homes well after the plant was constructed and each had actual knowledge of the concrete plant's existence and operation. Moreover, the comments by these members of the public about silica dust, fumes and diesel emissions are, simply put, nothing more than unsupported generalized public objections that are insufficient to support the Town Board's decision. These commenters provided absolutely no evidence of such claims and are wholly contradicted by the Building Inspector's records and building permits which demonstrate that the concrete plant uses state-of-the-art dust control measures and uses zero-emission trucks. One of the commenters even suggested that Titan and Kent paid no taxes to the Town, contending that these entities have some sort of exemption. The Town Board members admitted at the November 28th public hearing that this assertion was wrong, noting that both entities have no such exemption and contribute jobs and revenue to the Town.

There can be no doubt that this proposal is invalid and unconstitutional for a number of reasons and will not withstand scrutiny by the court system. First, the Proposed Revised Law is reverse spot zoning and is invalid because it extinguishes Titan's vested rights to operate the concrete plant at the Premises. The Proposed Revised Law, (as well as its original version), is confiscatory and an unconstitutional taking. Moreover, the Town Board's inclusion of an "amortization period" provision and an "extension of time" provision within the Proposed Revised Law represents nothing more than an attempt to disguise the taking and does not salvage the proposed law's unconstitutionality.

Putting aside the fact that an amortization period can only be applied to nonconforming uses and not to permitted uses, such as those allowed by a use variance, the Proposed Revised Law's amortization scheme is illegal even as applied to nonconforming uses. The two-year period is

wholly unreasonable. In *Village of Valatie v Smith*, 83 NY2d 396, 400 [1994], the Court of Appeals noted that a valid amortization period is use-specific and the reasonableness of the amortization period must protect the owners' financial interest; it is a grace period to allow a fair opportunity to recoup the party's investment. *See also Suffolk Outdoor Advertising Co., Inc., v Hulse*, 42 NY2d 483 [1977] (questioning 3-year amortization period coupled with 3-year extension period for a nonconforming billboard); *Mojeska Sign Studios, Inc. v Berle*, 43 NY2d 468, 480-81 [1977] (questioning whether a 6½-year amortization period for a nonconforming billboard was reasonable); *Suffolk Asphalt Supply, Inc. v Bd. of Trustees of the Vill. of Westhampton Beach*, 59 AD3d 429, 430 [2d Dept 2009] (reasonableness of amortization period is determined by the facts, including the length of the amortization period in relation to the nature of the business and the investment); *Oulmet v Frasier*, 240 AD2d 966 [3d Dept 1997] (3-year amortization period for a non-conforming mobile home park found to be unreasonable). In light of the typical capital expenditures and maintenance costs in the concrete manufacturing industry, generally, and in light of the $5 million-plus investment made by Titan and the investments made by Kent Investors in the concrete plant and other improvements, the very short two-year amortization period is unreasonable and punitive. Tellingly, Councilman Denbaum, the author of the Proposed Revised Law, refused to cite even a single case or decision in his remarks at the public hearing to support his claim that a two-year amortization period is reasonable. Mr. Denbaum, in essence, stated on the record at the November 28th public hearing that Titan would have to sue him and the Town Board to find out the legal underpinnings for his Proposed Revised Law. This is not just astonishing but also violates the Town Code, the Town Law and other New York State and federal laws.

Mr. Denbaum's newly added "extension of time" provision does not save the illegality of the two-year amortization period. The extension is not guaranteed, lacks any criteria for the extension, and gives the ZBA unbridled authority to deny the extension for any or no reason. It also gives the Town Board the ultimate say in whether to approve an extension granted by the ZBA, an unlawful invasion into the independent function of the ZBA, and no doubt added as a reaction to what occurred this past summer when the ZBA refused to rehear its July 17th use variance decision in defiance of the Town Board's unlawful meddling. In short, the inclusion of this extension of time provision does not correct any of the deficiencies of the amortization period or the Proposed Revised Law as a whole.

Second, the Proposed Revised Law is discriminatory because it only applies to Titan and its only purpose is to end Titan's business and its vested rights in the Premises. *See, e.g., Waterways Dev. Corp. v Town of Brookhaven Zoning Bd. of Appeals*, 126 AD3d 708 [2d Dept 2015].

Third, the Proposed Revised Law is invalid "reverse spot zoning" because it singles out one parcel of land for different, less favorable treatment and treats the Premises disparately. *See, e.g., C/S 12th Ave. LLC v City of New York*, 32 AD3d 1, 9 [2d Dept 2006].

Fourth, the Proposed Revised Law is inconsistent with the Town of Kent's comprehensive plan. Route 52 is a commercial and industrial corridor running through the Town. The Premises and

the concrete plant are surrounded by various other commercial and industrial operations and businesses. "[T]he 'comprehensive plan' protects the landowner from arbitrary restrictions on the use of his property which can result from the pressures which outraged voters can bring to bear in public official." *Udell v Haas*, 21 NY2d 463, 469 [1968]. The Court of Appeals touted the importance of a comprehensive scheme in *Udell*:

> Zoning is not just an expansion of the common law nuisance. It seeks to achieve much more than the removal of obnoxious gases and unsightly uses. Underlying the entire concept of zoning is the assumption that zoning can be a vital tool for maintaining a civilized form of existence only if we employ the insights and the learning of the philosopher, the city planner, the economist, the sociologist, the public health expert and all other professional concerned with urban problems. This fundamental conception of zoning has been present from its inception. The almost universal statutory requirement that zoning conform to a 'well-considered plan' or 'comprehensive plan' is a reflection of that view. The thought behind the requirement is that consideration must be given to the needs of the community as a whole. In exercising their zoning powers, *the local authorities must act for the benefit of the community as a whole following a calm and deliberate consideration of the alternatives, and not because of the whims of either an articulate minority or even majority of the community*. . . . [T]here is a danger that zoning, considered as a self-contained activity rather than as a means to a broader end, *may tyrannize individual property owners.*

Id. at 469-70 (citations omitted). To smite the concrete plan out of existence flies in the face of the Town of Kent's own comprehensive plan to host its industry along the Route 52 corridor.

