

1. Agendas

Documents:

[5-13 FINAL_AGENDA_PT._2.PDF](#)

[5-13 FINAL_AGENDA_PT._3.PDF](#)

[5-13 FINAL_AGENDA_PT._1.PDF](#)



CITY OF NEWBURGH

CITY CLERK'S OFFICE
83 BROADWAY
NEWBURGH, NEW YORK 12550
PHONE (845)569-7311
FAX (845)569-7314

LORENE VITEK
CITY CLERK

KATRINA COTTEN
LISETTE WILLIAMS
DEPUTY CLERKS

MEMORANDUM

TO: Michelle Kelson, Corporation Counsel

FROM: Katrina Cotten, Deputy City Clerk

RE: Notice of Claim:
Peter DeRose Vs. City of Newburgh

DATE: April 24, 2013

Please find attached Notice of Claim regarding the above, which was received in our office via Certified Mail on this date.

Attachment

Cc City Manager
Mayor & Council

DREYER LAW OFFICES, PLLC

5419 ROUTE 9W

NEWBURGH, NEW YORK 12550

E-MAIL: DREYERLAWOFFICES@AOL.COM

DARRYL J. DREYER
SARAH R. DREYER

MAIN: (845) 522-8910
FAX: (845) 522-8981
24 HOUR LINE: (914) 805-2562

April 22, 2013

VIA CERTIFIED MAIL # 7012 3050 0000 5839 2447
RETURN RECEIPT REQUESTED

City of Newburgh
83 Broadway
Newburgh, New York 12550



Attn: Lorene Vitek, City Clerk

Re: DeRose v. City of Newburgh
Date of Loss: 02/14/13

Dear Ms. Vitek:

Enclosed herewith please find service upon you of the Verified Notice of Claim against the City of Newburgh on behalf of Peter DeRose.

Very truly yours,

DREYER LAW OFFICES, PLLC

BY: SARAH R. DREYER

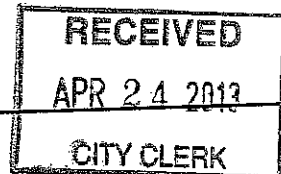
SRD/kel
Enclosure

In the Matter of the Claim of

PETER DeROSE

against

CITY OF NEWBURGH and NEW YORK STATE
DEPARTMENT OF MOTOR VEHICLES



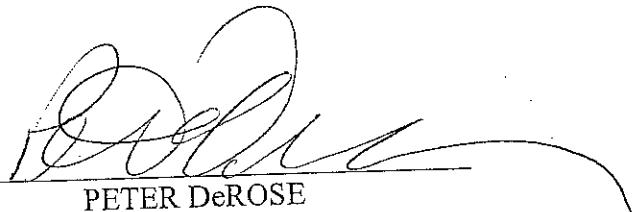
TO: CITY OF NEWBURGH

PLEASE TAKE NOTICE that the undersigned claimant(s) hereby make(s) claimed and demand against you as follows:

- The name and post-office address of each claimant and claimant's attorney is:*
Claimant resides at 72 1/2 Henry Avenue, Newburgh, New York 12550. Claimant's attorneys are Dreyer Law Offices, PLLC, 5419 Route 9W, Newburgh, New York 12550.
- The nature of the claim:*
The nature of the claim is for permanent and personal injuries sustained by the claimant, Peter DeRose, as a result of the negligence of the City of Newburgh, their agents, servants and/or employees, departments, agencies and those acting under their directions, in failing to maintain their sidewalks to keep clear of snow and ice.
- The time when, the place where and the manner in which the claim arose:*
The claim arose on Thursday, February 14, 2013, when the claimant, Peter DeRose, was caused to slip and fall due to an icy condition on the sidewalk in front of 128 Broadway, causing injuries to the claimant.
- The items of damage or injuries claimed are (do not state dollar amounts):*
The claimant, Peter DeRose, is entitled to a monetary recovery in an amount exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction herein, due to the injuries he sustained as well as the pain, suffering and disability that resulted.

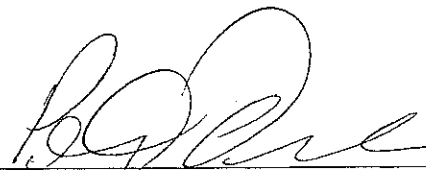
The undersigned claimant(s) therefore present this claim for adjustment and payment. You are hereby notified that unless it is adjusted and paid within the time provided by law from the date of presentation to you, the claimant(s) intend(s) to commence an action on this intended claim.

Dated: April 22, 2013

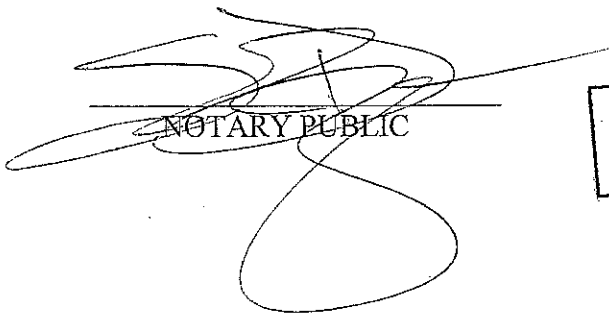

PETER DeROSE

State of New York, County of Orange ss.:

PETER DeROSE, being duly sworn, deposes and says that he is the intended claimant in the within Notice of Claim; that he has read the foregoing Notice of Claim and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matter therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.


PETER DeROSE

Sworn before me, this
22 day of April, 2013.


NOTARY PUBLIC

SARAH DREYER
Notary Public - State of New York
No. 02DR6217207
Qualified in Orange County
My Comm. Expires Feb. 8, 2014



CITY OF NEWBURGH

CITY CLERK'S OFFICE
83 BROADWAY
NEWBURGH, NEW YORK 12550
PHONE (845)569-7311
FAX (845)569-7314

LORENE VITEK
CITY CLERK

KATRINA COTTEN
LISETTE WILLIAMS
DEPUTY CLERKS

MEMORANDUM

TO: Michelle Kelson, Corporation Counsel

FROM: Lisette Acosta-Ramirez, Deputy City Clerk

RE: Notice of Claim:
Ramona McCallum vs. City of Newburgh

DATE: April 15, 2013

Please find attached Notice of Claim regarding the above, which was hand delivered to our office on April 12, 2013.

Attachment

Cc City Manager
Mayor & Council

In the Matter of the Claim of

RECEIVED

APR 12 2013

CITY CLERK

TO:

PLEASE TAKE NOTICE that the undersigned claimant(s) hereby make(s) claim and demand against you as follows:

1. The name and post-office address of each claimant and claimant's attorney is:

Ramona McCallum
55 Lake Drive
Newburgh, NY 12550347 489 8976
845 392 4964

2. The nature of the claim:

Damage clothing caused by Brown water
at Laundromat

3. The time when, the place where and the manner in which the claim arose:

4/12/13 at 24 Liberty St (Liberty St Laundromat)
10:50am Newburgh, NY 12550I went to do my laundry and the water
in the machine was brown and my
clothing was damaged they turned Rusty
and brown.

4. The items of damage or injuries claimed are (do not state dollar amounts)

- ① Blankets (4)
- ② Rugs (5)
- ③ Towels (7)
- ④ T-shirts (23) Fruit of Loom (white T)
- ⑤ Sweaters (12) - Hollister, Abercrombie, Ralph Lauren
- ⑥ Underwear (32) boxer brief + Panties
- ⑦ Socks (18) pairs
- ⑧ Sheet sets (5)
- ⑨ Working clothes (5 suits)

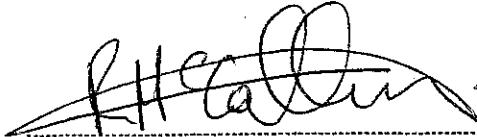
The undersigned claimant(s) therefore present this claim for adjustment and payment. You are hereby notified that unless it is adjusted and paid within the time provided by law from the date of presentation to you, the claimant(s) intend(s) to commence an action on this claim.

Dated:

Ramona A. McCallum

The name signed must be printed beneath

The name signed must be printed beneath



Attorney(s) for Claimant(s)
Office and Post Office Address, Telephone Number

CORPORATE VERIFICATION

State of New York, County of Orange ss.:

Ramona A. McCallum
being duly sworn, deposes and says that deponent is the
of

corporate claimant named in the within action; that deponent has read the foregoing Notice of Claim and knows the contents thereof, and that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true.

This verification is made by deponent because said claimant is a corporation, and deponent an officer thereof, to wit its
The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

INDIVIDUAL VERIFICATION

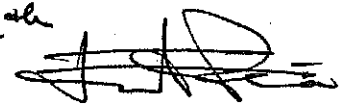
State of New York, County of Orange ss.:

Ramona A. McCallum
being duly sworn, deposes and says that deponent is the claimant in the within action; that he has read the foregoing Notice of Claim and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.

Sworn to before me, this 12th
day of April 2013.



Sworn to before me, this 12th
day of April 2013



LUIS A. PEÑA
Notary Public, State of New York
Qualified In Orange County
Reg. No. 01PE6225959
My Commission Expires Aug. 2, 2014

In the Matter of the Claim of

Notice of Claim Against

LUIS A. PEÑA
Notary Public, State of New York
Qualified In Orange County
Reg. No. 01PE6225959
My Commission Expires Aug. 2, 2014

Attorney(s) for Claimant(s)
Office and Post Office Address



CITY OF NEWBURGH

CITY CLERK'S OFFICE
83 BROADWAY
NEWBURGH, NEW YORK 12550
PHONE (845)569-7311
FAX (845)569-7314

LORENE VITEK
CITY CLERK

KATRINA COTTEN
LISETTE WILLIAMS
DEPUTY CLERKS

MEMORANDUM

TO: Michelle Kelson, Corporation Counsel
FROM: Lisette Acosta-Ramirez, Deputy City Clerk
RE: Notice of Claim:
Doris Pacheco vs. City of Newburgh
DATE: April 15, 2013

Please find attached Notice of Claim regarding the above, which was hand delivered to our office on April 12, 2013.

Attachment

Cc City Manager
Mayor & Council

In the Matter of the Claim of

RECEIVED

APR 12 2013

CITY CLERK

TO:

PLEASE TAKE NOTICE that the undersigned claimant(s) hereby make(s) claim and demand against you as follows:

1. The name and post-office address of each claimant and claimant's attorney is:

Jorge Pacheco
35 Liberty Heights
Newburgh N.Y 12550
(845) 562-8619.

2. The nature of the claim:

Damaged clothing caused by Brown water
at laundromat

3. The time when, the place where and the manner in which the claim arose:

4/12/13 at 24 Liberty St (Liberty St laundromat)
in the city of Newburgh.

All my clothing was destroyed
because of brown water coming
from the machine.

4. The items of damage or injuries claimed are (do not state dollar amounts)

- ① T-shirts (25)
- ② Rugs (2)
- ③ Towels (4)
- ④ Socks (24)
- ⑤ Underwear (16)
- ⑥ Shorts (4)

The undersigned claimant(s) therefore present this claim for adjustment and payment. You are hereby notified that unless it is adjusted and paid within the time provided by law from the date of presentation to you, the claimant(s) intend(s) to commence an action on this claim.

Dated:

Xavier L Pacheco
The name signed must be printed beneath

Doris L Pacheco
The name signed must be printed beneath

Attorney(s) for Claimant(s)
Office and Post Office Address, Telephone Number

CORPORATE VERIFICATION

State of New York, County of

ss.:

being duly sworn, deposes and says that deponent is the
of

corporate claimant named in the within action; that deponent has read the foregoing Notice of Claim and knows the contents thereof, and that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true.

This verification is made by deponent because said claimant is a corporation, and deponent an officer thereof, to wit its
The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

INDIVIDUAL VERIFICATION

State of New York, County of *Orange* ss.:

being duly sworn, deposes and says that deponent is the claimant in the within action; that he has read the foregoing Notice of Claim and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.

Sworn to before me, this *12*
day of *April* 20*13*

Virginia L Gross

VIRGINIA L. GROSS
Notary Public, State of New York
Qualified in Orange County
No. 01GR5012047
Commission Expires June 15, 20*13*

In the Matter of the Claim of

Notice of Claim Against

Attorney(s) for Claimant(s)
Office and Post Office Address

Sworn to before me, this
day of



CITY OF NEWBURGH

CITY CLERK'S OFFICE
83 BROADWAY
NEWBURGH, NEW YORK 12550
PHONE (845)569-7311
FAX (845)569-7314

LORENE VITEK
CITY CLERK

KATRINA COTTEN
LISETTE WILLIAMS
DEPUTY CLERKS

MEMORANDUM

TO: Michelle Kelson, Corporation Counsel

FROM: Katrina Cotten, Deputy City Clerk

RE: Notice of Claim:
Celeste Mays and Carrie Beard vs. City of Newburgh

DATE: April 12, 2013

Please find attached Notice of Claim regarding the above, which was personally served on our office on this date.

Attachment

Cc City Manager
Mayor & Council



In the Matter of the Claim of

RECEIVED

APR 12 2013

CITY CLERK

TO:

PLEASE TAKE NOTICE that the undersigned claimant(s) hereby make(s) claim and demand against you as follows:

1. The name and post-office address of each claimant and claimant's attorney is:

Celeste MAYS + MRS. GARRIE BEARD
63 Liberty St WH
Newburgh NY

2. The nature of the claim:

Damage Clothing cause by the Laundry
Brown water

3. The time when, the place where and the manner in which the claim arose:

4-12-13

24 Liberty Flats

Newburgh NY 12550

4. The items of damage or injuries claimed are (do not state dollar amounts)

108 items

my mom church clothes

Suits

Blouse

Coat

every day clothes

PANTS

under wears

SKIRTS

TOWELS

Dresses

WASH clothes

Sweaters

The undersigned claimant(s) therefore present this claim for adjustment and payment. You are hereby notified that unless it is adjusted and paid within the time provided by law from the date of presentation to you, the claimant(s) intend(s) to commence an action on this claim.

Dated:

Celeste May S

The name signed must be printed beneath

Celeste May S

Attorney(s) for Claimant(s)
Office and Post Office Address, Telephone Number

The name signed must be printed beneath

CORPORATE VERIFICATION

State of New York, County of

ss.:

being duly sworn, deposes and says that deponent is the
of
corporate claimant named in the within action; that deponent has read the foregoing Notice of Claim and knows the contents thereof, and that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true.

This verification is made by deponent because said claimant is a corporation, and deponent an officer thereof, to wit its
The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

INDIVIDUAL VERIFICATION

State of New York, County of Orange ss.:
Celeste May S
being duly sworn, deposes and says that deponent is the claimant in the within action; that he has read the foregoing Notice of Claim and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.

Sworn to before me, this 12th
day of April 2013

Sworn to before me, this
day of

In the Matter of the Claim of

LUIS A. PEÑA
Notary Public, State of New York
Qualified in Orange County
Reg. No. 01PE6225959
My Commission Expires Aug. 2, 2014

Notice of Claim Against

Attorney(s) for Claimant(s)
Office and Post Office Address



CITY OF NEWBURGH

CITY CLERK'S OFFICE
83 BROADWAY
NEWBURGH, NEW YORK 12550
PHONE (845)569-7311
FAX (845)569-7314

LORENE VITEK
CITY CLERK

KATRINA COTTEN
LISETTE WILLIAMS
DEPUTY CLERKS

MEMORANDUM

TO: Michelle Kelson, Corporation Counsel

FROM: Katrina Cotten, Deputy City Clerk

RE: Notice of Claim:
Robert Boone vs. City of Newburgh

DATE: April 12, 2013

Please find attached Notice of Claim regarding the above, which was personally served on our office on this date.

Attachment

Cc City Manager
Mayor & Council

In the Matter of the Claim of

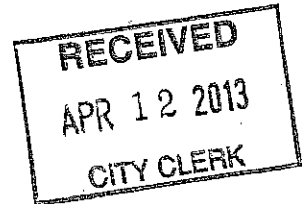
ROBERT BOONE,

Claimant,

-against-

CITY OF NEWBURGH,

Respondent.



TO: CITY OF NEWBURGH

PLEASE TAKE NOTICE that the undersigned claimants hereby make claim and demand against you as follows:

1. The name and post-office address of each claimant and claimants' attorney is:

ROBERT BOONE
Claimant
60 Benkard Ave.
Newburgh, New York 12550

FINKELSTEIN & PARTNERS, LLP
Attorneys for Claimant
1279 Route 300, PO Box 1111
Newburgh, New York 12551

2. The nature of the claim: Claim is for severe and serious permanent personal injuries, severe pain and suffering and medical expenses sustained by claimant, ROBERT BOONE.

3. The time when, the place where and the manner in which the claim arose: This claim arose on or about the 15th day of January, 2013, at approximately 2:00 P.M. on the sidewalk in front of premises located at 347 Broadway, approximately 31.7 feet northwest from the CHG & E utility pole# 2354n, in the City of Newburgh, County of Orange, State of New York, which is owned, maintained, controlled, operated and/or managed by the respondent, CITY OF NEWBURGH. The manner in which the claim arose is that while the claimant was lawfully walking thereon, he was caused to be precipitated to the ground, thereby sustaining severe and serious personal injuries due to the negligence, recklessness and carelessness of the respondents, their agents, servants and/or employees, in among other things, as follows: allowing, causing and/or permitting the aforesaid sidewalk to be,

****SEE ATTACHED RIDER** **SEE ATTACHED PHOTOS****

RIDER TO NOTICE OF CLAIM IN THE MATTER OF

-----X
ROBERT BOONE,

Claimant,

-against-

CITY OF NEWBURGH,

Respondent.
-----X

3. (continued)

become and remain in an icy, dangerous and hazardous condition to persons lawfully thereon; in causing and/or permitting dangerous accumulations of ice in and upon said sidewalk so as to constitute a trap creating danger to persons upon said sidewalk; in allowing, causing and/or permitting dangerous, hazardous and/or unsafe conditions to exist on the aforesaid sidewalk; in failing to properly and adequately sand and/or salt the sidewalk and/or use another type of traction to avoid the accident herein; in failing to properly remove and/or provide for the proper removal of ice from said sidewalk; in failing to fence off, barricade and/or by some other means block off the area of the dangerous, hazardous and unsafe conditions; in creating a trap; in failing to properly maintain, check and/or inspect said sidewalk; in failing to provide proper and adequate warnings to persons on the sidewalk of the existing conditions; in failing to remedy or take precautionary steps in reference to the aforementioned conditions; in creating a trap; in failing to use that degree of caution, prudence and care which was reasonable and proper under the controlling circumstances; in failing to take those steps necessary to avoid the contingency which occurred; in acting with reckless disregard for the safety of others; in hiring inept, incompetent and unskilled agents, servants and/or employees, and in other ways being negligent, wanton, reckless and careless.

4. The items of damage or injuries claimed are as follows: Claimant, ROBERT BOONE, sustained severe and serious permanent personal injuries to his body, including, but not limited to fracture left ankle requiring surgery to repair, abrasions both knees, sprain and/or strain both knees, permanent significant scarring and disfigurement, severe pain and suffering and extensive medical bills. Exact extent of same are unknown at this time.

The undersigned claimant(s) therefore present this claim for adjustment and payment. You are hereby notified that unless it is adjusted and paid within the time provided by law from the date of presentation to you, the claimant(s) intend(s) to commence an action on this claim.

Dated: February 14, 2013

Finkelstein & Partners, LLP
Attorneys for Claimant
1279 Route 300
P.O. Box 1111
Newburgh, NY 12551
Phone No: (800) 634-1212

X Robert Boone
The name signed must be printed beneath

X Robert Boone
The name signed must be printed beneath

By: _____

DAVID AKERIB, ESQ.

INDIVIDUAL VERIFICATION

State of New York, County of Orange

SS.:

ROBERT BOONE,
being duly sworn, deposes and says that deponent is
the claimant in the within action; that he/she has read the
foregoing Notice of Claim and knows the contents thereof;
that the same is true to deponents own knowledge, except
as to the matters therein stated to be alleged on information
and belief, and that as to those matters deponent believes it
to be true.

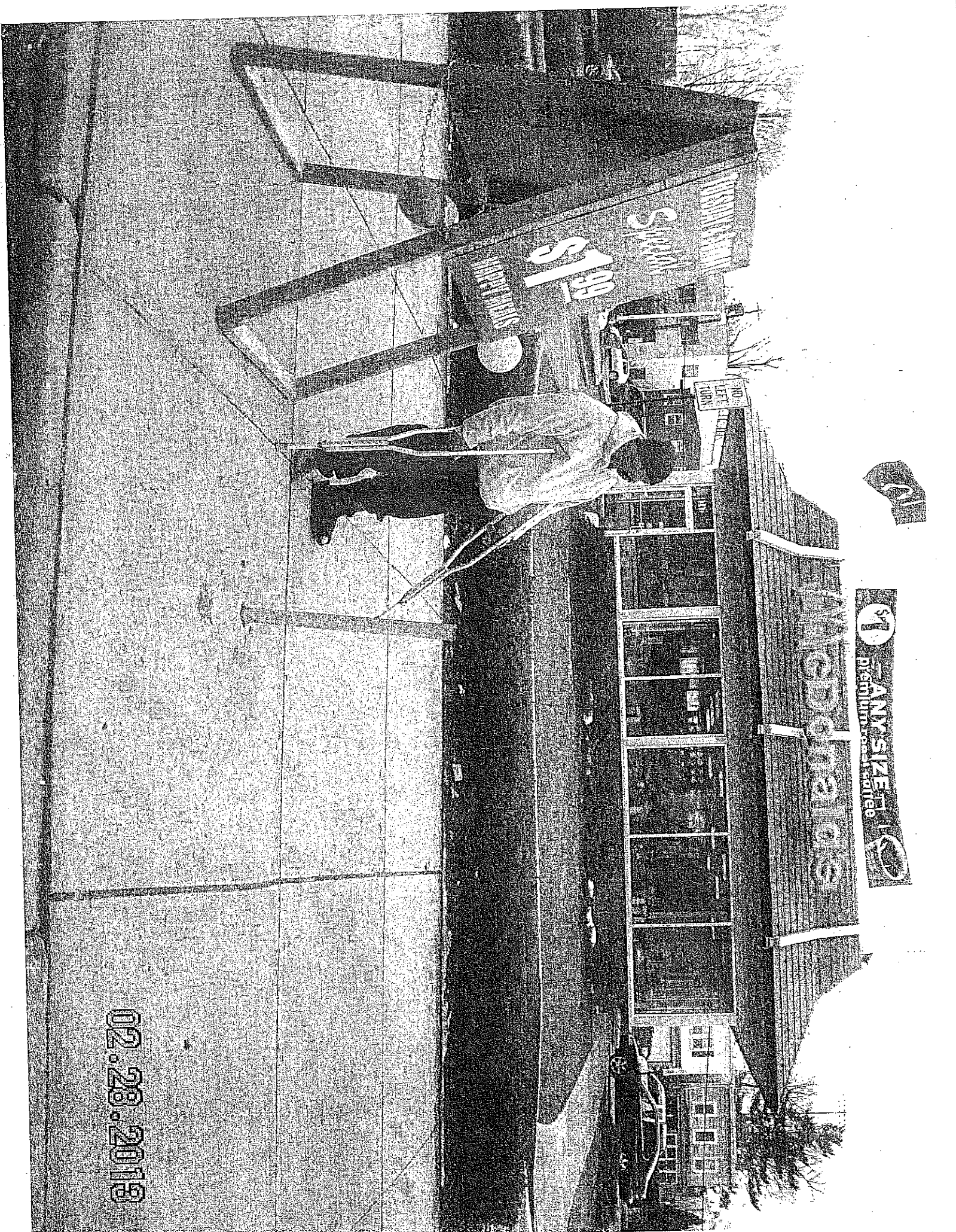
X Robert Boone
The name signed must be printed beneath

X Robert Boone
The name signed must be printed beneath

Sworn to before me, this
14th Day of Feb, 2013

Ana Rodriguez
NOTARY PUBLIC

ANA RODRIGUEZ
Notary Public, State of New York
Qualified in Orange County
Registration # 01RO5056552
Commission Expires March 4, 2014



