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Our File No.
27999-102

November 13, 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 Local Law Amending the Zoning Code to Restrict the Production Of Concrete
Town Board Public Hearing Date: November 14, 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**"). This letter is submitted to the Town of Kent Town Board ("**Town Board**"), as a supplement to my October 5, 2017 letter, which is incorporated herein by reference. Both letters are submitted in opposition to the above-referenced proposed local law and we request that they be made part of the administrative record of the public hearing. We also intend to testify at that public hearing in opposition to this ill-conceived and patently unconstitutional proposal.

While the proposed local law purports to apply across all zoning districts, that is a sham. The intended target is Titan's concrete plant, period. This is confirmed by numerous statements made on the record by Town Board members at public hearings that clearly and unequivocally establish that the proposed local law has only Titan's concrete plant in its cross-hairs.

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. As you also well know, 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. In its decision, dated July 17, 2017, the ZBA confirmed that in 1948, the ZBA issued a use variance for the concrete plant that runs with the land and still applies to the Premises. As such, the concrete plant is a lawfully permitted use that has been operating at the Premises for almost 70 years. It is not a nonconforming use. *See e.g., Scarsdale Shopping Center Associates v Board of Appeals On Zoning For The City of New Rochelle*, 64 AD3d 604, 606 [2d Dep't 2009] (a use for which a use variance has been granted is a conforming use and is unlike a use that is allowed to continue by

to operate the concrete plant in accordance with the 1948 use variance, and will be forced to incur additional legal fees to protect its rights. These fees 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.

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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November 14, 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 my prior correspondence, I am counsel to Kent Investors, LLC, (hereinafter "Kent Investors") owner of property known as 301 Route 52, Kent, New York (hereinafter "the Property"). Your Board is already in receipt of my letter of October 6, 2017 in connection with the proposed local law which is the subject matter of the public hearing being conducted tonight (hereinafter "Proposed Local Law"). As circumstances may prevent my appearance at tonight's public hearing, I request that this letter and the Protest Petition which accompanies same be made part of the public record of the public hearing this evening.

Dealing first with the issue of the Protest Petition, upon information and belief, no other property in the Town of Kent not located in the IOC Zoning District is presently utilized for the production of concrete, the operation of a concrete products plant or the manufacture in any form of concrete. At a minimum, with respect to Section B of the Proposed Local Law (which seeks to render such uses nonconforming and effectuate termination based upon a two-year amortization period), upon information and belief, no other property is being used for and no business owner is producing concrete or operating a concrete plant other than in the IOC Zoning District. By reason of the foregoing, the Property constitutes 100% of the property involved in the zoning change, consistent with the clear and unequivocal expressions of intent by members of the Town

Board to target this property and this business owner.[1] As set forth in the attached Protest Petition, under Subsection (a) of §265 of the Town Law and Subsection E of §77-63 of the Code of the Town of Kent, a protest petition may be submitted by "the owners of twenty percent or more of the area of land included in such proposed [zoning] change" and, upon such submission, an affirmative vote of 75% of the members of the Town Board is required to adopt this Proposed Local Law. Accordingly, if members of your Board imprudently seek to adopt the Proposed Local Law, it is respectfully submitted that such adoption can only be effectuated upon the affirmative vote of all members of the Board authorized to vote, it being understood that Supervisor Fleming has indicated that she is unable to vote on the Proposed Local Law by reason of her involvement with Hill & Dale Property Owners Inc.

Initially, I need to point out that this proposed Proposed Local Law is, in my opinion, nothing more than one additional component of a multifaceted and clearly constitutionally repugnant attempt by a member or members of this Town Board to target my client and my client's tenant, Titan Concrete Inc. (hereinafter "Titan") for disparate treatment in an attempt to placate certain voters. The history of actions taken by a member or members of the Town Board can lead to no other conclusion and my opinion in this regard is shared not merely by former members of the Zoning Board of Appeals (hereinafter "ZBA"), but by counsel to one of the voter groups that such members have been seeking to placate (see below). The conduct of the Town Board, in this unceasing campaign to target this property owner and this business owner, is in fact so blatant and heinous that this Town Board has accomplished two things that perhaps no town board has ever accomplished in New York.

First, its conduct on this singular issue has caused every member of the Town of Kent ZBA, highly skilled and experienced individuals (two members with more than 30 years of experience), to resign *en masse*, writing resignation letters which are shocking (but accurate) in their content and leave no doubt as to how these objective and experienced individuals viewed the Town Board's conduct.[2]

Secondly, when the Town Board's prior efforts were unavailing (except as to cause the resignation of the entire membership of the ZBA, as aforesaid) and a member or members of the Town Board resorted to proffering the Proposed Local Law, the Proposed Local Law was so obviously substantively and procedurally improper that it has caused counsel for Hill & Dale Property Owners Inc. to agree with counsel for Kent Investors and Titan that the Proposed Local Law represented a situation where the Town could be sued for an "unlawful and discriminatory

[1] To the extent that the Town Board attempts to assert to the contrary, the Town Board should provide a list of the properties not located in the IOC zoning district and presently involved in the manufacture of concrete, it being understood that a protest petition need only be signed by the owners of 20% of the properties involved in the zoning change.

[2] See excerpts from resignation letters set forth in my letter to the Town Board of October 6, 2017

land use practice" and urge the Board not to adopt the Proposed Local Law (see below).

The fact that actions by your Board could cause all of the foregoing to occur within the space of a few months is undoubtedly unprecedented and speaks volumes as to the impropriety of the Town Board's conduct.

What we are dealing with here is a very well documented history of conduct originating from this Town Board which clearly confirm a constitutionally infirm pattern of conduct seeking to bring to bear all the forces and powers of a municipality against a single property owner and a single business owner, the specifics of which will no doubt be the subject of discovery in future litigation. In so doing, this Town Board has elected to circumvent legally mandated processes in an effort to inflict damage on this property owner and this business owner, now seeking to legislate them out of existence[3]. Briefly described, this pattern of conduct originated in November 2016 when, after being advised by the Building Inspector as to the propriety of his issuance of a building permit to this property owner, Councilman Denbaum publicly opined "that the project should be denied the building permit and let them appeal to the Zoning Board as opposed to granting these permits and making it incumbent on the residents to then petition"[4], ***which is exactly what transpired ten (10) days later***). Following this directive and following a meeting with Supervisor Fleming, after treating this property owner in a certain fashion for months preceding these meetings, after being admonished by Mr. Denbaum and presumably directed by Supervisor Fleming, the Building Inspector reversed his entire pattern of conduct and made multiple determinations adverse to the interests of Kent Investors and Titan, one of which was withdrawn and another of which was reversed by the ZBA.

Subsequently, when the ZBA made a proper decision with respect to my client's application, Mr. Denbaum, rather than to follow lawful procedures (such as authorizing the institution of an article 78 proceeding), instead chose to attempt to circumvent and usurp the independent authority of the ZBA initiating this component of the Board's multifaceted attack after making statements on August 1, 2017 reflected in the minutes indicating that he: ***"admonished the Zoning Board. [He] said it was a terrible decision. [He] supported the hiring of legal counsel to go against it. We've been in executive session[5] fighting this the whole time. .. . this is a bad decision. The Zoning Board was a hundred-percent wrong"*** and thereafter seeking to *force* the ZBA to reconsider its decision, going so far in this regard as to schedule

[3] As repeatedly urged in all submissions on behalf of Kent Investors and Titan, it is our position that, as the use is authorized by a variance, the Proposed Local Law will be ineffective to achieve the Town Board's obvious desires.