It is obvious the Town Board's Proposed Revised Law is nothing other than a response to a particular outcry from a few citizens who chose to move to the area of an operating concrete plant and want it closed by any means, regardless of the vested rights in that plant. As noted by the Court of Appeals: "[I]n a zoning case . . . we must keep in mind that ours is a government of law and not of men; and that decision, *especially where property rights are protected by Constitutions and laws*, must be based upon such laws and not upon sympathetic or public opinion." *Circus Disco Ltd. v New York State Liq. Auth.*, 51 NY2d 24, 38 [1980] (citations omitted).

The Proposed Revised Law also has numerous procedural infirmities. First, the Town Board failed to comply with its own Town Code, namely Section 77-62. This Section of the Town Code requires the Town Board to present the Proposed Revised Law to the Town of Kent Planning Board for a 45-day review period prior to the Town Board taking any action with respect to the same. The Proposed Revised Law was revealed to the world on November 28, 2017, and at the time, had not yet been referred to the Planning Board. Accordingly, the Planning Board has not had an opportunity to review the Proposed Revised Law as required by the Town Code. Therefore, the Town Board cannot act upon the Proposed Revised Law at the public hearing on December 5, 2017.

The Town Board also failed to comply with N.Y. General Municipal Law Section 239-m. This Section of the General Municipal Law requires the Town Board to refer the Proposed Revised Law to the Putnam County Department of Planning for a 30-day review period. The Proposed Revised Law was not provided to the Putnam County Department of Planning prior to the November 28th public hearing. Even if it was referred the following morning, (November 29th), the Putnam County Department of Planning has not had an opportunity to review and comment upon the Proposed Revised Law. Therefore, the Town Board cannot act upon the Proposed Revised Law at the public hearing on December 5, 2017.

The Town Board also failed to comply, both procedurally and substantively, with the State Environmental Quality Review Act, ("**SEQRA**"). As to procedural defects, the Town Board's SEQRA Negative Declaration relies upon an unsubstantiated environmental assessment form, ("EAF") which itself is defective. The Town Board never provided the Proposed Revised Law to agencies and bodies as required by SEQRA. This EAF is neither signed nor dated. Accordingly, no one can know when this EAF was prepared, who prepared it and the basis for its preparation. No one verified the information to be true.

Additionally, this unsubstantiated EAF indicates that "a" proposed law was approved by the Town Board on October 10, 2017, was referred to the Town of Kent Planning Board on October 10, 2017, and has some relation to the Putnam County Department of Planning (the EAF does not indicate whether it was referred) as of October 10, 2017. However, the EAF could not be referring to the Proposed Revised Law because the Proposed Revised Law was drafted more than a month later and was only released to the world on November 28, 2017. Accordingly, the EAF is defective.

The Town Board failed to substantively comply with SEQRA because the Town Board, as lead agency, failed to take a "hard-look" at the environmental issues and failed to set forth a "reasoned elaboration" for its decision. The SEQRA Negative Declaration and the EAF for this Type I action are completely devoid of any facts and data relating to the subject matter of the Proposed Revised Law. Additionally, the EAF also failed to provide information as required by Part 1 Section C.3, failed to include answers for Part 2 Section 11, incorrectly answered many of questions in Part 2, including Sections 17 and 18, to which the Town Board answered "no" erroneously claiming that the proposal complies with the Town's comprehensive plan and complies with community characteristics. Therefore, the Town Board actions vis-à-vis the Proposed Revised Law and the imminent adoption thereof are arbitrary and capricious and contrary to law, including but not limited to violating SEQRA. Another interesting defect, the EAF refers to a cement plant, which as the Town Board knows, or should know, is not the same as a concrete plant.

Had the Town Board wished to challenge the ZBA's July 17th decision about the concrete plant's legal status, the Town Board should have timely commenced an Article 78 proceeding challenging that ZBA decision. The Town Board chose not to do that and the time to do so expired four months ago. The Town Board's attempt to end-run around the ZBA decision is part of the Town

Board's continuing pattern of unlawful activities that violate Titan's constitutional rights and vested property rights to operate the concrete plant. The other unlawful actions are set forth in my correspondence to the Town Board, dated October 5, 2017 and November 13, 2017.

One other comment is warranted. At the October 10, 2017 public hearing, Supervisor Fleming recused herself from participating in consideration of the proposed law because she is a member of the Hill and Dale Property Owners, one of the entities that commenced an Article 78 proceeding challenging the July 17th ZBA decision. Despite her recusal, the Supervisor continues to participate in the discussions and public hearings about the proposed law, claiming at the November 28th public hearing that her recusal was limited to the final vote on the proposed law. This parsing of the extent of her recusal is patently absurd, violates well-established legal principles, and substantially taints the entire process.