21

\$1 ANY SIZE 100
PUSHING PRESS CO. LLC

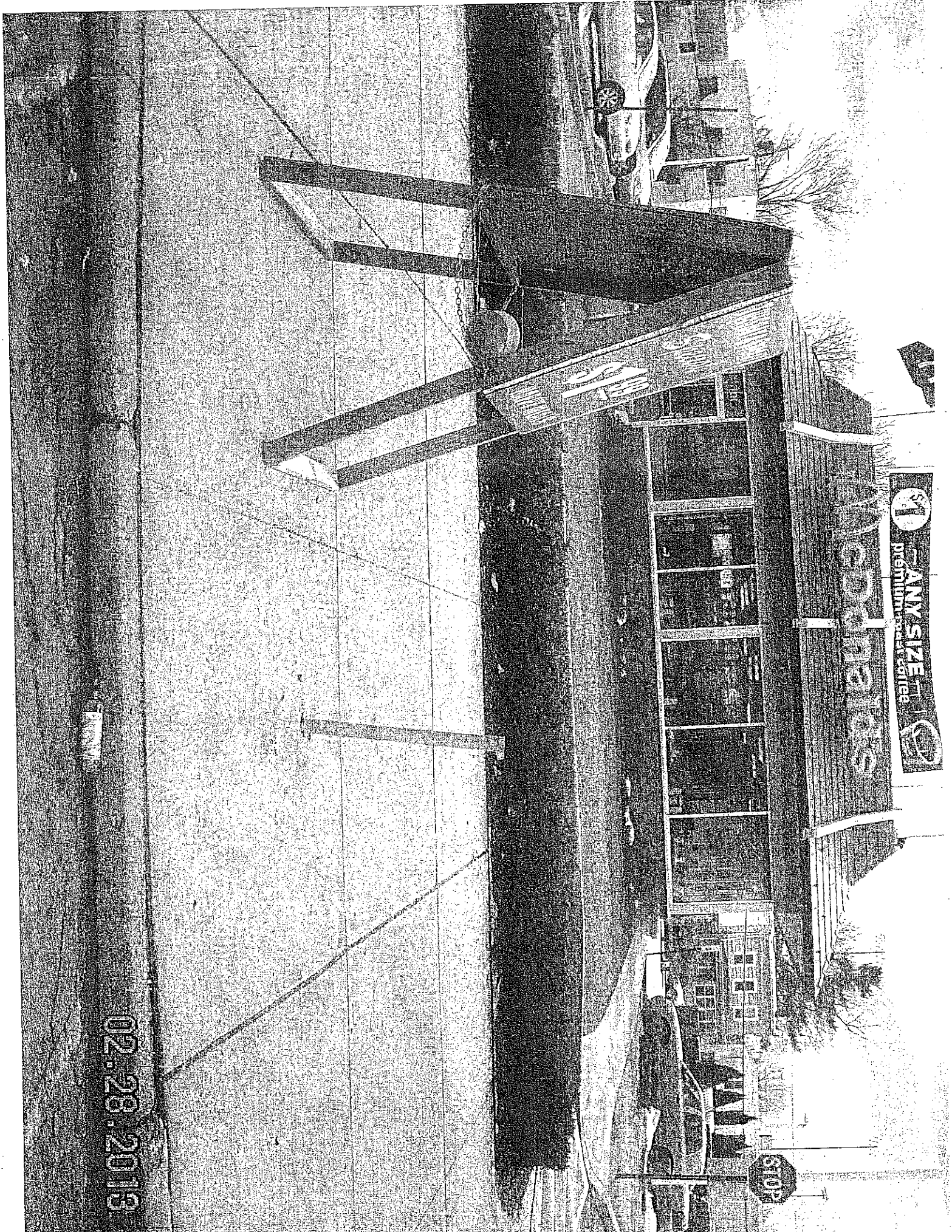
Meddinaas

NO LEFT TURN

S/PA

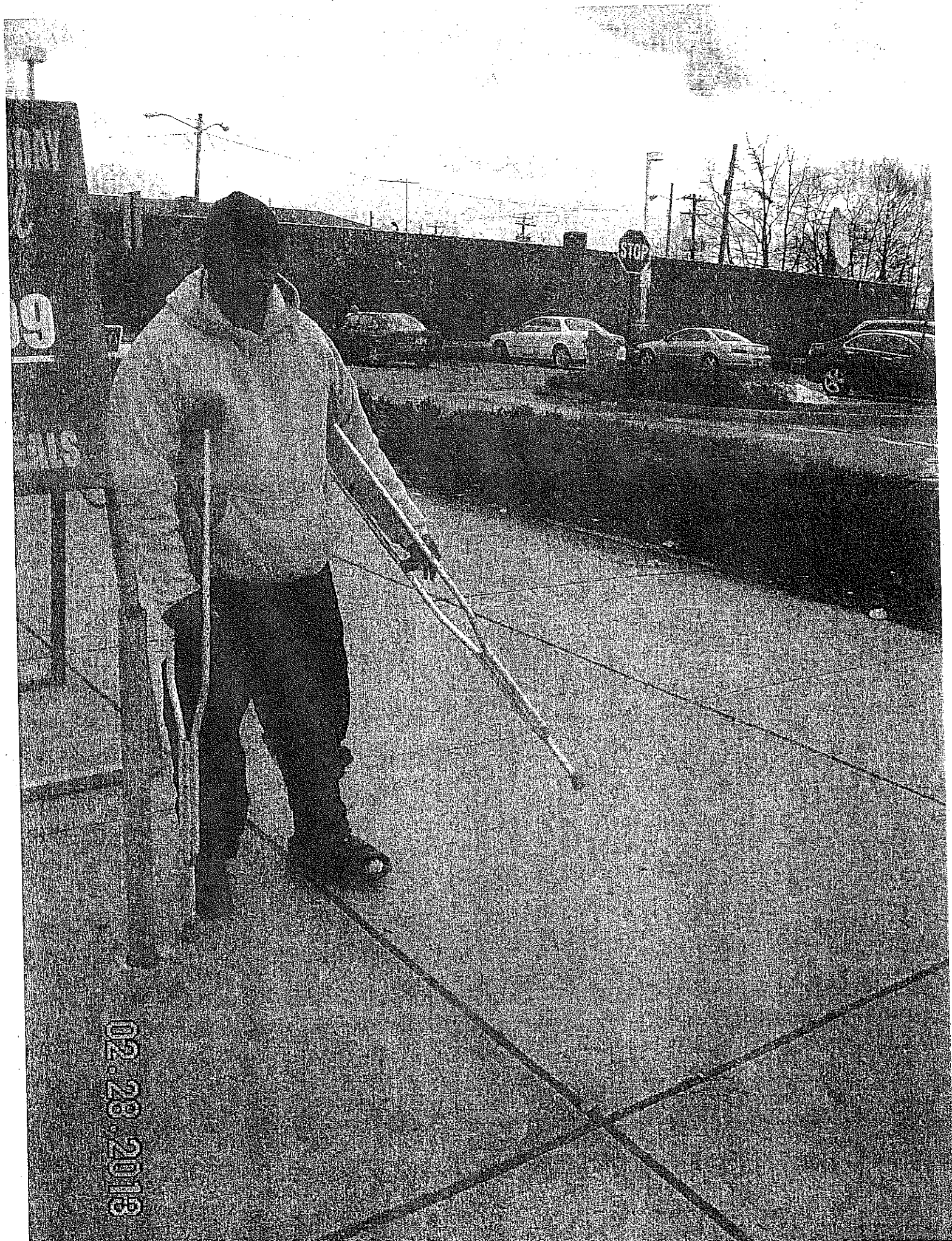
HONEY BUNDS

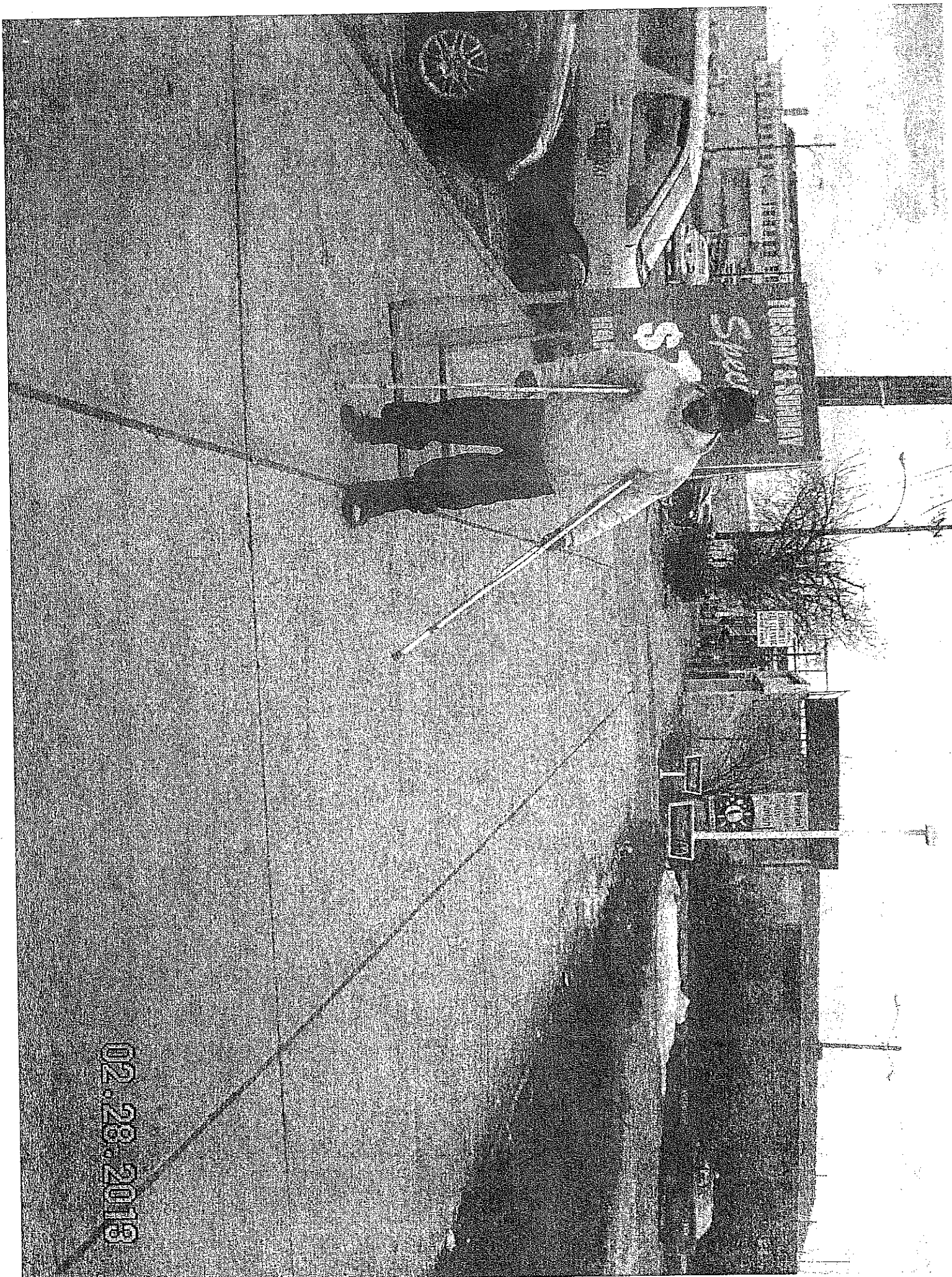
02.28.2018



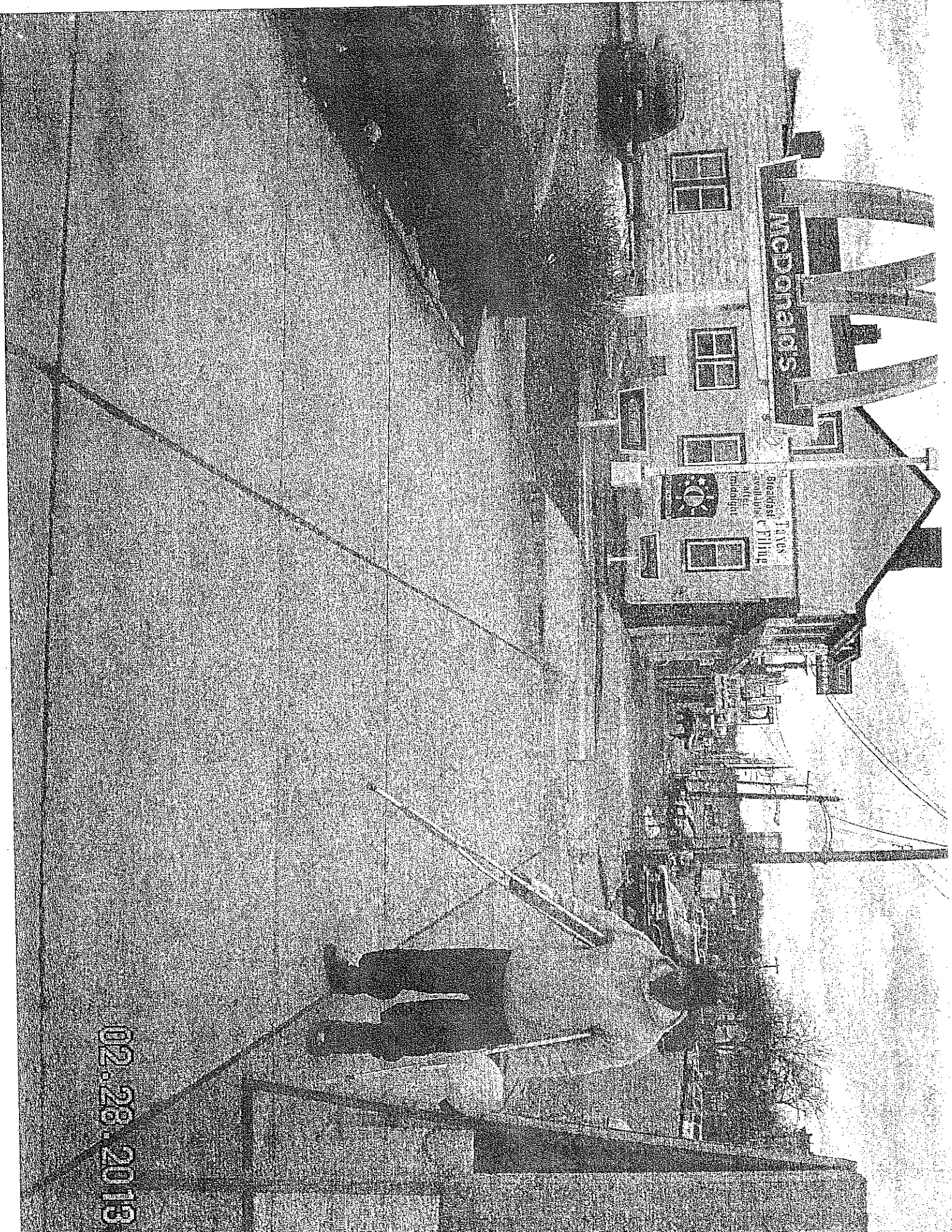
02.28.2013

02.28.2018





02.28.2019



02.28.2013



CITY OF NEWBURGH

CITY CLERK'S OFFICE
83 BROADWAY
NEWBURGH, NEW YORK 12550
PHONE (845)569-7311
FAX (845)569-7314

LORENE VITEK
CITY CLERK

KATRINA COTTEN
LISETTE WILLIAMS
DEPUTY CLERKS

MEMORANDUM

TO: Michelle Kelson, Corporation Counsel

FROM: Lisette Acosta-Ramirez, Deputy City Clerk

RE: Notice of Claim:
Cornelius Stubbs vs. City of Newburgh

DATE: April 17, 2013

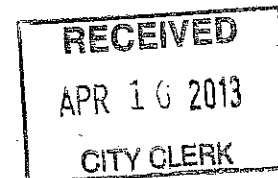
Please find attached Notice of Claim regarding the above, which was hand delivered to our office on April 16, 2013..

Attachment

Cc City Manager
Mayor & Council



In the Matter of the Claim of



TO:

PLEASE TAKE NOTICE that the undersigned claimant(s) hereby make(s) claim and demand against you as follows:

1. The name and post-office address of each claimant and claimant's attorney is:

Cornelius Stubbs
P.O. Box 1891 Newburgh N.Y 12551
(845) 219-3392

2. The nature of the claim:

Reinburst for The Damage

3. The time when, the place where and the manner in which the claim arose:

11:00 pm ON William St.
Newburgh N.Y 12550

4. The items of damage or injuries claimed are (do not state dollar amounts)

front Suspension

Lower Control Arm includes new bolts
Riant

Includes Bushings And Lower Ball Joint

Replace inc. diagnosis

front Suspension

Lower Control Arm / one Side (B)

Rim

Fog / Driving Lamp Fog Lamp Assembly Right Labor Repl
Wheeling / Alignment

New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT
 MV-104A (3/04)

Local Codes
 CN-007463-13
 KCMD22000230

☐ AMENDED REPORT

1	Accident Date Month 4 Day 14 Year 2013	Day of Week Sunday	Military Time 23:00	No. of Vehicles 1	No. Injured 0	No. Killed 0	Not Investigated at Scene ☐	Left Scene ☐	Police Photos ☐ Yes ☒ No
2	VEHICLE 1			VEHICLE 2			OTHER PEDESTRIAN		

2	VEHICLE 1 - Driver License ID Number 950943265	State of Lic. NY	VEHICLE 2 - Driver License ID Number	State of Lic.
---	---	---------------------	---	---------------

3	Driver Name - exactly as printed on license STUBBS, CORNELIUS D	Apt. No.	Driver Name - exactly as printed on license	Apt. No.
---	--	----------	---	----------

4	Address (Include Number and Street) PO BOX 1891	City or Town NEWBURGH	State NY	Zip Code 12551
---	--	--------------------------	-------------	-------------------

5	Date of Birth Month 8 Day 22 Year 1971	Sex M	Unlicensed ☐	No. of Occupants 01	Public Property Damaged ☐
---	---	----------	-------------------------------------	------------------------	--

6	Name - exactly as printed on registration STUBBS, CORNELIUS D	Sex M	Date of Birth Month 8 Day 22 Year 1971	City or Town NEWBURGH	State NY	Zip Code 12550
---	--	----------	---	--------------------------	-------------	-------------------

7	Address (Include Number and Street) 86 WILLIAM ST	Apt. No.	City or Town NEWBURGH	State NY	Zip Code 12550
---	--	----------	--------------------------	-------------	-------------------

8	Plate Number GFF5345	State of Reg. NY	Vehicle Year & Make 2008 LNDR	Vehicle Type SUBN	Ins. Code 071
---	-------------------------	---------------------	----------------------------------	----------------------	------------------

9	Ticket/Arrest Number(s)	Violation Section(s)
---	-------------------------	----------------------

10	Check if involved vehicle is: ☐ more than 95 inches wide; ☐ more than 34 feet long; ☐ operated with an overweight permit; ☐ operated with an overdimension permit.	Check if involved vehicle is: ☐ more than 95 inches wide; ☐ more than 34 feet long; ☐ operated with an overweight permit; ☐ operated with an overdimension permit.
----	--	--

11	VEHICLE 1 DAMAGE CODES Box 1 - Point of Impact Box 2 - Most Damage Enter up to three more damage codes	VEHICLE 2 DAMAGE CODES Box 1 - Point of Impact Box 2 - Most Damage Enter up to three more damage codes
----	---	---

12	Vehicle Bv. Towed To:	Vehicle Bv. Towed To:
----	--------------------------	--------------------------

13	VEHICLE DAMAGE CODING: 1-13 SEE DIAGRAM ON RIGHT. 14. UNDERCARRIAGE 15. TRAILER 16. OVERTURNED 17. DEMOLISHED 18. NO DAMAGE 19. OTHER
----	--

14	Diagram of vehicle damage coding (1-19)
----	---

15	ACCIDENT DIAGRAM See the last page of the MV-104A for the accident diagram.
----	--

16	Cost of repairs to any one vehicle will be more than \$1000. ☒ Unknown/Unable to determine ☐ Yes ☐ No
----	--

17	Reference Marker	Coordinates (if available) Latitude/Northing: Longitude/Easting:
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18	Place Where Accident Occurred: County ORANGE ☒ City ☐ Village ☐ Town of NEWBURGH Road on which accident occurred WILLIAM ST (Route Number or Street Name) at 1) intersecting street ☐ N ☒ S of BROADWAY (Route Number or Street Name) or 2) 30 feet miles ☐ E ☐ W (Milepost, Nearest Intersecting Route Number or Street Name)
----	---

19	Accident Description/Officer's notes (D1) RESPONDED TO POLICE HQ ON 04/14/13 AT APPROX 1138 HOURS TO REPORT THAT ON 04/13/13 AT APPROX 2300 HOURS HE WAS TRAVELING NORTHBOUND ON WILLIAM ST., APPROACHING BROADWAY WHEN (V1)'S RIGHT FRONT TIRE STRUCK A DEEP POTTHOLE. (D1) STATES THE HOLE WAS LARGE AND DEEP ENOUGH TO BEND THE INSIDE OF HIS RFRONT RIM AS WELL AS KNOCK THE FRONT PASSENGER DRIVING LIGHT LOOSE. THIS OFFICER OBSERVED SAID POTTHOLE AS IT IS DIRECTLY IN FRONT OF THE ENTRANCE TO 7-11 WILLIAM ST, APPROX. 10' WEST OF THE EAST SIDE OF THE STREET CURB. THE STREET IS MOSTLY
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20	Names of all involved STUBBS, CORNELIUS D
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21	Date of Death Only
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22	8 9 10 11 12 13 14 15 16 17 BY TO 18
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23	A 1 1 4 1 41 M - - -
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24	B
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25	C
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26	D
----	---

27	E
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28	F
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29	OFFICER'S RANK AND SIGNATURE P.O. [Signature] Print Name K Brune in Full	Badge/ID No. 286	NCIC No. 03502	Precinct/Post Troop/Zone C	Station/Beat Sector	Reviewing Officer Schluter, C	Date/Time Reviewed 4/14/2013 20:13
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POLICE ACCIDENT REPORT MV-104A (3/04)

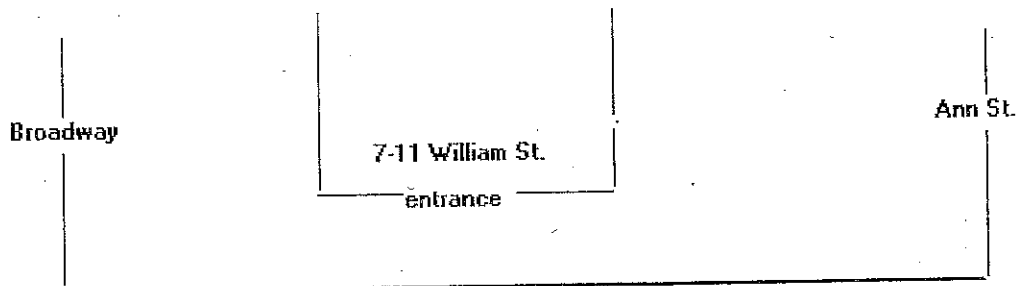
Local Codes

CN-007463-13

KCMD22000230

☐ **AMENDED REPORT**

Accident Date			Day of Week	Military Time	No. of Vehicles	No. Injured	No. Killed	Not Investigated at Scene ☐	Left Scene ☐	Police Photos ☐ Yes ☒ No
Month	Day	Year						Accident Reconstructed ☐		
4	14	2013	Sunday	23:00	1	0	0			



William St. (2 way)





CITY OF NEWBURGH

CITY CLERK'S OFFICE
83 BROADWAY
NEWBURGH, NEW YORK 12550
PHONE (845)569-7311
FAX (845)569-7314

LORENE VITEK
CITY CLERK

KATRINA COTTEN
LISETTE WILLIAMS
DEPUTY CLERKS

MEMORANDUM

TO: Michelle Kelson, Corporation Counsel

FROM: Katrina Cotten, Deputy City Clerk

RE: Notice of Claim:
Colleen Guyt Vs. City of Newburgh

DATE: April 23, 2013

Please find attached Notice of Claim, which was personally served on our office on this date.

Attachment

Cc City Manager
Mayor & Council

In the Matter of the Claim of

COLLEEN GUYT,

Claimant,

-against-

THE CITY OF NEWBURGH and JOHN A. JENEROSE,

Respondents.

RECEIVED

APR 23 2013

CITY CLERK

TO: THE CITY OF NEWBURGH

PLEASE TAKE NOTICE that the undersigned claimant(s) hereby make(s) claim and demand against you as follows:

1. *The name and post office of each claimant and claimant's attorney is:*

Colleen Guyt
8 Oak Lane
Campbell Hall, NY 10916

LoBiondo Law Offices
36 North Plank Road
Newburgh, New York 12550
(845) 569-7600

2. The nature of the claim: Claim is for severe personal injuries, permanency, severe pain and suffering, lost earnings and medical expenses occurring to claimant, COLLEEN GUYT.
3. The time when, the place where and the manner in which the claim arose: That on or about the 1st day of March, 2013, at approximately 1:05 p.m. at the intersection of Pierce's Road and Gidney Avenue in the City of Newburgh, County of Orange, State of New York, upon information and belief, a public thoroughfare. The vehicle operated by one, John A. Jenerose, a Police Officer employed by the City of Newburgh, and owned by the Respondent, THE CITY OF NEWBURGH, came into contact with the vehicle being operated by the Plaintiff, as a result of the negligence of Defendant, John A. Jenerose, thereby causing claimant to sustain severe and serious personal injuries as a result of the negligence, wantonness, recklessness and carelessness of the Respondent, THE CITY OF NEWBURGH, its agents, servants and/or employees in, among other things, as follows:

In the Matter of the Claim of

COLLEEN GUYT,

Claimant,

-against-

THE CITY OF NEWBURGH and JOHN A. JENEROSE,

Respondents.

3. (continued)

in the ownership, operation, maintenance, management and control of the Respondents' vehicle, in failing to observe the Claimants' vehicle; in failing to see what was there to be seen; in failing to keep Respondents' motor vehicle under proper control; in failing to stop Respondents' motor vehicle prior to the collision; in failing to use that degree of caution, prudence and care which was warranted under the circumstances; in failing to keep proper lookout; in failing to stop and/or slow down; in failing to sound a horn; in violating the rules of the roadway; in failing to keep alert and attentive; in failing to obey traffic signs, signals, and/or lights; in failing to yield right of way; in failing to properly apply brakes; and in other ways was negligent, reckless and careless.

4. The items of damage or injuries claimed are as follows: The Claimants sustained severe and serious permanent injuries to their mind and body, including, but not limited to, Lumbar and cervical injuries, headaches, pain and suffering, medical bills, and loss of services. The exact amount of same is unknown at this time.

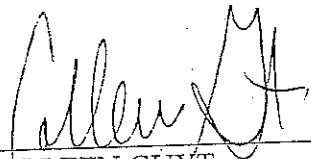
The exact amount of the expenses and damages cannot be determined at the present time.

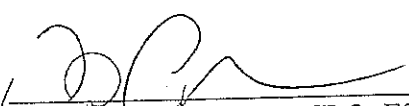
****SEE ATTACHED POLICE ACCIDENT REPORT****

WHEREFORE, Claimant claims damages against THE CITY OF NEWBURGH and JOHN A. JENEROSE.

PLEASE TAKE NOTICE, that the undersigned Claimant therefore presents this claim for adjustment and payment. You are hereby notified that unless it is adjusted and paid within the time provided by law from the date of presentation to you, the Claimant intends to commence an action on this claim.

Dated: Newburgh, New York
April 18, 2013



COLLEEN GUYT

ANTHONY R. LoBIONDO, ESQ.
LoBIONDO LAW OFFICES
Attorneys for Claimant
36 North Plank Road
Newburgh, New York 12250
(845) 569-7600

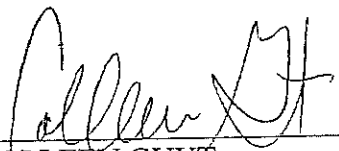
INDIVIDUAL VERIFICATION

STATE OF NEW YORK)

) ss.:

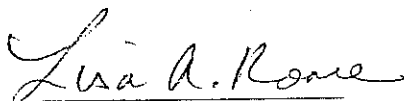
COUNTY OF ORANGE)

COLLEEN GUYT, being duly sworn, deposes and says that deponent is the Claimant in the within action; that she has read the foregoing Notice of Claim and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.



COLLEEN GUYT

Sworn to before me on this
18 day of April, 2013.



Notary Public LISA A. ROME

NOTARY PUBLIC STATE OF NEW YORK
ORANGE COUNTY
LIC # 01R06261066
Comm Exp 05/07/2016

New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT
 MV-104A (6/04)

Local Codes
 NEWBURGH City Police
 CN 003950-13

☐ AMENDED REPORT POLICE COPY 1

1	Accident Date Month 03 Day 01 Year 13	Day of Week FR	Military Time 1305	No. of Vehicles 2	No. Injured 0	No. Killed 0	Not Investigated at Scene ☐	Left Scene ☐	Police Photos ☒ Yes ☐ No
	Accident Reconstructed ☐								

VEHICLE 1 ☒ VEHICLE 2 ☐ BICYCLIST ☐ PEDESTRIAN ☐ OTHER PEDESTRIAN

2	VEHICLE 1 - Driver License ID Number 328 121 729	State of Lic. NY	VEHICLE 2 - Driver License ID Number 582 863 620	State of Lic. NY
---	---	------------------	---	------------------

2	Driver Name - exactly as printed on license JENNEROSE, JOHN A.	Driver Name - exactly as printed on license GUYT, COLLEEN L.
---	--	--

2	Address (Include Number & Street) 55 BROADWAY	Apt. No.	Address (Include Number & Street) 8 OAK LN	Apt. No.
---	--	----------	---	----------

2	City or Town NEWBURGH	State NY	Zip Code 12550	City or Town CAMPBELL HALL	State NY	Zip Code 10916
---	--------------------------	-------------	-------------------	-------------------------------	-------------	-------------------

3	Date of Birth Month 10 Day 25 Year 66	Sex M	Unlicensed ☐	No. of Occupants 1	Public Property Damaged ☐	Date of Birth Month 07 Day 22 Year 88	Sex F	Unlicensed ☐	No. of Occupants 1	Public Property Damaged ☐
---	--	----------	-------------------------------------	-----------------------	--	--	----------	-------------------------------------	-----------------------	--

3	Name - exactly as printed on registration CITY OF NEWBURGH	Sex -	Date of Birth Month - Day - Year	Name - exactly as printed on registration DRIVER 2	Sex -	Date of Birth Month - Day - Year
---	---	----------	-------------------------------------	---	----------	-------------------------------------

4	Address (Include Number & Street) 83 BROADWAY	Apt. No.	Haz. Mat. Code -	Released ☐	Address (Include Number & Street)	Apt. No.	Haz. Mat. Code -	Released ☐
---	--	----------	---------------------	-----------------------------------	-----------------------------------	----------	---------------------	-----------------------------------

4	City or Town NEWBURGH	State NY	Zip Code 12550	City or Town	State	Zip Code
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4	Plate Number 159	State of Reg. -	Vehicle Year & Make 05 CHEVY	Vehicle Type 4DSD	Ins. Code 318	Plate Number ENI 7536	State of Reg. NY	Vehicle Year & Make 06 VOLKS	Vehicle Type 4DSD	Ins. Code 220
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5	Ticket/Arrest Number(s)	Ticket/Arrest Number(s)
---	-------------------------	-------------------------

5	Violation Section(s)	Violation Section(s)
---	----------------------	----------------------

6	Check if involved vehicle is: ☐ more than 95 inches wide; ☐ more than 34 feet long; ☐ operated with an overweight permit; ☐ operated with an overdimension permit.	Check if involved vehicle is: ☐ more than 95 inches wide; ☐ more than 34 feet long; ☐ operated with an overweight permit; ☐ operated with an overdimension permit.	Circle the diagram below that describes the accident, or draw your own diagram in space #9. Number the vehicles.
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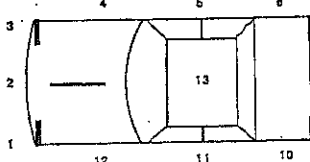
7	VEHICLE 1 DAMAGE CODES Box 1 - Point of Impact Box 2 - Most Damage Enter up to three more Damage Codes	VEHICLE 2 DAMAGE CODES Box 1 - Point of Impact Box 2 - Most Damage Enter up to three more Damage Codes	ACCIDENT DIAGRAM GIDNEY AVE PIERCE'S RD
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7	Vehicle By NOT TOWED Towed: To	Vehicle By NOT TOWED Towed: To
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VEHICLE DAMAGE CODING:

1-13. SEE DIAGRAM ON RIGHT.

14. UNDERCARRIAGE 17. DEMOLISHED
 15. TRAILER 18. NO DAMAGE
 16. OVERTURNED 19. OTHER



Cost of repairs to any one vehicle will be more than \$1000.

☒ Unknown/Unable to Determine ☐ Yes ☐ No

Reference Marker	Coordinates (if available) Latitude/Northing: Longitude/Easting:	Place Where Accident Occurred: County ORAN ☒ City ☐ Village ☐ Town of NEWBURGH Road on which accident occurred PIERCE'S RD. at 1) intersecting street GIDNEY AVE. or 2) ☐ N ☐ S ☐ E ☐ W of Feet Miles (Milepost, Nearest intersecting Route Number or Street Name)
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Accident Description/Officer's Notes DRIVER 1, AN ON DUTY POLICE OFFICER OPERATING A MARKED POLICE CAR STATES HE WAS TRAVELLING EAST ON PIERCE'S RD AND STOPPED BEHIND VEH. 2 WHICH WAS ALREADY STOPPED. VEH 2 WAS STOPPED, FACING EAST ON PIERCE'S RD. AT GIDNEY AVE. DRIVER 1 STATED HE WAS WATCHING TRAFFIC AND STARTED TO ROLL FORWARD, MISJUDGED THE DISTANCE BETWEEN VEH 1 AND VEH 2 AND DIDN'T HAVE TIME TO STOP PRIOR TO STRIKING VEH. 2 FROM BEHIND.

	8	9	10	11	12	13	14	15	16	17	BY	TO	18	Names of all involved	Date of Death Only
A	1	1	1	1	46	M	-	13	6	-	-	-	-	DRIVER 1	-
B	2	1	4	1	24	F	-	13	6	-	-	-	-	DRIVER 2	-
C															
D															
E															
F															

Officer's Rank and Signature Print Name in Full JASON ALBRECHTSON	Badge/ID No. 278	NCIC No. 0350	Precinct/Post Troop/Zone	Station/Beat Sector	Reviewing Officer 378	Date/Time Reviewed 3-1-13
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New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT
MV-104A (6/04)

☒ **AMENDED REPORT** POLICE COPY 1

Accident Date Month <u>03</u> Day <u>01</u> Year <u>13</u>	Day of Week <u>FR</u>	Military Time <u>1305</u>	No. of Vehicles <u>2</u>	No. Injured <u>0</u>	No. Killed <u>0</u>	Not Investigated at Scene ☐	Left Scene ☐	Police Photos ☒ Yes ☐ No
Accident Reconstructed ☐			Accident Reconstructed ☐			Accident Reconstructed ☐		

VEHICLE 1		VEHICLE 2		BICYCLIST		PEDESTRIAN		OTHER PEDESTRIAN	
-----------	--	-----------	--	-----------	--	------------	--	------------------	--

VEHICLE 1 - Driver License ID Number	State of Lic.	VEHICLE 2 - Driver License ID Number	State of Lic.
--------------------------------------	---------------	--------------------------------------	---------------

Driver Name - exactly as printed on license	Apt. No.	Driver Name - exactly as printed on license	Apt. No.
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Address (Include Number & Street)	Apt. No.	Address (Include Number & Street)	Apt. No.
-----------------------------------	----------	-----------------------------------	----------

City or Town	State	Zip Code	City or Town	State	Zip Code
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Date of Birth	Sex	Unlicensed	No. of Occupants	Public Property Damaged	Date of Birth	Sex	Unlicensed	No. of Occupants	Public Property Damaged
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Name - exactly as printed on registration	Sex	Date of Birth	Name - exactly as printed on registration	Sex	Date of Birth
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Address (Include Number & Street)	Apt. No.	Haz. Mat. Code	Released	Address (Include Number & Street)	Apt. No.	Haz. Mat. Code	Released
-----------------------------------	----------	----------------	----------	-----------------------------------	----------	----------------	----------

City or Town	State	Zip Code	City or Town	State	Zip Code
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Plate Number	State of Reg.	Vehicle Year & Make	Vehicle Type	Ins. Code	Plate Number	State of Reg.	Vehicle Year & Make	Vehicle Type	Ins. Code
--------------	---------------	---------------------	--------------	-----------	--------------	---------------	---------------------	--------------	-----------

Ticket/Arrest Number(s)	Ticket/Arrest Number(s)
-------------------------	-------------------------

Violation Section(s)	Violation Section(s)
----------------------	----------------------

Check if involved vehicle is:	Check if involved vehicle is:
-------------------------------	-------------------------------

Circle the diagram below that describes the accident, or draw your own diagram in space #9. Number the vehicles.
--

VEHICLE 1 DAMAGE CODES	VEHICLE 2 DAMAGE CODES
------------------------	------------------------

Box 1 - Point of Impact	Box 2 - Most Damage	Box 1 - Point of Impact	Box 2 - Most Damage
-------------------------	---------------------	-------------------------	---------------------

Enter up to three more Damage Codes	Enter up to three more Damage Codes
-------------------------------------	-------------------------------------

Vehicle Towed:	Vehicle Towed:
----------------	----------------

VEHICLE DAMAGE CODING:

1-13. SEE DIAGRAM ON RIGHT.

14. UNDERCARRIAGE	17. DEMOLISHED
-------------------	----------------

15. TRAILER	18. NO DAMAGE
-------------	---------------

16. OVERTURNED	19. OTHER
----------------	-----------

Place Where Accident Occurred:

County <u>ORAN</u>	City ☐ Village ☐ Town of <u>NEWBURN</u>
--------------------	---

Road on which accident occurred <u>PIERCE'S RD.</u>	(Route Number or Street Name)
---	-------------------------------

at 1) intersecting street <u>GIDNEY AVE.</u>	(Route Number or Street Name)
--	-------------------------------

or 2) <u> </u>	(Milepost, Nearest Intersecting Route Number or Street Name)
-----------------------------------	--

Cost of repairs to any one vehicle will be more than \$1000.
--

☐ Unknown/Unable to Determine ☐ Yes ☐ No

Reference Marker	Coordinates (if available)
------------------	----------------------------

Latitude/Northing:

Longitude/Easting:

Accident Description/Officer's Notes

Accident Description/Officer's Notes

Accident Description/Officer's Notes

Accident Description/Officer's Notes

Accident Description/Officer's Notes

Accident Description/Officer's Notes

Accident Description/Officer's Notes

Accident Description/Officer's Notes

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Accident Description/Officer's Notes

Accident Description/Officer's Notes

Accident Description/Officer's Notes

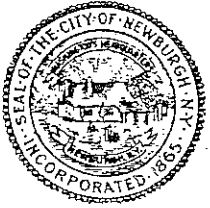
Accident Description/Officer's Notes

Accident Description/Officer's Notes

Accident Description/Officer's Notes

Accident Description/Officer's Notes

Accident Description/Officer's Notes



CITY OF NEWBURGH

CITY CLERK'S OFFICE
83 BROADWAY
NEWBURGH, NEW YORK 12550
PHONE (845)569-7311
FAX (845)569-7314

LORENE VITEK
CITY CLERK

KATRINA COTTEN
LISETTE WILLIAMS
DEPUTY CLERKS

MEMORANDUM

TO: Michelle Kelson, Corporation Counsel

FROM: Lisette Acosta-Ramirez, Deputy City Clerk

RE: Summons & Complaint:
Wells Fargo Bank, et al. vs. City of Newburgh, et al.