[4] See minutes of November 1, 2016 meeting of Town Board.

[5] It is respectfully submitted that it appears as though the members of the Town Board illegally met in executive sessions as I know of no basis under the Public Officers Law which, under the circumstances, would authorize the Town Board to meet behind closed doors to discuss anything related to this ongoing controversy as the Town Board was not involved in any litigation at the time of these meetings.

multiple meetings for the ZBA to reconsider its decision which, upon information and belief, was not done at the request of or with the consent of the ZBA. This conduct perhaps reached its zenith when the ZBA was given advice by its newly appointed counsel[6] to the effect that it could not reconsider its decision once the decision was challenged in court and the Town Board dispatched the Town Attorney to urge the ZBA to ignore its counsel's advice.

Your Board need not rely upon my characterization of the tactics utilized by your Board. Abundant objective proof of the improper machinations/tactics utilized by the Town Board is provided by the fact that each and every member of the ZBA, including two members with more than 30 years of experience and service to the Town, resigned over the strong-arm tactics utilized by the Town board seeking to force the ZBA to reconsider its decision. I am unable to characterize the actions of the Town Board in any manner which would more adequately describe them then was accomplished by ZBA Chairman Bob Rogers in his resignation letter to the Town Board which read, in pertinent part, as follows:

> "Never, in my 30 years of service on the Zoning Board of Appeals has any Town Board or Town Board member ever had the presumption to intrude into the deliberative process of the ZBA in an effort to direct, or affect, or influence any decision or determination made by the Zoning Board of Appeals. Recently, however, members of the present Town Board, either ignorant of, or just simply indifferent to the statutory independence of this body, its quasi-judicial character, and the legal, ethical and procedural constraints under which it is required to operate, have and continue to endeavor, in what appears to be for the sole benefit of a cynical and self-serving political agenda, to do just that."

Parenthetically, the question needs to be asked: Does your Board know of any situation in the history of the State of New York where an entire zoning board of appeals of such pervasive experience and background resigned specifically over strong arm tactics utilized by a Town Board of the same Town "for the sole benefit of a cynical and self-serving political agenda". I think not. I have practiced zoning law since 1980 and I know of no such circumstances.

Having "accomplished" all this, the same Board member who was singled out in the resignation letters of the members of the ZBA now proposes this Proposed Local Law, which is so constitutionally repugnant in both a procedural and substantive context that it has caused counsel to Hill & Dale Property Owners, Inc., *opponents to the concrete plant use*, to implore your Board not to proceed with the Proposed Local Law. I refer in this regard to the letter submitted by Alyce D. Terhune, Esq. dated October 16, 2017 and appended to the minutes of the October 24, 2017 meeting of your Board. Commenting upon the Proposed Local Law, Ms. Terhune, after asserting that the Proposed Local Law was unnecessary in the first instance, also opined as follows:

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[6] Immediately subsequent to the issuance of the decision in issue, the Town Board replaced the ZBA's counsel of 20 years with a newly appointed attorney.

> "Any change to the zoning law at this time could open the Town to more litigation including unlawful and discriminatory land use practice. If such claims are brought in federal court and proved, the Town could be liable for the challenger's attorney's fees. On behalf of our clients and with all due respect, we humbly asked the Town Board to withdraw this Proposed Local Law from consideration until after the pending lawsuit has been decided."

In my letter of October 6, 2017 I stated in pertinent part as follows:

> "Moreover, the incredibly narrow scope of the legislation (essentially limited to one property and one use, as confirmed by Supervisor Fleming's recusal) can leave no doubt that your Board has simply chosen to target this property owner and this user in a retaliatory attempt to circumvent the ZBA determination which you could not otherwise affect through the tactics which engendered the reaction of the ZBA members referenced above. Such a position will not be countenanced by the courts and will undoubtedly result in protracted and costly litigation, perhaps involving punitive damages. I make this assertion viewing the legislation in the abstract. When the reviewing courts view the legislation with its background of improper and vexatious action on the part of the Town Board and in recognition of the protected status of the property as a use permitted by use variance, I believe such courts will recognize the adoption of this legislation as nothing more than a component part of a concerted course of conduct seeking to deprive my client and its tenant of their constitutional rights in violation of New York and federal law, including 42 U.S.C. §1983. Please note in this regard that successful plaintiffs under 42 U.S.C. §1983 are entitled to collect their attorney's fees as well."

I would therefore ask you in a rhetorical context: how often is it that a proposed piece of legislation is both so constitutionally infirm in its substance and so obviously targeted at one property owner and one business user that counsel *opposing each other* in court regarding the legality of the concrete plant use make the same argument. This speaks volumes.

In my letter of October 6, 2017, I outlined my objections to the Proposed Local Law based upon applicable law and I questioned whether the Town Board had followed proper procedures in connection with its adoption including the following:

a. referral of the Proposed Local Law amending the zoning chapter of the code to the Planning Board pursuant to the ***mandatory referral*** set forth in §77-62 of the Code;

b. receipt by the Town Board of the report of the Planning Board to be rendered pursuant to the mandatory referral set forth in §77-62 of the Code;

c. referral of the Proposed Local Law to Putnam County pursuant to §239 of the

General Municipal Law;

d. receipt of the response from Putnam County pursuant to §239 of the General Municipal Law;

e. compliance with the requirements of SEQRA[7].

I would presume that, in the more than five week since the date of my letter, significant progress has been made with respect to these procedural prerequisites and I would expect that your Board will provide a complete report at the meeting this evening. I would note however that in reviewing the agendas of the Planning Board, discussions of the Proposed Local Law have not appeared on any agenda. Further, I believe that compliance with SEQRA would require that the Town Board make inquiry as to a multitude of issues which would arguably involve input from my client or Titan such as fiscal impacts (whether same be in connection with loss of sales tax revenue, loss of employment, potential for creation of monopolies, adverse impacts to consumers and businesses of the consequence of same, litigation expenses, possible damage awards etc.) or, depending upon the Town Board's intention to make legislative findings, input as to the improvements made to the concrete plant, vehicles utilizing same, all of which represent significant improvements which have transpired since the 2005 site plan approval was granted following full SEQRA review. I am therefore somewhat skeptical as to whether the Town Board has made significant progress with respect to these procedural prerequisites.