As noted in my prior letters and my comments at the public hearings, Titan expended in excess of $5 million refurbishing the concrete plant and purchasing equipment and brand-new state-of-the-art zero emission trucks for use in the operation of the concrete plant and incurred and will continue to incur significant legal fees in defending its right to operate the concrete plant in accordance with the 1948 use variance. These fees and costs will be sought from the Town of Kent, the Town Board and the members of the Town Board along with other elements of Titan's damages.

Be guided accordingly.

Very truly yours,

Charlotte Biblow

Charlotte Biblow

cc: Charles Martabano, Esq. (via email)
Michael Saccente, Titan Concrete (via email)
John C. Stellakis, Esq. (via email)

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December 4, 2017

VIA HAND DELIVERY
Supervisor Maureen Fleming, and
Members of the Town Board
Town of Kent
25 Sybil's Crossing
Kent, New York 10512

Re: Proposed Local Law Setting Restrictions on Production of Concrete

Dear Supervisor Fleming and Members of the Town Board:

As you are aware from your receipt of prior correspondence from me, I am counsel to Kent Investors, LLC, owner of the property located at 301 Route 52 in the Town of Kent. As you are also aware from prior correspondence, it is and shall continue to be the position of my client that as the concrete plant use is permitted and protected by the issuance of the 1948 variance, this Proposed Local Law is ineffective in terms of converting a use protected by a variance to a prior legal nonconforming use. Abundant case law has been produced and reviewed by the Zoning Board of Appeals (sometimes hereinafter referred to as the "ZBA") and I would suggest that members of the Town Board acquaint themselves with such case law authorities before continuing to proceed along this ill-advised course.

Notwithstanding the position of my client as hereinabove set forth, I write to you in connection with the Proposed Local Law because the public hearing with respect to same is to be continued on December 5, 2017 and my client desires that the information set forth herein be contained within the public record of the amendment process in the event that your Board elects to adopt this Proposed Local Law. This letter should be considered in conjunction with my prior letters to your Board dated October 6, 2017; November 14, 2017 (including Protest Petition); and November 28, 2017. I have examined the revised version of the Proposed Local Law, the SEQRA documents allegedly pertaining to same (but which in fact pertained to an earlier version of the Proposed Local Law) and I have viewed the video of the public hearing held on November 28, 2017. As such, I wish to make the following comments for inclusion in the public record.

First, based upon the admissions made by Councilman Denbaum at the November 28, 2017 public hearing, it has now been established for the record that, as pertains to concrete plants, this Proposed Local Law is ***solely targeted*** at the use presently conducted by Titan Concrete, Inc. (hereinafter "Titan") located at my client's property. It is equally patently obvious that this insidious Proposed Local Law is this Town Board's ill-conceived and last-ditch attempt to overcome what a group of residents[1] perceives as the "failure" on the part of this Town Board to force the ZBA to reverse its well-reasoned decision and the concomitant desire of members of the Town Board to engender political support at election time by placating these residents. However, as has been demonstrated by your Board's receipt of correspondence from an attorney representing Hill & Dale, even a group diametrically opposed to the existence of the concrete plant has recognized the constitutional infirmities of the Proposed Local Law, characterizing same as susceptible to challenge as an "unlawful and discriminatory land use practice"[2]. The recent admission by Councilman Denbaum as to the clearly targeted nature of the Proposed Local Law only adds further credence to this contention. This is further buttressed by the documented record which establishes that in connection with its consideration of the Proposed Local Law and the events preceding same, your Board has clearly documented a course of conduct inconsistent with that of (a) prior Town Boards of the Town of Kent; (b) prior Planning Boards of the Town of Kent; and (c) prior Zoning Boards of Appeal of the Town of Kent commencing in 1949 and continuously followed through 2017. This course of conduct has now been shown to clearly be discriminatory and may constitute what has been referred to as "reverse spot zoning" being, as it is, site-specific and so clearly engendered by the palpable desire of certain Town Board members to appease Town residents/voters.

On this point, I would like to emphasize that although multiple comments have been made regarding this use being located in "a residential area", such comments are disingenuous on two levels. First, the concrete plant is located in a *commercial, not residential*, zoning district as has been consistently recognized by prior Town Boards (including the Town Board that authorized the execution of the Consent Judgment in 2005); Planning Boards (including the Planning Board which conducted the SEQRA process and approved the site plan and all uses located on the property when issuing the conditional use permit in 2005[3] while recognizing the existence of the use variance for the concrete plant and further recognizing the long-term use of the property characterizing same as " the site has historically been in industrial use for many

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[1] The record of this matter will confirm that one such group of residents specifically reminded members of the Board of the voting strength of their group, thereby emphasizing the political knee-jerk nature of the Proposed Local Law as opposed to representing proper planning.

[2] See letter from Alyse D. Terhune, Esq. dated October 16, 2017.