DATE: April 23, 2013

Please find attached Summons & Complaint regarding the above, which was hand delivered to our office on April 22, 2013.

Attachment

✓ Cc City Manager
Mayor & Council

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

SUMMONS

INDEX #

002907/13

WELLS FARGO BANK, NATIONAL ASSOCIATION
AS TRUSTEE FOR STRUCTURED ASSET
MORTGAGE INVESTMENTS II INC., GREENPOINT
MORTGAGE FUNDING TRUST 2005-AR4,
MORTGAGE PASS-THROUGH CERTIFICATES,
SERIES 2005-AR4,

Plaintiff,

— against —

HUGH MCKENZIE, SOPHIA MCKENZIE, SOMAC
ENTERPRISES, INC., THE CITY OF NEWBURGH,
NEW YORK STATE DEPARTMENT OF TAXATION &
FINANCE, MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC. SOLELY AS
NOMINEE FOR GREENPOINT MORTGAGE
FUNDING, INC.

and JOHN DOE AND JANE DOE #1 through #7, the last
seven (7) names being fictitious and unknown to the
plaintiff, the persons or parties intended being the tenants,
occupants, persons or parties, if any, having or claiming an
interest in or lien upon the mortgaged premises described in
the Complaint,

Defendants.

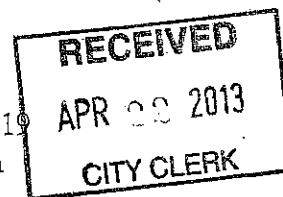
Original Filed With
Clerk on

4/8/13

Plaintiff Designates Orange
County as the Place of Trial

The Basis of Venue is that the
Subject of the Action is situated in
Orange County.

Plaintiff resides at
315 Vision Drive
Columbus OH 43219
County of Franklin



TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a
copy of your answer, or, if the Complaint is not served with this Summons, to serve a notice of
appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this Summons,
exclusive of the day of service (or within 30 days after the service is complete if this Summons is
not personally delivered to you within the State of New York); The United States of America

may appear or answer within 60 days of service hereof; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

NOTICE

YOU ARE IN DANGER OF LOSING YOUR HOME

If you do not respond to this Summons and Complaint by serving a copy of the answer on the attorney for the mortgage company who filed this foreclosure proceeding against you and filing the answer with the court, a default judgment may be entered and you can lose your home.

Speak to an attorney or go to the court where your case is pending for further information on how to answer the summons and protect your property.

Sending a payment to your mortgage company will not stop this foreclosure action.

YOU MUST RESPOND BY SERVING A COPY OF THE ANSWER ON THE ATTORNEY FOR THE PLAINTIFF (MORTGAGE COMPANY) AND FILING THE ANSWER WITH THE COURT.

Dated: Huntington, NY
April 3, 2013

Respectfully submitted,

STIENE & ASSOCIATES, P.C.



By: Christopher Virga
Attorneys for Plaintiff
187 East Main Street
Huntington, NY 11743
(631) 935-1616, Fax (631) 935-1223

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

WELLS FARGO BANK, NATIONAL ASSOCIATION AS
TRUSTEE FOR STRUCTURED ASSET MORTGAGE
INVESTMENTS II INC., GREENPOINT MORTGAGE
FUNDING TRUST 2005-AR4, MORTGAGE PASS-
THROUGH CERTIFICATES, SERIES 2005-AR4,

COMPLAINT

INDEX #

Plaintiff,

— against —

HUGH MCKENZIE, SOPHIA MCKENZIE, SOMAC
ENTERPRISES, INC., THE CITY OF NEWBURGH,
NEW YORK STATE DEPARTMENT OF TAXATION &
FINANCE, MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC. SOLELY AS
NOMINEE FOR GREENPOINT MORTGAGE
FUNDING, INC.

and JOHN DOE AND JANE DOE #1 through #7, the last
seven (7) names being fictitious and unknown to the
plaintiff, the persons or parties intended being the tenants,
occupants, persons or parties, if any, having or claiming an
interest in or lien upon the mortgaged premises described in
the Complaint,

Defendants.

Plaintiff, Wells Fargo Bank, National Association as Trustee for Structured Asset
Mortgage Investments II Inc., GreenPoint Mortgage Funding Trust 2005-AR4, Mortgage Pass-
Through Certificates, Series 2005-AR4, by its attorneys, STIENE & ASSOCIATES, P.C.,
complaining of the defendants, alleges upon information and belief as follows:

1. That the plaintiff herein is, and at all times hereinafter mentioned was, a National Bank organized and existing under and by virtue of the laws of the United States of America, having its principal place of business at 3415 Vision Drive, Columbus, OH 43219.

2. Upon information and belief, at all times hereinafter mentioned, the defendants set forth in "Schedule 1-Defendants" reside or have a place of business at the address set forth therein (any that are corporations being organized and existing under the laws of the State set forth therein) and are made defendants in this action in the capacities therein and for the reasons set forth in said Schedule.

3. That the United States of America, The People of the State of New York, The State Tax Commission of the State of New York, the Industrial Commission of the State of New York, New York City Parking Violations Bureau, New York City Environmental Control Board and City of New York Transit Adjudication Bureau and all other agencies or instrumentalities of the Federal, State or local government (however designated), if any, are made parties solely by reason of the facts set forth in "Schedule 2-Defendants".

4. On May 20, 2005, the defendant, Hugh McKenzie (hereinafter "Obligor"), executed and delivered to GreenPoint Mortgage Funding, Inc. a Note ("the Note") dated May 20, 2005, whereby the Obligor promised to pay GreenPoint Mortgage Funding, Inc. the principal sum of \$187,650.00. A copy of the Note, with proper endorsements, is annexed hereto as Exhibit "A".

5. On May 20, 2005, the defendants Hugh McKenzie and Sophia McKenzie (the "Mortgagors") executed and delivered to Mortgage Electronic Registration Systems, Inc., solely as nominee for GreenPoint Mortgage Funding, Inc. a Mortgage ("the Mortgage") in the principal sum of \$187,650.00 with interest, mortgaging the premises known as 12-16 Dubois St, Newburgh, NY 12550 n/k/a 14 Dubois Street, Newburgh, NY 12550 ("the Premises") as

collateral security for the Note. The mortgaged premises are more fully described in Exhibit "B" annexed hereto.

6. The Mortgage was duly recorded in the Orange County Clerk's Office on May 31, 2005, under liber 11859, page 471, and the Recording Tax was duly paid. Said Mortgage was assigned from Mortgage Electronic Registration Systems, Inc., solely as nominee for GreenPoint Mortgage Funding, Inc. to Wells Fargo Bank, National Association As Trustee For Structured Asset Mortgage Investments II Inc., Greenpoint Mortgage Funding Trust 2005-AR4, Mortgage Pass-Through Certificates, Series 2005-AR4, as memorialized by Assignment of Mortgage recorded in the Orange County Clerk's Office on April 23, 2009 in Liber 12814 at page 114. Copies of the aforementioned loan documents are annexed hereto as Exhibit "C".

7. Pursuant to the Note, the Obligor promised to make consecutive monthly payments in initial amounts of \$791.14 each month, at the initial adjustable interest rate of 3.0%, commencing on July 1, 2005, and on the first day of each succeeding month to and including June 1, 2035, until the entire principal amount and accrued interest shall be due and payable.

8. Pursuant to the Mortgage, the Mortgagors promised to pay, in addition to principal and interest, all amounts necessary to pay for taxes, assessments, leasehold payments or ground rents (if any), hazard insurance and mortgage insurance.

9. The Mortgagors defaulted on their obligations under the terms of the Note and Mortgage by failing and omitting to pay to the Plaintiff payments due on October 1, 2008 and said default has continued for a period in excess of fifteen (15) days.

10. At the time of the default, the interest rate was 6.375%. Said rate has been calculated from September 1, 2008, the first date of the month before the default date of October 1, 2008.

11. Plaintiff notified the Mortgagors of the default under the terms of the Note and Mortgage but the Mortgagors failed to remedy the default. As a result of the Mortgagors' failure to remedy the default, the plaintiff elected to declare the entire principal balance due and owing and notified the Mortgagors of this election.

12. Pursuant to the terms of the Note and Mortgage, the plaintiff has elected and does hereby elect to declare the entire principal balance to be due and owing.

13. By reason of the foregoing, there is now due and owing from the Mortgagors to plaintiff the principal sum of \$201,370.20 plus interest and late charges.

14. The Note provides that in the event any installment shall become overdue for a period in excess of fifteen (15) days a late charge of 2.0% on the overdue sum may be charged for the purpose of defraying the expense in handling such delinquent payment.

15. The Mortgage further provides that in the event of default by the Mortgagors, plaintiff may recover all costs, including reasonable attorneys' fees, disbursements, and allowances provided by law in bringing any action to protect its interest in the premises.

16. Plaintiff shall not be deemed to have waived, altered, released or changed the election hereinbefore made by reason of the payment after the date of commencement of this action of any or all of the defaults mentioned herein, and such election shall continue and remain effective until the costs and disbursements of this action and any and all future defaulted payments under the aforesaid Note and Mortgage occurring prior to the discontinuance of this action are fully paid.

17. That in order to protect its security, the plaintiff may be compelled during the pendency of this action to pay taxes, assessments, water, sewer charges, insurance premiums, and other charges for the protection of the premises, and the plaintiff requests that any sums so

paid by it shall be added to the sum otherwise due herein and be deemed secured by the said Mortgage and adjudged a valid lien on the premises described herein.

18. That the plaintiff is now and was at the commencement of the within action the sole, true and lawful owner of the said Note and Mortgage securing the same or has been delegated the authority to institute a mortgage foreclosure action against the homeowner by the owner and holder of the subject Mortgage and Note, and the within subject Mortgage complies with the underwriting standards in §6-m of the Banking Law, as well as the pre-foreclosure notice requirements, unless exempt from doing so; and that there are no pending proceedings at law or otherwise to collect or enforce said Note and Mortgage.

19. Plaintiff has complied with all the provisions of Banking Law §§ 6-1 and 6-m; Real Property Actions and Proceedings Law § 1304. A copy of the pre-foreclosure notices is annexed hereto as Exhibit "D".

20. Plaintiff has complied with RPAPL § 1306.

21. That each of the defendants, including but not limited to the aforementioned defendants, have or claim to have some interest in, or lien upon, the said mortgaged premises or some part thereof, which interest or lien, if any, is subject and subordinate to the lien of the plaintiff's Mortgage.

22. Any lien held or claimed to be held by any of the defendants named herein is subject and subordinate to the lien of the plaintiff's Mortgage.

23. That Schedules "1" and "2" are expressly incorporated and made a part of the Complaint for all purposes with the same force and effect as if they were completely and fully set forth herein whenever reference has been made to each or any of them.

24. That if the premises consists of more than one parcel, plaintiff respectfully requests that the judgment of foreclosure provide for the parcels be sold as one parcel.

WHEREFORE, plaintiff demands judgment against the defendants as follows:

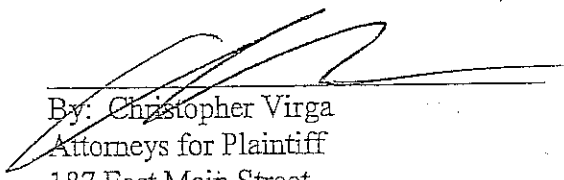
- A. that the defendants and all persons claiming under them, or any of them, subsequent to the filing of the Notice of Pendency of this action and the recording of the mortgage in the Office of the Clerk of Orange County, the county in which said mortgaged premises are located, and every person whose conveyance or encumbrance is subsequent or subsequently recorded or subordinate, be forever barred or foreclosed of any and all right, title, claim, lien and equity of redemption of the said mortgaged premises and each and every part thereof;
- B. that the premises be sold according to law;
- C. that the amount due to plaintiff on its Note and Mortgage may be adjudged;
- D. that the monies received from the sale may be brought into Court;
- E. that plaintiff be paid the amount adjudged to be due it with interest thereon to the time of such payment, together with the costs and disbursements of this action, together with plaintiff's attorneys' fees, late charges, escrow advances and the expenses of said sale to the extent that the amount of such monies applicable thereto will pay the same;
- F. that this Court, if requested, forthwith appoint a Receiver of the rents and profits of said premises with the usual powers and duties;
- G. plaintiff specifically reserves its rights to share in any surplus monies arising from the sale of subject premises by virtue of its position as a judgment or other lien creditor excluding the Mortgage being foreclosed herein.

H. that plaintiff have such other and further relief as may be just and equitable together with the costs, allowances and disbursements of this action.

Dated: Huntington, NY
April 3, 2013

Yours etc.,

STIENE & ASSOCIATES, P.C.,



By: Christopher Virga
Attorneys for Plaintiff
187 East Main Street
Huntington, NY 11743
(631) 935-1616, Fax (631) 935-1223

Schedule 1-Defendants

Hugh McKenzie
14 Dubois Street
Newburgh, NY 12550

Original mortgagor of premises being foreclosed herein by virtue of a mortgage dated 5/20/2005 and recorded on 5/31/2005 in the Orange County Clerk's Office, in Liber 11859, page 471.

Sophia McKenzie
14 Dubois Street
Newburgh, NY 12550

Original mortgagor of premises being foreclosed herein by virtue of a Mortgage dated 5/20/2005 and recorded on 5/31/2005 in the Orange County Clerk's Office, in Liber 11859, page 471.

Somac Enterprises, Inc.
14 Dubois Street
Newburgh, NY 12550

Record owner of premises being foreclosed herein by virtue of a Deed dated 12/13/2006, and recorded on 1/3/2007 in Reel/Liber 12334, Page 746 in the Orange County Clerk's Office.

Mortgage Electronic Registration Systems, inc. solely as nominee for Greenpoint Mortgage Funding, Inc.

Holder of Mortgage inferior to that being foreclosed herein, dated May 20, 2005 and recorded May 31, 2005 in Liber 11859, page 497 of the Orange County Clerk's Office.

JOHN DOE AND JANE
DOE #1 through #7
14 DUBOIS ST
Newburgh, NY 12550

Said name being fictitious, it being the intention of plaintiff to designate any and all occupants of premises being foreclosed herein, and generally all persons or parties, if any, having or claiming an interest in or lien upon the mortgaged premises described in the Complaint.

Schedule 2-Defendants

The City of Newburgh
83 Broadway
City Hall
Newburgh, NY 12550

Named as a party defendant to extinguish any and all liens it has against the premises being foreclosed herein which liens are more particularly described in Exhibit E annexed hereto.

New York State Department of Taxation & Finance
250 Veterans Memorial Highway
Hauppauge, NY 11788

Named as a party defendant to extinguish any possible unpaid franchise taxes.



CITY OF NEWBURGH

CITY CLERK'S OFFICE
83 BROADWAY
NEWBURGH, NEW YORK 12550
PHONE (845)569-7311
FAX (845)569-7314

LORENE VITEK
CITY CLERK

KATRINA COTTEN
LISETTE WILLIAMS
DEPUTY CLERKS

MEMORANDUM

TO: Michelle Kelson, Corporation Counsel

FROM: Lisette Acosta-Ramirez, Deputy City Clerk

RE: Notice of Claim:
Susan Grimm vs. City of Newburgh

DATE: April 26, 2013

Please find attached Notice of Claim regarding the above, which was hand delivered to our office on April 23 2013.

Attachment

Cc City Manager
Mayor & Council

RECEIVED

APR 23 2013

CITY CLERK

File #106337-1/11

In the Matter of the Claim of

SUSAN GRIMM,

Claimant,

-against-

CITY OF NEWBURGH,

Respondent.

TO: CITY OF NEWBURGH

PLEASE TAKE NOTICE that the undersigned claimants hereby make claim and demand against you as follows:

1. The name and post-office address of each claimant and claimants' attorney is:

SUSAN GRIMM
Claimant
111 Broadway, Apt. 226
Newburgh, NY 12550

FINKELSTEIN & PARTNERS, LLP
Attorneys for Claimant
1279 Route 300, PO Box 1111
Newburgh, New York 12551

2. The nature of the claim: Claim is for severe and serious permanent personal injuries, severe pain and suffering and medical expenses sustained by claimant, SUSAN GRIMM.

3. The time when, the place where and the manner in which the claim arose: This claim arose on or about the 25th day of January, 2013, at approximately 12:30 P.M. on the sidewalk on the east side of Mill Street, in the area of a certain cable wire and anchor and surrounding area, approximately 27.7 feet north from utility pole #CHG&E N21510, adjacent to the Church of the Good Shepherd, located at 271 Broadway, City of Newburgh, County of Orange, State of New York, which is owned, maintained, controlled, operated and/or managed by respondent, CITY OF NEWBURGH.

SEE ATTACHED RIDER **SEE ATTACHED PHOTOS**

RIDER TO NOTICE OF CLAIM IN THE MATTER OF

-----x
SUSAN GRIMM,

Claimant,

-against-

CITY OF NEWBURGH,

Respondent.
-----x

3. (continued)

The manner in which the claim arose was that while the claimant was walking on said sidewalk, she was caused to come into contact with a utility cable and/or wire running off of a certain utility pole, which had been anchored into the sidewalk, causing her to be precipitated to the ground, thereby sustaining severe and serious personal injuries, due to the negligence, wantonness, recklessness and carelessness of, among others, the respondent, CITY OF NEWBURGH, its agents, servants and/or employees in, among other things, as follows: allowing, causing and/or permitting dangerous, hazardous and unsafe conditions to exist on the aforesaid sidewalk; in allowing, causing and/or permitting a utility cable and/or wire to be strung, placed and/or extended across said sidewalk in an unsafe, dangerous and hazardous condition and manner; in allowing, causing and/or permitting said utility cable and/or wire to extend across said sidewalk without properly and adequately placing fluorescent marking, tags and/or other warnings to alert persons of said cable and/or wire; in failing to attach a brightly colored covering and/or marking over said utility cable and/or wire to alert persons of said utility cable and/or wire; in failing to warn persons of the dangerous, hazardous and unsafe conditions; in allowing, causing and/or permitting said unmarked utility cable and/or wire to extend across said sidewalk creating a dangerous, hazardous and unsafe condition to persons on said sidewalk; in failing to properly maintain, check, inspect and/or repair said utility cable and/or wire; in creating a trap; in failing to properly maintain, check and/or inspect said sidewalk; in failing to use that degree of

SEE ATTACHED RIDER **SEE ATTACHED PHOTOS**

RIDER TO NOTICE OF CLAIM IN THE MATTER OF

-----x
SUSAN GRIMM,

Claimant,

-against-

CITY OF NEWBURGH,

Respondent.

-----x

3. (continued)

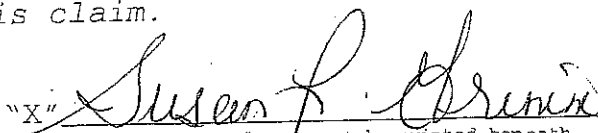
caution, prudence and care which was reasonable and proper under the controlling circumstances; in failing to take those steps necessary to avoid the contingency which occurred; in acting with a reckless disregard for the safety of others; in hiring inept, incompetent and unskilled agents, servants and/or employees, and in other ways being negligent, wanton, reckless and careless.

4. The items of damage or injuries claimed are as follows: Claimant, SUSAN GRIMM, sustained severe and serious permanent personal injuries to her body, including, but not limited to fracture left leg, cast applied, future surgery may be required with resulting scarring, severe pain and suffering and extensive medical bills. Exact extent of same are unknown at this time.

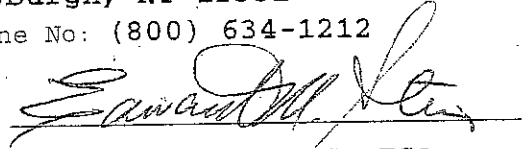
The undersigned claimant(s) therefore present this claim for adjustment and payment. You are hereby notified that unless it is adjusted and paid within the time provided by law from the date of presentation to you, the claimant(s) intend(s) to commence an action on this claim.

Dated: February 12, 2013

Finkelstein & Partners, LLP
Attorneys for Claimant
1279 Route 300
P.O. Box 1111
Newburgh, NY 12551
Phone No: (800) 634-1212

"X" 
The name signed must be printed beneath
SUSAN GRIMM

"X" _____
The name signed must be printed beneath

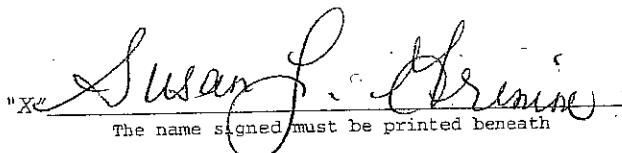
By: 
EDWARD M. STEVES, ESQ.

INDIVIDUAL VERIFICATION

State of New York, County of Orange

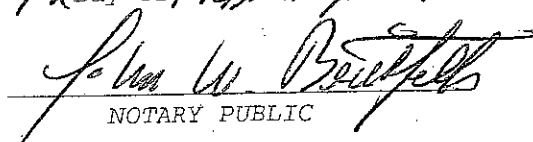
SS.:

SUSAN GRIMM,
being duly sworn, deposes and says that deponent is
the claimant in the within action; that he/she has read the
foregoing Notice of Claim and knows the contents thereof;
that the same is true to deponents own knowledge, except
as to the matters therein stated to be alleged on information
and belief, and that as to those matters deponent believes it
to be true.

"X" 
The name signed must be printed beneath
SUSAN GRIMM

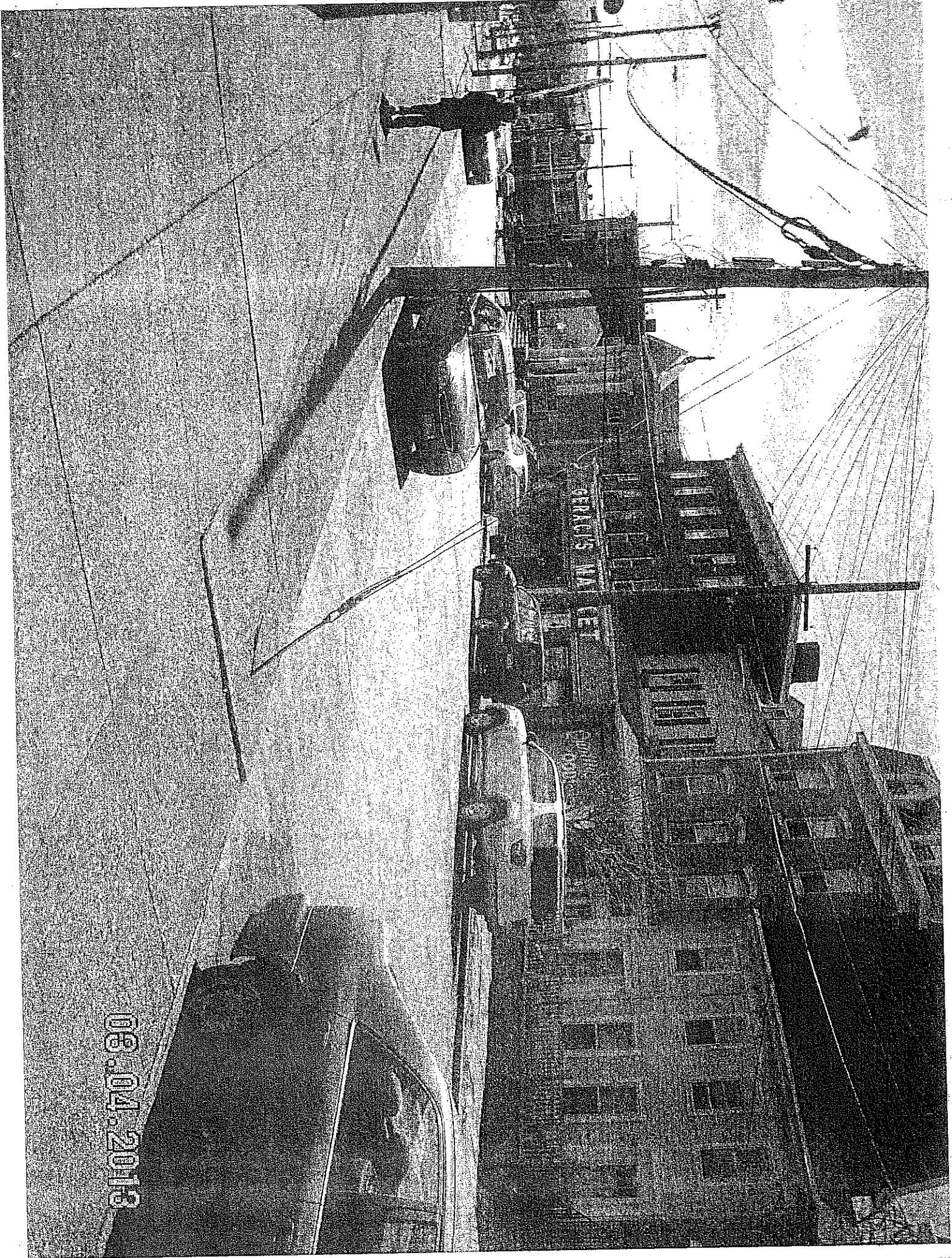
"X" _____
The name signed must be printed beneath

Sworn to before me, this
12 Day of February, 2013


NOTARY PUBLIC

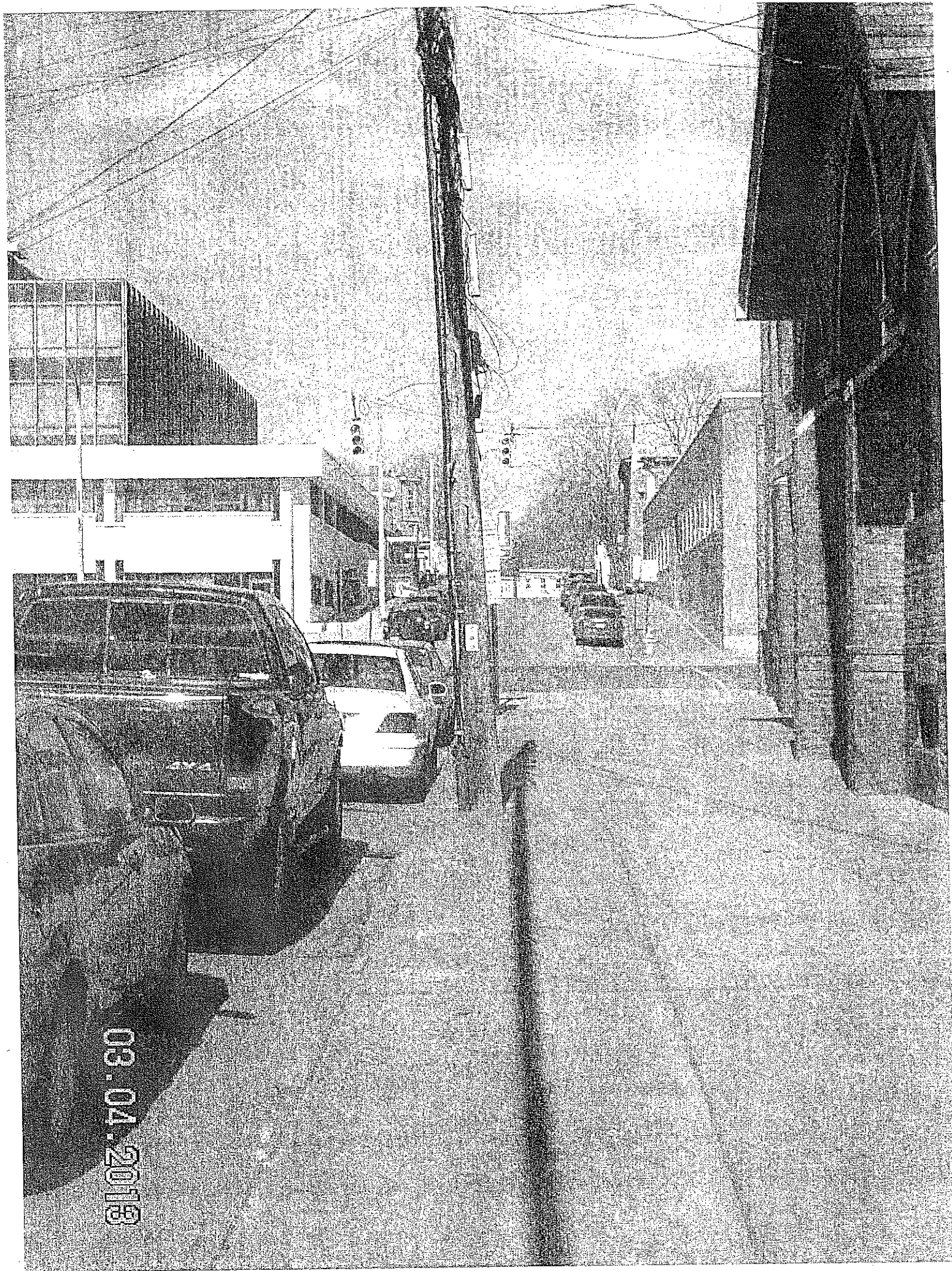
JOHN W. BREITFELLER
Notary Public, State of New York
Qualified in Orange County
Registration #01BR6160428
Commission Expires February 5, 2015

08.04.2013



08.04.2013





08.04.2013



CITY OF NEWBURGH

CITY CLERK'S OFFICE
83 BROADWAY
NEWBURGH, NEW YORK 12550
PHONE (845)569-7311
FAX (845)569-7314

LORENE VITEK
CITY CLERK

KATRINA COTTEN
LISETTE WILLIAMS
DEPUTY CLERKS

MEMORANDUM

TO: Michelle Kelson, Corporation Counsel

FROM: Lisette Acosta-Ramirez, Deputy City Clerk

RE: Summons & Verified Complaint:
Richard & Lynda Diasparra vs. City of Newburgh

DATE: April 30, 2013

Please find attached Summons & Verified Complaint regarding the above, which was hand delivered to our office on April 29, 2013.

Attachment

Cc City Manager
Mayor & Council

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

2013 003016

RICHARD DIASPARRA and LYNDIA DIASPARRA.

Index No. _____

RECEIVED

APR 29 2013

CITY CLERK

Plaintiff(s),

Date Filed:

-against-

SUMMONS

CITY OF NEWBURGH,

Basis of Venue:

Place of occurrence

Defendant(s).

To the above named Defendant(s):

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Place of occurrence is: 343 Route 32 Newburgh, NY 12550

Dated: New York, New York
March 21, 2013

Yours, etc.