In my letter of October 6, 2017 I also briefly reviewed some of the more significant court decisions pertaining to amortization provisions. Please note, as I stressed previously and continue to stress, with the concrete plant use being confirmed to be authorized on this property via the issuance of a variance, attempts to cause such use to become nonconforming are unavailing as uses permitted by variance are not susceptible of being rendered nonconforming in this manner. By reason of the foregoing, the Proposed Local Law will not be effective to subject the use to an amortization period. Even if it were, this Proposed Local Law would fail to conform to the requirements of law pertaining to amortization periods. Amortization laws, to be constitutional, must provide for *reasonable* termination periods. The Court of Appeals, in dealing with a use rendered non-conforming but not protected by issuance of a variance, made this crystal clear stating that "[i]t is the law of this state that nonconforming uses or structures, in existence when a zoning ordinance is enacted, are, as a general rule, constitutionally protected and will be permitted to continue, notwithstanding the contrary provisions of the ordinance." *People v. Miller,* 304 N.Y. 105 (1952). The Court held that "[t]he enforcement of a zoning regulation

[7]As referenced in my October 6, 2017 letter, a SEQRA context there are many significant issues which need to be thoroughly examined. This Proposed Local Law to eliminate a use existing for almost seven decades. There are 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) etc.

against a prior nonconforming use will be sustained where the resulting loss to the owner is ***relatively slight and insubstantial,***". The corollary of the foregoing is that an amortization provision will be upheld only if it provides a period for amortization which is ***sufficient to reduce the nonconforming user's loss to a point where it is insubstantial.*** As was noted by Councilman Denbaum, if the law fails to make reasonable allowance for amortization, it becomes a taking without compensation, violating substantive due process guarantees under the United States and New York State Constitutions. Therefore, as a constitutional matter, amortization periods must be reasonable in view of nature of the business, improvements/investments made to and in the property, character of the neighborhood and detriment to property owner, *see e.g., Suffolk Outdoor Advertising Co. v. Hulse,* 43 N.Y.2d 483 (1977).*; Harbison v. City of Buffalo,* 4 N.Y.2d 553 (1958). Where the amortization period is too short, it constitutes a taking and is unenforceable, *Gauthier v. Larchmont,* 30 A.D.2d 303 (2d Dep't 1968). These cases were relied upon in the brief for the prevailing party in *Suffolk Asphalt Supply, Inc. v. Board of Trustees of Village of Westhampton Beach,* 59 A.D.3d 429, 872 N.Y.S.2d 516 (2nd Dep't, 2009), reviewed at length in my October 6, 2017 letter. As stated by the court in its decision in that case:

> "Whether an amortization period is reasonable is a question which must be answered in light of the facts of each particular case" (*Modjeska Sign Studios v. Berle*, 43 N.Y.2d 468, 479–480, 402 N.Y.S.2d 359, 373 N.E.2d 255, appeal dismissed 439 U.S. 809, 99 S.Ct. 66, 58 L.Ed.2d 101). "***Reasonableness is determined by examining all the facts, including the length of the amortization period in relation to the investment and the nature of the use. The period of amortization will normally increase as the amount invested increases or if the amortization applies to a structure rather than a use***" (*Matter of Town of Islip v. Caviglia*, 73 N.Y.2d 544, 561, 542 N.Y.S.2d 139, 540 N.E.2d 215).
>
> "***Typically, the period of time allowed has been measured for reasonableness by considering whether the owners had adequate time to recoup their investment in the use***" (*Village of Valatie v. Smith*, 83 N.Y.2d at 401, 610 N.Y.S.2d 941, 632 N.E.2d 1264). "While an owner need not be given that period of time necessary to permit him to recoup his investment entirely, ***the amortization period should not be so short as to result in a substantial loss of his investment***" (*Modjeska Sign Studios v. Berle*, 43 N.Y.2d at 480, 402 N.Y.S.2d 359, 373 N.E.2d 255)."
>
> (emphasis added)

Given the foregoing, and mindful of the fact that, presumably, the Town Board does not want to subject the residents of the Town of Kent to the costs associated with an unconstitutional taking, the question next becomes one of what level of inquiry the Town Board has engaged in to determine the reasonableness of the proposed amortization period of two years. Your Board is respectfully referred to the letter submitted by Titan's counsel of November 13, 2017 which

details the investment in the improvements associated with the concrete plant by Titan. I can assure you that when Kent Investors made its investment in this property it did so based upon record documents submitted in connection with the foreclosure which indicated the use of the property as having a concrete plant. With multiple millions of dollars being invested in the property and the plant, and it being understood that the length of the amortization period should be predicated upon the amount of time ***sufficient to reduce the nonconforming user's loss to a point where it is insubstantial,*** it is respectfully submitted that the proposed amortization period is not merely unreasonable but manifestly unreasonable and clearly unconstitutional.

Should your Board elect to go down this path, all it will do will be to engender litigation with the concomitant costs to the residents of the Town of Kent. The issues involved with respect to the ZBA's determination are pending for resolution in court. The decision by any Board member to vote in favor of the Proposed Local Law is clearly an improvident exercise of discretion which will engender litigation as aforesaid and could, as urged by Ms. Terhune, "open the Town to more litigation including unlawful and discriminatory land use practice" and "the Town could be liable for the challenger's attorney's fees", to which I would further add, subject the Town and its residents to compensatory and possibly punitive damages.

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.

Protest Petition

Kent Investors, LLC, as and for its Protest Petition to the Town Board of the Town of Kent in connection with the consideration and potential adoption of the undated Local Law proposing to modify Chapter 77 of the Code of the Town of Kent (hereinafter the "Proposed Local Law"), a copy of which is attached hereto, hereby states as follows:

1. Kent Investors, LLC is the owner of property known as 301 Route 52 in the Town of Kent, New York, said property being also known and described as parcel number 44.6-1-7 on the tax maps of the Town of Kent (hereinafter the "Property"). Said Property is located in the Commercial Zoning District;
2. There is located on the Property a plant for the manufacture of concrete and there has been located on the Property a plant for the manufacture of concrete since approximately 1949, said plant being authorized pursuant to the issuance of a variance by the Zoning Board of Appeals of the Town of Kent in 1948;
3. The Proposed Local Law, by its terms, purports to expressly prohibit "the production of concrete, the operation of a concrete products plant, or the manufacturer in any form of concrete" in any use district except for the Industrial-Office-Commercial District ("IOC District");
4. The Proposed Local Law, by its terms, also purports to cause the termination by amortization of any "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 [the] IOC District" "no later than 2 years immediately following the effective date of this subsection";

5. Upon information and belief, the Property owned by Kent Investors, LLC is the only property in the Town of Kent which is involved in "the production of concrete, the operation of a concrete products plant, or the manufacturer in any form of concrete" and is not located in the IOC Zoning District. Additionally, records maintained by the Town of Kent make it crystal clear that the Property and its use are the singular target of the Proposed Local Law;
6. By reason of the foregoing, the Property owned by Kent Investors, LLC is the only Property in the Town of Kent which theoretically could be affected by the Proposed Local Law, although it is the position of Kent Investors, LLC that, as the manufacture of concrete on the Property has been authorized by a variance, the Proposed Local Law can have no effect with respect to same;
7. Pursuant to subsection (a) of §265 of the Town Law and subsection E of §77-63 of the Code of the Town of Kent, a protest petition may be submitted by "the owners of twenty percent or more of the area of land included in such proposed [zoning] change" which, if submitted, would have the effect of requiring the favorable vote of at least ¾ or 75% of the members of the Town Board to adopt the Proposed Local Law;
8. The Protest Petition of Kent Investors, LLC is therefore hereby submitted for the express purpose of requiring the favorable vote of at least ¾ or 75% of the members of the Town Board to adopt the Proposed Local Law.

Signature appears on next page

Respectfully submitted

Kent Investors, LLC

By: Donald A. Flood II, Co-manager

FARRELLFRITZ, P.C.
ATTORNEYS

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Our File No.
27999-102

October 5, 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 Local Law Amending the Zoning Code to Restrict the Production Of Concrete
Public Hearing Date: October 10, 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**"). This letter is submitted in opposition to the above-referenced proposed local law and we request that it be made part of the administrative record of the public hearing. We also intend to testify at that public hearing in opposition to this ill-conceived and patently unconstitutional proposal.