[3] It should be noted in this regard that your FEAF completely ignores this fact and is actually contrary to this fact despite your Board being constantly reminded regarding same.

decades"[4]); and the Zoning Board of Appeals, whose decision your Board or certain members thereof attempted to circumvent "for the sole benefit of a cynical and self-serving political agenda[5]". Second, the facts are such that the concrete plant existed on the site pursuant to the 1948 variance for decades before property to the rear was subdivided for residential purposes. Accordingly, any suggestion that the concrete plant is located in a residential district is completely inaccurate as are any claims that it would be inappropriate for the Town Board to allow the concrete plant to continue to exist at its location, *irrespective of its protection by the 1948 variance which prohibits interference by the Town Board in this manner*, since it is not located in a residential district and its use, as aforesaid, predates any subsequent residential development of adjoining properties.

Another point that I would like to raise pertains to the characterizations of the use by Titan as generating excessive amounts of silica dust, excessive amounts of diesel fumes etc. I respectfully defer to Titan's counsel to respond to these allegations but I am aware, just as you are aware, that the building permit issued by the Building Inspector in October 2016 included proposals to extensively modernize the concrete plant to specifically address problems that may have existed with respect to outdated equipment but were affirmatively sought to be addressed through the joint efforts of Titan and Kent Investors. You are aware of this because, at the meeting of your Board held on November 1, 2016, the Building Inspector provided the following statements to you on this precise subject matter:

> "Building permit was obtained after looking at the equipment since I've requested more information on the concrete plant machinery that's going in there, *particularly the filter system, the exhaust system and the noise level studies which I've gotten.* I've gotten a blueprint of the machinery, I've gotten a sound level report, just got it in the other day, haven't been able to read it yet and I've requested more information on the exhaust system to deal with the dust issue because I know that there's always been dust issues there so we want to try to head those problems off before they get started."

This quote by your own Building Inspector makes it clear that my client and Titan, recognizing that some problems may have existed by reason of the antiquated equipment previously in use, affirmatively sought to address the situation in its planned modernization of the plant and did so, submitting detailed information to the Building Inspector regarding the improvements to the plant for the specific purposes. Accordingly, there is no question that the modernized plant *represents significant improvements* in all areas of concern, including noise and dust. Regarding

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[4] See Town of Kent Planning Board Conditional Use Permit Approval dated January 13, 2005.

[5] Statement by former Chairman Bob Rogers in his resignation letter.

the issue of alleged diesel fumes, Titan has, as indicated in prior submissions to the Town, purchased new zero emission concrete trucks which cannot be the source of allegedly excessive diesel fume emissions. *Why isn't this information referenced anywhere in the allegedly extensive work that has been conducted in connection with this Proposed Local Law? What investigations have your Board members engaged in to determine the truth of the situation? Since it is no longer a secret that you have targeted this particular use at this particular property, why do your SEQRA documents not evidence the truth regarding the environmental issues i.e. that Titan has measurably improved the environmental conditions relating to this use at this property? You are not merely on notice, you have actual knowledge of the Building Inspector's comments. Why are you ignoring these facts in your rush to judgment? Perhaps because they represent an "inconvenient truth" inconsistent with your desire to simply eradicate this use?*

Turning to the recent amendment that was presented at the November 28, 2017 meeting, it is obvious that while you included such a provision in the hope of passing constitutional muster, the fact is that in so doing, you did so in such a manner as to make it crystal clear that this is an example of elevating form over substance. Initially, the provision is clearly void for vagueness because it uses undefined words and phrases such as "substantial financial expenditure in the real property" and "not otherwise recoverable without engaging in the legal nonconforming use", understanding in this regard that such language does not give an applicant fair warning of what is required nor provide meaningful guidance or standards to the administrative agency. Moreover, we have already provided to you case law confirming the fact that legal expenses incurred by property owners are properly to be considered in determining the reasonableness of an amortization period or extension thereof. Hundreds of thousands of dollars have already been expended on legal fees in connection with this municipal campaign against this property owner and this user and it is anticipated that many more thousands of dollars will be incurred in the near future and these expenses must be considered in terms of determining the reasonableness of the amortization period or extension thereof. Your Proposed Local Law however makes no mention of such expenditures for obvious reasons.

However, these constitutional infirmities pale in comparison to the obvious desire of the Town Board to continue to hold the ultimate "trump card" by reserving unto itself the final authority to overturn any determination made by the ZBA *without any standards whatsoever*. It is, quite frankly, unconscionable that such language would be proposed to be included where, as here, this Town Board has shown such animosity and such hubris in attempting to bully the ZBA members to change their decision and thereafter circumvent the lawful determination of the ZBA.[6] Could you be more obvious in your intent to single out this property owner and this use

[6] Since the Town Board or some members thereof are directly responsible for causing the public to appear at ZBA meetings empowered/encouraged by clearly inflammatory rhetoric, I would suggest that you view the videotape of the August 21, 2017 meeting of the ZBA and tell me whether you think that the ZBA members should ever have been treated in that manner after 30 years of service to the Town when they rendered a decision after consultation

while conferring unto yourself the ultimate authority to do what you so clearly want to do i.e. eliminate this use for political gain? Could you be more obvious as to how you seek to accomplish same? The Town of Kent has been recognized for being perceived as anti-business, with the "negative attitude and length of time to get approvals" being recognized as obstacles to doing business in the Town of Kent[7]. The Town of Kent has also inexplicably displayed animosity towards extension of a public sewer system which would promote economic development along the specific portion of the Route 52 Corridor in issue. While an independent ZBA might recognize these factors, it is highly doubtful that the Town Board would do so being, as it is, the source from which these attitudes arise. Where, as here, nothing is proposed to govern the otherwise unbridled discretion of the Town Board, the resultant determination is very predictable.