Hach & Rose, LLP
185 Madison Avenue, 14th Floor
New York, NY 10016
(212) 779-0057
(212) 779-0028

By: Michael A. Rose

To: City of Newburgh
Office of Corporation Counsel
83 Broadway, 2nd Floor
Newburgh, NY 12550

FILED
ORANGE COUNTY CLERK
2013 APR 10 A 10:56

received
APR 29 2013

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

-----X
RICHARD DIASPARRA and LYNDIA DIASPARRA

Index No:

Plaintiff(s),

-against-

VERIFIED COMPLAINT

CITY OF NEWBURGH

Defendant(s).

2013 003016

-----X

Plaintiff(s), RICHARD DIASPARRA and LYNDIA DIASPARRA, by their attorneys,
HACH & ROSE, LLP, as for a cause of action alleges, upon information and belief, as follows:

FILED
ORANGE COUNTY CLERK
2013 APR 10 A 10:56

AS AND FOR A FIRST CAUSE OF ACTION
ON BEHALF OF PLAINTIFF(S)

1. That at the time of the commencement of this action, Plaintiff(s) resided in the County of Putnam, State of New York;
2. That the cause of action alleged herein arose in the County of Orange in the State of New York;
3. That this action falls within one or more of the exemptions set forth in CPLR Section 1602;
4. That on and at all times mentioned, Defendant, CITY OF NEWBURGH, was and still is a domestic municipal corporation;
5. That on or about the Plaintiff served upon the Comptroller, a Notice of Claim, setting forth the time when, the place where, and the manner in which the claim arose; and that said Notice of Claim was served on February 8th, within ninety (90) days of the date of the occurrence herein;

6. That at least thirty (30) days have elapsed prior to the commencement of this action since the said service of the Notice of Claim as aforesaid, on the Corporation Counsel of the City of Newburgh, and payment thereof has been neglected and/or refused by the Defendant(s), CITY OF NEWBURGH;

7. That this action was commenced within one (1) year and ninety (90) days after the happening of the event upon which the claim herein sued upon is based;

8. That on November 26, 2012 and at all times herein mentioned, a public pedestrian walkway existed Town of Newburgh Water Supply Chadwick Lake Filter Plant 343 Route 32 Newburgh, NY 12550;

9. That at all times hereinafter mentioned, and on November 26, 2012, the defendant, CITY OF NEWBURGH, maintained a principal place of business in the State of New York.

10. That at all times mentioned herein, and on November 26, 2012, the defendant, CITY OF NEWBURGH, was the lessor of some land and structures thereon, at the Town of Newburgh Water Supply Chadwick Lake Filter Plant 343 Route 32 Newburgh, NY 12550.

11. That at all times mentioned herein, and on November 26, 2012, the defendant, CITY OF NEWBURGH, was the owner of some land and structures thereon, at the Town of Newburgh Water Supply Chadwick Lake Filter Plant 343 Route 32 Newburgh, NY 12550.

12. That at all times mentioned herein, and on November 26, 2012, the defendant, CITY OF NEWBURGH, was the managing agent of certain the land and structures thereon, at the Town of Newburgh Water Supply Chadwick Lake Filter Plant 343 Route 32 Newburgh, NY 12550.

13. That at all times mentioned herein, and on November 26, 2012, the defendant, CITY OF NEWBURGH, was the lessee of certain land and structures thereon, at the Town of Newburgh Water Supply Chadwick Lake Filter Plant 343 Route 32 Newburgh, NY 12550.

14. That at all times mentioned herein, and on or prior to November 26, 2012, the defendant, CITY OF NEWBURGH, had been retained to perform certain work, labor and/or services at

the Town of Newburgh Water Supply Chadwick Lake Filter Plant 343 Route 32 Newburgh, NY 12550.

15. That at all times mentioned herein, and on or prior to November 26, 2012, the defendant, CITY OF NEWBURGH, had been retained to perform certain work, labor and/or services at the Town of Newburgh Water Supply Chadwick Lake Filter Plant 343 Route 32 Newburgh, NY 12550, pursuant to a written contract.

16. That at all times mentioned herein, and on November 26, 2012, the defendant, CITY OF NEWBURGH, was performing its work, labor and/or services at the construction site as aforesaid, pursuant to a written contract.

17. That at all times mentioned herein, and on November 26, 2012, the defendant, CITY OF NEWBURGH, had present at the construction site as aforesaid its agents, servants, associates and/or employees.

18. That at all times mentioned herein, and on November 26, 2012, CITY OF NEWBURGH, was acting as the general contractor and/or construction manager at the construction site as aforesaid.

19. That on or prior to November 26, 2012, CITY OF NEWBURGH, retained plaintiff, RICHARD DIASPARRA's employer Wilken Construction Corp. to perform certain work, labor and/or services at the premises commonly known as structures thereon, commonly known as the Town of Newburgh Water Supply Chadwick Lake Filter Plant 343 Route 32 Newburgh, NY 12550.

20. That at all times mentioned herein the plaintiff, RICHARD DIASPARRA, was employed by Wilken Construction Corp., and was performing his work at the construction site as aforesaid.

21. That on or about, November 26, 2012 while acting within the scope of his employment at the construction site as aforesaid, the plaintiff was caused to sustain severe injuries as set forth more fully below.

22. That the above occurrence was caused solely by and through the negligence of the defendants herein, without any negligence on the part of the plaintiff contributing thereto.

23. That the defendants, and/or each of them had both actual and constructive notice of the dangerous and defective conditions and practices complained of herein.

24. Plaintiff asserts an exemption from the abolition of joint and several liability pursuant to Article 16 of the C.P.L.R.

25. That the defendant, CITY OF NEWBURGH, and/or each of them, and/or their agents, servants, associates and/or employees were negligent, careless and reckless, in that they:

- a. Negligently, carelessly and recklessly, failed and omitted to properly construct, shore, equip, guard, arrange, operate and conduct the construction activities at the construction site as aforesaid, so as to provide reasonable and adequate protection and safety to the persons so employed therein, and more particularly to the plaintiff herein;
- b. Failed and omitted to provide the plaintiff with a safe place to work;
- c. Failed and omitted to insure that the working areas within the premises of the construction site as aforesaid were kept free of hazardous conditions;
- d. Failed and omitted to provide the plaintiff with a hardhat;
- e. Failed and omitted to properly inspect the construction site as aforesaid;
- f. Failed and omitted to properly and adequately coordinate the construction activities at the construction site as aforesaid so as to prevent the various trades from interfering with one another;
- g. Failed and omitted to construct and/or install barricades and/or other warnings so as to apprise workers, and more particularly the plaintiff herein, of the dangerous conditions existing thereat;
- h. Failed and omitted to comply with Section 240 of the Labor Law of the State of New York;

- i. Failed and omitted to comply with Section 241 of the Labor Law of the State of New York;
- j. Failed and omitted to comply with Section 200 of the Labor Law of the State of New York;
- k. Failed and omitted to comply with Rule 23 of the Industrial Code;
- l. Failed and omitted to properly secure the work area so that plaintiff could perform his labor in a safe environment;
- m. Allowed unqualified people to operate heavy equipment;
- n. Failed and omitted to provide the Plaintiff with the proper and necessary equipment to perform his job;
- o. Failed and omitted to provide the Plaintiff with adequate hoists or other lifting equipment.

26. That as a result of the negligence of the defendants, and/or each of them, the plaintiff, RICHARD DIASPARRA, became, still is and for a long time to come, will be sick, sore, lame, bruised, injured, disabled and wounded in and about the various parts of his head, limbs, body, blood vessels and surrounding tissues, and has suffered severe and extreme mental shock, anguish and psychic injuries, and that plaintiff was otherwise injured, and upon information and belief, said injuries are permanent. That by reason of the foregoing, the plaintiff was obligated to and did necessarily employ medical aid, hospital services, medicinals and medical supplies in an attempt to cure the aforesaid injuries, and has been prevented from his usual duties and will be so prevented for a long time to come.

27. That by reason of the foregoing, the plaintiff, RICHARD DIASPARRA, has been damaged in an amount exceeding the jurisdictional limits of all lower courts of the State of New York.

**AS AND FOR A SECOND CAUSE OF ACTION
ON BEHALF OF THE PLAINTIFF, RICHARD DIASPARRA
BASED UPON A THEORY OF STATUTORY LIABILITY:**

28. That the plaintiff, RICHARD DIASPARRA, repeats, reiterates and realleges each and every allegation of the complaint in paragraphs numbered "1" through "27", with the same force and effect as though each and every allegation were set forth more fully herein at length below.

29. That at all times mentioned herein, and on November 26, 2012, Section 200 of the Labor law of the State of New York was in full force and effect.

30. That at all times mentioned herein, and on November 26, 2012, the defendants, and/or each of them were subject to the provisions of the statute as cited herein above.

31. That on or about, November 26, 2012, the defendants, and/or each of them were in violation of the Statute as cited as herein above.

32. That as a result of the statutory violation as cited herein above, the plaintiff, RICHARD DIASPARRA, was caused to sustain the injuries as set forth herein above.

33. That as a result of the foregoing the plaintiff, RICHARD DIASPARRA, has been damaged in an amount exceeding the jurisdictional limits of all lower courts of the State of New York.

**AS AND FOR A THIRD CAUSE OF ACTION
ON BEHALF OF THE PLAINTIFF, RICHARD DIASPARRA
BASED UPON A THEORY OF STATUTORY LIABILITY:**

34. That the plaintiff, repeats, reiterates and realleges each and every allegation of the complaint in paragraphs numbered "1" through "33", with the same force and effect as though each and every allegation were set forth more fully herein at length below.

35. That at all times mentioned herein, and on November 26, 2012, Section 241 of the Labor law of the State of New York was in full force and effect.

36. That at all times mentioned herein, and on November 26, 2012, the defendants, and/or each of them were subject to the provisions of the statute as cited herein above.

37. That on or about, November 26, 2012, the defendants, and/or each of them were in violation of the Statute as cited as herein above.

38. That as a result of the statutory violation as cited herein above, the plaintiff, RICHARD DIASPARRA, was caused to sustain the injuries as set forth herein above.

39. That as a result of the foregoing the plaintiff, RICHARD DIASPARRA, has been damaged in an amount exceeding the jurisdictional limits of all lower courts of the State of New York.

**AS AND FOR A FOURTH CAUSE OF ACTION
ON BEHALF OF THE PLAINTIFF, RICHARD DIASPARRA
BASED UPON A THEORY OF STATUTORY LIABILITY:**

40. That the plaintiff, RICHARD DIASPARRA, repeats, reiterates and realleges each and every allegation of the complaint in paragraphs numbered "1" through "39", with the same force and effect as though each and every allegation were set forth more fully herein at length below.

41. That at all times mentioned herein, and on November 26, 2012, Section 240 of the Labor law of the State of New York was in full force and effect.

42. That at all times mentioned herein, and on November 26, 2012, the defendants, and/or each of them were subject to the provisions of the statute as cited herein above.

43. That on or about, November 26, 2012, the defendants, and/or each of them were in violation of the Statute as cited as herein above.

44. That as a result of the statutory violation as cited herein above, the plaintiff, RICHARD DIASPARRA, was caused to sustain the injuries as set forth herein above.

45. That as a result of the foregoing the plaintiff, RICHARD DIASPARRA, has been damaged in an amount exceeding the jurisdictional limits of all lower courts of the State of New York.

AS AND FOR A FIFTH CAUSE OF ACTION
ON BEHALF OF THE PLAINTIFF LYNDIA DIASPARRA

46. That the plaintiff, LYNDIA DIASPARRA, repeats, reiterates and realleges each and every allegation of the complaint in paragraphs numbered "1" through "45", with the same force and effect as though each and every allegation were set forth more fully herein at length below.

47. That at all times hereinafter mentioned, plaintiff, LYNDIA DIASPARRA, was the lawful spouse of the plaintiff, RICHARD DIASPARRA, as such said plaintiff, LYNDIA DIASPARRA, was entitled to the society, services and consortium of the said plaintiff, RICHARD DIASPARRA.

48. By reason of the afore-described negligence of the defendants, their agents, servants and/or employees, the plaintiff, LYNDIA DIASPARRA, was deprived of the aforesaid society, services and consortium of the plaintiff, RICHARD DIASPARRA, and shall forever be deprived of said society, services and consortium.

49. That by reason of the foregoing negligence on the part of the defendants, the plaintiff, LYNDIA DIASPARRA, has been damaged in an amount exceeding the jurisdictional limits of all lower courts of the State of New York, together with the costs and disbursements of this action.

WHEREFORE, the plaintiff, RICHARD DIASPARRA, demands judgment against the defendant(s), CITY OF NEWBURGH, in an amount exceeding the jurisdictional limits of all lower courts of the State of New York on the First Cause of Action together with interest, costs and disbursements of this action;

WHEREFORE, the plaintiff, RICHARD DIASPARRA, demands judgment against the defendant(s), CITY OF NEWBURGH, in an amount exceeding the jurisdictional limits of all lower courts of the State of New York on the Second Cause of Action together with interest, costs and disbursements of this action;

WHEREFORE, the plaintiff, RICHARD DIASPARRA, demands judgment against the defendant(s), CITY OF NEWBURGH, in an amount exceeding the jurisdictional limits of all lower courts of the State of New York on the Third Cause of Action together with interest, costs and disbursements of this action;

WHEREFORE, the plaintiff, RICHARD DIASPARRA, demands judgment against the defendant(s), CITY OF NEWBURGH, in an amount exceeding the jurisdictional limits of all lower courts of the State of New York on the Fourth Cause of Action together with interest, costs and disbursements of this action.

WHEREFORE, the plaintiff, LYNDIA DIASPARRA, demands judgment against the defendant(s), CITY OF NEWBURGH, in an amount exceeding the jurisdictional limits of all lower courts of the State of New York on the Fifth Cause of Action together with interest, costs and disbursements of this action.

Dated: New York, New York
March 21, 2013

Yours, etc.,

Michael A. Rose
HACH & ROSE, LLP
Attorneys for Plaintiff's
RICHARD DIASPARRA and

LYNDA DIASPARRA
185 Madison Avenue, 14th Floor
New York, NY 10016
(212) 779-0057

STATE OF NEW YORK

} ss.

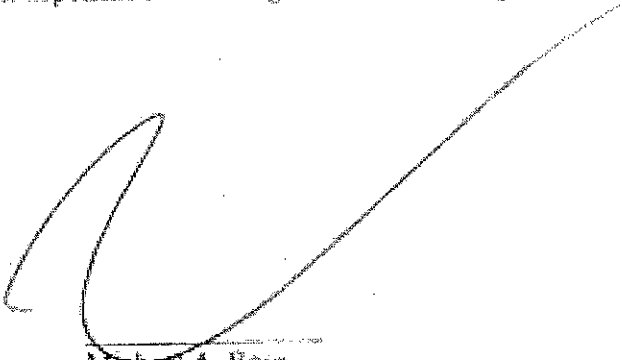
COUNTY OF NEW YORK

Michael A. Rose, being duly sworn, deposes and says:

That deponent is a member with HACH & ROSE, L.L.P., attorneys for Plaintiff(s), in the within action; that the deponent has read the foregoing **SUMMONS AND COMPLAINT** and knows the contents thereof, that the same is true to deponent's knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true and the reasons that this verification is not made by the Plaintiff(s) and is made by deponent is that Plaintiff(s) does/do not reside in the county where the attorney for the Plaintiff(s) have their office.

Deponent further says that the source of deponent's information and the grounds of deponent's beliefs as to all matters not stated upon deponent's knowledge are from investigation made on behalf of Plaintiff(s).

DATED: NEW YORK, NEW YORK
March 21, 2013



Michael A. Rose
HACH & ROSE, LLP
185 Madison Avenue, 14th Floor
New York, NY 10016
(212) 779-0057

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

RICHARD DIASPARRA and LYNDA DIASPARRA,

Plaintiff(s),

-against-

CITY OF NEWBURGH,

Defendant(s).

SUMMONS AND COMPLAINT

HACH & ROSE, LLP

Attorneys for Plaintiff(s)

RICHARD DIASPARRA and LYNDA DIASPARRA

185 Madison Avenue, 14th Floor

New York, NY 10016

Tel. (212) 779-0057

Fax. (212) 779-0028

RESOLUTION NO. 92 - 2013

MAY 13, 2013

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH
PROCLAIMING NEWBURGH, NEW YORK
A PURPLE HEART CITY

WHEREAS, on August 7, 1782 at his headquarters in Newburgh, New York, Commander in Chief General George Washington established the Badge of Military Merit, the precursor to the modern day Purple Heart, for singular meritorious action; and

WHEREAS, 150 years later on February 22, 1932 General Douglas MacArthur's General Order Number Three created the modern day Purple Heart; and

WHEREAS, on May 28, 1932, 138 World War I veterans were conferred their Purple Hearts at Temple Hill, New Windsor, New York in the County of Orange at the New Windsor Cantonment, final encampment of the Continental Army; and

WHEREAS, the National Purple Heart Hall of Honor was opened on this same site on November 10, 2006 and continues the tradition begun here in Newburgh in 1782 on honoring veterans who have earned the Purple Heart; and

WHEREAS, the people of the City of Newburgh have great admiration and the utmost gratitude for all the men and women who have selflessly served their country and this community in the Armed Forces; and

WHEREAS, veterans have paid the high price of freedom by leaving their families and communities and placing themselves in harm's way for the good of all; and

WHEREAS, the contributions and sacrifices of the men and women from Newburgh who served in the Armed Forces have been vital in maintaining the freedoms and way of life enjoyed by our citizens; and

WHEREAS, many citizens of our City have earned the Purple Heart Medal as a result of being wounded or killed while engaged in combat with an enemy force, construed as a singularly meritorious act of essential service; and

WHEREAS, August 7th has officially been designated as the day in Orange County to remember and recognize veterans who are recipients of the Purple Heart Medal; and

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Newburgh, New York hereby proclaims the City of Newburgh as New York's first Purple Heart City, honoring the service and sacrifice of our Nation's men and women in uniform wounded or killed by the enemy while serving to protect the freedoms enjoyed by all Americans.

RESOLUTION NO. 93 - 2013

OF
MAY 13, 2013

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH
PROCLAIMING NEWBURGH ARMORY UNITY CENTER AS A PURPLE HEART CITY
CENTER

WHEREAS, on August 7, 1782 at his headquarters in Newburgh, New York, Commander in Chief General George Washington established the Badge of Military Merit, the precursor to the modern day Purple Heart, for singular meritorious action; and

WHEREAS, 150 years later on February 22, 1932 General Douglas MacArthur's General Order Number Three created the modern day Purple Heart; and

WHEREAS, on May 28, 1932, 138 World War I veterans were conferred their Purple Hearts at Temple Hill, New Windsor, New York in the County of Orange at the New Windsor Cantonment, final encampment of the Continental Army; and

WHEREAS, the National Purple Heart Hall of Honor was opened on this same site on November 10, 2006 and continues the tradition begun here in Newburgh in 1782 on honoring veterans who have earned the Purple Heart; and

WHEREAS, the people of the City of Newburgh have great admiration and the utmost gratitude for the nineteen men who died in the Battle of the Hindenburg Line on September 29, 1918 all members of Companies E and L of the 107th Regiment who went to war from the Broadway Armory; and

WHEREAS, in 2006, September 29th was designated Orange County Veterans Memorial Day to memorialize the sacrifice of those 39 men of the 107th Regiment; and

WHEREAS, the Newburgh Armory was opened in 1932 as the home of the 156th Field Artillery Regiment the same year as the introduction of the modern day Purple Heart; and carries on the tradition of the City of Newburgh in the World War as a united center with patriotism, service and as a safe haven; and

WHEREAS, the Newburgh Armory Unity Center is a home for all our active duty military and our veterans who have paid the high price of freedom by leaving their families and communities and placing themselves in harm's way for the good of all; and

WHEREAS, many citizens of our city have earned the Purple Heart Medal as a result of being wounded or killed while engaged in combat with an enemy force, construed as a singularly meritorious act of essential service.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Newburgh, New York hereby proclaims the Newburgh Armory Unity Center as New York's first Purple Heart City Center, honoring the service and sacrifice of our Nation's men and women in uniform wounded or killed by the enemy while serving to protect the freedoms enjoyed by all Americans.

RESOLUTION NO.: 94 - 2013

OF

MAY 13, 2013

A RESOLUTION AUTHORIZING THE CITY MANAGER
TO ENTER INTO AN AGREEMENT WITH THE COUNTY OF ORANGE
FOR THE SUMMER YOUTH EMPLOYMENT AND TRAINING PROGRAM TO
PROVIDE YOUNG PEOPLE TO WORK FOR THE CITY OF NEWBURGH
FOR THE SUMMER OF 2013

WHEREAS, the County of Orange is once again offering a Summer Youth Employment and Training Program for the purpose of providing meaningful work experience for participants; and

WHEREAS, the City of Newburgh Youth Bureau and other City Departments have expressed an interest in using this program to provide summer jobs for young people and service to the City of Newburgh; and

WHEREAS, this Council finds that entering into an agreement with Orange County for this purpose is in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute an agreement and other necessary documents with the County of Orange in order to participate in the Summer Youth Employment and Training Program which provides young people to work in the City for the Summer of 2013.

RESOLUTION NO.: 95 - 2013

OF

MAY 13, 2013

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER
INTO A LICENSE AGREEMENT WITH ST. LUKE'S CORNWALL HOSPITAL TO
ALLOW USE OF CITY OWNED PROPERTY LOCATED IN THE CARTER STREET
PEDESTRIAN WALKWAY KNOWN AS LARKIN PARK FOR A FARMERS MARKET**

WHEREAS, the City of Newburgh is the owner of portion of lands now or formerly owned by the City of Newburgh, designated on the City of Newburgh Tax Maps as Carter Street between City Terrace and Dubois Street between City Terrace and Dubois Street, and more accurately described in Schedule "A" of the Carter Street Easement Agreement between the City of Newburgh and St. Luke's Cornwall Hospital, dated October 25, 2007, hereinafter referred to as "Larkin Park"; and

WHEREAS, the St. Luke's Cornwall Hospital proposes to hold a Farmers Market in Larkin Park; and

WHEREAS, holding the Farmers Market in Larkin Park requires the parties to execute a license agreement, a copy of which is attached hereto and made a part of this resolution; and

WHEREAS, this Council has reviewed such license and has determined that entering into the same would be in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to enter into the attached license agreement, in substantially the same form with other provisions as Corporation Counsel may require, with St. Luke's Cornwall Hospital to allow access to and use of City-owned property for the purpose of holding a Farmers Market.

LICENSE AGREEMENT

This Agreement, made this ____ day of _____, two thousand and thirteen, by and between the SAINT LUKE'S CORNWALL HOSPITAL, with principal offices at 70 Dubois Street, Newburgh, New York 12550 as "LICENSEE; and the CITY OF NEWBURGH, a municipal corporation organized and existing under the laws of the State of New York with offices at 83 Broadway, City Hall, Newburgh, New York 12550 as "LICENSOR";

WITNESSETH THAT:

WHEREAS, Licensee desires the license or privilege of gaining access to the premises of Licensor and in substantially the location and position shown as set forth on the map or plan hereto attached and made a part hereof and bearing the following address:

All that portion of lands now or formerly owned by the City of Newburgh, designated on the City of Newburgh Tax Maps as Carter Street between City Terrace and Dubois Street, and more accurately described in Schedule "A" of the Carter Street Easement Agreement between the City Newburgh and St. Luke's Cornwall Hospital, dated October 25, 2007, hereinafter referred to as "Larkin Park".

AND WHEREAS, Licensor is willing to give said license or privilege on the following terms and conditions:

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and conditions hereinafter contained, it is hereby agreed as follows:

First: Licensor hereby gives to Licensee, upon the conditions hereinafter stated, the license or privilege of entering upon Licensor's property located at _____, in the City of Newburgh, New York, and taking thereupon such vehicles, equipment, tools, tables, chairs and other materials as may be necessary; for the purposes of hosting a farmer's market, including but not limited to the sale of farm products, produce and other general information and demonstrations by Orange County agencies on property owned by Licensor. No permanent improvements may be erected on the premises.

Second: Licensee agrees to use and maintain said facilities in such manner as will comply fully with the provisions of any laws, ordinances or other lawful authority obtaining any and all permits required thereby.

Third: Licensor acknowledges that the use of the subject property shall inure to the benefit of both parties, and shall be satisfactory, adequate and sufficient consideration for the Licensee granted hereunder.

Fourth: Licensee hereby agrees to defend, indemnify and hold Licensor harmless against any claims, actions and proceedings brought against Licensor arising out of, in connection with and/or relating to Licensee's use of the premises. Licensee has posted evidence of and shall maintain throughout the term of this License public liability insurance naming the Licensor as additional insured in a minimum coverage amount of One Million (\$1,000,000.00) Dollars.

Fifth: This Agreement and the license or privilege term is from June 1, 2013 to October 31, 2013.

Seventh: It is understood and agreed that no vested right in said premises is hereby granted or conveyed from either party to the other, and that the privileges hereby given are subject to any and all encumbrances, conditions, restrictions and reservations upon or under which the parties hold said premises.

Eighth: Without limitation to the general provisions of this Agreement, it is understood and agreed that said facilities shall be installed in substantially the location and position shown in the attachments hereto, and in accordance with details and specifications as set forth on map or plan hereto attached and hereby made a part hereof.

WITNESSETH:

THE CITY OF NEWBURGH

LICENSOR

By: _____

Richard F. Herbek, City Manager

ST. LUKE'S CORNWALL HOSPITAL

LICENSEE

By: _____

RESOLUTION NO.: 96 - 2013

OF

May 13, 2013

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH
ADOPTING AN ENVIRONMENTAL ASSESSMENT FORM (EAF)
AND ISSUING A NEGATIVE DECLARATION UNDER
THE STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA) CONCERNING AN
AMENDMENT OF ARTICLE VII, ENTITLED "SPECIAL USE PERMITS" OF THE
ZONING ORDINANCE OF THE CITY OF NEWBURGH

WHEREAS, by Resolution No. 194-2012 of October 22, 2012, the City Council of the City of Newburgh, New York authorized the City Manager to execute a Development and Land Disposition Agreement with Mill Street Partners, LLC (the "Development Agreement") for the redevelopment of the Mid-Broadway site, which obligates the City to adopt modifications to the Zoning Code to permit the proposed development; and

WHEREAS, by Resolution No. 73-2013 of April 8, 2013, the City Council of the City of Newburgh declared itself as the Lead Agency for the environmental review of "An Ordinance to Amend Article VII, entitled "Special Use Permits" of Chapter 300 entitled "Zoning" of the Code of Ordinances of the City of Newburgh to Add Section 300-38 entitled "Large-Scale Mixed-Use Development Special Use Permit" ("the Ordinance") pursuant to 6 NYCRR 617.6; classified the adoption of the proposed ordinance as an Unlisted Action; proposed to accept as complete the Environmental Assessment Form ("EAF"); referred the proposed legislation to the Orange County Planning Department as required by General Municipal Law Section 239; and scheduled a public hearing to receive comments regarding the proposed ordinance; and

WHEREAS, in compliance with SEQRA, the City Council of the City of Newburgh now wishes to approve and adopt the EAF; and

WHEREAS, the City of Newburgh has taken a hard look at the environmental impacts of adopting the ordinance and has determined that there will be no negative environmental impacts regarding same; and

WHEREAS, the City Council finds that the adoption of the ordinance is in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York hereby adopts the EAF and issues a Negative Declaration pursuant to the SEQRA.

**ADOPTION OF AMENDMENTS TO THE TC-1 ZONING DISTRICT TO ALLOW A
LARGE-SCALE MIXED-USE DEVELOPMENT SPECIAL USE PERMIT**

City of Newburgh, New York

ENVIRONMENTAL ASSESSMENT FORM PART 1

Prepared on behalf of:

City of Newburgh City Council
City Hall
83 Broadway
Newburgh, NY 12550-5617

Prepared by:

BFJ Planning
115 Fifth Avenue
New York, NY 10003

Prepared: March 25, 2013

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Appendix A: Proposed Zoning Text Amendments

1.0 INTRODUCTION: LOCATION, PROJECT COMPATIBILITY AND DESCRIPTION OF THE PROPOSED ACTION

Pursuant to the New York State Environmental Quality Review Act [6 NYCRR Part 617 (SEQR)], the proposed action discussed in this Full Environmental Assessment Form (EAF) is the adoption of text amendments to the City of Newburgh Zoning Code to create a Large-Scale Mixed-Use Development Special Use Permit within the City's Tourist Commercial (TC-1) District.

1.1 Project Location

The City of Newburgh is located on the western shore of the Hudson River in Orange County, approximately 60 miles north of New York City. The City is bordered by the Town of Newburgh to the west and north, the Hudson River to the east and the Town of New Windsor to the south (see Figure 1). Newburgh is a small, densely settled community, comprising 3.9 square miles.

The proposed zoning text amendments will only apply within the City's TC-1 Zoning District and only to parcels located within the TC-1 District that have frontage along Broadway (see Figure 2: Existing Zoning Map). Of the 310-acres of land zoned TC-1 the proposed new large-scale mixed-use special use permit would only apply within the 13.8 acres of TC-1 land fronting Broadway located between Concord Street to the east and Colden Street to the west (see Figure 3:}.....

1.2 Project Compatibility

The proposed action is consistent with the recommendations made in the 2008 *"Plan-It Newburgh"* Sustainable Master Plan and the 2011 City of Newburgh Future Land Use Plan which was adopted as an addendum to the 2008 Master Plan.