As you well know, under its lease with Kent Investors, LLC (**"Kent Investors"**), the owner of the Premises, Titan is permitted to operate the concrete plant located at the Premises. As you also well know, 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, which the ZBA in a decision, dated July 17, 2017 confirmed was a use variance that runs with the land. As you further know, via the various Notices of Claims Titan has been forced to serve against the Town of Kent as well as from other correspondence, Titan has expended in excess of $3 million refurbishing the concrete plant and purchasing equipment and trucks for use in the operation of the concrete plant.

This proposed local law is the latest action in a pattern of unlawful activities that the Town Board of the Town of Kent (**"Town Board"**) has taken that violate the constitutional rights and vested property rights of Titan to operate the concrete plant. These other unlawful activities include, but are not limited to: (1) using bully pulpit rhetoric, described by one resident as "inflammatory" to incite members of the public against Titan, which was a prescient comment now that Titan has become the victim of violence in an inflammatory context as two of their new, state of the art zero emission concrete trucks (costing approximately $250,000.00 each) were firebombed over the

weekend, (2) directing the Town Building Inspector to issue a stop work order and erroneous determinations regarding the status of the concrete plant despite the Town and its employees having unlimited access to Town records that contained the 1948 variance and the 2005 Consent Judgment and related approvals and failing to review the Town records before issuing the stop work order and erroneous decisions, (3) colluding with members of Local 456 against Titan, (4) directing the Town Attorney to issue a letter to the ZBA and adopting a resolution in which the Town Board demanded that the ZBA rehear the matter and reverse its decision in what could only be described as an unethical attempt to invade the jurisdiction and independence of the ZBA, a separate quasi-judicial body, the letter instructed the ZBA to ignore both the advice of the ZBA's own counsel and well-established case law that prohibits rehearing the July 17th decision due to the filing of two Article 78 proceedings by two sets of residents, and (5) directing the sending out of a rehearing notice ostensibly for the ZBA and setting the rehearing on the ZBA's calendar's without the knowledge or consent of the ZBA. The ZBA members were so infuriated with the Town Board's interference with the ZBA that all five members of the ZBA resigned at the same time in September, issuing excoriating resignation letters citing chapter and verse about the Town Board's unlawful actions.

Even in the face of this very public rebuke by the ZBA, the Town Board is undeterred in its unlawful actions and now is considering adopting this proposed local law to prohibit concrete production in the Town of Kent. There can be no doubt that this proposed local law is specifically targeted at Titan and Kent Investors. Comments made on the record by Town Board members, particularly by Councilman Denbaum, at the September 26, 2017 Town Board meeting, who apparently drafted the proposed local law only a few days before the meeting, as well as comments made by the general public, make this abundantly clear. This is further bolstered by the fact that Supervisor Fleming recused herself from voting on the proposal because she resides in the Hill & Dale development, and that property owner's association is one of the petitioners in one of the two Article 78 proceeding challenging the ZBA"s July 17th decision regarding the Titan concrete plant. It is not lost on anyone that the September 26th Town Board meeting occurred only a few days before the fire-bombing of the concrete trucks. Titan will hold the Town Board responsible for any role or conduct the actions or omissions of the Town Board played in the destruction of or damage to Titan's trucks, equipment or to the concrete plant, or for any violence or injury to Titan's principals or employees that occurs as a result of the reckless rhetoric and unlawful actions by Town Board members.

The proposed local law is an abomination and no doubt was drafted to pander to a small but vocal minority of the voting public. To begin with, in light of the Notices of Claims filed by Titan and Kent Investors, and the ZBA decision, dated July 17, 2017, the Town Board is well aware of the substantial constitutionally-protected vested property rights these companies have, which would be vitiated by the proposed law. In addition, the proposed two-year amortization period is, simply put, a joke. This exceedingly short time period would be overturned by a court. *See, e.g., Village of Valatie v Smith*, 83 NY2d 396, 400 [1994] (validity of amortization period applicable to a non-conforming use depends on period's reasonableness to protect the owners' financial interest, it is a grace period to allow a fair opportunity to recoup the party's investment); *Suffolk Asphalt Supply, Inc., v Board of Trustees of the Village 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). In light of the $3 million plus investment made by Titan and the investments made by Kent investors in the concrete plant and other improvements and the fact that this use is a lawful conforming use pursuant to the 1948 use variance, rather than a pre-existing non-conforming use, the inclusion of this very-short 2-year amortization period is unreasonable and punitive. Even if the use was considered to be non-conforming, which it is not, the very-short 2-year amortization period is still unreasonable.

Furthermore, the Town Board is acting in violation of its own code as well as in violation of state and federal law in its zeal to pass this proposed local law before Election Day. For example, given that the proposed local law was drafted a few days before the September 26th Town Board meeting, the Town Board has likely not followed §77-62 of Town Zoning Code and has not referred the proposed law to the Town Planning Board. The Town Board has also not complied with the State Environmental Quality Review Act ("SEQRA") as the required SEQRA review has not been done. The Town Board also has not referred this to the Putnam County Planning Commission, although it is required to do so under General Municipal Law 239-m. Moreover, as the actions of the Town Board rise to the level of civil rights violations, the Town is in violation of 42 USC § 1983. Titan intends to pursue all of its legal remedies against the Town, the Town Board and its members and will seek compensatory and punitive damages. As mentioned above, Titan has expended in excess of $3 million, not including attorney's fees, all of which it will seek to recoup in an action challenging the proposed local law.

Tread carefully here as it is abundantly clear that the Town Board is marching down a path similar to the path that it took in the *Kent Manor/Kent Acres* debacle, as was astutely mentioned on more than one occasion by members of the general public at Town Board meetings.

Very truly yours,

Charlotte Biblow

Charlotte Biblow

cc: Charles Martabano, Esq.
Michael Saccente, Titan Concrete
John C. Stellakis, Esq.

FARRELLFRITZ

400 RXR Plaza
Uniondale, NY 11556

Voice: 516.227.0700
Fax: 516.227.0777

FROM:	Lemmo, Maryann	**DATE:**	10/5/2017 - 1:58:06 PM
PHONE:	288	**CLIENT MATTER:**	27999 - 102

PLEASE DELIVER AS SOON AS POSSIBLE TO:

RECIPIENT	COMPANY	FAX NO.
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Re: Fax to Supervisor Maureen Fleming and Members of the Town Board from Charlotte Biblow

Fax to Supervisor Maureen Fleming and Members of the Town Board from Charlotte Biblow

cc TB TA Kleinberg

CHARLES V. MARTABANO
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October 6, 2017

By Hand John Brett

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:

Please be advised that the undersigned is counsel for Kent Investors, LLC, owner of property known as 301 Route 52, Kent, New York. Said property has been the site of a lawfully permitted concrete plant since circa 1949. Due to the necessity of my having to appear at a public hearing in the Town of Bedford on October 10, 2017, I will be unable to attend the public hearing scheduled on the above referenced Local Law. I do, however, wish to convey the information set forth below for your consideration and for the purposes of setting forth my client's record objections, not merely to the current attempt at improper interference with my client's constitutionally protected vested rights, but to what is clearly a consistent course of governmental conduct specifically intended to and effectuated with the clear intent to interfere with such constitutionally protected vested rights in a manner which I believe to be actionable under New York law and 42 U.S.C. §1983, a section of the United States Code with which the Town of Kent is presumably intimately familiar.

42 U.S.C. §1983 provides in pertinent part as follows:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a

declaratory decree was violated or declaratory relief was unavailable."