There is yet another issue that you have apparently not considered in your rush to judgment to adopt this Proposed Local Law. Your Proposed Local Law emphatically prohibits "the manufacture in any form of concrete" other than in the IOC district. Under your Code, the term "manufacturing" is defined as "any process whereby the nature, size or shape of articles or raw materials is changed or where articles are assembled". Accordingly, any person or property owner mixing concrete for any purpose (business or residential) shall no longer be permitted to do so unless the property in issue happens to be located in the IOC zoning district. Given this fact, it is clear beyond any question that your SEQRA process is clearly deficient because you have not properly considered the ramifications of the prohibition that you propose to adopt. Of course, now that Councilman Denbaum has acknowledged the site-specific nature of the Proposed Local Law, we all know that such a result would be nothing more than an unintended consequence of same and I am certain you/ he will rush to correct the Proposed Local Law to protect everyone but Titan and Kent Investors.

Remaining with the issue of the proposed SEQRA determination, I think it is clear beyond any reasonable question that such determination is wholly inadequate, in both a substantive and procedural context, as well as being premised upon inaccurate statements contained in the FEAF. In a substantive context, in my earliest communications to your Board regarding this ill-conceived Proposed Local Law, I pointed out that there were a number of SEQRA concerns which needed to be fully vetted, including when I described as "many serious socioeconomic issues to be considered in connection with this legislation including loss of local jobs, loss of a source for concrete products at reasonable rates (which could have regional ramifications), loss of significant sales tax revenue (fiscal impacts), public controversy, potential for litigation and litigation costs and damages (fiscal impacts)". Notwithstanding the legitimacy of the consideration of such issues under these circumstances, your proposed SEQRA

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with their attorney with 20 years of service to the Town and then properly refused to reconsider their decision when advised that they were without jurisdiction to do so by an attorney you appointed to represent them.

[7] See Niche Marketing Plan: The Town of Kent Route 52 Corridor, March 2009.

determinations *make no mention of any of these issues and most certainly makes no reference to any studies you conducted in connection with same*. Given the potential for all of these impacts, how could your proposed SEQRA documents be wholly devoid of any reference to these issues whatsoever?

In a procedural context, I respectfully refer you to the letter being submitted simultaneously herewith by Charlotte a Biblow, Esq. on behalf of Titan wherein she points out that said documents are apparently premised on a prior version of the Proposed Local Law and contain references to procedural prerequisites which are clearly inaccurate in view of the fact that a revised draft of the Proposed Local Law was presented for the first time on November 28, 2017.

With respect to the issue of mandatory procedural prerequisites, at the public hearing conducted on November 28, 2017, Town Attorney Nancy Tagliafierro properly indicated that the November 28, 2017 version of the Proposed Local Law was going to be referred to the Planning Board and to the Putnam County Planning Department. However, she also appeared to indicate that under the Code such referral to the Planning Board was not required. I respectfully disagree. While it is true that under §77-62 A the Town Board may, by supermajority, act on a proposed amendment prior to receipt of the Planning Board's recommendations, referral to the Planning Board for a report is, nevertheless, in fact mandatory (the exact language requires that "[e]very proposed amendment *shall* be referred by the Town Board to the Planning Board for a report, which *shall* be rendered within 45 days of such referral") under the same provision. Indeed, §77-63 specifies the minimum requirements for inclusion in the report by the Planning Board in fairly significant detail. Under the circumstances applicable to this Proposed Local Law, it would clearly be highly inappropriate for the Town Board to circumvent this important planning tool given the mandatory and specific language of the Town Code. I would also point out that, although the Town's SEQRA documents indicate a prior referral (presumably some earlier version) to the Planning Board dated October 10, 2017, a review of the Planning Board's agendas since that date do not indicate that the Proposed Local Law was ever considered by the Planning Board. In view of the fact that this matter is not on the agenda of the Planning Board for its December 14, 2017 meeting, I would respectfully submit that the Town Board should refrain from voting on this Proposed Local Law until such time as the Planning Board has been given the opportunity to weigh in with respect to the content thereof as clearly contemplated by the Town Code.

I also noted that Supervisor Fleming made the point at the November 28, 2017 meeting that although she previously recused herself by reason of her membership in Hill & Dale Property Owners Inc.[8], given its adamant opposition to the concrete plant, it is apparently

[8] As noted above, Hill & Dale Property Owners Inc vehemently opposes the concrete plant and has sued the ZBA to overturn its determination, thereby clearly confirming the propriety of Supervisor Fleming's recusal.

Supervisor Fleming's position that she could participate in the discussions pertaining to the Proposed Local Law because she only indicated that she was going to recuse herself from voting on the Proposed Local Law. I believe that if you research the decisions issued by the Attorney General of the State of New York and the New York State Comptroller, you will find that where municipal officials recuse themselves from a particular matter by reason of a conflict of interest, that recusal requires that such officials not participate *in any manner* in connection with the matter under consideration i.e. a recusal pertains both to voting and to participation in deliberations. I would suggest that the Town Attorney research this matter and provide such advice as she might deem appropriate to Supervisor Fleming in this regard. Further, if indeed Supervisor Fleming feels that she is entitled to participate in these discussions, perhaps she can publicly confirm to Councilman Denbaum that she did in fact conduct a meeting with the President of Local 456 and the Building Inspector on October 14, 2016 and perhaps she can also publicly confirm to Councilman Denbaum that the President of Local 456 was present at the Town Board meeting of November 1, 2016 when counsel to Local 456 made a presentation on behalf of neighboring residents.