"Plan-It Newburgh" Sustainable Master Plan

The *"Plan-It Newburgh"* Sustainable Master Plan, adopted December 8, 2008, describes the "visions and hopes of the city regarding future growth and development." Goals, targets and strategies in the Master Plan outline how the City of Newburgh will accommodate growth and development until the target date 2040. The objective of the Master Plan is to direct and guide public and private decisions and actions in a consistent and logical manner (pg. 8). Specifically, the Master Plan included targets to provide balance in the City's zoning districts to accommodate all types of land use, including mixed-use development and directing that a future land use plan be prepared to assess where residential development can be accommodated at increased densities in appropriate areas (Housing Goal 2, pg. 61-62). In addition, the Master Plan called for a

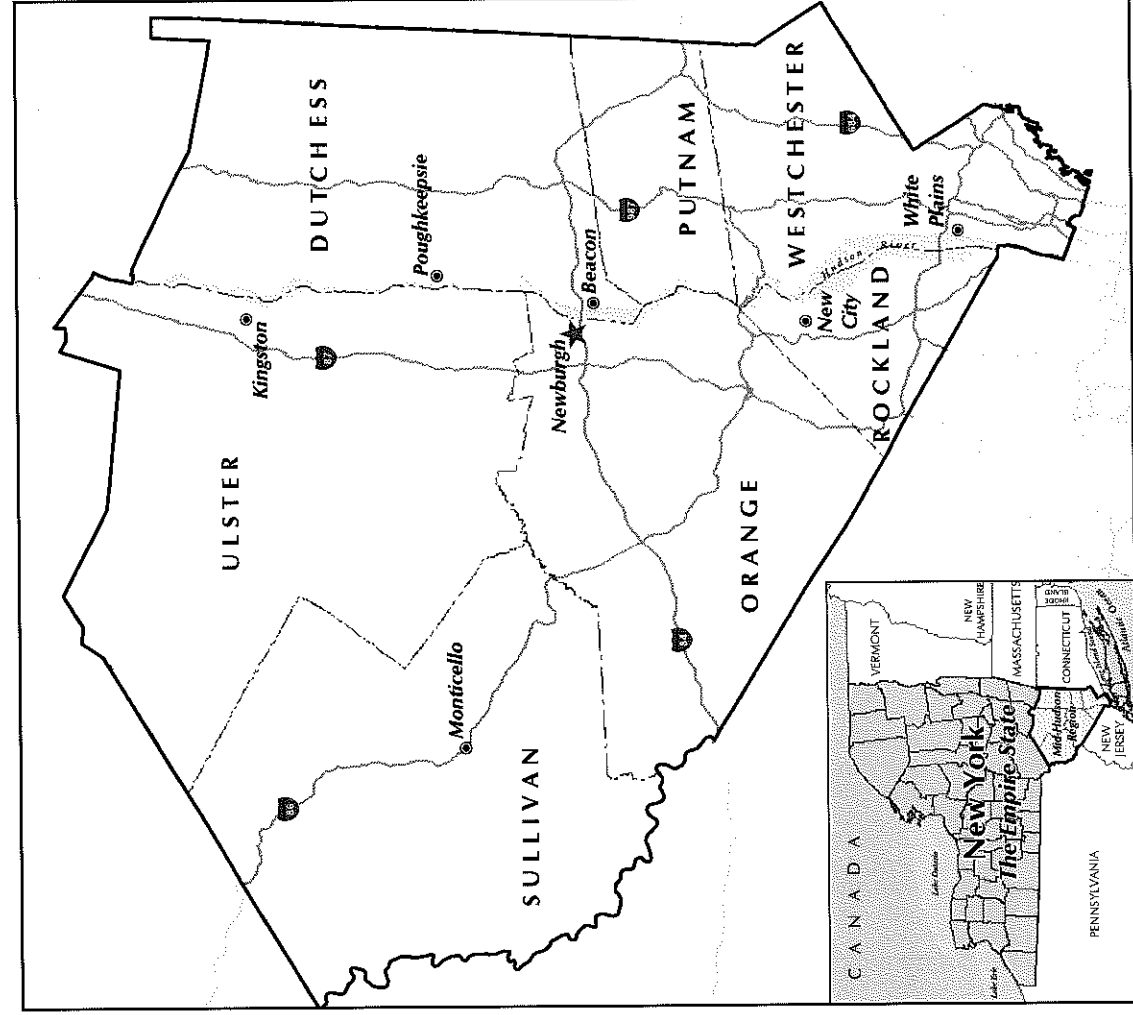
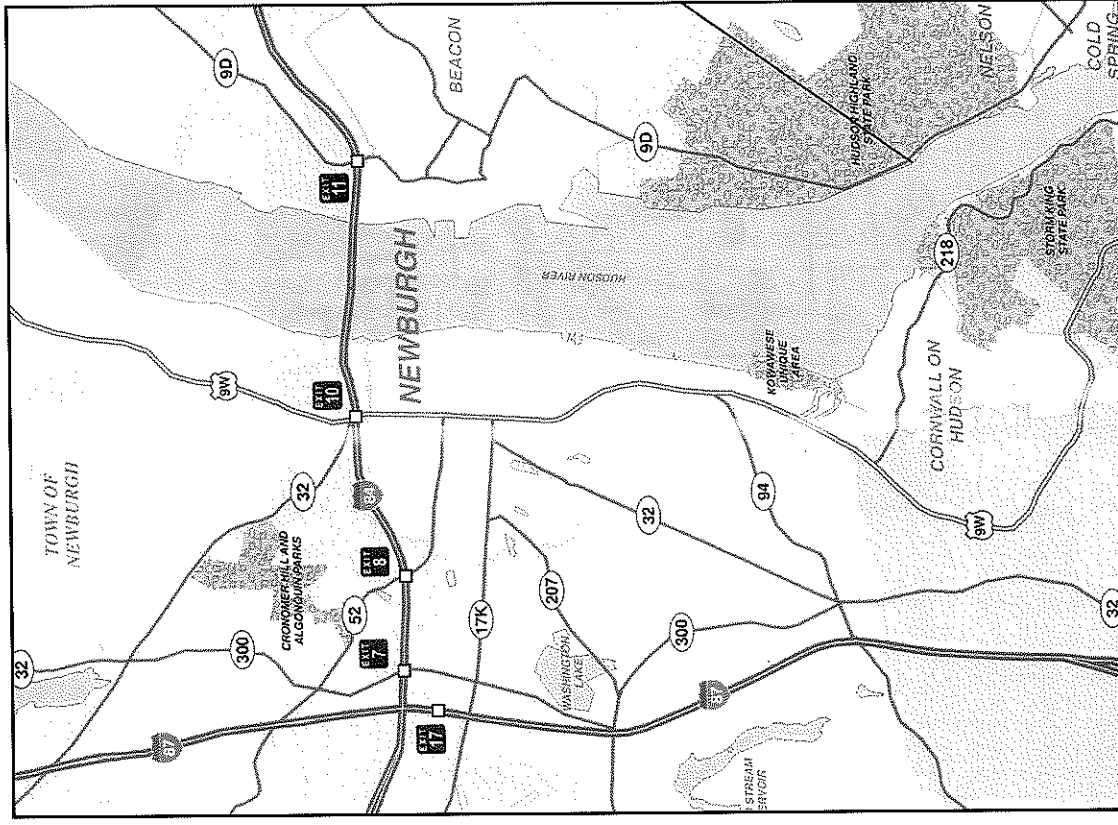


FIGURE 1: REGIONAL LOCATION MAP

LARGE-SCALE MIXED-USE DEVELOPMENT SPECIAL USE PERMIT EAF

NEWBURGH, NY

SOURCE: PLAN-IT-NEWBURGH MASTER PLAN, 2008



BEJ Planning

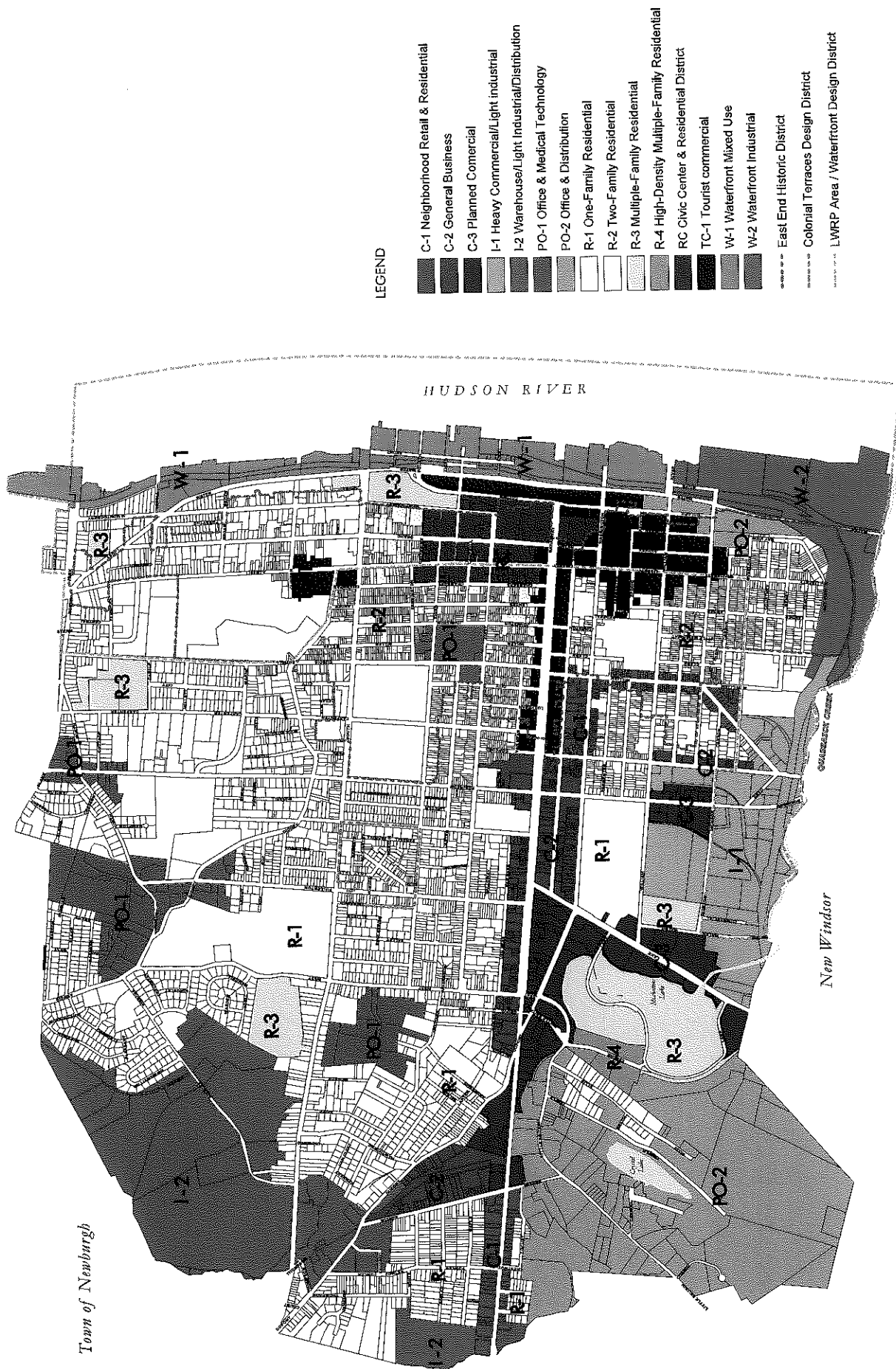
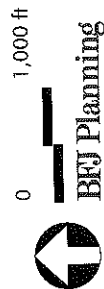


FIGURE 2: CITY OF NEWBURGH EXISTING ZONING MAP

LARGE-SCALE MIXED-USE DEVELOPMENT SPECIAL USE PERMIT EAF

NEWBURGH, NY

SOURCE: BFJ PLANNING



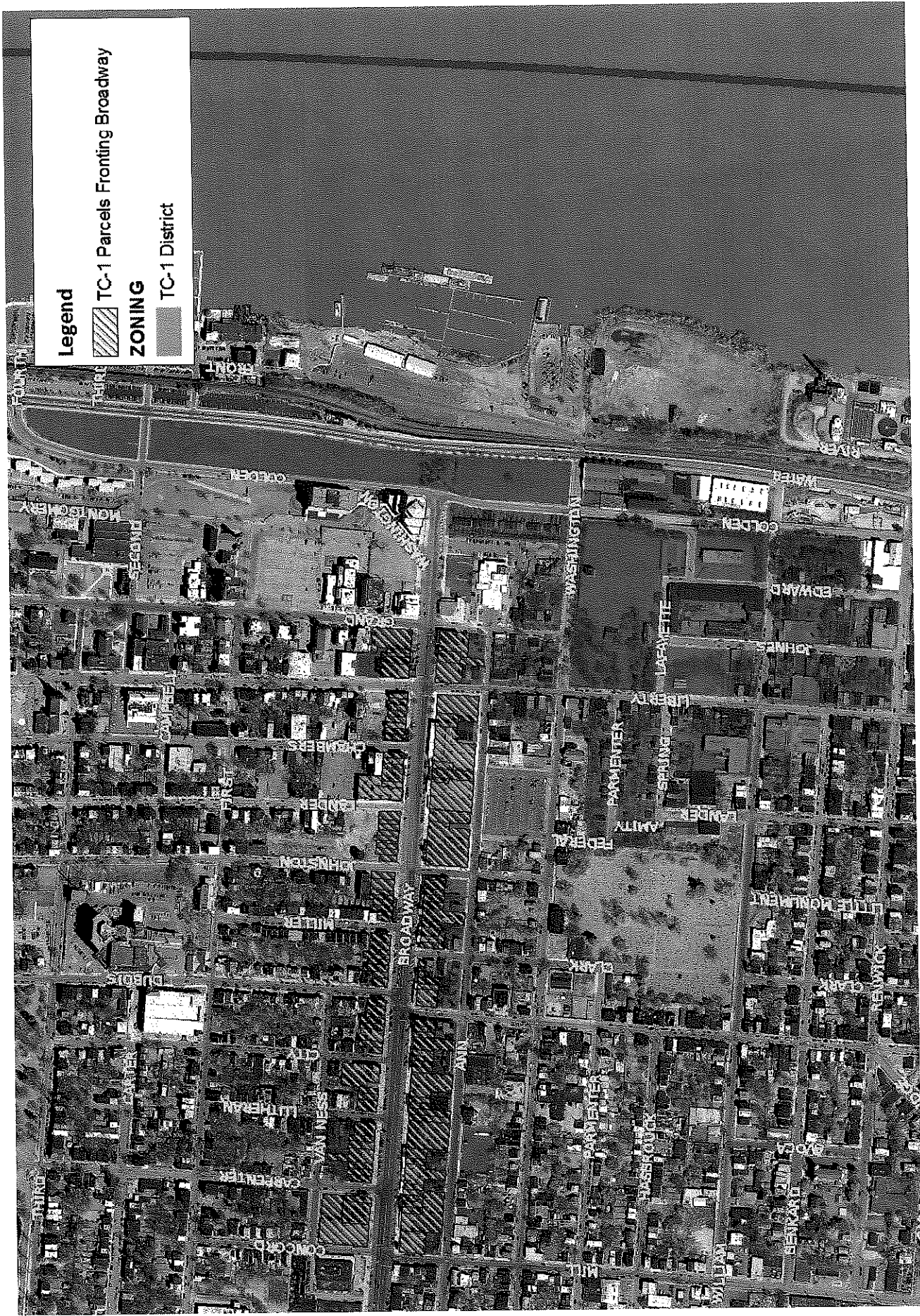


FIGURE 3: TC-1 PARCELS FRONTING BROADWAY

LARGE-SCALE MIXED-USE DEVELOPMENT SPECIAL USE PERMIT EAF

NEWBURGH, NY

SOURCE: BFJ PLANNING



BFJ Planning

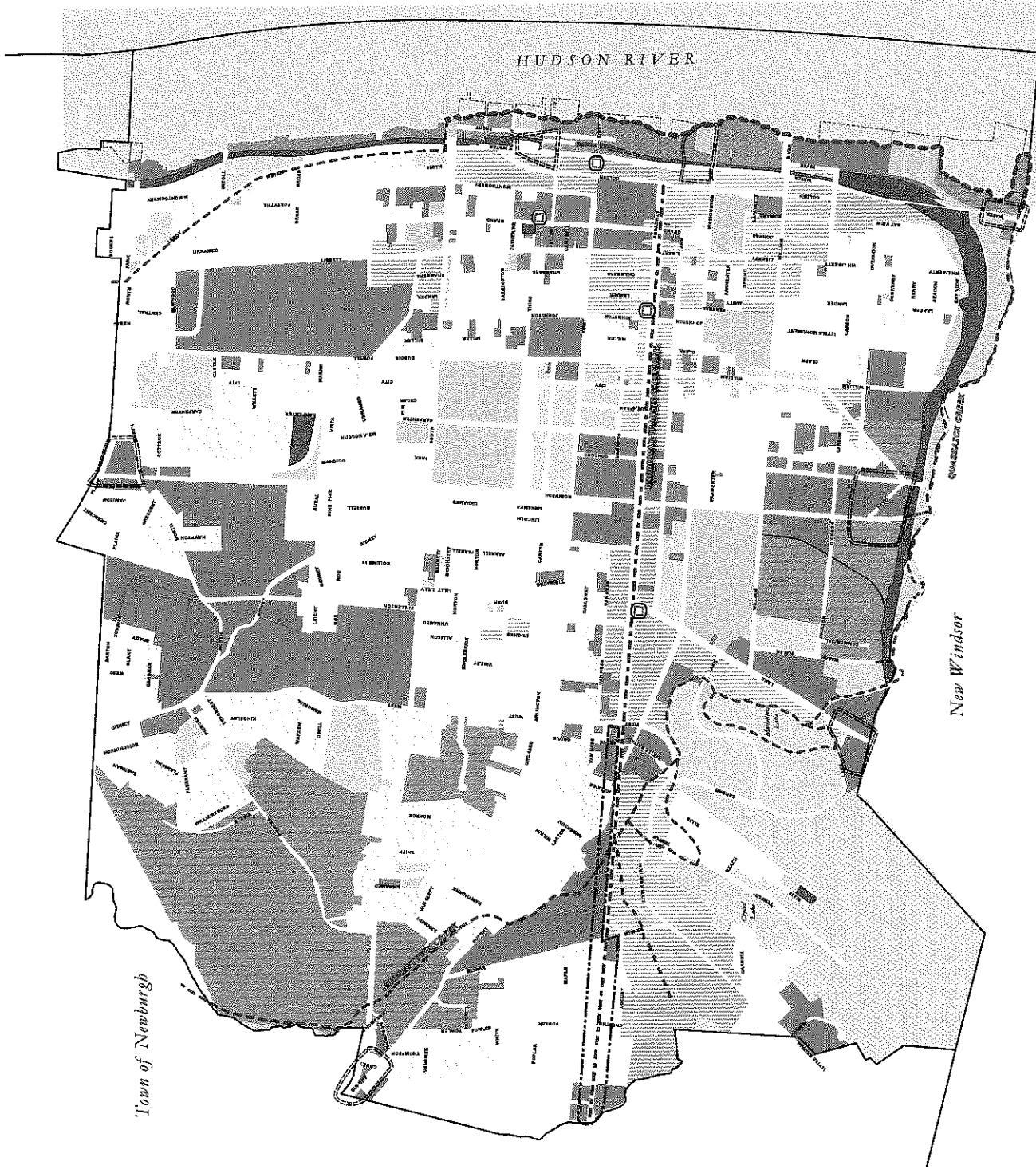
reduction in off-street parking requirements in traditional mixed-use and business/retail corridors where adequate off-street parking is within walking distance (Economic Development Goal 2, pg. 88) as well as a reduction or elimination of front yard setback requirements to allow for traditional neighborhood design (Economic Development Goal 4, pg. 90). The proposed zoning text amendments are consistent and compatible with the recommendations of the 2008 Master Plan and seek to implement, on a limited scale, the Plan recommendations outlined above.

Future Land Use Plan

Although the Master Plan identified and described issues regarding land use planning, the document did not specifically contain a future land use component, which provides a framework for potential future zoning changes. The proposed Future Land Use Plan, adopted September 12, 2011, supports the goals enumerated in the 2008 Master Plan and was prepared as an addendum to the plan, pursuant to the New York State General City Law §28. The proposed Future Land Use Plan serves as the land use component of the Master Plan. All land use regulations adopted in the City must be in accordance with the proposed Future Land Use Plan.

Specifically, the Future Land Use Plan calls for higher density mixed-use development in the Lower Broadway corridor [See Figure 4: Future Land Use Plan (Opportunity Area I, pg. 15)]. The Future Land Use Plan states that “there is a significant opportunity in this area to promote the re/development of a traditional urban/city neighborhood that has a mix of uses; is pedestrian oriented; and provides for a diverse public to live, learn, work and play” (pg. 15). Further, the plan recommends that an increase in mixed-use development in the Lower Broadway area will promote an urban lifestyle typical of thriving urban areas where residences, related commercial and entertainment uses support one another and that by promoting mixed-use development and increasing residential density in this area, the City will re-establish a physical and walkable connection between the Broadway corridor and the waterfront.

The Future Land Use Plan also included revisions to the Zoning Code are proposed to include “building coverage” standards and Floor Area Ratios (FAR), where appropriate, to the existing schedules of area and bulk controls. When combined with a height control, building coverage and FAR control density on any given site. Recommended revisions to the City’s parking standards and use group definitions as well as to the City’s administrative and enforcement aspects of the Zoning Code are also proposed.



LEGEND

- 1-4 Family
- 5+ Family
- Mixed Use w/ Res
- Commercial
- Industrial/Commercial/Recreational
- Institutional
- Conservation Area Development
- Planned Waterfront Development
- Park/Open Space
- Utility
- Broadway Transit Corridor
- Greenway
- Waterfront Buffer/Walkway
- Public Plaza
- Gateway District
- Residential Transitional Zone

FIGURE 4: FUTURE LAND USE MAP

0 1,000 ft



BET Planning

LARGE-SCALE MIXED-USE DEVELOPMENT SPECIAL USE PERMIT EAF

NEWBURGH, NY

SOURCE: NEWBURGH FUTURE LAND USE PLAN, 2011

The Plan recommends zoning changes that support the goal of increasing opportunities for mixed-use development at increased densities. In the Broadway portion of the existing TC-1 District, the Plan recommends zoning changes that would permit heights ranging from 6-8 stories and significant increases in residential densities. The proposed zoning text amendments are a first step in implementing the land use and zoning recommendations contained in the Future Land Use Plan. The proposed action is consistent and compatible with the Future Land Use Plan.

2.0 DESCRIPTION OF THE PROPOSED ACTION

The Newburgh City Council, through the adoption of the proposed action seeks to support the recommendations to provide opportunities for mixed-use development of an increased scale and density along the Lower Broadway Corridor expressed in both the 2008 Master Plan and 2011 Future Land Use Plan. The proposed zoning text amendments are compatible with both the Master Plan and Future Land Use Plan. Specifically, the City Council is proposing amendments to the City Zoning Code (§300-38 and §300 Attachment 8) adding a new special use permit subject to review and approval by the City Council to permit new large-scale mixed-use developments within the TC-1 District.

The proposed zoning text amendments would create a new "Large-Scale Mixed-Use Development" Special Use Permit within the City's existing TC-1 District. The purpose of this special use permit is to facilitate the redevelopment of vacant or underutilized properties along the Lower Broadway Corridor with a mix of vibrant residential and commercial uses. This new special use permit would be added to the *Schedule of Use and Bulk Regulations* for the TC-1 District (§300 Attachment 8). In order to apply for a large-scale mixed-use development special use permit an applicant would have to meet the following area and bulk requirements:

- Only applicable to TC-1 zoned lots with frontage on Broadway;
- Projects may extend from Broadway through the length of the block to the next public street, irrespective of the zone, provided that the portion outside the TC-1 zone is part of a unified development parcel with frontage on Broadway;
- 20,000 square foot minimum lot size;
- 100 foot minimum lot width;
- 15 foot minimum front yard and up to a 5 foot side yard, subject to reduction or elimination at the discretion of the City Council;
- 20 foot minimum rear yard; and
- Maximum building height of 65 feet/6 stories within 200 feet of Broadway and 45 feet/4 stories beyond 200 feet.

In addition, a new special use permit section (§300-38) has been added within the Zoning Code to allow large-scale mixed-use developments within the TC-1 District. This section sets forth the power, applicability, conditions to be fulfilled and the standards that must be met in order to qualify for a large-scale mixed-use development special use permit. The conditions and standards set forth in this section are similar to other special permit uses in the City, except that this special use permit can only be granted by the City Council; all other special permit uses in the City are subject to review and approval by the Planning Board. The approval authority for this special permit use has been placed with the City Council in recognition of the importance of the Lower Broadway Corridor to the City as a whole, as well as the potential benefits these types of large-scale projects could have on the City. The proposed zoning text also includes provisions for shared parking and grants the City Council the authority to modify parking requirements based on a parking analysis that demonstrates that the parking demands of a proposed development can be met through the provision of fewer spaces than those required by the City's off-street parking regulations. Finally, the City Council may also allow up to 25% of the required parking spaces to be provided at an off-site location within 300 feet of the project site.

See Appendix A for the proposed Zoning Text Amendments.

3.0 ANALYSIS OF DEVELOPMENT POTENTIAL

Based on a review of the TC-1 zoned lots with frontage along Broadway, it is projected that only two potential development sites exist that are likely to be developed under the proposed special use permit. These two sites, shown on Figure 5, are both currently vacant and meet all of the dimensional requirements set forth in the proposed zoning text amendments. Additional large-scale mixed-use development sites may exist, but due to current ownership constraints, their redevelopment would require assembling numerous parcels from multiple property owners which would most likely serve to hinder this type of large-scale development. Small scale mixed-use developments are currently permitted within the TC-1 District as-of-right.

Since the special use permit process for a large-scale mixed-use development will be discretionary and based on a review of site specific development plan, the exact number of future potential residential units and commercial square footage cannot be determined with certainty at this time. However, based on a cursory review of the two potential development sites illustrated in Figure 5, which total approximately 105,600 square feet, it is estimated that redevelopment of these parcels could result in approximately 144 residential units and 19,500 square feet of commercial space. This estimate assumes a 30% building coverage and groundfloor retail uses fronting Broadway. In addition, this estimate assumes a 6-story building within 200 feet of Broadway tapering down to a 4-story building beyond 200 feet of Broadway.



LARGE-SCALE MIXED-USE DEVELOPMENT SPECIAL USE PERMIT EAF

FIGURE 5: POTENTIAL LARGE-SCALE MIXED-USE DEVELOPMENT SITES



This potential increase in density along the Broadway Corridor and the resultant potential increase in population, could result in impacts to the City's infrastructure, including water, sewer, and transportation systems. Given that special use permits are not granted as-of-right, any site specific proposal for a large-scale mixed-use development would be required to comply with the special use permit standards set forth in the proposed zoning text amendments as well as all existing standards set forth in the City's Zoning Code, including site plan review as well site specific review under SEQR. Therefore, the exact number and unit type of residential units and associated parking requirements, the projected future population, and breakdown of commercial space cannot be determined. However, when testing the implications of new zoning, a realistic market based approach and demographic based projection of what the likely population that could result is an important benchmark.

Within this context, it is important to look at Newburgh's population over time, as well as to project anticipated future growth within the City over the next 10 years. Table 1 below, presents the City's population, as reported by the US Census, since 1940. As this table demonstrates, the City's population peaked in 1950 and steadily declined by 27% over the following 30 years. Since the 1980s the City's population has grown, but is still 9.7% lower than the 1950 historic high.

Table 1: City of Newburgh Population

Year	Population	% Change from Previous 10-year period
1940	31,883	--
1950	31,956	2.3%
1960	30,979	-3.1%
1970	26,219	-15.1%
1980	23,438	-10.6%
1990	26,454	12.9%
2000	28,259	6.8%
2010	28,866	2.1%
% Change 1950 – 2010:		-9.7%

Source: US Bureau of the Census. <http://www.census.gov/prod/www/abs/decennial>

Using population growth projections generated by Orange County¹, and adjusting for the actual 2010 US Census data, the City of Newburgh is only projected to grow to 29,410

¹The Orange County Planning Department generated population projections using four different methodologies for each of the County's municipalities. For Newburgh, depending on the methodology used, the County projected growth rates of -0.03%, 0.07%, 0.09%, and 0.17%. To be conservative, the highest projected growth rate of 0.17% has been used in this analysis. http://www.orangecountygov.com/filestorage/124/1362/3210/Municipal_Population_Projections_Comparison_Sheet.pdf

residents by 202, an increase of only 1.9% over the next 10 years and still 8.0% below the 1950 population high. The City's overall infrastructure is able to reasonably sustain the small impact of the proposed zoning text amendments as any increase in population reasonably anticipated to occur over the next 10 years would be below the peak 1950 numbers.

However, in part, the purpose of the zoning text amendments is to foster development along the Lower Broadway Corridor that could in turn result in related increases in population density. This possible increase in density could result in impacts to the City's infrastructure as discussed below².

Water

The City of Newburgh's water supply is from the Washington Lake reservoir, located at the intersection of Route 300 and Little Britain Road, in the Town of New Windsor. The Washington Lake Reservoir was constructed in 1907 and holds approximately 1.5 billion gallons of water. An emergency water supply source from the NYC Catskill Aqueduct is also available. Raw water from the reservoir is conveyed to the City's water filtration plant through a 30-inch diameter water main. The City's water filtration plant has the ability to treat approximately 9 million gallons of water per day (MGD) and its current average daily demand is 4.2 MGD. The plant employs a series of mechanical and chemical treatments to remove color, odor, and tastes along with organic material, dirt, and particles. The water then passes through a series of sand filters; chlorine is added for disinfection; fluoride is added to help promote sound dental health; and corrosion inhibitors are added to reduce the corrosive effects of water on pipes and plumbing. Once treated, the water is pumped to the distribution system.

The City water system is comprised of two zones, the high service zone, which services properties north of Broadway and west of Lake Street, and the low service zone, which services the remainder of the City, including Lower Broadway. The high service district is serviced by two water storage tanks, a one (1) million gallon tank located on Brady Avenue and a one and one half (1.5) million gallon tank located on Marne Avenue. A small pumping station is located on Marne Avenue to boost the pressure for residence located around the base of the tank (University Heights neighborhood in the vicinity of Mount St. Mary's College). The two tanks are fed by the Marne Avenue/Carter Street Pumping Station, which draws water from the low service district.

² The analysis in this section is based in part on the analysis contained in the June 2008 Preliminary DEIS for "The Newburgh Waterfront Redevelopment Project Preliminary DEIS," prepared by Saccardi & Schiff, Inc. as well as on an October 15, 2010 meeting between BFJ Planning and Craig Marti, Newburgh City Engineer.

The low service district is serviced by two (2) water storage tanks. The first tank is a two (2) million gallon tank located near the water treatment plant on Little Britain Road. A second two (2) million gallon tank is located on Ellis Avenue. The high water level of the tanks is at approximately 275 ft.

Water distribution for the City is through approximately 80 miles of water mains ranging from 4 inches to 30 inches in diameter. The mains within the City are, for the most part, interconnected for improved hydraulic characteristics and decrease of minor losses. The distribution system provides domestic water and fire demand for residents within the water district.

As demonstrated there is not a significant constraint on serving the entire City with water. The water demand of the City would have to more than double (a 100% increase in demand) before any constraints to the design capacity of the City's water filtration plant would occur. As the population of Newburgh is only projected to grow by approximately 1.9% over the next ten years, even if the zoning text amendments result in an increase in density along Lower Broadway, no impact to the City's water supply are anticipated.

According to the Newburgh City Engineer, the issue with water is not one of capacity, but rather has to do with water pressure in certain parts of the City, in particular the University Heights section. Water pressure is not an issue for areas along Lower Broadway which may increase in density as a result of proposed zoning text amendments.

Sanitary Sewer

The City of Newburgh is serviced by the City of Newburgh wastewater treatment plant (WWTP), located in the southern portion of the waterfront, off of Martin Luther King Boulevard. The WWTP has a dry weather capacity of nine (9) million gallons per day (MGD); 3.8 MGD are reserved for the Town of Newburgh and 5.2 MGD are available for the City of Newburgh. The plant currently operates at an average daily flow rate of approximately six (6) MGD, of which 1.6 MGD is generated by the Town of Newburgh. Based on the current flow rates, approximately 3 MGD of remaining plant capacity is available for use by the City of Newburgh and available to meet the needs of any future population generated by the proposed zoning text amendments; a 68% increase in demand would need to occur before the WWTP would reach dry weather capacity.

Traffic and Parking

The adoption of the proposed zoning text amendments does not appear to result in significant traffic issues along Broadway. Localized impacts at specific intersections may occur as part of implementation of future projects seeking the proposed special use permit, but these would be addressed during site specific review of future actions under

SEQR. The Newburgh Waterfront Redevelopment Project proposed the development of approximately 1,170 residential units, a 150-room hotel, 100,000 square feet of office space, and 140,000 of retail space to be located in the area just west of the TC-1 District parcels with frontage along Broadway.

The traffic study, prepared by Saccardi & Schiff, Inc. as part of the Preliminary Draft Environmental Impact Statement (DEIS) for the Waterfront Redevelopment Project found that the proposed development program outlined above would have an impact on the operation of the road network in the area, including slight changes in the level of service at the intersections of Broadway and Robinson Avenue, Robinson Avenue and South Street, Robinson Avenue and Plank Road, and North Street and Balmville Road. The DEIS did provide mitigation measures for these localized intersection impacts; these measures should be considered, and implemented, if deemed appropriate, as part of the SEQR review of future development projects seeking the large-scale mixed-use development special use permit, if deemed applicable.