The Court of Appeals has ruled that "[i]n the land-use context, 42 USC § 1983 protects against municipal actions that violate a property owner's rights to due process, equal protection of the laws and just compensation for the taking of property under the Fifth and Fourteenth Amendments to the United States Constitution" *Bower Associates v. Town of Pleasant Valley*, 2 N.Y.3d 617, 781 N.Y.S.2d 240 (2004), citing *Town of Orangetown v. Magee*, 88 N.Y.2d 41, 49, 643 N.Y.S.2d 21, 665 N.E.2d 1061 (1996). The Town of Kent should be intimately familiar with these decisions because, when the Town of Kent, at such time urged to participate and perpetuate litigation in concert with a neighborhood group (who is also opposed to the concrete plant and recently urged the Town Board to take action while specifically reminding the Town Board members of the number of votes at stake in their neighborhood in an election year), made a decision to ignore a court order, leading to a multiyear litigation (colloquially referred to as the "Kent Manor litigation" in which I was involved as counsel) with very significant financially adverse consequences to the Town of Kent and its residents. In such litigation, the Appellate Division for the Second Department determined that the plaintiffs had evidenced the requisite vested rights necessary under these decisions, a predicate for a subsequent §1983 action (see *Kent Acres Development Co., Ltd. v. City of New York*, 41 A.D.3d 542, 841 N.Y.S.2d 108 (2nd Dep't, 2007). It is respectfully submitted that my client is in a similar position as a potential plaintiff and, assuming that your Board moves forward to adopt this completely constitutionally infirm (in both a substantive and procedural context) legislation, the vulnerability of the Town of Kent is both self-evident and extremely substantial.

When evaluating the propriety of a course of conduct for purposes of 42 U.S.C. §1983, the provability of record facts is, of course, of significance. What has transpired since the first appearance of certain neighbors/voters before your Board in November 2016 (when Councilman Denbaum publicly opined "that the project should be denied the building permit and let them appeal to the Zoning Board as opposed to granting these permits and making it incumbent on the residents to then petition"[1], ***which is exactly what transpired ten (10) days later***) will undoubtedly become a matter of record when discovery is conducted so as to ascertain precisely what actions municipal actors have taken in bad faith. This will of necessity include discovery of what the Town Board has been doing in executive session (for which there appears to be no legal basis to have conducted) as referenced by Councilman Denbaum when, on August 1, 2017, he admitted that "we've been in executive sessions fighting it the whole time"[2]. What has transpired since the Zoning Board of Appeals (hereinafter "ZBA") made their determination of July 17, 2017 is also a matter of record. However, rather than to depend upon my recitation of the facts, allow me to recount what long-serving members of the ZBA and another resident of the Town of Kent have confirmed in writing:

"Never, in my 30 years of service on the Zoning Board of Appeals has any

[1] See minutes of November 1, 2016 meeting of Town Board.

[2] This statement is from a verbatim transcript of the Town Board meeting of August 1, 2017. The official minutes use the phrase "they have been…"

Town Board or Town Board member ever had the presumption to intrude into the deliberative process of the ZBA in an effort to direct, or affect, or influence any decision or determination made by the Zoning Board of Appeals. Recently, however, members of the present Town Board, either ignorant of, or just simply indifferent to the statutory independence of this body, its quasi-judicial character, and the legal, ethical and procedural constraints under which it is required to operate, have and continue to endeavor, in what appears to be for the sole benefit of a cynical and self-serving political agenda, to do just that. Neither will I bow to such pressure, nor will I become part of, or party to any such agenda."

(Letter from Bob Rogers dated September 8, 2017 resigning from ZBA after 30 years of continuous service, emphasis and italics added)

"Recently, I received a memo from the Town Attorney stating that as a board we should not " slavishly follow the advise of council ". I knew it was time to end my volunteer association with the town of Kent.

The Zoning Board of Appeals was always non political and the only way that it can work is to be so to make independent decisions. Most of what the board does is non controversial, some decisions are not. In the most complicated of cases before us we have relied on legal assistance from town attorneys or from outside land use council. ***In the current case both the outside council that has served us for years and the new council appointed for us by the town board agreed with our decision and verified the law involved and the procedures that we followed, at all times we were guided by council who we were then instructed to not "Slavishly " follow. As a Former Chair of the ZBA I strongly resent the board being used as a political football. It is clear to me that the Town board has no respect for the town volunteers and no understanding of the board's procedures or purposes.***"

(Letter from Bob Bradley dated September 8, 2017 resigning from ZBA after more than 30 years of service to the Town, emphasis and italics added)

"However, the recent actions of the Kent Town Board have been so disturbing that I feel I can no longer serve the needs of the community. I have been practicing law in New York State since 1985. Although I do not serve as counsel to the Zoning Board of Appeals, my interpretation of the law defining the role of the Zoning Board of Appeals is that it has the power to hear and decide appeals from decisions of officials charged with the administration and enforcement of the zoning ordinances or local law. As such, it is a quasi- judicial entity which functions independently of the Town Board. ***The recent attempts of the Kent Town Board to control the actions of the Zoning Board of Appeals by passing a***

"resolution" to "urge" the Board to reopen the public hearing on the matter involving Kent Investors, LLC, and to rescind the Board's July 17, 2017, decision in that matter, are inappropriate and, in my opinion, ultra vires. At the point when the attorney for the Town Board of the Town of Kent has sent an undated letter to the Zoning Board of Appeals admonishing us for "slavishly" following the advice of counsel, I have grave concerns that the current Town Board has more fear of public opinion than it has respect for the rule of law.

(Letter from Nina DeRosa, Esq., dated September 8, 2017 resigning from the ZBA, emphasis and italics added)

"The 1st August 2017 Town Board resolution that the ZBA 1) rehear the Kent Investors LLC appeal of the Building Inspector's 18 May 2017 determination, and 2) rescind our 17 July 2017 decision regarding same constitutes undue interference in the functioning of what should be an independent Zoning Board of Appeals.

Furthermore, Council Member Paul Denbaum's stunning remarks during the 1st August 2017 Town Board public meeting that "I admonished the Zoning Board. I said it was a terrible decision. I supported the hiring of legal counsel to go against it. We've been in executive session fighting this the whole time. .. . this is a bad decision. The Zoning Board was a hundred-percent wrong." demonstrates the Town Board's willingness to meddle in the work of the independent ZBA and its attempts to obstruct the ZBA's lawful jurisdiction. (Note: Denbaum's words were transcribed from the video "Town Board Meeting _08_01_17_Part2" posted on the Town web site.)

Subsequently, the undated letter (received by email on 21 August 2017) from Town Attorney Nancy Tagliafierro (Hogan & Rossi) chiding the ZBA for its decision and urging it to rehear the 17 July 2017 appeal or, barring that, reopen the 1948 public hearing from which the existing variance dates, additionally highlights the extent of this organized and sustained interference.

In an election year, with three Town Board members on the ballot, it is difficult to view these highly public actions as having been anything but politically motivated. Instead, the Town Board could have directed its time—and taxpayer-funded attorney fees—toward filing a NY State Article 78 proceeding (as did two neighborhood groups), properly referring the ZBA decision to the NY State Supreme Court for review and judgement.

Throughout the ZBA's consideration of the Kent Investors LLC appeal we sought legal advice from the ZBA attorney: the 17 July 2017 decision was crafted in conjunction with longtime ZBA attorney Ron Blass (Van DeWater & Van DeWater), and that decision was subsequently confirmed by the new Town-

Board-appointed ZBA attorney, Veronica McMillan (Lewis & Greer)."