We will submit additional comments following receipt of the Planning Board report or following further modification of the Proposed Local Law.

Please be guided accordingly.

Yours very truly,

Charles V. Martabano

cc: Kent Investors, LLC
Titan Concrete Corp.
Charlotte Biblow, Esq. Farrell Fritz, P.C.
John Stellakis, Esq. Farrell Fritz, P.C.
Nancy Tagliafierro, Esq.

Notwithstanding such vehement opposition, as noted above, counsel to Hill & Dale Property Owners Inc so recognized the dangers associated with the potential adoption of the Proposed Local Law, she urged the Town Board not to adopt same.

State Environmental Quality Review
NEGATIVE DECLARATION
Notice of Determination of Non-significance

Project Number: N/A Date: December 5, 2017

This notice is issued pursuant to Part 617 (State Environmental Quality Review Act) of the implementing regulations pertaining to Article 8 of the Environmental Conservation Law.

The **Town Board of the Town of Kent**, as Lead Agency, has determined that the Proposed Action described below will not have any significant adverse impact on the environment and a Draft Environmental Impact Statement will not be prepared.

Name of Action: Amendment to Chapter 77 of the Town Code

SEQR Status: Type 1 X
Unlisted ☐

Conditioned Negative Declaration: ☐ Yes
☒ No

Description of Action: The action consists of amendments to the Town Code to prohibit the production of concrete, the operation of a concrete products plant, or the manufacture in any form of concrete in any district in the Town, with the exception of the Industrial-Office-Commercial District.

Location: Townwide.

Reasons Supporting This Determination:

The following analysis forms the basis for the Town Board's determination that no significant adverse environmental impacts would result from the Proposed Action, and that the Proposed Action will have a positive impact on the environment.

WHEREAS, the Town Board has initiated revisions to Chapter 77 to restrict the districts within which the production of concrete, the operation of a concrete products plant, or the manufacture in any form of concrete may be performed (the "Proposed Local Law"); and

WHEREAS, members of the public have identified negative environmental impacts resulting from the production and manufacture of concrete, including but not limited to noise, air, light and water pollution, and the prohibition on the manufacture and production of concrete, especially near residential areas, would have a positive impact on the environment; and

WHEREAS, on November 14, 2017, November 28, 2017 and December 5, 2017, the Town Board held a public hearing on the Proposed Local Law and the comments of the Town Board, its consultants and the public were heard and the public hearing was continued to December 19, 2017; and

WHEREAS, in assessing the Proposed Action for potentially significant environmental impacts, the Town Board has taken a hard look at all of the relevant areas of environmental concern and determined that the Proposed Action would:

(i) Not result in "a substantial adverse change in existing air quality, ground or surface water quality or quantity, traffic or noise levels; a substantial increase in solid waste production; a substantial increase in potential for erosion, flooding, leaching or drainage problems;" (§617.7(c)(1)(i)). Section 77-6(G) of the Town Code provides that any use not listed as permitted within any zoning district is prohibited. Currently, the manufacture of concrete products is only allowed within the Industrial-Office-Commercial (IOC) District. The proposed local law would add the manufacture of concrete products to the list of expressly prohibited uses in all districts, except the IOC District, under a new section 77-40.1, thereby strengthening the current prohibition against concrete manufacturing uses under §77-6(G) in all of the other zoning districts. The proposed local law does not change the current regulatory scheme in regard to concrete product manufacture, but rather confirms the limited prohibition. By making the prohibition of concrete manufacture in all districts except for the IOC District express, the adverse impacts in regard to noise, air quality, increased truck and vehicle traffic, and storm water runoff associated with the use would be avoided.

(ii) Not result in "the removal or destruction of large quantities of vegetation or fauna; substantial interference with the movement of any resident or migratory fish or wildlife species; impacts on a significant habitat area; substantial adverse impacts on a threatened or endangered species of animal or plant, or the habitat of such a species; or other significant adverse impacts to natural resources;" (§617.7(c)(1)(ii)) By making the prohibition of concrete manufacture in all districts except for the IOC District express, the adverse impacts in regard to impacts to flora and fauna, including rare, threatened, endangered and special concern species of plant and animal would be avoided.

(iii) Not result in "the impairment of the environmental characteristics of a Critical Environmental Area as designated pursuant to subdivision 617.14(g) of this Part;" (§617.7(c)(1)(iii)) The proposed local law would have no effect on any designated Critical Environmental Area.

(iv) Not result in "the creation of a material conflict with a community's current plans or goals as officially approved or adopted;" (§617.7(c)(1)(iv)) The proposed local law merely confirms the current regulatory scheme in regard to concrete manufacture and would be consistent with the Town Comprehensive Plan and the Town Zoning Law.

(v) Not result in "the impairment of the character or quality of important historical, archaeological, architectural, or aesthetic resources or of existing community or neighborhood character;" (§617.7(c)(1)(v)) The proposed local law would have no effect on any historic or pre-historic cultural resources.

(vi) Not result in "a major change in the use of either the quantity or type of energy;" (§617.7(c)(1)(vi)) The proposed local law would have no effect on energy use or production.