In addition to on-street metered parking that is available on most of the streets located within the vicinity of the Lower Broadway Corridor, the City of Newburgh currently has a significant amount of off-street parking. Much of the off-street parking is located in close proximity to Broadway and Martin Luther King Jr. Boulevard. Currently there is approximately 22 acres of parking east of Route 9W, roughly 13 acres of which is located east of Liberty Street within close proximity to Broadway and the TC-1 District.

As demonstrated above, Newburgh has the water capacity, sewer capacity and street network capacity to sustain a substantial amount of growth. In the case of Newburgh, the population has slightly increased over the last 30 years, but is still 9.7% below its 1950 historic peak. In addition, using the most aggressive growth rate provided by the County, the population is only projected to grow by 1.9% over the next 10 years; which is still 8.0% below the historic peak. Therefore, the limited growth that might realistically be expected to occur can be accommodated by the City's existing infrastructure.

Further, as special use permits are not granted as-of-right, any site specific large-scale mixed-use development proposal would be required to comply with the special use permit standards set forth in the proposed zoning text amendments as well as all existing standards set forth in the City's Zoning Code, including site plan review as well site specific review under SEQR.

4.0 FULL ENVIRONMENTAL ASSESSMENT FORM

This EAF evaluates the potential for environmental impacts to be created by the adoption of amendments to the City of Newburgh Zoning Code to create a Large-Scale Mixed-Use Development Special Use Permit within the City's Tourist Commercial (TC-1) District. This legislative action is generic in nature, not site-specific, and does not directly result in any physical changes to the environment. Part 1 of the Full EAF is designed for a site specific action rather than area-wide or generic proposals. As a result, many of the questions in Part 1 are not relevant to the proposed action and have been answered "not applicable" or "NA."

PART 1--PROJECT INFORMATION

Prepared by Project Sponsor

NOTICE: This document is designed to assist in determining whether the action proposed may have a significant effect on the environment. Please complete the entire form, Parts A through E. Answers to these questions will be considered as part of the application for approval and may be subject to further verification and public review. Provide any additional information you believe will be needed to complete Parts 2 and 3.

It is expected that completion of the full EAF will be dependent on information currently available and will not involve new studies, research or investigation. If information requiring such additional work is unavailable, so indicate and specify each instance.

Name of Action Adoption of Amendments to the TC-1 Zoning District to allow a Large-Scale Mixed-Use Development Special Use Permit

Location of Action (include Street Address, Municipality and County)

Broadway between Concord Street and Grand Street, City of Newburgh, Orange County, NY 12550

Name of Applicant/Sponsor City of Newburgh City Council

Address City Hall, 83 Broadway

City / PO Newburgh State NY Zip Code 12550-5617

Business Telephone (845) 569-7301

Name of Owner (if different) N/A

Address _____

City / PO _____ State _____ Zip Code _____

Business Telephone _____

Description of Action:

Pursuant to the New York State Environmental Quality Review Act [6 NYCRR Part 617 (SEQR)], the proposed action discussed in this Full Environmental Assessment Form (EAF) is the adoption of text amendments to the City of Newburgh Zoning Code to create a Large-Scale Mixed-Use Development Special Use Permit within the City's Tourist Commercial (TC-1) District. The purpose of this special use permit is to facilitate the redevelopment of vacant or underutilized properties along the Lower Broadway Corridor with a mix of vibrant residential and commercial uses. This new special use permit would be added to the Schedule of Use and Bulk Regulations for the TC-1 District (§300 Attachment 8). Please see the attached project description for a detailed discussion of the proposed action.

Please Complete Each Question--Indicate N.A. if not applicable

A. SITE DESCRIPTION

Physical setting of overall project, both developed and undeveloped areas.

1. Present Land Use: ☒ Urban ☐ Industrial ☒ Commercial ☐ Residential (suburban) ☐ Rural (non-farm)
☐ Forest ☐ Agriculture ☒ Other mixed-use, vacant

2. Total acreage of project area: 13.8 acres.

APPROXIMATE ACREAGE	PRESENTLY	AFTER COMPLETION
Meadow or Brushland (Non-agricultural)	<u>N/A</u> acres	<u>N/A</u> acres
Forested	<u>N/A</u> acres	<u>N/A</u> acres
Agricultural (Includes orchards, cropland, pasture, etc.)	<u>N/A</u> acres	<u>N/A</u> acres
Wetland (Freshwater or tidal as per Articles 24,25 of ECL)	<u>N/A</u> acres	<u>N/A</u> acres
Water Surface Area	<u>N/A</u> acres	<u>N/A</u> acres
Unvegetated (Rock, earth or fill)	<u>N/A</u> acres	<u>N/A</u> acres
Roads, buildings and other paved surfaces	<u>N/A</u> acres	<u>N/A</u> acres
Other (Indicate type) <u>vacant</u>	<u>N/A</u> acres	<u>N/A</u> acres

3. What is predominant soil type(s) on project site? Urban Land

- a. Soil drainage: ☐ Well drained ____% of site ☐ Moderately well drained ____% of site.
N/A ☐ Poorly drained ____% of site

- b. If any agricultural land is involved, how many acres of soil are classified within soil group 1 through 4 of the NYS Land Classification System? N/A acres (see 1 NYCRR 370).

4. Are there bedrock outcroppings on project site? ☐ Yes ☒ No

- a. What is depth to bedrock N/A (in feet)

5. Approximate percentage of proposed project site with slopes: N/A

- ☒ 0-10% ____% ☒ 10- 15% ____% ☒ 15% or greater ____%

6. Is project substantially contiguous to, or contain a building, site, or district, listed on the State or National Registers of Historic Places? ☒ Yes ☐ No

7. Is project substantially contiguous to a site listed on the Register of National Natural Landmarks? ☐ Yes ☒ No

8. What is the depth of the water table? >6.5 (in feet)

9. Is site located over a primary, principal, or sole source aquifer? ☐ Yes ☒ No

10. Do hunting, fishing or shell fishing opportunities presently exist in the project area? ☐ Yes ☒ No

11. Does project site contain any species of plant or animal life that is identified as threatened or endangered? ☐ Yes ☐ No

According to:

Not known. The proposed action is generic in nature and will not result in any direct impacts to plant or animal species; however, the TC-1 District is predominantly comprised of urban developed land and formerly developed vacant land. The potential for threatened or endangered species limited.

Identify each species:

There are no state-designated Significant Coastal Fish and Wildlife Habitats located within Newburgh.

12. Are there any unique or unusual land forms on the project site? (i.e., cliffs, dunes, other geological formations?)

☐ Yes ☒ No

Describe:

N/A

13. Is the project site presently used by the community or neighborhood as an open space or recreation area?

☐ Yes ☒ No

If yes, explain:

14. Does the present site include scenic views known to be important to the community? ☒ Yes ☐ No

Newburgh's View Preservation District regulations identify the following view planes for protection: Grand and Washington Streets, Washington's Headquarters, Broadway and Colden Street, Grand and Second Streets, Public Library, First and Grand Streets.

15. Streams within or contiguous to project area:

None.

a. Name of Stream and name of River to which it is tributary

16. Lakes, ponds, wetland areas within or contiguous to project area:

None.

b. Size (in acres):

17. Is the site served by existing public utilities? ☒ Yes ☐ No
- a. If **YES**, does sufficient capacity exist to allow connection? ☐ Yes ☐ No N/A
- b. If **YES**, will improvements be necessary to allow connection? ☐ Yes ☐ No N/A
18. Is the site located in an agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304? ☐ Yes ☒ No
19. Is the site located in or substantially contiguous to a Critical Environmental Area designated pursuant to Article 8 of the ECL, and 6 NYCRR 617? ☐ Yes ☒ No

20. Has the site ever been used for the disposal of solid or hazardous wastes? ☐ Yes ☒ No

B. Project Description N/A*

1. Physical dimensions and scale of project (fill in dimensions as appropriate).

- a. Total contiguous acreage owned or controlled by project sponsor: N/A acres.
- b. Project acreage to be developed: N/A acres initially; N/A acres ultimately.
- c. Project acreage to remain undeveloped: N/A acres.
- d. Length of project, in miles: N/A (if appropriate)
- e. If the project is an expansion, indicate percent of expansion proposed. N/A %
- f. Number of off-street parking spaces existing N/A; proposed N/A
- g. Maximum vehicular trips generated per hour: N/A (upon completion of project)?
- h. If residential: Number and type of housing units: N/A

	One Family	Two Family	Multiple Family	Condominium
Initially	<u> </u>	<u> </u>	<u> </u>	<u> </u>
Ultimately	<u> </u>	<u> </u>	<u> </u>	<u> </u>

- i. Dimensions (in feet) of largest proposed structure: N/A height; N/A width; N/A length.
- j. Linear feet of frontage along a public thoroughfare project will occupy is? N/A ft.

2. How much natural material (i.e. rock, earth, etc.) will be removed from the site? N/A tons/cubic yards.

3. Will disturbed areas be reclaimed ☐ Yes ☐ No ☒ N/A

a. If yes, for what intended purpose is the site being reclaimed?

b. Will topsoil be stockpiled for reclamation? ☐ Yes ☐ No

c. Will upper subsoil be stockpiled for reclamation? ☐ Yes ☐ No

4. How many acres of vegetation (trees, shrubs, ground covers) will be removed from site? N/A acres.

*The proposed action is the adoption of a Zoning Text Amendments to the City's TC-1 District to allow a new special use permit with respect to large-scale mixed-use developments. This legislative action is generic in nature, not site-specific, and does not directly result in physical changes to the environment. Thus, project-related impacts assumed by the EAF are generally not applicable or variable dependent on location within the City.

5. Will any mature forest (over 100 years old) or other locally-important vegetation be removed by this project?

☐ Yes ☒ No

6. If single phase project: Anticipated period of construction: N/A months, (including demolition)

7. If multi-phased:

a. Total number of phases anticipated _____ (number)

b. Anticipated date of commencement phase 1: _____ month _____ year, (including demolition)

c. Approximate completion date of final phase: _____ month _____ year.

d. Is phase 1 functionally dependent on subsequent phases? ☐ Yes ☐ No

8. Will blasting occur during construction? ☐ Yes ☐ No N/A

9. Number of jobs generated: during construction N/A ; after project is complete N/A

10. Number of jobs eliminated by this project None .

11. Will project require relocation of any projects or facilities? ☐ Yes ☐ No N/A

If yes, explain:

12. Is surface liquid waste disposal involved? ☐ Yes ☐ No N/A

a. If yes, indicate type of waste (sewage, industrial, etc) and amount _____

b. Name of water body into which effluent will be discharged _____

13. Is subsurface liquid waste disposal involved? ☐ Yes ☒ No Type _____

14. Will surface area of an existing water body increase or decrease by proposal? ☐ Yes ☒ No

If yes, explain:

15. Is project or any portion of project located in a 100 year flood plain? ☐ Yes ☒ No

16. Will the project generate solid waste? ☐ Yes ☐ No N/A

a. If yes, what is the amount per month? _____ tons

b. If yes, will an existing solid waste facility be used? ☐ Yes ☐ No

c. If yes, give name _____ ; location _____

d. Will any wastes not go into a sewage disposal system or into a sanitary landfill? ☐ Yes ☐ No

e. If yes, explain:

17. Will the project involve the disposal of solid waste? ☐ Yes ☒ No

a. If yes, what is the anticipated rate of disposal? _____ tons/month.

b. If yes, what is the anticipated site life? _____ years.

18. Will project use herbicides or pesticides? ☐ Yes ☐ No N/A

19. Will project routinely produce odors (more than one hour per day)? ☐ Yes ☐ No N/A

20. Will project produce operating noise exceeding the local ambient noise levels? ☐ Yes ☐ No N/A

21. Will project result in an increase in energy use? ☐ Yes ☐ No N/A

If yes, indicate type(s)

22. If water supply is from wells, indicate pumping capacity N/A gallons/minute.

23. Total anticipated water usage per day N/A gallons/day.

24. Does project involve Local, State or Federal funding? ☐ Yes ☒ No

If yes, explain:

25. Approvals Required:

		Type	Submittal Date
City, Town, Village Board	☒ Yes ☐ No	<u>City Council - Resolution to</u> <u>Amend Zoning Text</u>	<u> </u> <u> </u> <u> </u>
City, Town, Village Planning Board	☐ Yes ☒ No	<u>Referral to Newburgh</u> <u>Planning Board</u> <u>Referrals to adjoining</u> <u>municipalities: Town of</u> <u>Newburgh, Town of New</u> <u>Windsor</u>	<u> </u> <u> </u> <u> </u> <u> </u> <u> </u>
City, Town Zoning Board	☐ Yes ☒ No		<u> </u> <u> </u> <u> </u> <u> </u> <u> </u>
City, County Health Department	☐ Yes ☒ No		<u> </u> <u> </u> <u> </u> <u> </u> <u> </u>
Other Local Agencies	☐ Yes ☒ No	<u>Referral to County Planning</u> <u>Department</u>	<u> </u> <u> </u> <u> </u> <u> </u> <u> </u>
Other Regional Agencies	☐ Yes ☒ No		<u> </u> <u> </u> <u> </u> <u> </u> <u> </u>
State Agencies	☐ Yes ☒ No		<u> </u> <u> </u> <u> </u> <u> </u> <u> </u>
Federal Agencies	☐ Yes ☒ No		<u> </u> <u> </u> <u> </u> <u> </u> <u> </u>

C. Zoning and Planning Information

1. Does proposed action involve a planning or zoning decision? ☒ Yes ☐ No

If Yes, indicate decision required:

- | | | | |
|--|---|---|--------------------------------------|
| ☒ Zoning amendment | ☐ Zoning variance | ☒ New/revision of master plan | ☐ Subdivision |
| ☐ Site plan | ☐ Special use permit | ☐ Resource management plan | ☐ Other |

2. What is the zoning classification(s) of the site?

TC-1 Tourist Commercial

3. What is the maximum potential development of the site if developed as permitted by the present zoning?

Approximately 937,759 square feet.

4. What is the proposed zoning of the site?

N/A.

5. What is the maximum potential development of the site if developed as permitted by the proposed zoning?

N/A.

6. Is the proposed action consistent with the recommended uses in adopted local land use plans? ☒ Yes ☐ No

The Propose Zoning Text Amendments are consistent with both the 2011 Future Land Use Plan and the 2008 Sustainable Master Plan.

7. What are the predominant land use(s) and zoning classifications within a ¼ mile radius of proposed action?

Uses within a 1/4-mile include residential, office, commercial and institutional zones.

Zoning districts include: C-1 Neighborhood Retail and Residential, C-2 General Business, RC Civic Center and Residential District, R-2 Two-family Residential, PO-1 Office and Medical Technology, and R-1 One-Family Residential.

8. Is the proposed action compatible with adjoining/surrounding land uses with a ¼ mile? ☒ Yes ☐ No

9. If the proposed action is the subdivision of land, how many lots are proposed? No

- a. What is the minimum lot size proposed? _____

10. Will proposed action require any authorization(s) for the formation of sewer or water districts? ☐ Yes ☒ No

11. Will the proposed action create a demand for any community provided services (recreation, education, police, fire protection)?

☐ Yes ☒ No

a. If yes, is existing capacity sufficient to handle projected demand?

☐ Yes ☐ No

12. Will the proposed action result in the generation of traffic significantly above present levels? ☐ Yes ☒ No

a. If yes, is the existing road network adequate to handle the additional traffic.

☐ Yes ☐ No

D. Informational Details

Attach any additional information as may be needed to clarify your project. If there are or may be any adverse impacts associated with your proposal, please discuss such impacts and the measures which you propose to mitigate or avoid them.

E. Verification

I certify that the information provided above is true to the best of my knowledge.

Applicant/Sponsor Name Sarah K. Yackel Date March 25, 2013

Signature *Sarah K. Yackel*

Title Associate Principal, BFJ Planning

If the action is in the Coastal Area, and you are a state agency, complete the Coastal Assessment Form before proceeding with this assessment.

Appendix A

Proposed Zoning Text Amendments

Article VII. SPECIAL USE PERMITS

§ 300-35. Special uses.

§ 300-36. Procedures.

§ 300-37. Standards for individual special uses.

§ 300-38. Large-Scale Mixed-Use Development Special Use Permit
and § 300-39. (Reserved)

§ 300-35. Special uses.

A. Power. The Planning Board shall have the power to hear and decide on applications to permit the proper integration into the community of uses which may be suitable only in specific locations in a zone or only if such uses are designed and laid out on the site in a particular manner, provided that this chapter otherwise permits such uses subject to the validation of the Planning Board.

B. Conditions to be fulfilled. In applying for a special use permit, the applicant need not demonstrate hardship, since the basis for the action is general benefit to the City as a whole. In granting a special use permit, the Planning Board, with due regard to the nature and condition of all adjacent structures and uses, the zone within which the same is located, the Master Plan, the Local Waterfront Revitalization Program (LWRP) and any relevant urban renewal plans, shall find all of the following general conditions to be fulfilled:

(1) The use requested is listed among the special uses in the zone for which application is made.

(2) The special use is essential or desirable to the public convenience or welfare.

(3) The special use will not impair the integrity or character of the zone or adjoining zones nor be detrimental to the health, morals or welfare.

(4) The special use will be in conformity with the Master Plan.

(5) Consistency with policies.

(a) The special use, if undertaken within the waterfront area, will be consistent with the LWRP policies, standards and conditions, which are derived from and further explained and described in Section III of the City of Newburgh LWRP.

[1] To revitalize deteriorated and underutilized waterfront areas (Policies 1, 1A, 1B, 1C, 1D and 1E).

[2] To retain and promote commercial and recreational water-dependent uses (Policy 2).

[3] To strengthen the economic base of smaller harbor areas by encouraging traditional uses and activities (Policies 4 and 4A).

[4] To ensure that development occurs where adequate public infrastructure is available to reduce health and pollution hazards (Policy 5).

[5] To protect significant and locally important fish and wildlife habitats from human disruption and chemical contamination (Policies 7, 7A, 8 and 8A).

[6] To maintain and expand commercial fishing facilities to promote commercial and recreational fishing opportunities (Policies 9, 9A and 10).

[7] To minimize flooding and erosion hazards through nonstructural means, carefully selecting long-term structural measures and appropriate siting of structures (Policies 11, 11A, 12, 13, 14, 16, 17 and 28).

[8] To safeguard economic, social and environmental interests in the coastal area when major actions are undertaken (Policies 18 and 18A).

[9] To maintain and improve public access to the shoreline and to water-related recreational facilities while protecting the environment (Policies 2, 19, 19A, 20, 20A, 21, 21A, 21B, 22 and 22A).

[10] To protect and restore historic and archaeological resources (Policies 23 and 23A).

[11] To protect and upgrade scenic resources (Policy 25).

[12] To site and construct energy facilities in a manner which will be compatible with the environment and contingent upon the need for a waterfront or water location (Policies 27, 29 and 40).

[13] To prevent ice management practices which could damage significant fish and wildlife and their habitat (Policy 28).

[14] To protect surface and groundwater from direct and indirect discharge of pollutants and from overuse (Policies 30, 31, 33, 34, 35, 36, 36A, 37 and 38).

[15] To perform dredging and dredge spoil in a manner protective of natural resources (Policies 15 and 35).

[16] To handle and dispose of solid and hazardous wastes and effluents in a manner which will not adversely affect the environment nor expand existing landfills (Policies 39 and 39A).

[17] To protect air quality (Policies 41, 42 and 43).

[18] To protect freshwater wetlands (Policy 44).

(b) The Planning Board will consider the recommendations of the Waterfront Advisory Committee when determining consistency with the above policies.

C. Factors to be considered. In making such determination, the Planning Board shall give consideration to any or all of the following as they may be appropriate:

(1) The character of the existing uses and the probable development of uses in the district and the peculiar suitability of such district for the location of any of such permissive uses.

(2) The conservation of property values and the encouragement of the most appropriate uses of land.

- (3) The effect that the location of the proposed use may have upon the creation of or undue increase of vehicular traffic congestion on public street or highways.
- (4) The availability of adequate and proper public or private facilities for the treatment, removal or discharge of sewage, refuse or other effluent, whether liquid, solid, gaseous or otherwise, that may be caused or created by or as a result of the use.
- (5) Whether the use or materials incidental thereto or produced thereby may give off obnoxious gases, odors, smoke or soot.
- (6) Whether the use will cause disturbing emission of electrical discharges, dust, light, vibration, noise or radioactivity.
- (7) Whether the operations in pursuance of the use will cause undue interference with the orderly enjoyment by the public of parking or of recreational facilities, if existing, or if proposed by the City or by other competent governmental agency.
- (8) The necessity for bituminous-surfaced space for the purpose of off-street parking of vehicles incidental to the use and whether such space is reasonably adequate and appropriate in area and design and can be furnished by the owner of the plot sought to be used within or adjacent to the plot wherein the use shall be had.
- (9) Whether a hazard to life, limb or property because of fire, flood, erosion or panic may be created by reason of or as a result of the use, by the structures to be used therefor, by the inaccessibility of the property or structure thereon for the convenient entry and operation of fire and other emergency apparatus or by the undue concentration or assemblage of persons upon such plot.
- (10) Whether the use of the structures to be used therefor will cause an overcrowding of land or undue concentration of population.
- (11) Whether the plot area is sufficient, appropriate and adequate for the use and the reasonably anticipated operation and expansion thereof.
- (12) Whether the use to be operated is unreasonably near to a church, school, theater, recreational area or other place of public assembly.

D. Planning Board action. The Board may approve, approve with modifications, or disapprove any application for a special use permit. The Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed special use permit and may be necessary in the Board's opinion to meet the objectives herein set forth. Upon its granting of said special use permit, any such conditions must be met in connection with the issuance of permits by applicable enforcement agents or officers of the City.

- (1) Such conditions may include a time limitation.
- (2) Conditions may be imposed which require that one or more improvements be done before the use requested can be initiated; for example, that a solid board fence be erected entirely around the site to a height of six feet before the use requested is initiated.

(3) Conditions of a continuing nature may be imposed. For example, exterior loudspeakers shall not be used between the hours of 10:00 p.m. and 9:00 a.m.

(4) The Planning Board may establish a schedule of inspection to be conducted by the Building Inspector to determine continued compliance with this chapter and any conditions of the special use permit.

E. Reversion to permitted use. Whenever all the conditions required are of such type that they can be completely and permanently satisfied, the administrative official, upon request of the applicant, may, if the facts warrant, make a determination that the conditions have been satisfied and enter said determination on the file copy of the special use permit. Thereafter, said special use, provided that it continues to meet the other requirements of the chapter, will be treated as a permitted use.

F. Compliance with other codes. Granting of a special use permit does not exempt the applicant from complying with all of the requirements of building codes and other ordinances.

G. Revocation. In any case where the conditions of a special use permit have not been or are not being complied with, the administrative official shall give the permittee notice of intention to revoke such permit at least 10 days prior to a Planning Board review thereon. After conclusion of the review, the Planning Board may authorize the administrative official to revoke such permit.

H. Expiration. In any case where a special use permit has not been exercised within the time limit set by the Planning Board, or within one year if no specific time limit has been set, then, without further action, the permit shall be null and void. "Exercised," as set forth in this section, shall mean that binding contracts for the construction of the main building have been let or, in the absence of contracts, that the main building is under construction to a substantial degree or that prerequisite conditions involving substantial investment are contracted for, in substantial development, or completed (sewage, drainage, etc.). When construction is not a part of the use, "exercised" shall mean that the use is in operation in compliance with the conditions set forth in the permit.

§ 300-36. Procedures.

The powers and duties of the Planning Board shall be exercised in accordance with the procedures set forth in this article plus the following additional procedures:

A. Strict compliance. The Planning Board shall act in strict accordance with the procedures specified by law and by this chapter.

B. Fees. All applications made to the Planning Board shall be accompanied by the fee established by the City Council as provided for in § 300-83. The Board may, in its discretion, return to the applicant part or all of the fee paid by him in the event that his appeal is under § 300-78 hereof and is partially or wholly successful. The fees filed in connection with applications under § 300-35 shall not be returnable regardless of the disposition of the case by the Planning Board.

C. Submission. An application for a special use permit shall be submitted to the Planning Board office on the last business day of the month preceding the month in which the application is to be heard.

D. Contents of applications. Each application shall fully set forth the circumstances of the case. Every application shall refer to the specific provision of the chapter involved.

- E. Site plan required. Application for a special use permit shall require site plan approval in accordance with the site plan regulations contained in this chapter, except that the Planning Board may waive site plan approval for a special use permit application that will involve no physical alteration or disturbance to a site. At a minimum, the application for a special permit use shall be accompanied by a plan showing the size and location of the lot, and the location of all buildings and proposed facilities, including access drives, parking areas, and all streets within 200 feet of the lot lines.
- F. Public hearings. The Planning Board shall conduct a public hearing within 62 days from the day a complete application is received by the Planning Board. At least 10 days prior to such hearing the Secretary of the Board shall mail, by regular mail, at the applicant's expense, a notice of such hearing and of the substance of the application to the owners of all properties within 300 feet of the exterior boundaries of the property affected by the application. At least 10 days prior to such hearing, the Secretary of the Planning Board, at the expense of the applicant, to be paid in advance, shall cause to be published in the official newspaper of the City a notice of such hearing and of the substance of the appeal or application. Prior to said hearing, the applicant shall submit to the Board affidavits of the Secretary of the Board swearing that the required mailings and publication have been performed, which documents shall become part of the application. For the purpose of the mailings required by this section, the term "owner" shall be construed to mean the owner as indicated on the assessment roll of the City of Newburgh.
- G. Notice to the applicant and the Orange County Planning Department. At least 10 days prior to the public hearing, the Planning Board shall mail notices thereof to the applicant and to the Orange County Planning Department, as required by § 239-m of the General Municipal Law, which shall be accompanied by a full statement of the matter under consideration, as defined therein.
- H. Architectural Review Commission advisory opinion. The Planning Board shall, within 10 days of its submission, refer any special use permit application within historic districts or architectural design districts to the Architectural Review Commission for review and recommendations. The Planning Board shall defer any decision on these matters pending the receipt of a report from the Architectural Review Commission.
- I. Waterfront Advisory Committee. Whenever a request for a special use permit involves a use to be located within the City's waterfront districts, the Planning Board shall refer a copy of a completed coastal assessment form (CAF) to the Waterfront Advisory Committee within 10 days of its submission and, prior to making its determination, shall consider the recommendation of the Waterfront Advisory Committee with reference to the consistency of the proposed action as set forth in Chapter 296 of the Code of the City of Newburgh, known as the "City of Newburgh Waterfront Consistency Review Law." In the event that the Waterfront Advisory Committee recommendation is not forthcoming within 30 days following referral of the CAF, the Planning Board shall make its decision without the benefit of the Waterfront Advisory Committee recommendation.
- J. Decision. The Planning Board shall decide upon an application within 62 days after the public hearing is closed. The time within which the Planning Board must render its decision may be extended by mutual consent of the applicant and the Planning Board.
- K. Filing. The decision of the Planning Board shall be filed in the office of the City Clerk within five business days after such decision is rendered and a copy thereof mailed to the applicant.

L. Existing violations. No special use permit shall be issued for property where the Building Inspector has found a violation of this chapter, and where such violation has not been corrected, unless the granting of such special use permit and site plan approval will result in a correction of said violation.

M. Area variance. Where a proposed special use permit would require an area variance, an application may be made to the Zoning Board of Appeals without the necessity of a denial of an administrative official charged with enforcement of this chapter.

§ 300-37. Standards for individual special uses.

The following individual standards are hereby established for special uses:

A. Garages, filling stations, auto repair shops, used car lots, automobile painting, automobile rebuilding or reconditioning, tire retreading or recapping, and taxi and limousine service shall be subject to the following:

- (1) Notwithstanding any grant of authority contained elsewhere in this chapter, no special permit or variance shall be granted for a use enumerated herein to be located within a designed historic district or architectural design district unless the Architectural Review Commission shall certify to the Planning Board that said use will not be out of keeping with the architectural character of the district and will not be out of harmony with the style, materials, colors, line and details of the buildings in the district and that said use will not detrimentally affect the preservation of the beauty and character of the district. Said certification must be reviewed by the Planning Board prior to its acceptance of any application for a special use permit.
- (2) Any special use permit granted shall be granted only for an initial period of six months, after which the Planning Board shall review the compliance with the permit conditions and may vote to permanently grant the permit or to continue the special permit for an additional limited time period, in the absence of which said special permit shall lapse and become null and void.
- (3) Sufficient off-street parking is to be provided for all cars brought for repair; a minimum of five off-street parking spaces are to be provided.
- (4) No repair or storage of vehicles shall be on the public street.
- (5) The property must be maintained in a neat and orderly manner with no accumulation of junk vehicles, tires, auto parts, garbage, refuse or debris on the property.
- (6) Hours of operation are to be established by the Planning Board so as to limit the effect of noise and traffic on the neighborhood.
- (7) All facilities are to conform to the New York State Uniform Fire Prevention and Building Code, environmental regulations and sewer use regulations and ordinances, particularly in regard to prevention of the discharge of oil, grease, or other petroleum products into the public sewers.
- (8) All surfaces for vehicle travel or storage are to be provided with a desirable dustless surface to be approved by the Planning Board and an adequate system of storm drainage.

(9) All lighting is to be installed in accordance with a plan to be submitted to and approved by the City Engineer and the Building Inspector and so designed as to prevent light from being thrown onto neighboring properties.

(10) All parking, vehicle storage areas and driveways must be constructed so as to meet the requirements of Article VIII of this chapter.

(11) The use shall be screened from all abutting residences or residential districts in accordance with § 300-12 of this chapter, except that the Planning Board may permit the substitution of an eight-foot-high wooden fence or masonry wall as a substitute for or in addition to the plantings provided in § 300-12. The screening strips of 10 feet in width must be measured entirely within the property lines of the parcel to be devoted to the use.

(12) The Planning Board shall have the power to impose such additional conditions as it may deem required in accordance with the standards established by § 300-35 of this chapter. However, the Planning Board shall not have the power to delete or modify any of the conditions required by Subsection A(1) through (11) of this section.

(13) Where the Zoning Board of Appeals has approved a special use permit and said permit is subject to renewal, the Planning Board shall be responsible for renewing said special use permit.

B. Home occupation or professional office. Customary home occupations are deemed to be accessory uses to a single-family detached dwelling subject to the requirements contained herein. A home occupation shall not require full site development plan submission. However, an applicant shall be required to submit a lot survey indicating the location of the home and the area of the home to be used for purposes of the home occupation.

(1) The minimum lot size shall be 7,500 square feet.

(2) Such occupation is carried on in an area not exceeding 25% of the gross floor area of the principal building.

(3) At no time shall any premises be used in such a manner to cause the emanation therefrom of offensive or noxious odors, vapors, fumes, glare, dust, smoke, gas, vibration, noise or radiation or be used in such a manner as to cause injury, annoyance or disturbance to any of the surrounding properties and to their owners and occupants.

(4) Equipment capable of causing interference with radio or television reception in the neighborhood shall be prohibited unless also equipped with means to prevent such interference.

(5) There shall be no outdoor storage of materials, supplies, or equipment associated with the home occupation.

(6) Such occupation is incidental to the residential use of the premises and is carried on in the principal building by a resident therein with not more than two nonresident assistants.