(Letter from Board member Dan Clayton resigning from ZBA, emphasis and italics added)

"What is not proper were the actions of the Town Board, who passed an illegal and inappropriate resolution censuring the Zoning Board; instigated a mob to attend and disrupt the subsequent Zoning Board meeting, circulated information that was glaringly incorrect and inflammatory and, finally, inexplicably, allowed their attorney to write a letter to the Zoning Board in her official capacity, which ridiculed them for their "slavish" devotion to the rule of law. It was an outrageous letter for an attorney to write, given her primary duty to advise the Town Board on the legality of its own actions.

The result is the resignation of the Zoning Board, including two men who have each served for over thirty years, who had ruled repeatedly and faithfully on the law, sometimes despite public opinion and sometimes despite their own personal feelings. They served the greater purpose of their appointment."

(Letter to the Editor appearing in Putnam Courier September 26, 2017, emphasis and italics added)

I need not add more, but I expect that much more will become evident when we determine what transpired in the executive sessions referenced by Councilman Denbaum and the actions taken as a consequence of directives by members of the Town Board in addition to those actions referenced above which were deemed to be so repugnant as to result in the resignation of members of the ZBA, some of whom have devoted more than 30 years of service to the Town.

Returning to the issue of the subject legislation itself, as a preliminary matter I wish to make it clear that the Town has received multiple written statements (some in the form of Notices of Claim) documenting the millions of dollars of investment in the 301 Route 52 property and the concrete plant and equipment. The Town is therefore on notice of the magnitude of investment and the corresponding magnitude of the potential losses to be suffered by my client and its tenant. Now, at the behest of Councilman Denbaum, and other members of the Board, your Board appears poised to adopt legislation that is (1) clearly and unequivocally engendered by bad faith for political/election year purposes and targeted at one property/one use in the Town of Kent; (2) clearly and unequivocally seeking to undermine the determination of the ZBA after the ZBA chose to resign rather than to cave in to the heinous and repugnant tactics utilized by the members of the Town Board engendered by perceived political expediency in an election year; (3) purporting to terminate what the legislation acknowledges as legal rights to operate a concrete manufacturing business within two (2) years of its adoption. It is respectfully submitted that the narrow scope of the legislation and the clearly constitutionally infirm amortization period only adds to the obvious bad faith intentions underlying the proposing of and

potential adoption of this legislation.

I find it particularly significant that in a recent newspaper article Councilman Denbaum, who I believe to be an attorney by profession, was quoted as stating that the two year amortization period "was added because if the town were to immediately terminate business activities instead of allowing a phase-out, the decision would be considered a 'taking', a type of eminent domain that devalues property and could require the town to compensate businesses for the loss of land use." I find this significant because it confirms that the proponent of this legislation as having actual knowledge of the potential of the legislation to effectuate a taking, thereby subjecting the Town to monetary liability in the event that the amortization period is inadequate or the legislation is otherwise infirm and imposes damages to the property owner or business owner. I am hopeful that Councilman Denbaum will explain to the residents and taxpayers of the Town of Kent how he arrived at a two year amortization period as being reasonable under the circumstances applicable to this matter where, as here, multiple millions of dollars have been invested in this property and the concrete plant operations and the potential for monetary losses and damages is so significant.

Wholly aside from the issue as to whether such legislation could affect a use protected by a use variance[3], and even setting aside the obvious bad faith conduct and apparent procedural infirmities in seeking to adopt same (which would require its invalidation or its non-applicability to my client's property), it is, in my opinion, axiomatic that such legislation, if adopted, would be set aside upon challenge by reason of the wholly inadequate amortization period. In *Suffolk Asphalt Supply, Inc. v. Board of Trustees of Village of Westhampton Beach,* 59 A.D.3d 429, 872 N.Y.S.2d 516 (2nd Dep't, 2009), the Appellate Division for the Second Department set forth rules for determination of the propriety of an amortization period sought to be imposed as against an asphalt plant. The law provided for a one year amortization period unless the owner applied to the local zoning board of appeals to obtain an extension not to exceed five years. The asphalt plant owner applied to and received an extension of five years so as to have a minimum amortization period of six years but nevertheless challenged the statutory enactment. In its decision, the Court stated as follows:

> "Whether an amortization period is reasonable is a question which must be answered in light of the facts of each particular case" (*Modjeska Sign Studios v. Berle*, 43 N.Y.2d 468, 479–480, 402 N.Y.S.2d 359, 373 N.E.2d 255, appeal dismissed 439 U.S. 809, 99 S.Ct. 66, 58 L.Ed.2d 101). "***Reasonableness is determined by examining all the facts, including the length of the amortization period in relation to the investment and the nature of the use. The period of amortization will normally increase as the amount invested increases or if the amortization applies to a structure rather than a use***" (*Matter of Town of Islip v. Caviglia*, 73 N.Y.2d 544, 561, 542 N.Y.S.2d 139, 540 N.E.2d 215).
>
> "***Typically, the period of time allowed has been measured for reasonableness by***

[3] None of the cases referenced below deal with a use protected by a legally cognizable use variance and it will be the position of my client that such legislation cannot be made applicable to the concrete plant use.

> ***considering whether the owners had adequate time to recoup their investment in the use***" (*Village of Valatie v. Smith*, 83 N.Y.2d at 401, 610 N.Y.S.2d 941, 632 N.E.2d 1264). "While an owner need not be given that period of time necessary to permit him to recoup his investment entirely, ***the amortization period should not be so short as to result in a substantial loss of his investment***" (*Modjeska Sign Studios v. Berle*, 43 N.Y.2d at 480, 402 N.Y.S.2d 359, 373 N.E.2d 255)."

In *Town of Plattekill v. Ace Motocross, Inc.*, 87 A.D.3d 788, 928 N.Y.S.2d 151 (3rd Dep't, 2011), the court, in reviewing an amortization provision of 10 years for the commercial use of land for the operation of off-road motor sized vehicles, restated the rule for such amortization period as follows:

> "It is well settled that a municipality may enact a zoning law that eliminates prior nonconforming uses in a "reasonable fashion" (*Matter of 550 Halstead Corp. v. Zoning Bd. of Appeal of Town/Vil. of Harrison*, 1 N.Y.3d 561, 562, 772 N.Y.S.2d 249, 804 N.E.2d 413 [2003]; see *Matter of Syracuse Aggregate Corp. v. Weise*, 51 N.Y.2d 278, 287, 434 N.Y.S.2d 150, 414 N.E.2d 651 [1980]), such as by providing for an "amortization period" to allow a party to recoup expenditures by continuing the nonconforming use for a designated period of time (see *Village of Valatie v. Smith*, 83 N.Y.2d 396, 400, 610 N.Y.S.2d 941, 632 N.E.2d 1264 [1994]; *Matter of Cioppa v. Apostol*, 301 A.D.2d 987, 989, 755 N.Y.S.2d 458 [2003])."

In the face of documented investment of millions of dollars in the property, repairs and renovations, concrete plant and equipment, on a property zoned for commercial use with no sewer service to support permitted uses, and with the property owner and tenant being required to expend hundreds of thousands of dollars to protect their vested rights[4] your Board is poised to adopt this legislation specifically intending to terminate rights of the property owner and tenant within two years of its adoption.