(vii) Not result in "the creation of a hazard to human health;" (§617.7(c)(1)(vii)) The proposed local law would not result in any hazard to human health, and is expressly intended to protect the public health, safety and welfare.

(viii) Not result in "a substantial change in the use, or intensity of use, of land including agricultural, open space or recreational resources, or in its capacity to support existing uses;" (§617.7(c)(1)(viii)) The proposed local law would have no effect on open space or recreational uses.

(ix) Not result in "the encouraging or attracting of a large number of people to a place or places for more than a few days, compared to the number of people who would come to such place absent the action;" (§617.7(c)(1)(ix)) The proposed local law does not grant any permissions for any use that may result in an increase, temporary or otherwise, in the local population.

(x) Not result in "the creation of a material demand for other actions that would result in one of the above consequences;" (§617.7(c)(1)(x)) The proposed local law would designate concrete manufacture as an express prohibited use in most of the zoning districts. Under the current Town Code concrete manufacture is an implied (i.e. by omission) use in most of the zoning districts.

(xi) Not result in "changes in two or more elements of the environment, no one of which has a significant impact on the environment, but when considered together result in a substantial adverse impact on the environment; or" (§617.7(c)(1)(xi)) The proposed local law is not related to any other local law change.

(xii) Not result in "two or more related actions undertaken, funded or approved by an agency, none of which has or would have a significant impact on the environment, but when considered cumulatively would meet one or more of the criteria in this subdivision." (§617.7(c)(1)(xii)) The proposed local law is not related to any other local law change.

WHEREAS, on the basis of the foregoing information, the Town Board's preparation and review of the EAF, and advice provided by the Town Attorney, the Town Board has determined that the Proposed Action would not result in have any potentially significant adverse environmental impacts and hereby issues this Negative Declaration.

This Negative Declaration, together with the EAF, constitutes the Town Board's reasoned elaboration of potential environmental impacts and forms the Town Board's determination that no significant adverse environmental impacts would result from the proposed action.

For Further Information:

Contact Person:	Hon. Paul Denbaum, Councilman
Address:	Kent Town Hall 25 Sybil's Court Kent, NY 10512
Telephone Number:	(845) 306-5620

A Copy of this Notice has been filed with:
Yolanda D. Cappelli, Kent Town Clerk

(3)

Subject: (none)
Date: Monday, July 24, 2017 at 9:31:24 AM Eastern Daylight Time
From: Rich Othmer
To: Maureen Fleming, Highway Kent, Nancy Tagliafierro, Nancy Tagliafierro, was.law@comcast.net
Category: Department Heads

To All;

In the matter of the correspondence I received from Attorney William Shilling Jr dated July 17, 2017 concerning Kent resident Peter Warren and his interest of purchasing the portion of "Philipse Road" I recommend the following after my field & office investigation;

1) The road is just an unoccupied extension of the existing Philipse Road that just meanders into the woods and dead ends.
2) The Highway Department does not plow it or maintain it.
3) It is not listed as a Town Paper Road
4) It is absolutely of no use to the Highway Department
5) Parking in Lake Carmel is congested on all the narrow & small country roads and any land that could be granted to adjacent property owners to alleviate this road congestion by expanding more space for driveways is beneficial all around.
6) My recommendation is to go through with the conveyance.
7) The only thing I am not sure of is there is some kind of boundary / access situation with the neighboring property that I am unaware of.

I hope this help. If you need this put into a more formal memo please let me know.

Sincerely;

Rich Othmer

William A. Shilling, Jr., P.C.
Attorney at Law
122 Old Route 6
Carmel, New York 10512
E-Mail was.law@comcast.net

Michael V. Caruso
**Also admitted in CT*

Phone (845) 225-7500

Fax (845) 225-5692

July 17, 2017

Maureen Fleming
Supervisor
Town of Kent
25 Sybil's Crossing
Kent Lakes, NY 10512

Re: Peter Warren

Dear Supervisor Fleming:

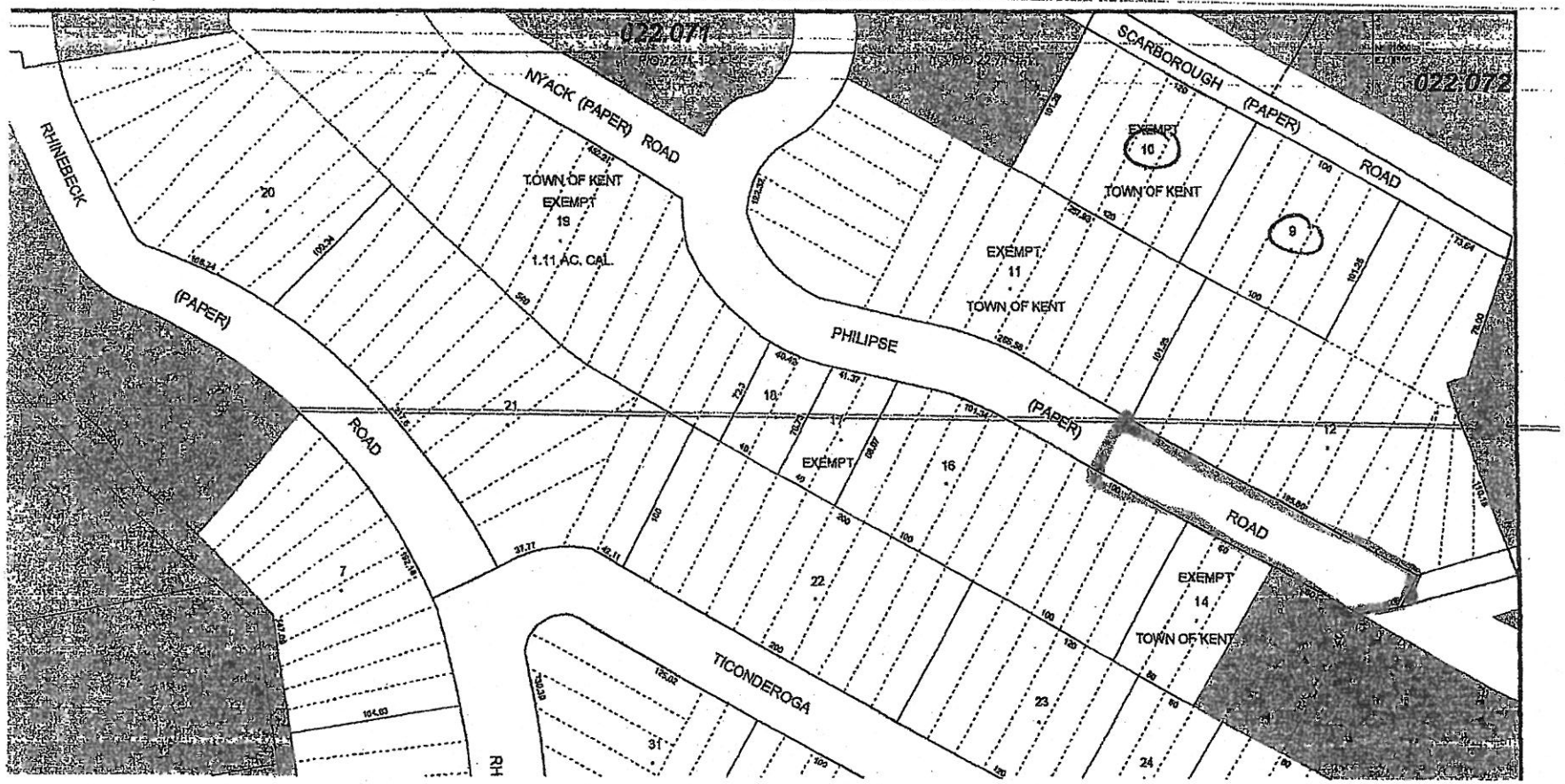
This office represents Peter Warren with regard to property adjoining his property which is part of a paper road known as "Philipse Road". It is my belief that the Town retaining same is of no practical value to the Town of Kent. My client would be willing to purchase same at fair market value. It would provide him a more direct and safer access driveway to his home. I have discussed the matter with your Highway Superintendent who I am copying in this transmittal. I have attached a copy of the tax map depicting the property Mr. Warren is interested in purchasing.

Very truly yours,

William A. Shilling, Jr.

WAS:mb
Cc: Richard T. Othmer, Jr., Highway Superintendent
Nancy Tagliaferro, Esq., Town Attorney
Peter Warren

A Kent
22.79-1-9+10



Virtual
TOWNS &
SCHOOLS

Virtual Towns & Schools - Services Contract Addendum

Agreement between Virtual Town Hall Holdings, LLC of Boxborough, MA ("VTHH") and the Town of Kent, New York ("Client").

WITNESSETH:

WHEREAS, VTHH is the current primary website services provider for Client, and

WHEREAS, the Client hereto desires to redesign the look & navigation of its current VTHH website,

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the parties hereby agree to amend their current agreement as follows:

1. VTHH will provide a new, custom design for the main website based on the Client's direction and ultimately approved by the Client prior to implementation.

2. Services summary, payment terms, and other elements for this addendum are contained in Exhibit A hereto. Note: This addendum comprises one-time services and costs, VTS's annual costs will remain unchanged from the current contract.

Town of Kent, NY
25 Sybil's Crossing
Kent Lakes, NY 10512

_____
Signature

_____
Name

_____
Title

_____
Date

Virtual Town Hall Holdings, LLC
1300 Massachusetts Avenue
Boxborough, MA 01719

_____
Millard Rose
President

_____
(Date)

Exhibit A

One Time Charges: Design & Development
Town of Kent, NY

Phase 1: Main Website Design (Including "Responsive Design")

- Create Site Homepage Design & Layout; Modify Design until Approved
- Create Subpage Design & Layout

Phase 2: Site Implementation

- Identify Global Navigation, Cascading Navigation & Related Links
- Implement Design within VTS Responsive Design Content Management System

Phase 3: Content Development

- Re-map All Existing Web Pages as Necessary into New Design

Phase 4: User Training

- One (1) On-Line Group Training Session (Approx 1.5 to 2 hrs).
  Note: Small Amount of Training Needed for Existing Users.

Phase 5: Website Deployment

- Final Site Review and Link Checking
- DNS Actvities

Total "One-Time" Charges for Project:	**$4,200**
2017 Flexibility Discount*	**($1,800)**
Net Cost	**$2,400**

***This discount grants VTS the flexibility to initiate the project any time between the date of this agreement and July 1, 2018.**

Payment Terms:

- $800 of project costs invoiced upon execution of contract (Due on Reciept)
- $800 of project costs invoiced on 7/1/18
- $800 of project costs invoiced on 7/1/19