(7) A studio where dancing or music instruction is offered is permitted, provided only up to a maximum of four pupils at any one time are instructed. Concerts or recitals are prohibited.

(8) The Planning Board may restrict the number of deliveries of materials or supplies associated with the home occupation.

(9) The Planning Board may approve the operation of a home occupation subject to any condition it deems necessary to ensure that the use does not diminish or impact the peace, security and the overall residential quality of the neighborhood.

C. Day-care center. The standards for a day-care center shall be as follows:

(1) The application shall describe the anticipated occupancy of the facility by age group, i.e., infant, toddler, and school age, and the hours of operation of the facility.

(2) A floor plan of the day-care center shall be submitted.

(3) In addition to the parking space requirements contained in Article VIII, Table 1, *Editor's Note: See § 300-45*, additional parking spaces shall be provided for dropoff and pickup of children at a rate of one parking space per 15 children. Said spaces shall be provided directly in front of the facility along an internal driveway or in an approved parking area. The most appropriate location for dropoff parking shall include a consideration of emergency access and shall be determined by the Planning Board during site plan review. The dropoff location shall be clearly posted with appropriate signage or pavement markings. Fire lanes shall not be used for dropoff areas.

(4) A minimum outdoor play area of 125 square feet per child under three years of age, or per child three and over, whichever is greater, shall be provided. Said outdoor play area shall be located at a minimum distance of 25 feet from any lot line or from any parking area and 50 feet from any public right-of-way. Outdoor play areas shall be directly accessible from the principal structure and shall not require crossing any street, driveway, or parking area for access. The Planning Board may, as part of site plan review and in consultation with the prospective operator, modify the area requirement to apply only to the largest age group enrollment scheduled to use the outdoor play area at one time.

(5) A six-foot-high solid fence or opaque fence combined with hedge or tree plantings shall be provided to screen the outdoor play area where it abuts a residential zoning district.

(6) Said facility shall provide a minimum of two exits.

(7) Day-care centers shall adhere to the requirements of the New York State Uniform Fire Prevention and Building Code and all other applicable state guidelines that govern said uses.

(8) If included as part of a professional office building, said day-care center shall occupy the ground floor only.

(9) Hallways with a length of 20 feet or greater between the building exterior and the day-care center shall be prohibited.

D. Bed-and-breakfasts shall be subject to the following:

(1) Applicability. A bed-and-breakfast is permitted as an accessory use to a single-family residence. A single-family residence must be in existence at the date of adoption of these regulations to

become eligible to be a bed-and-breakfast. Except as otherwise specified herein, the single-family residence shall be required to meet the bulk requirements for single-family residences within the applicable zoning district.

(2) Application submission. In addition to the general requirements for special use permit approval, the applicant shall also submit:

- (a) A sketch showing the floor plan of the home and the location of proposed guest rooms.
- (b) A site plan delineating the location of the residence on the tax parcel, minimum setback distances, proposed parking areas, proposed screening, and any other information applicable.
- (c) If a sign is proposed, a sign plan, including type and location of illumination, if proposed.
- (d) A certification that the owner resides and will continue to reside within the residence while the special use permit is in effect. A change in owner occupancy shall require renewal of the special use permit.
- (e) Proof of insurance to operate a bed-and-breakfast.

(3) Requirements and conditions of operation.

- (a) The bed-and-breakfast shall be the primary residence of the owner.
- (b) The number of paying guests accommodated per night shall not exceed 10 guests, and no guest shall stay for a period exceeding 15 days. The bed-and-breakfast shall maintain a guest registry identifying the arrival and departure dates of guests.
- (c) A maximum of two adult guests and accompanying minor children shall be allowed to occupy each guest bedroom, subject to fire safety standards.
- (d) There shall be no more than five bedrooms occupied by paying guests. Said rooms shall not be equipped with a kitchenette or other cooking devices.
- (e) As a minimum, one bathroom shall be provided for each two guest rooms. In addition, a separate bathroom shall be maintained for the owners of the single-family residence.
- (f) Each guest bedroom shall be equipped with a smoke detector alarm installed and maintained in a functional condition on or near the ceiling.
- (g) A bed-and-breakfast is permitted one sign, not to exceed two square feet, identifying the name of the facility. Illumination may be permitted, subject to Planning Board approval. The Planning Board shall take into consideration the proximity of adjoining residences and potential nighttime disturbance. Said sign shall not be illuminated between 9:00 p.m. and sunrise.
- (h) No parking space shall be located within the front yard. Parking spaces shall be set back a minimum distance of 15 feet from any side or rear lot line. A minimum of two spaces shall be provided for the single-family dwelling, plus a minimum of one off-street parking space shall be provided for each guest bedroom. Each space shall measure not less than nine feet by 18 feet in

size. New parking areas required to meet these requirements shall limit the introduction of impervious surfaces.

(i) The Planning Board shall consider the need for landscaping to screen views from adjoining residences.

(j) The dwelling shall not be altered in a manner which would cause the premises to differ from its residential character, nor shall any extensions or additions to the dwelling be made for the purpose of renting such space for overnight accommodations. Accessory buildings detached from the principal dwelling shall not be used for the purpose of a bed-and-breakfast.

(k) There shall be no more than two employees in addition to the owner.

(l) Each facility shall be operated and maintained so as to preserve the character and integrity of the surrounding residential neighborhood.

(4) Approval. A special use permit to operate a bed-and-breakfast shall be valid for one year from the date of issuance, subject to continuing compliance with the conditions of the special use permit and subject to continuing compliance with the New York State Uniform Fire Prevention and Building Code.

(5) Permit renewal. The applicant may renew the permit for additional two-year time periods, subject to approval by the Planning Board and any fees applicable to the review of special use permit applications. The Planning Board shall notify the Building Inspector, 15 days prior to the meeting at which the renewal is being considered, who shall provide a description, in writing, of any changes that have occurred in the floor or site plan since the time the special use permit was approved or last renewed and a list of violations or complaints, if applicable. The Planning Board shall take the Building Inspector's report into consideration when rendering a decision.

(6) Enforcement. The Building Inspector shall be given access to the premises for the purpose of making inspections as deemed necessary from time to time to ensure compliance with these regulations and with the New York State Uniform Fire Prevention and Building Code. Such inspections shall be conducted in accordance with procedures set forth in this chapter. Any facility operated in violation of this chapter shall have its permit suspended on a first violation and revoked for a second violation. No permit shall be reinstated until the owner fully complies with the provisions of this chapter.

(7) Registry. The Planning Board Secretary shall maintain a record of bed-and-breakfasts, including the name of the owner, the address, the maximum occupancy of the establishment, and the date of special use permit approval.

E. Community parking area. Community parking areas shall be subject to the following:

(1) A plan shall be submitted detailing the parking lot layout. Parking lots shall be macadam and parking spaces shall be appropriately striped. The City Engineer, in consultation with the Building Inspector, shall be responsible for reviewing and shall favorably recommend the layout prior to Planning Board approval of the special use permit.

(2) Adequate drainage shall be provided.

(3) The owner shall be responsible for keeping said parking area clean and debris-free.

(4) The community parking area shall be screened from abutting residential uses in accordance with § 300-12.

(5) Mature trees in excess of eight inches dbh (diameter breast height) shall be identified on the site plan. The parking layout shall incorporate mature trees into the design of the parking area to the maximum extent practicable.

(6) No more than one curb cut shall be permitted per each street frontage.

E. Planned residential development shall be subject to the following:

(1) A planned residential development may consist of a mix of multiple-family dwellings or single-family attached (townhome) dwellings.

(2) The site plan shall be accompanied by building elevations and a landscape plan.

(3) The maximum density shall be 12 units per acre for multiple-family dwellings. The maximum density for townhomes shall be eight units per acre. A minimum of 25% of the site shall be maintained as open space.

(4) No building shall exceed 120 feet in length.

(5) Principal buildings shall be separated a minimum distance equal to the height of the taller of adjoining buildings, but in no case shall a building be located closer than 30 feet to any other principal building.

(6) Accessory buildings, including recreational facilities, shall be located a minimum of 25 feet from principal buildings or from any lot line.

(7) To the maximum extent practicable, buildings shall be situated in a manner so that the front facade and the main entry point to the dwellings face to the street line.

(8) Off-street parking is prohibited in the front yard or adjacent to a street bounding the lot when the other side of the street is zoned residential. Parking shall be located to the rear of the principal buildings. The Planning Board may allow parking in a side yard, provided that said parking area shall be screened from the street and pedestrian traffic by means of a planted strip or fence of a height of at least three feet. Parking areas shall not be located closer than 10 feet to a principal building or outside deck or recreational space and shall be suitably screened from said buildings and spaces with appropriate landscape materials.

(9) The applicant shall make provisions for the maintenance of any open space or common areas in a manner that is satisfactory to the Planning Board and the City Council of the City of Newburgh.

(10) All off-street parking areas shall be attractively landscaped. A minimum of 20% of the parking area shall be landscaped.

(11) Where provided, dumpsters shall be located in a fenced enclosure which shall be suitably screened with appropriate landscape materials.

(12) Each dwelling unit shall be provided with an outdoor deck or space consisting of a minimum of 25 square feet.

(13) On-site lighting shall not spill over onto adjoining residential properties.

G. Adaptive reuse of an existing building for residential use in the W-1 District shall be subject to the following:

(1) The ground floor of said structure shall be used for nonresidential uses permitted or allowed by special use permit in the W-1 District.

(2) Each dwelling unit shall contain a minimum of 1,000 square feet in area.

(3) On-site indoor or outdoor accessory recreational facilities are permitted, e.g., swimming pools or tennis or squash courts. The Planning Board may impose restrictions on the type and operation of lighting associated with outdoor recreational facilities in order to protect the "night sky" of the Hudson River.

(4) A landscape plan shall be submitted with the site plan.

(5) Off-street parking shall be provided in accordance with the standards for multifamily dwellings.

(6) The applicant shall make provisions for the maintenance of any open space or common areas in a manner that is satisfactory to the Planning Board and the City Council of the City of Newburgh.

H. Boarding homes shall be subject to the following:

(1) In the R-4 District, up to three nontransient roomers or boarders may be accommodated for remuneration by the resident owner of the dwelling.

(2) The owner of the dwelling shall occupy the dwelling and shall constitute the principal use thereof.

(3) Kitchen and dining facilities shall be limited to use by the resident owner, roomers or boarders and bona fide guests but shall not be open to the general public. There shall be no individual kitchen or dining facilities for any sleeping room.

(4) There shall be no more than one rented sleeping room for each 2,000 square feet of lot area, with a maximum of three rooms being permitted.

(5) Each sleeping room for rent to a roomer or boarder shall be at least 100 square feet in area.

(6) One off-street parking space shall be provided for each rented sleeping room. The Planning Board may require landscaping or screening around the parking area.

(7) In order to preserve the residential character of the neighborhood, there shall be no exterior alteration or expansion of the structure to allow the use of the dwelling for boarders and roomers, except for parking.

I. Colleges or universities shall be subject to the following:

- (1) All buildings shall be located at least 100 feet from the street lot line and 50 feet from all other property lines. Grandstands, gymnasiums, central heating plants and similar buildings shall be located at least 200 feet from all property lines. The distance between principal buildings shall be at least equal to the height of the taller building. Total building coverage of the site shall be limited to 30%. On-campus housing, dormitory buildings or single-family detached dwellings shall be permitted as accessory buildings, provided that the minimum lot area for the entire site shall be increased by at least 1,000 square feet for each dormitory bed and by at least the minimum lot area of the applicable zoning district for each single-family dwelling. Use of such dormitories or dwellings shall be limited exclusively to students, teachers, or other members of the staff of the college or university, and a dormitory or dwelling shall not subsequently be sold or rented as a private residence or for any other legal use unless the building and any required lot surrounding it shall meet all regulations of the district in which it is located.
- (2) Multiple-family dwellings for the exclusive use of teachers and other members of the staff of the school shall be permitted as accessory buildings, provided that, in addition to all other site requirements, there shall be land set aside for each such dwelling of an area at least equal to the minimum residential lot size of the district in which such school site is located times the number of dwelling units in such dwelling and provided that each multifamily dwelling shall be at least 100 feet from any property line and be so located with respect to the required additional land that a lot could be separated from the balance of the school site and meet these area requirements. No such dwellings shall subsequently be rented or sold unless the above-mentioned lot shall be created with frontage on an approved street and unless the Planning Board shall find that the school to which such dwellings are accessory has ceased to operate or that the type of school has changed to one which no longer requires staff housing.
- (3) The minimum area that shall be dedicated to playgrounds and playfields shall be three acres, plus an additional two acres per 100 students.
- (4) Suitable fencing, landscaping and screening shall be provided to prevent any nuisance to surrounding properties and to protect students attending the school.
- (5) The college shall comply with any standards established for schools by the New York State Commissioner of Education.
- (6) The Planning Board may approve the design of a parking area to serve more than one use, provided that such uses will require parking facilities at different times. Parking areas shall be located at least 50 feet from all property lines, except that in the case of a property line adjacent to permanently reserved open space, parking areas may be located no closer than 25 feet therefrom. Access and interior drives shall be located so as to prevent unnecessary traffic on local residential streets and to avoid unsafe conditions and traffic congestion.

J. Used car lots shall be subject to the following:

- (1) All existing used car lots shall have a paved surface constructed in accordance with specifications of the City Engineer, an adequate system of storm drainage, screening in accordance with § 300-12 of this chapter to protect adjacent residential properties or residential-zoned areas and provision for lighting that is satisfactory to the City Building Inspector.

§ 300-38. and Large-Scale Mixed-Use Development Special Use Permit

A. Power. The City Council shall have the power to hear and decide on applications for a large-scale mixed-use development special use permit.

B. Applicability. The Large-Scale Mixed-Use Development Special Use Permit shall apply in the Tourist Commercial (TC-1) zoning district only, and only to parcels with frontage on Broadway. However, said project may extend from Broadway through the length of the block to the next public street, irrespective of the zone, provided that the portion outside of the TC-1 zone is part of a unified development parcel with frontage on Broadway.

C. Conditions to be fulfilled. In applying for a large-scale mixed-use development special use permit, the applicant need not demonstrate hardship, since the basis for the action is general benefit to the City as a whole. In granting a large scale mixed-use development special permit, the City Council, with due regard to the nature and condition of all adjacent structures and uses, shall consider the requirements of the zone within which the same is located, the Master Plan, the Future Land Use Plan, the Local Waterfront Revitalization Program (LWRP) and any relevant urban renewal plans and shall find all of the general conditions set forth in §300-35B.(1) through (5) fulfilled.

D. Factors to be considered. In making a determination that the conditions specified above have been fulfilled, the City Council shall give consideration to any or all of the factors set forth in §300-35C.(1) through (12).

E. City Council action. The City Council may approve, approve with modifications, or disapprove any application for a large-scale mixed-use development special use permit. The Council shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed large-scale mixed-use development special use permit and may be necessary in the Council's opinion to meet the objectives herein set forth. Upon the granting of said large-scale mixed-use development special use permit, any such conditions must be met in connection with the issuance of permits by applicable enforcement agents or officers of the City. Such conditions include those set forth in §300-35D.(1) through (4), or any that the Council determines reasonable and necessary.

F. Other conditions for approval. The application for a large-scale mixed-use development special use permit shall meet the conditions and provisions set forth in §300-35E. through (H).

G. Standards for large-scale mixed-use development special use permits.

The following individual standards are hereby established for large-scale mixed-use development special use permits:

- (1) Area standards. The proposed development shall meet the minimum lot area, width and depth; yard; and maximum building height requirements for large-scale mixed-use development as set forth in the Schedule of Use and Bulk Regulations for the TC-1 District.
- (2) In the case that the proposed large-scale mixed-use development contains any use which would be individually subject to a special permit from the Planning Board, the standards for such use, as provided in in §300-37., shall apply, unless the City Council determines that the application of said standards is unreasonably or unnecessary or impractical due to the unique characteristics of the site, mix of uses or other factors.

- (3) At a minimum, the special use permit application must be accompanied by a site plan prepared in accordance with §300-52.
- (4) To the maximum extent practicable, buildings shall be situated in a manner so that the front façade and the main entry face to the street line.
- (5) Off-street parking.
- (a) The City Council may modify the area requirements (length and width) of off-street parking spaces as set forth in §300-44, provided that in no case shall the width be decreased by more than 6 inches and the length by no more than one foot. In granting such reductions, the City Council shall consider such benefits as increased landscaping and screening within and adjacent to off-street parking areas;
- (b) When based on a Parking Analysis, the City Council may reduce the off-street parking space and loading berth requirements as set forth in §300-45 provided that the parking capacity to be provided will substantially meet the intent of this Article. The Parking Analysis shall be prepared assuming peak-hour utilization and demonstrate that sufficient parking spaces will exist so that no overflow parking is likely to occur in any public street; and
- (c) The City Council may permit a portion, not to exceed 25%, of the total required spaces, the total number of which shall be determined pursuant to §300-38.G.(5)(b) above, to be located at an off-site location no further than 300 feet from the premises to which they are appurtenant.
- (6) Shared parking. The use or uses proposed for the large-scale mixed-use development shall provide the required number of off-street parking spaces pursuant to §300-45., except that the number of required spaces may be reduced if the City Council finds that the parking capacity to be provided will substantially meet the intent of this Article by reason of variation in the probable time of maximum use by patrons, employees or residents of such establishments, provided that:
- (a) The City Council shall base its finding upon a Shared Parking Analysis to be prepared, assuming peak-hour utilization, to demonstrate that sufficient parking spaces will exist so that no overflow parking is likely to occur in any public street; and
- (b) In the event that any establishment changes use, the applicant seeking approval for the new use or uses shall adequately demonstrate, based upon a Shared Parking Analysis, that the new use configuration will continue to allow for sufficient parking capacity, or alternatively, that additional off-street parking spaces will be provided to ensure such capacity.
- (7) Off-street parking is prohibited in the front yard. Parking shall be located to the rear of the principal buildings. The City Council may allow parking in a side yard, provided that said parking area shall be screened from the street and pedestrian traffic by means of a planted strip or

fence. Parking areas shall be located a reasonable distance from principal buildings or outside decks or recreational spaces and shall be suitably screened from said buildings and spaces with appropriate landscape materials.

(8) When abutting a residential district, off-street parking areas must be appropriately landscaped and screened.

(9) The applicant shall make provisions for the maintenance of any open space or common areas in a manner that is satisfactory to the City Council.

(10) Mature trees in excess of eight inches dbh (diameter breast height) shall be identified on the site plan. The proposed development shall incorporate such mature trees into the plan to the maximum extent practicable.

(11) Where provided, dumpsters shall be located in a fenced enclosure which shall be suitably screened with appropriate fencing and/or landscaping materials.

(12) On-site lighting shall be designed and situated so that it does not spill over onto adjoining residential properties or create potential driving hazards. The City Council may require a lighting plan to verify that the proposed lighting will not present such adverse impacts.

H. Procedures. The powers and duties of the City Council in considering large-scale mixed-use development special permits shall be exercised in accordance with the procedures set forth in this article and in §300-36., except that, where relevant, said procedures shall apply to the City Council and not to the Planning Board.

§ 300-39. (Reserved)

Zoning

300 Attachment 8

City of Newburgh Schedule of Use and Bulk Regulations TC-1 Tourist Commercial District¹

Use	Use Type	Minimum Lot Area (feet)	Minimum Lot Width (feet)	Minimum Lot Depth (feet)	Minimum Front Yard (feet)	Minimum Side Yard Each (feet)	Minimum Rear Yard (feet)	Maximum Building Height	
								Stories	Feet
One-family detached dwelling	P	7,500	50	100	15	10	20	2.5	35
One-family attached (duplex, town home)	P	2,500**	25	100	15	0/10*	20	3	45
Two-family dwelling	P	10,000	75	100	15	10	20	2.5	35
Mixed use: residential on upper floors only***	P	2,500	25	100	15	0/5*	20	3	45
Professional and business office	P	2,500	25	100	15	0/5**	20	3	45
Government office	P	2,500	25	100	15	0/5*	20	3	45
Tourist-related retail use	P	2,500	25	100	15	0/5**	20	3	45
Art and antique gallery	P	2,500	25	100	15	0/5*	20	3	45
Museum	P	2,500	25	100	15	0/5**	20	3	45
Church and similar place of worship	P	7,500	75	100	15	15	20	3	45
Assembly hall	SP	2,500	25	100	15	0/5*	20	3	45
Craft shop	SP	2,500	25	100	15	0/5**	20	3	45
Restaurant, bar	SP	2,500	25	100	15	0/5*	20	3	45
Fast-food restaurant, without drive-through facility	SP	2,500	25	100	15	0/5**	20	3	45
Laundromat	SP	2,500	25	100	15	0/5**	20	3	45
Conference center	SP	10,000	100	100	25	15	25	3	45
Hotel	SP	10,000	100	100	25	15	25	3	45
Theater	SP	10,000	100	100	25	15	25	3	45
Large-scale mixed use development****	SP	20,000	100	100	15	0/5****	20	6/4	65/45
Swimming pools accessory to one-family detached	A								
Other customary accessory uses and buildings, provided that such use is clearly incidental to the principal use	A								

P = Permitted

SP = Special Permit Use

A = Accessory Use

NOTES:

¹In the TC-1 District, residential uses are not permitted east of Washington Place and Colden Street

* Where existing buildings share common wall, no side yard is required. All other buildings require five-foot side yard.

** Minimum area is per unit.

*** One dwelling unit is permitted for each 1,000 square feet of gross floor area per upper story floor.

**** Only applicable to lots with frontage on Broadway pursuant to Section 300-38.

***** Front and side yard requirements may be waived, reduced or otherwise modified at the discretion of the City Council as part of the Special Use Permit process.

***** Six stories (65 feet) are permitted within 200 feet of Broadway; four stories (45 feet) are permitted beyond 200 feet pursuant to Section 300-38.



Edward A. Diana
County Executive

ORANGE COUNTY DEPARTMENT OF PLANNING

DAVID CHURCH, AICP
COMMISSIONER

www.orangecountygov.com/planning
planning@orangecountygov.com

124 MAIN STREET
GOSHEN, NY 10924-2124
TEL: (845) 615-3840
FAX: (845) 291-2533

County Reply – Mandatory Review of Local Planning Action as per NYS General Municipal Law §239-I, m, &n

Local Referring Board: *Newburgh City Council* County ID #: *NBC02-13M*
Applicant: *City of Newburgh* Tax Map #: *City-wide*
Project Name: *Mid Broadway Housing Project* Local File #: *N/A*
Proposed Action: *Zoning amendment to the TC-1 district to allow a large-scale mixed-use development special use permit*
Reason for County Review: *Zoning amendment*
Date of Full Statement: *April 8, 2013*

Comments: Based on the additional information received at the April 22, 2013 public comment hearing, our review has been revised to reflect this new material. This review letter supersedes any previous review.

The Department has received the above referenced zoning amendment and has determined that the proposed action has the potential to cause intermunicipal or countywide impacts. We therefore recommend that the local referring board address the binding comments outlined below. The local referring board may not act contrary to such recommendations except by a vote of a majority plus one of all the members thereof or by disapproving the action.

- i. Currently and historically all special permits are awarded by the Planning Board in Newburgh. Indeed, this is most common in Orange County and NYS for many reasons, notably for consistency and efficiency of procedures. The Planning Board also, by design, offers the depth of experience and knowledge relevant to the nature of special permit applications. The proposed amendment would deviate from common, uniform procedure and have only this one type of permit to be reviewed by the City Council. No explanation is provided why this deviated process is necessary. As such, it may further add confusion to code procedures the City has acknowledged need to be updated and "streamlined". We recommend such review stay with the Planning Board.

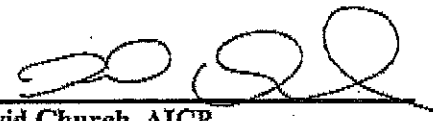
Additionally, this Department offers the following advisory comments for your consideration.

This Department believes that this important block-long site is crucial to the vibrancy of Broadway. As such we applaud and support the City Council for their leadership on this issue and on all efforts for redevelopment of the Broadway corridor. However, adoption of the amendments to the TC-1 zoning district as proposed and at this time to allow a large-scale mixed-use development may be perceived as "spot zoning" since the proposed new standards, by our analysis, may only apply to two viable parcels City-wide. Additionally, the City is actively working on two more comprehensive zoning evaluations – the code streamlining initiative being researched by Pace Land Use Law Center, and the fuller zoning update in partnership with the Greater Newburgh Partnership and others, including this Department. As such, this isolated proposal appears out of synch with these more comprehensive and important efforts. The City should provide clear record that this proposal is consistent with adopted land use policy including your recently adopted Land Use Plan. We also recommend provision of clear record that these specific amendments are time sensitive and necessary separate from the other initiatives noted above.

County Recommendation:

Date: May 2, 2013
Prepared by: Kate Schmidt

Local Determination


David Church, AICP
Commissioner of Planning

As per NYS General Municipal Law 239-m & n, within 30 days of municipal final action on the above referred project, the referring board must file a report of the final action taken with the County Planning Department. For such filing, please use the final action report form attached to this review or available on-line at www.orangecountygov.com/planning.

RESOLUTION NO. 97 - 2013

OF

MAY 13, 2013

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO
GRANT AN EXTENSION OF TIME TO REHABILITATE
THE PREMISES KNOWN AS 44 HASBROUCK STREET
(SECTION 38, BLOCK 3, LOT 50)
IN THE CITY OF NEWBURGH**

WHEREAS, the City of Newburgh did convey the premises located at 44 Hasbrouck Street, more accurately described as Section 38, Lot 3, Block 50 on the Official Tax Map of the City of Newburgh, by deed dated June 17, 2011; and

WHEREAS, said deed included a provision requiring rehabilitation of the conveyed premises to be completed on or about December 17, 2012; and

WHEREAS, Araceli Mendoza, the owner of property located at 44 Hasbrouck Street in the City of Newburgh, has been unable to comply with the deadline, but has attempted a good faith effort and intent to complete the rehabilitation; and

WHEREAS, this Council has determined that it would be in the best interests of the City of Newburgh and its future development to grant said extension;

NOW, THEREFORE, BE IT RESOLVED, that the City Manager be and he hereby is authorized to grant Araceli Mendoza a six (6) month extension to rehabilitate the premises known as 44 Hasbrouck Street in the City of Newburgh, until October 13, 2014, that being six (6) months from the date of this Resolution.

RESOLUTION NO. 98 - 2013

OF

MAY 13, 2013

A RESOLUTION AUTHORIZING THE CITY MANAGER TO
GRANT AN EXTENSION OF TIME TO REHABILITATE
THE PREMISES KNOWN AS 128 DUBOIS STREET
(SECTION 18, BLOCK 1, LOT 27)
IN THE CITY OF NEWBURGH

WHEREAS, the City of Newburgh did convey the premises located at 128 Dubois Street, more accurately described as Section 18, Lot 1, Block 27 on the Official Tax Map of the City of Newburgh, by deed dated June 17, 2011; and

WHEREAS, said deed included a provision requiring rehabilitation of the conveyed premises to be completed on or about December 17, 2012; and

WHEREAS, Araceli Mendoza, the owner of property located at 128 Dubois Street in the City of Newburgh, has been unable to comply with the deadline, but has attempted a good faith effort and intent to complete the rehabilitation; and

WHEREAS, this Council has determined that it would be in the best interests of the City of Newburgh and its future development to grant said extension;

NOW, THEREFORE, BE IT RESOLVED, that the City Manager be and he hereby is authorized to grant Araceli Mendoza a six (6) month extension to rehabilitate the premises known as 128 Dubois Street in the City of Newburgh, until October 13, 2014, that being six (6) months from the date of this Resolution.

RESOLUTION NO.: 99-2013

OF

MAY 13, 2013

**A RESOLUTION AUTHORIZING THE EXECUTION
OF A RELEASE OF RESTRICTIVE COVENANTS AND RIGHT OF RE-ENTRY
FROM A DEED ISSUED TO DAVID L. JADIDIAN
TO THE PREMISES KNOWN AS 83 NICOLL STREET
(SECTION 9, BLOCK 1, LOT 3)**

WHEREAS, on December 9, 2009, the City of Newburgh conveyed property located at 83 Nicoll Street, being more accurately described on the official Tax Map of the City of Newburgh as Section 9, Block 1, Lot 3, to David L. Jadidian; and

WHEREAS, Mr. Jadidian has requested a release of the restrictive covenants contained in said deed; and

WHEREAS, the appropriate departments have reviewed their files and advised that the covenants have been complied with, and recommends such release be granted; and

WHEREAS, this Council believes it is in the best interest of the City of Newburgh to grant such request;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute the release, annexed hereto and made a part of this resolution, of restrictive covenants numbered 1, 2, 3, 4 and 5 of the aforementioned deed.

**RELEASE OF COVENANTS AND
RIGHT OF RE-ENTRY**

KNOWN ALL PERSONS BY THESE PRESENTS, that the City of Newburgh, a municipal corporation organized and existing under the Laws of the State of New York, and having its principal office at City Hall, 83 Broadway, Newburgh, New York 12550, in consideration of TEN (\$10.00) DOLLARS lawful money of the United States and other good and valuable consideration, receipt of which is hereby acknowledged, does hereby release and forever quitclaim the premises described as 83 Nicoll Street, Section 9, Block 1, Lot 3, on the Official Tax Map of the City of Newburgh, from those restrictive covenants numbered 1, 2, 3, 4 and 5 in a deed dated December 9, 2009, from the CITY OF NEWBURGH to DAVID L. JADIDIAN, recorded in the Orange County Clerk's Office on December 22, 2009, in Liber 12943 of Deeds at Page 1376 and does further release said premises from the right of re-entry reserved in favor of the City of Newburgh as set forth in said deed.

Dated: _____, 2013

THE CITY OF NEWBURGH

By: _____

RICHARD F. HERBEK,
City Manager

STATE OF NEW YORK)

)ss.:

COUNTY OF ORANGE)

On the _____ day of May in the year 2013, before me, the undersigned, a Commissioner of Deeds in and for said State, personally appeared RICHARD F. HERBEK, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted; executed the instrument.