I would suggest that someone make inquiry of Mr. Denbaum as to the extensive studies he has conducted whereby he has considered the totality of the investments in the property (including incurred and projected legal fees); the amount of time necessary to recoup those investments based upon the profitability of the business operations he seeks to terminate; the monetary damage to the property owner for any improvements rendered useless and the loss of revenue from the lease in effect which may be rendered valueless (and as to which the Town has notice of its terms) and all other aspects of financial impositions when he made the unilateral decision that a two year amortization period was allegedly adequate. I would presume, and trust that taxpayers of the Town should be entitled to rely upon the presumption, that any steward of

[4] In a very recent (2016) decision, the court determined that litigation expenses are properly considered by a court in assessing the reasonableness of an amortization period. See *Suffolk Asphalt Supply, Inc. v. Board of Trustees of Village of Westhampton Beach,* 51 Misc.3d 303, 25 N.Y.S.3d 809 (2016)

the interests of all the taxpayers in the Town of Kent would never propose such legislation subjecting the Town to such potentially significant damages without performing such an analysis.

Moreover, the incredibly narrow scope of the legislation (essentially limited to one property and one use, as confirmed by Supervisor Fleming's recusal) can leave no doubt that your Board has simply chosen to target this property owner and this user in a retaliatory attempt to circumvent the ZBA determination which you could not otherwise affect through the tactics which engendered the reaction of the ZBA members referenced above. Such a position will not be countenanced by the courts and will undoubtedly result in protracted and costly litigation, perhaps involving punitive damages. I make this assertion viewing the legislation in the abstract. When the reviewing courts view the legislation with its background of improper and vexatious action on the part of the Town Board and in recognition of the protected status of the property as a use permitted by use variance, I believe such courts will recognize the adoption of this legislation as nothing more than a component part of a concerted course of conduct seeking to deprive my client and its tenant of their constitutional rights in violation of New York and federal law, including 42 U.S.C. §1983. Please note in this regard that successful plaintiffs under 42 U.S.C. §1983 are entitled to collect their attorney's fees as well.

I would also hasten to point out that based upon my review of the Town Board agendas and the supporting documentation attached thereto, it appears as though your Board is considering taking action without compliance with or inconsistent with the mandates of the Kent Town Code (hereinafter "Code") or other statutory or regulatory requirements. Assuming this to be accurate, such actions are clearly suspect and again indicative of an agenda engendered by political pandering but having the effect of violating constitutionally protected rights. In this regard, I am curious as to why a public hearing would actually be scheduled or conducted when, at least to my knowledge, at the time that the public hearing was scheduled for October 10, 2017 there was no reference to:

a. referral of the proposed local law amending the zoning chapter of the code to the Planning Board pursuant to the ***mandatory referral*** set forth in §77-62 of the Code;

b. receipt by the Town Board of the report of the Planning Board to be rendered pursuant to the mandatory referral set forth in §77-62 of the Code;

c. referral of the proposed local law to Putnam County pursuant to §239 of the General Municipal Law;

d. receipt of the response from Putnam County pursuant to §239 of the General Municipal Law;

e. compliance with the requirements of SEQRA[5].

[5] In a SEQRA context there are many significant issues which need to be thoroughly examined. This legislation

Assuming that I am correct with respect to the foregoing, why hasn't all of the foregoing been done before your Board determined to conduct a public hearing?

Finally, in view of the extraordinary history of this matter and further in view of what has transpired subsequent to the your Board "passed[ed] an illegal and inappropriate resolution censuring the Zoning Board; instigated a mob to attend and disrupt the subsequent Zoning Board meeting, circulated information that was glaringly incorrect and inflammatory and, finally, inexplicably, allowed their attorney to write a letter to the Zoning Board in her official capacity, which ridiculed them for their "slavish" devotion to the rule of law"; and further in view of comments made by some of your residents indicative of a desire to avoid "another Kent Manor" situation; I feel that it is incumbent upon your Board to discuss the wisdom of the proposed action with the insurance carrier or carriers for the Town of Kent. Between the amounts paid in damages by the Town of Kent in the Kent Manor litigation, the amount spent in attorney's fees and the amount of taxes required to be refunded as a consequence of same, the total monetary consequences of the actions and omissions of the Town of Kent Town Board in connection with such litigation were in the multiple millions of dollars. As to what portion of such losses were covered by insurance, I cannot say. What I can say is that your insurance carrier is already in possession of notices of claim with more coming. Has the proponent of this legislation brought ALL the facts relative to the Town Board's conduct since November 1, 2016 and this proposed legislation to the attention of the Town's insurance carrier in an effort to safeguard the financial interests of ALL the taxpayers? Have the members of the Town Board discharged their fiduciary duties to all of their citizens before embarking on this course of action? Have they been assured that the Town will be indemnified and defended for damages and litigation costs based upon this extraordinary history if this legislation is adopted?

The Town Board owes all of its citizens, not merely one group, fiduciary obligations. This proposed local law, if enacted, will result in significant litigation in the abstract and will be considered as yet one additional component part of what is clearly a continuing act of governmental bad faith action intending and causing damages in violation of my client's constitutional rights.

Please be guided accordingly.

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proposes to eliminate a use existing for almost seven decades. There are 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) etc.

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.

(2)

1. WHEREAS, the Finance Department has requested a budgetary transfer to cover under budgeted expenses, and now therefore be it RESOLVED that the following budgetary transfers be made:

Increase Appropriation

A.1310.400	Finance - Contractual	$ 355.00	
A.1430.400	Personnel - Contractual	$ 3,350.00	(ESI Group for 7 mos for EAP)
A.1620.400	Buildings - Operations & Maint - Contractual	$ 48,100.00	(CIA security system)
A.1620.408	Buildings - Operations & Maint - Contractual - Police	$ 11,200.00	(Police Bldg Steps)
A.1620.408	Buildings - Operations & Maint - Contractual - Police	$ 5,891.00	(Control Panel Repl - CIA)
A.3120.400	Police - Contracual	$ 540.00	(Goostown Comm)
A.3120.411	Police - First Aid	$ 300.00	(Medical Supplies)
A.3120.414	Police - New Issue Uniforms	$ 2,672.00	(New issue for new PO)
A.3120.445	Police - Canine Unit	$ 4,000.00	(Vet for Radar 53034)
A.3120.814	Police - Good and Welfare	$ 324.00	(Contractual: Fam vs Single)
A.3310.400	Traffic Control - Contractual	$ 30.00	
A.3989.400	Other Public Safety - Contractual	$ 1,655.00	(Abandoned Prop Clean-up)
A.5132.400	Garage - Contractual	$ 2,345.00	(Install breaker & multi-media filter sys)
		$ 2,985.00	(Water System upgrade)
		$ 2,592.00	(Smokey Hollow Survey)
		$ 1,400.00	(Garage Shed Roof)
		$ 1,100.00	(Gutter Smokey Hollow)
		$ 6,933.00	(New Well Smokey Hollow)
A.7020.400	Recreation Administration - Contractual	$ 206.00	
A.7110.400	Parks - Contractual	$ 10,993.00	(Basketball Court Paving - Huestis Park)
A.7310.451	Recreation - Youth Programs - Baseball	$ 1,000.00	
A.7310.504	Recreation - Youth Programs - Laser Tag	$ 806.00	
A.8010.400	Zoning - Contractual	$ 3,500.00	(Legal fees)
A.8105.400	Lake Consultant - Contractual	$ 9,000.00	(Budgeted in Contingency)
A.8664.404	Code Enforcer - Auto Repair	$ 430.00	
		$ 121,707.00	

Decrease Appropriation

A.1310.100	Finance - Personal Services	$ (355.00)	
A.1990.400	Contingency	$ (9,000.00)	
A.3120.404	Police - Auto Repair	$ (7,836.00)	
A.3510.100	Control of Dogs - Personal Services	$ (1,655.00)	
A.1420.416	Law - Other Services	$ (3,500.00)	
A.7020.403	Recreation Administration - Gas	$ (206.00)	
A.7310.457	Recreation - Youth Programs - Girls Softball	$ (1,000.00)	
A.8664.100	Code Enforcer - Personal Services	$ (430.00)	
A.9040.804	Workers Comp	$ (3,380.00)	
		$ (27,362.00)	

Increase Revenue

A.2680	Insurance Recoveries	$ 5,891.00	(Control Panel Fire)
A.2001.504	Recreation - Laser tag	$ 806.00	
		$ 6,697.00	

Increase Appropriated Fund Balance

A	Appropriated Fund Balance	$ 48,100.00	
A	Appropriated Fund Balance	$ 11,200.00	
A	Appropriated Fund Balance	$ 10,993.00	
A	Appropriated Fund Balance	$ 17,355.00	HWY garage imprv
		$ 87,648.00	

2017 Fiscal impact increase **$ 94,345.00**

2. WHEREAS, the Recycling Center has requested a budgetary ammendment to transfer from Fund Balance - Restricted for Recycling to cover the cost of the Recycling Building and now therefore be it RESOLVED that the following budgetary ammendment be made:

Increase Appropriation			
A.8161.200	Recycling - Equipment	$ 99,100.00	(Recycling Bldg)
Increase Appropriated Fund Balance			
A	Appropriated Fund Balance - Recycling reserve	$ 99,100.00	
2017 Fiscal impact increase		**$ 99,100.00**	

3. WHEREAS, the Police Department has requested a budgetary transfer to cover police overtime expended while covering court security through August 31, 2017; as well as overtime expended for ERT training, and now therefore be it RESOLVED that the following budgetary transfer be made:

Increase Appropriation			
A.3120.140	Police Overtime	$ 4,574.88	
A.3120.140	Police Overtime	$ 5,000.00	
		$ 9,574.88	
Decrease Appropriation			
A.1110.110	Municipal Court - PT	$ (4,574.88)	
Increase Revenue			
A.4085	Federal Aid	$ 5,000.00	
2017 Fiscal impact increase		**$ 5,000.00**	

4. WHEREAS, Sewer District has requested a budgetary appropriation to cover an emergency sewer line repair, and now therefore be it RESOLVED that the following budgetary appropriation be made:

Increase Appropriation			
G.8110.400	Sewer Administration - Contractual	$ 7,000.00	(Leak Repair)
Increase Appropriate Fund Balance		$ 7,000.00	
2017 Fiscal impact increase		**$ 7,000.00**	

5. WHEREAS, Lake Carmel Park District has requested a budgetary transfer to cover under budgeted expenses, and now therefore be it RESOLVED that the following budgetary transfers be made:

Increase Appropriation			
SP1.7110.102	Parks - Summer Payroll	$ 5,753.00	
SP1.7110.140	Parks - Overtime	$ 60.00	
SP1.7110.438	Parks - LC Dam Engineering Costs	$ 30,450.00	
SP1.7110.441	Parks - Lake Treatment	$ 23,070.00	
SP1.7180.400	LC Beaches - Contractual	$ 13,200.00	(Lifeguard Huts)
SP1.7110.400	Parks - Contractual	$ 19,000.00	(Tree Removal)
		$ 91,533.00	
Decrease Appropriation			
SP1.7180.102	LC Beaches - Seasonal Payroll	$ (5,759.00)	
SP1.7110.404	Parks - Auto Repair	$ (12,000.00)	
SP1.9040.804	Workers Comp	$ (5,371.00)	
		$ (23,130.00)	
Increase Revenue			
SP1.2680	Insurance Recoveries	$ 5,753.00	(Workers Comp Reimb)

Increase Appropriate Fund Balance

SP1	Appropriated Fund Balance	$ 19,000.00
SP1	Appropriated Fund Balance	$ 30,450.00
SP1	Appropriated Fund Balance	$ 13,200.00
		$ 62,650.00

2017 Fiscal impact increase **$ 68,403.00**

6. WHEREAS, Lake Carmel Sanitation Department has requested a budgetary transfer to cover under budgeted expenses, and now therefore be it RESOLVED that the following budgetary transfers be made:

Increase Appropriation

SR.9070.807	Welfare Benefit Fund	$ 416.00
SR.9055.805	Disability Insurance	$ 48.00

Decrease Appropriation

SR.9040.804	Workers Compensation	$ (464.00)

2017 Fiscal impact $0

7. WHEREAS, Water District 1 has requested a budgetary appropriation to cover an emergency water leak repair, and now therefore be it RESOLVED that the following budgetary appropriation be made:

Increase Appropriation

SW1.8340.400	Transmission/Distribution contractual	$ 8,000.00

Increase Appropriated Fund Balance

SW1	Appropriated Fund Balance	$ 8,000.00

2017 Fiscal impact increase **$ 8,000.00**

8. WHEREAS, Water District 2 has requested a budgetary appropriation to cover an emergency water leak repair and support rod on water tank, and now therefore be it RESOLVED that the following budgetary appropriation be made:

Increase Appropriation

SW2.8340.400	Transmission/Distribution contractual	$ 8,500.00

Increase Appropriated Fund Balance

SW2	Appropriated Fund Balance	$ 8,500.00

2017 Fiscal impact increase **$ 8,500.00**

Energy Pricing
Annual Kwh: 647330

	12 months	24 months	36 months
Crius Energy	$ 0.07112	$ 0.07154	$ 0.07273
American New Energy	$ 0.06648	$ 0.06738	$ 0.06665
Hudson Energy	$ 0.07380	$ 0.07350	$ 0.07420
Direct Energy	$ 0.06952	$ 0.06912	$ 0.06998
Viridian - current rate	$ 0.10385	$ 0.10385	$ 0.10385

	Annual Cost	Annual Cost	Annual Cost
Crius Energy	$ 46,038	$ 46,310	$ 47,080
American New Energy	$ 43,034	$ 43,617	$ 43,145
Hudson Energy	$ 48,331	$ 48,134	$ 48,593
Direct Energy	$ 45,528	$ 45,266	$ 45,829
Viridian - current	$ 68,010	$ 68,010	$ 68,010

Savings

Variance to Viridian	Variance	Variance	Variance
Crius Energy	$ (21,972)	$ (21,700)	$ (20,930)
American New Energy	$ (24,976)	$ (24,393)	$ (24,866)
Hudson Energy	$ (19,679)	$ (19,876)	$ (19,417)
Direct Energy	$ (22,482)	$ (22,744)	$ (22,181)

American New Energy
Green Power
Consolidated billing with NYSEG (one Bill per account; 24 accounts)

Hudson Energy
100% Renewable Energy/Green above NYS Mandated Amounts
Consolidated billing with NYSEG (one Bill per account; 24 accounts)

Direct Energy
Minimal Renewable Energy - under 15%
Consolidated billing with NYSEG (one Bill per account; 24 accounts)

Crius Energy
100% Renewable energy