RESOLUTION NO.: 100 - 2013

OF

MAY 13, 2013

A RESOLUTION TO AUTHORIZE A CHANGE ORDER TO THE
CONTRACT WITH RITTER & PARATORE CONTRACTING INC.
IN AN AMOUNT NOT TO EXCEED \$38,530.00 AND TO AMEND RESOLUTION NO:
223-2012, THE 2013 BUDGET FOR THE CITY OF NEWBURGH, NEW YORK
TO TRANSFER \$19,265.00 FROM FUND BALANCE TO 7-11 JHONES STREET ERP
PROJECT.2010 YEAR IN CONNECTION WITH THE JHONES STREET BUILDING
DEMOLITION PROJECT

WHEREAS, by Resolution No. 155-2012 of September 10, 2012, the City Council awarded a bid for the demolition of the building located at 7-11 Jhones Street and authorized the City Manager to enter into a contract with Ritter & Paratore Contracting Inc. for the bid amount of \$118,470.00; and

WHEREAS, the actual costs associated with the removal of debris exceeded the pre-demolition estimates increasing the actual cost of the project from \$118,470.00 to \$157,000.00; and

WHEREAS, a change order to the contract with Ritter & Paratore Contracting Inc. in the amount of \$38,530.00 is required; and

WHEREAS, as said property is part of the ERP the City will be reimbursed for 50% of building demolition costs, including 50% of costs in the change order, by the Department of Environmental Conservation; and

WHEREAS, funding for such project shall be derived from the budget line H1.1440.0215.5403.2010; and

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager, the City Engineer and the Comptroller be and they hereby are authorized to prepare and execute a change order to the demolition contract with Ritter & Paratore Contracting Inc. in an amount not to exceed Thirty-Eight Thousand Five Hundred Thirty (\$38,530.00) Dollars for the costs associated with the removal of debris in connection with demolition of 7-11 Jhones Street; and

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, that Resolution No: 223-2012, the 2013 Budget of the City of Newburgh, is hereby amended as follows:

	<u>Decrease</u>	<u>Increase</u>
A.0000.0911	\$19,265.00	
Fund Balance		
H1.1440.0208.5403.2010		\$19,265.00
7-11 Johnes Street ERP Project.2010 Year		

RESOLUTION NO.: 101 - 2013

OF

MAY 13, 2013

**A RESOLUTION REDUCING THE FIXED AMOUNT TO
BE PROVIDED IN THE FORM OF A PUBLIC IMPROVEMENT
PERFORMANCE SECURITY TO BE POSTED BY THE OWNER/SPONSOR
OF THE SUNSET RIDGE SUBDIVISION PROJECT**

WHEREAS, by Resolution No. 142-2005 of July 11, 2005, the City Council of the City of Newburgh declared that the sum of One Million One Hundred Fifty Thousand Six Hundred Forty Five and zero/one-hundredths (\$1,153,645.00) Dollars was to be established and accepted as the amount estimated as the cost of infrastructure and improvements required by the Planning Board, and therefore, as the sum to be covered by such Public Improvement Performance Security to be posted by the owner/sponsor of the Sunset Ridge Subdivision in order to sufficiently safeguard the interests of the City of Newburgh and to secure the installation of the public improvements and infrastructure necessarily involved in said project; and

WHEREAS, the original developer partially completed the installation of the infrastructure and improvements; and

WHEREAS, Iconic Properties, LLC is in contract to purchase the Sunset Ridge Subdivision from TD Bank and is requesting a reduction in the amount of the Public Improvement Security to be posted based on a review by a licensed engineer; and

WHEREAS, the City Engineer has reviewed the developer's submission and completed his own survey of the subdivision and the existing infrastructure and recommends that the performance bond for the infrastructure improvements be reduced from One Million One Hundred Fifty Thousand Six Hundred Forty Five and zero/one-hundredths (\$1,153,645.00) Dollars to Five Hundred Seventy Five Thousand Five Hundred and zero/one-hundredths (\$575,500.00) Dollars; and

WHEREAS, this Council finds that the reduction in the performance bond, as recommended by the City Engineer, is in the best interests of the City of Newburgh and its further development;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Newburgh, New York that the Public Improvement Performance Security to be posted by the owner/sponsor of the Sunset Ridge Subdivision be and hereby is reduced from One Million One Hundred Fifty Thousand Six Hundred Forty Five and zero/one-hundredths (\$1,153,645.00) Dollars to Five

Hundred Seventy Five Thousand Five Hundred and zero/one-hundredths (\$575,500.00) Dollars as the amount sufficient to secure the installation of the remaining public improvements and infrastructure required by said project.; and

BE IT FURTHER RESOLVED, that pursuant to Code Section 266-6, such Public Improvement Performance Security shall be posted with the City Manager by the owner/sponsor of the Sunset Ridge Subdivision and in a form acceptable to the Corporation Counsel.

RESOLUTION NO.: 102-2013

OF

MAY 13, 2010

**A RESOLUTION AUTHORIZING THE AMENDMENT TO
THE TERMS OF A DEED TO JCL MEDIA, INC.
FOR PREMISES KNOWN AS 67 LIBERTY STREET (SECTION 39, BLOCK 5, LOT 14)
TO AUTHORIZE THE CONVEYANCE OF REAL PROPERTY TO
THE FOLK MUSEUM HALL OF FAME AND TO ALLOW FOR ADDITIONAL
TIME TO REHABILITATE THE PROPERTY**

WHEREAS, by Resolution No. 155-2004 of August 9, 2004, the Council of the City of Newburgh authorized the City Manager to execute a Land Disposition Agreement with JCL Media, Inc. regarding the sale and proposed development of real property known as 63 Liberty Street (Section 39, Block 5, Lot 16); 65 Liberty Street (Section 39, Block 5, Lot 15.1); 67 Liberty Street (Section 39, Block 5, Lot 14; and 65 Liberty Street Rear (Section 39, Block 5, Lot 15.2) upon certain terms and conditions, including a prohibition against conveying title to same until certain rehabilitation requirements relating to said property have been satisfied; and

WHEREAS, JCL Media, Inc. has successfully completed the redevelopment of 63 Liberty Street (Section 39, Block 5, Lot 16) and 65 Liberty Street (Section 39, Block 5, Lot 15.1); and

WHEREAS, JCL Media, Inc. has requested permission of the City to convey title 67 Liberty Street (Section 39, Block 5, Lot 14) to the Folk Music Hall of Fame; and

WHEREAS, upon such transfer, the Folk Music Hall of Fame shall abide by all of the terms and conditions set forth in the covenants provided for in the deed from the City of Newburgh to JCL Media, Inc. dated June 8, 2006 and the correction deed from the City of Newburgh to JCL Media, Inc. dated November 23, 2010; and

WHEREAS, said deeds included a provision requiring the subject properties be rehabilitated within eighteen (18) months of the date of the deed which were to be completed on or about December 8, 2007; and

WHEREAS, JCL Media, Inc. has also requested an extension of time to rehabilitate the property located at 67 Liberty Street (Section 39, Block 5, Lot 14) until November 13, 2014, said date being eighteen (18) months from the date of this resolution; and

WHEREAS, the City Council of the City of Newburgh has determined that the permitting proposed transfer to the Folk Music Hall of Fame and granting said extension is in the best interest of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Newburgh, New York that the City Council of the City of Newburgh that the terms of sale by which the premises known as 67 Liberty Street (Section 39, Block 5, Lot 14) in the City of Newburgh were conveyed to JCL Media, Inc. be and the same hereby are amended to allow the conveyance of said premises by JCL Media, Inc. to the Folk Music Hall of Fame and further authorizes an extension of time to rehabilitate said premises until November 13, 2014, said date being eighteen (18) months from the date of this resolution.

RESOLUTION NO. 103 -2013

OF

MAY 13, 2013

A RESOLUTION AUTHORIZING A REQUEST TO AMEND THE ENVIRONMENTAL RESTORATION PROGRAM STATE ASSISTANCE CONTRACT (SAC) C303486 IN CONNECTION WITH THE INVESTIGATION, INTERIM REMEDIAL MEASURES AND PREPARATION OF REMEDIAL ALTERNATIVES FOR CITY OWNED PROPERTY LOCATED AT 350-352 LIBERTY STREET IN AN AMOUNT OF \$40,000 AND TO AMEND RESOLUTION NO: 223 - 2012, THE 2013 BUDGET FOR THE CITY OF NEWBURGH, NEW YORK TO TRANSFER \$4,000.00 FROM FUND BALANCE TO LIBERTY STREET ERP ON SITE

WHEREAS, the City of Newburgh has entered into a State Assistance Contract (SAC) C303486 with the New York State Department of Environmental Conservation (the "Department") to address environmental concerns at 350-352 Liberty Street, and

WHEREAS, the nature and extent of the problems at the site were complicated by conditions unknown to the City of Newburgh, and

WHEREAS, the Engineer has incurred or will incur costs beyond the limit of the current SAC Agreement Limit of \$380,500.00 in order to complete the required scope of work, the nature of which are described in the attached letter to the Department from C.T. Male Associates dated March 25, 2013, and

WHEREAS, it is now necessary to authorize the City Manager to request a SAC Amendment with the Department to cover said costs outlined in C.T. Male Associates March 25, 2013 letter (attached), the cost of which are reimbursable to the City at a minimum of 90% per the SAC;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager is hereby authorized to request a SAC Amendment to cover additional costs to the contract for the City-owned property located at 350-352 Liberty Street at a cost not to exceed \$40,000; and

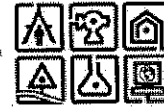
BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, that Resolution No: 223-2012, the 2013 Budget of the City of Newburgh, is hereby amended as follows:

	<u>Decrease</u>	<u>Increase</u>
A.0000.0911 Fund Balance	\$4,000.00	
H1.1440.0208.5403.2010 Liberty Street ERP On Site		\$4,000.00

C.T. MALE ASSOCIATES

Engineering, Surveying, Architecture & Landscape Architecture, P.C.

652 Route 299, Suite 204B, Highland, NY 12528
845.883.0964 FAX 845.883.0965 ctmale@ctmale.com



March 25, 2013

Mr. David Crosby, P.E.
Remedial Bureau C
Division of Environmental Remediation
NYS Department of Environmental Conservation
625 Broadway
Albany, New York 12233-7014

RE: *Request for SAC Amendment No. 4 to Rectify Cost Overruns
Due to Requests for Additional Work and Changes to the Alternative Analysis Report
350-352 Liberty Street ERP Site; Site #B00189
City of Newburgh, Orange County
C.T. Male Project No.: 10.1045*

Dear Mr. Crosby:

C.T. Male Associates (C.T. Male), on behalf of the City of Newburgh, New York, respectfully submits this request for a State Assistance Contract (SAC) Amendment to cover anticipated costs overruns incurred to address out of scope work including highly time sensitive requests from the New York State Department of Environmental Conservation ("Department") that were not addressed in the Remedial Investigation Work Plan dated April 2010 and subsequent modifications. This Proposed SAC Amendment cover costs already incurred and projected costs to bring the project to completion.

The additional costs are the result of the following activities:

- The number of surface samples was doubled overall. Lead was especially prevalent with a detection of 2,550 ppm in one location and this required additional sampling and samples to identify the nature and extent of the impacts for incorporation into the PRAP,
- The number of subsurface confirmatory samples increased due to the size of the excavation,
- Unanticipated complications due to scheduling issues beyond our control substantially lengthening the duration of the field work,
- Complicated bidding process and the creation/revision of the bid documents due to the substantial modification caused by the discovery of five (5) previously

1910 - 2010
years

C.T. MALE ASSOCIATES

March 25, 2013

Dave Crosby

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unidentified underground storage tanks, two (2) waste oil tanks and two hydraulic lifts. Engineering associated with the IRM and completion of the CCR was more than twice what was anticipated,

- Completion of the Construction Completion Report (CCR) was substantially more complicated due to the more than doubling of the potential sources requiring remediation and its completion more than doubled the report preparation costs. The approved work plan had the CCR included with the RI report,
- Managing the data turned out to be substantially more complicated due to the Department's implementation of the EDD management structure. We have invested more 45 hours of staff time simply to get the data in a form that was acceptable to the Department. We have had an extremely difficult time meshing the data, some of which resulted from the Department's changes to the process. This was not anticipated when budgeting for this project,
- We have made multiple revisions to the Alternative Analysis Report and it still does not reflect the proposed remedy identified in the Department's PRAP and ROD. The City has expressed concerns that this inconsistency could be an impediment to the future sale of the property,
- We have provided assistance to the Department in the preparation of the PRAP and ROD, and,
- Technical review of the PRAP and ROD and the preparation of a Responsiveness Summary to address concerns with the ROD as well as creating the final reports, assistance at the public meeting and miscellaneous reporting and assistance to the City.

The estimated budget is as follows:

	Project Costs	SAC Amount
Existing Budget	\$380,500.00	\$325,850.00
Estimated Costs Incurred to Date	\$411,000	\$325,850.00
Remaining Funds Available from Original Budget	\$0.00	\$0.00
Cost Estimate to Address Remaining Tasks	\$40,000.00	\$36,000.00
Less Remaining Funds Available from Original Budget	\$0.00	\$0.00
Total Proposed SAC Amendment Costs	\$40,000.00	\$36,000.00
Final SAC Total including Amendment	\$420,500.00	\$362,050.00

C.T. MALE ASSOCIATES

March 25, 2013

Dave Crosby

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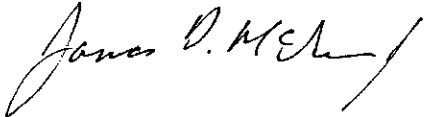
This SAC Amendment request does not seek to extend the contract completion date beyond its current scheduled date.

Closing

Thank you for your time and attention. Should you have any questions or need further information, please do not hesitate to contact Jim McIver at (845) 691-7234.

Respectfully,

C.T. MALE ASSOCIATES, P.C.

A handwritten signature in black ink, appearing to read "James D. McIver, Jr.", with a stylized flourish at the end.

James D. McIver, Jr.
Managing Geologist

c: William Bennett, P.E., NYSDEC
Ian MacDougall, Acting Director of Planning and Development, Newburgh, NY
Dan Reilly, P.E., C.T. Male Associates

RESOLUTION NO. 104 - 2013

OF

MAY 13, 2013

**A RESOLUTION TO AUTHORIZE A SETTLEMENT IN THE MATTER OF
CHRISTOPHER PAGE AGAINST THE CITY OF NEWBURGH IN THE AMOUNT OF
SEVEN THOUSAND EIGHT HUNDRED FORTY ONE AND 76/100 DOLLARS**

WHEREAS, Christopher Page brought a claim against the City of Newburgh; and

WHEREAS, the parties have reached an agreement for the payment of the settlement of the claim in the amount of Seven Thousand Eight Hundred Forty One and 76/100 (\$7,841.76) Dollars in exchange for a release to resolve all claims among them; and

WHEREAS, such funds shall be secured by 2013 "M" Funds, Account M.1930.0400 Judgments & Claims; and

WHEREAS, this Council has determined it to be in the best interests of the City of Newburgh to settle the matter for the amount agreed to by the parties;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City's attorney is hereby authorized to settle the claim of Christopher Page in the total amount of Seven Thousand Eight Hundred Forty One and 76/100 (\$7,841.76) Dollars, and that City Manager be and he hereby is authorized to execute documents as the City's attorney may require, to effectuate the settlement as herein described.

RESOLUTION NO.: 105 - 2013

OF

MAY 13, 2013

A RESOLUTION TO AUTHORIZE THE RE-PURCHASE OF
REAL PROPERTY KNOWN AS 72 HASBROUCK STREET
(SECTION 38, BLOCK 3, LOT 61)
AT PRIVATE SALE TO KEITH GIFFT

WHEREAS, the City of Newburgh has acquired title to several parcels of real property by foreclosure *In Rem* pursuant of Article 11 Title 3 of the Real property Tax law of the State of New York; and

WHEREAS, pursuant to Section 1166 of the Real Property Tax Law the City may sell properties acquired by foreclosure *In Rem* at private sale; and

WHEREAS, Keith Giff, the former owner of 72 Hasbrouck Street, being more accurately described as Section 38, Block 3, Lot 61 on the official tax map of the City of Newburgh, has requested to re-purchase the property at private sale; and

WHEREAS, the City Council of the City of Newburgh has determined that it would be in the best interests of the City of Newburgh to allow the former owner to re-purchase this property, without the need for litigation and subject to any liens, encumbrances or mortgages of record that existed against this property at the time the City of Newburgh took title in the tax foreclosure proceeding, provided that all taxes, interest and penalties owed are paid expeditiously;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the sale of 72 Hasbrouck Street, Section 38, Block 3, Lot 61, to Keith Giff be and hereby is confirmed and that the City Manager is authorized and directed to execute and deliver a quitclaim deed to said purchaser upon receipt of the purchase price of \$21,691.50, which represents all past due tax liens, together with all interest and penalties accruing thereon, including attorneys fees, in full; and that said purchase price must be paid no later than June 1, 2015, and in accordance with said terms and conditions; and

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, New York, that the parcel is not required for public use.

Terms and Conditions of Sale

1. City of Newburgh acquired title to the property known as 72 Hasbrouck Street, more accurately described as Section 38, Block 3, Lot 61 on the official tax map of the City of Newburgh, (hereinafter referred to as "the parcel") in accordance with Article 11 of the Real Property Tax Law of the State of New York, and all known rights of redemption under said provisions of law have been extinguished by the tax sale proceedings and/or as a result of forfeiture.
2. The parcel, including any buildings thereon, is sold "AS IS" and without any representation or warranty whatsoever as to the condition or title, and subject to: (a) any state of facts an accurate survey or personal inspection of the premises would disclose; (b) applicable zoning/land use/building regulations; (c) water and sewer assessments are the responsibility of the purchaser, whether they are received or not; and (d) easements, covenants, conditions and rights-of-way of record existing at the time of the levy of the tax, the non-payment of which resulted in the tax sale in which City of Newburgh acquired title.
3. The purchase price of the property is equal to the total of the delinquent taxes owing on the property in the amount of \$21,691.50. The purchaser shall pay to the City the purchase price as follows:

A down payment in the amount of \$4,273.86 shall be due on or before June 1, 2013. The amount of said down payment consists of \$2,169.15, which includes all of the taxes for the 2012-2013 school district tax year and all the 2013 City/County tax year, and \$2,169.15, which is ten (10%) percent of the delinquent taxes owed. The down payment shall be payable by certified check, bank check, money order or cash.

The balance of the purchase price, after the down payment, plus interest at the rate of 25% per annum shall be due and payable in eight (8) installments as follows:

\$3,174.98 due September 1, 2013
\$3,174.98 due December 1, 2013
\$3,174.98 due March 1, 2014
\$3,174.98 due June 1, 2014
\$3,174.98 due September 1, 2014
\$3,174.98 due December 1, 2014
\$3,174.98 due March 1, 2015
\$3,174.98 due June 1, 2015

4. Any and all future property taxes levied by the City of Newburgh and the Newburgh Enlarged City School District, including but not limited to the 2013-2014 school tax bill and the 2014 City/County tax bill, shall be paid by the purchaser to the City of Newburgh as the installments come due during the applicable tax year.
5. The purchaser shall continue to be responsible for all water, sewer and sanitation charges.
6. All payments due hereunder shall be payable to the City of Newburgh **by bank check, certified check or money order.**
7. Purchaser is advised to personally inspect the premises and to examine title to the premises prior to the date upon which the sale is scheduled to take place. Upon delivery of the quitclaim deed by the City of Newburgh to the purchaser, any and all claims with respect to title to the premises are merged in the deed and do not survive.
8. No personal property is included in the sale of any of the parcels owned by City of Newburgh, unless the former owner or occupant has abandoned same. The disposition of any personal property located on any parcel sold shall be the sole responsibility of the purchaser following the closing of sale.
9. All informational tools, such as slides, tax maps, deeds, photos, property record cards, etc., are for identification purposes only and are neither a guarantee nor a warranty as to location, dimensions, parcel use and/or size, or anything else. **THE CITY MAKES NO WARRANTY EXPRESSED OR IMPLIED IN CONNECTION WITH THIS SALE.**
10. The City makes no representation, express or implied, as to the condition of any property, warranty of title, or as to the suitability of any for any particular use or occupancy. Properties may contain paint or other similar surface coating material containing lead. Purchaser shall be responsible for the correction of such conditions when required by applicable law. Properties also may contain other environmental hazards. Purchasers shall be responsible for ascertaining and investigating such conditions prior to bidding. Purchasers shall be responsible for investigating and ascertaining from the City Building Inspector's records the legal permitted use of any property prior to closing. Purchaser acknowledges receipt of the pamphlet entitled "Protecting Your Family From Lead in Your Home." Purchaser also acknowledges that she has had the opportunity to conduct a risk assessment or inspection of the premises for the presence of lead-based paint, lead-based paint hazards or mold.
11. All recording costs and transfer taxes shall be paid by the purchaser. Such recording costs shall be payable to the "Orange County Clerk" **by bank check, certified check or money order.**

12. The entire purchase price and all closing costs/fees must be paid by cash or guaranteed funds to the City of Newburgh Comptroller's Office on or before June 30, 2015. **The City is not required to send notice of acceptance to a purchaser. If the purchaser fails to pay the balance of the purchase price as herein provided, the deposit shall be forfeited.** The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to close title of up to, but not to exceed, sixty (60) additional days. No request shall be entertained unless in writing, stating the reasons therefore, and unless accompanied by a fee of \$250.00 per parcel for which a request is submitted. The fee shall be in addition to all other fees and deposits and shall not be credited against the purchase price and shall not be returnable. In addition, should the purchaser fail to close within the time set forth above, the entire deposit shall be forfeited to the City as liquidated damages without further notice to the purchaser. Any additional request made thereafter shall be made in writing and placed before the City Council for their consideration.
13. The purchaser warrants that he is in possession of the parcel and shall remain in possession until such time as the payments set forth herein have been paid. Purchaser shall be responsible for all property maintenance during his continued possession of the parcel.
14. If the purchaser fails to close title by the close of business on June 30, 2015, then, the City may, but is not obligated to offer the parcel to another purchaser.
15. In the event that a sale is cancelled by court order, judgment, the Comptroller or the Newburgh City Council, the purchaser shall be entitled only to a refund of the purchase money paid with interest, but not to any payment of rent. Purchaser agrees that she shall not be entitled to special or consequential damages, attorney's fees, reimbursement for any expenses incurred as a result of ownership, improvements of property, or for taxes paid during period of ownership, and this agreement by the purchaser is a material condition of the sale. However, if purchaser fails to close title in accordance with the terms and conditions set forth herein, she shall be entitled to reimbursement for expenses incurred to bring said parcel into compliance with applicable building and maintenance codes made during her possession as tenant, and as required as a condition of sale, upon presentation of proof that such expenses were incurred in a form that is satisfactory to the City.
16. The sale shall be final, absolute and without recourse once title has closed and the deed has been recorded. In no event, shall City of Newburgh be or become liable for any defects in title for any cause whatsoever, and no claim, demand or suit of any nature shall exist in favor of the purchaser, its heirs, success or assigns, against City of Newburgh arising from this sale.
17. Conveyance shall be by quitclaim deed only, containing a description of the property as it appeared on the tax roll for the year upon which the City acquired title or as corrected up to date of deed. The deed will be recorded by the City upon payment in full of the purchase

price and closing fees/costs. Purchaser may remain in possession of property until the deed is recorded conveying title to the purchaser. **Title vests upon recording of deed.**

18. Upon closing, the City shall deliver a quitclaim deed conveying all of its right, title and interest in the subject property, which deed shall be drawn by the City Corporation Counsel. The City shall not convey its interest in any street, water, sewer or drainage easement, or any other interest the City may have in the property. The City shall only convey that interest obtained by the City pursuant to the judgment rendered in an *in rem* tax foreclosure action filed in the Orange County Clerk's Office.
19. The description of the property shall be from the City of Newburgh Tax Map reference or a survey description certified to the City of Newburgh and provided to the City Corporation Counsel by the purchaser at least thirty (30) days in advance of closing title and approved by the City's Engineer.
20. By acknowledging and executing these Terms & Conditions, the purchaser certifies that he is the former owner(s) of the property against whom City of Newburgh foreclosed and has no intent to defraud City of Newburgh of the unpaid taxes, assessment, penalties and charges which have been levied against the property. The purchaser agrees that neither he nor his assigns shall convey the property until after the date of the deed conveying title to the purchaser. If such conveyance in violation of these terms and conditions, the purchaser understands that he may be found to have committed fraud, and/or intent to defraud, and will be liable for damages to the City of Newburgh.

KEITH GIFFT

Date: _____

RESOLUTION NO.: 106-2013

OF

MAY 13, 2013

A RESOLUTION TO AMEND RESOLUTION NO. 163-2007 REGARDING
THE SALARY AND BENEFIT PLAN FOR NON-BARGAINING UNIT EMPLOYEES AND
TO AMEND RESOLUTION NO. 223-2012, THE 2013 BUDGET
OF THE CITY OF NEWBURGH AND THE PERSONNEL ANALYSIS BOOK
REGARDING SALARY OF THE PLANNER

WHEREAS, this Council, by Resolution No. 163-2007 of August 20, 2007, adopted a salary and benefit plan for non-bargaining unit employees; and

WHEREAS, this Council, by Resolution No. 223-2012, adopted the 2013 Budget of the City of Newburgh and the Personnel Analysis Book; and

WHEREAS, this Council desires to amend said Resolutions,

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh that Schedule A of Resolution No. 163-2007, the salary and benefit plan for non-bargaining unit employees, is amended as follows, effective immediately:

Grade 4
Planner

Grade 5
Planner; and

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh that Resolution No. 223-2012, the 2013 Budget of the City of Newburgh and the Personnel Analysis Book, is amended to reflect a net increase of \$3,733.00 in the adjustment of the salary of the Planner from Grade 4, Step 5 to Grade 5, Step 2.

~~Strikethrough~~ denotes deletion
Underlining denotes addition

RESOLUTION NO.: 107 - 2013

OF

MAY 13, 2013

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH
MEMORIALIZING ITS INTENT WITH RESPECT TO THE CONSIDERATION OF
SALARY INCREASES FOR NON-BARGAINING UNIT POSITIONS
IN CONNECTION WITH THE 2014 BUDGET PROCESS

WHEREAS, the salaries of the City Engineer and the Fire Chief positions were increased during 2012 and the salary of the City Engineer position was increased in the 2013 budget process; and

WHEREAS, this Council intends to be equitable in the adjustments of the salaries of all positions, including the non-bargaining positions;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Newburgh does hereby memorialize its intent that if salary increases are considered for non-bargaining unit positions during the 2014 budget process that the positions of City Engineer and Fire Chief shall not be included in the consideration of any such salary increases.

RESOLUTION NO.: 108 - 2013

OF

MAY 13, 2013

RESOLUTION AMENDING RESOLUTION NO: 223 - 2012,
THE 2013 BUDGET FOR THE CITY OF NEWBURGH, NEW YORK
AND THE PERSONNEL ANALYSIS BOOKLET
TO ADJUST THE SALARIES OF THE FIRE CHIEF AND CITY ENGINEER

BE IT RESOLVED, by the Council of the City of Newburgh, that Resolution No: 223-2012, the 2013 Budget of the City of Newburgh, and the 2013 Personnel Analysis Booklet is hereby amended to reduce the salary of the City Engineer by \$9,691.00 from \$100,692.00 to \$91,001.00 and to reduce the salary of the Fire Chief by \$6,644.00 from \$110,843 to \$103,839.00 as follows:

	<u>Decrease</u>	<u>Increase</u>
A.1440 Engineering		
.0101 Salary	\$ 9,691.00	
A.3412 Fire Department		
.0101 Salary	\$ 6,644.00	



CITY OF NEWBURGH COUNCIL MEETING AGENDA

May 13, 2013

7:00 pm

Mayor:

1. Prayer
2. Pledge of Allegiance

City Clerk:

3. Roll Call

Communications:

4. Approval of the minutes of the April 18, 2013 work session and the April 22, 2013 City Council meeting
5. Notice of Claim: Peter Derosé v. City of Newburgh
6. Notice of Claim: Ramona McCallum v. City of Newburgh
7. Notice of Claim: Doris Pacheco City of Newburgh
8. Notice of Claim: Celeste Mays and Carrie Beard v. City of Newburgh
9. Notice of Claim: Robert Boone v. City of Newburgh
10. Notice of Claim: Cornelius Stubbs v. City of Newburgh
11. Notice of Claim: Colleen Guyt v. City of Newburgh
12. Summons & Complaint: Wells Fargo, et al v. City of Newburgh
13. Notice of Claim: Susan Grimm v. City of Newburgh
14. Summons and Verified Complaint: Richard and Linda Diasparra v. City of Newburgh

Comments from the public regarding the agenda:

Comments from the Council regarding the agenda:

City Manager's Report:

15. Resolution No. 92-2013
A resolution of the City Council of the City of Newburgh proclaiming Newburgh, New York as a Purple Heart City.
16. Resolution No. 93-2013
A resolution of the City Council of the City of Newburgh proclaiming the Newburgh Armory Unity Center as a Purple Heart City Center.

17. Resolution No. 94 - 2013
A resolution authorizing the City Manager to enter into an agreement with the County of Orange for the Summer Youth Employment and Training program to provide young people with work for the City of Newburgh for the Summer of 2013.
18. Resolution No. 95 - 2013
A resolution authorizing the City Manager to enter into a license agreement with St. Luke's Cornwall Hospital to allow use of City-owned property located in the Carter Street pedestrian walkway known as Larkin Park for a farmers market.
19. Resolution No. 96 - 2013
A resolution of the City Council of the City of Newburgh adopting an Environmental Assessment Form and issuing a negative declaration under the State Environmental Quality Review Act concerning an amendment of Article VII, entitled "Special Use Permits of the Zoning Ordinance of the City of Newburgh.
20. Resolution No. 97 - 2013
A resolution authorizing the City Manager to grant an extension of time to rehabilitate the premises known as 44 Hasbrouck Street in the City of Newburgh.
21. Resolution No. 98 - 2013
A resolution authorizing the City Manager to grant an extension of time to rehabilitate the premises known as 128 Dubois Street in the City of Newburgh.
22. Resolution No. 99 - 2013
A resolution authorizing the execution of a Release of Restrictive Covenants and Right of Re-Entry from a deed issued to David L. Jadidian to the premises known as 83 Nicoll Street.
23. Resolution No. 100 - 2013
A resolution to authorize a change order to the contract with Ritter and Paratore Contracting, Inc. in connection with the Johnes Street building demolition project in an amount not to exceed \$38,530.00 and to amend Resolution No. 223-2012, the 2013 Budget for the City of Newburgh, New York to transfer \$19,265.00 from fund balance to 7-11 Johnes Street ERP Project.2010 in connection with the Johnes Street Building Demolition Project.
24. Resolution No. 101 - 2013
A resolution reducing the fixed amount to be provided in the form of a Public Improvement Performance Security to be posted by the owner/sponsor of the Sunset Ridge subdivision project.

25. Resolution No. 102 - 2013

A resolution authorizing the amendment to the terms of a deed to JCL Media, Inc. for the premises known as 67 Liberty Street, to authorize the conveyance of real property to the Folk Museum Hall of Fame and to allow for additional time to rehabilitate the property.

26. Resolution No. 103 - 2013

A resolution authorizing a request to amend the Environmental Restoration Program State Assistance contract C303486 in connection with the investigation, interim remedial measures and preparation of remedial alternatives for City-owned property located at 350-352 Liberty Street in an amount of \$40,000.00 and to amend Resolution No. 223-2012, the 2013 Budget for the City of Newburgh, New York to transfer \$4,000.00 from fund balance to Liberty Street ERP On Site.

27. Resolution No. 104 - 2013

A resolution to authorize a settlement in the matter of Christopher Page against the City of Newburgh in the amount of seven-thousand eight hundred forty one and 76/100 dollars.

28. Resolution No. 105 - 2013

A resolution to authorize the repurchase of real property known as 72 Hasbrouck Street at private sale to Keith Gifft.

29. Resolution No. 106 - 2013

A resolution to amend Resolution No. 163-2007, regarding the salary and benefit plan for non-bargaining unit employees and to amend Resolution No. 223-2012, the 2013 Budget of the City of Newburgh and the Personnel Analysis booklet regarding the salary of the Planner.

30. Resolution No. 107 - 2013

A resolution of the City Council of the City of Newburgh memorializing its intent with respect to the consideration of salary increases for non-bargaining unit positions in connection with the 2014 budget process.

31. Resolution No. 108 - 2013

A resolution amending resolution No. 223-2012, the Budget for the City of Newburgh, New York and the Personnel Analysis booklet to adjust the salaries of the City Engineer and the Fire Chief.

Agenda - City Council Meeting
May 13, 2013

Old Business:

New Business:

Public Comments Regarding General Matters of City Business:

Further Comments from the Council:

Adjournment:

A regular meeting of the City Council of the City of Newburgh was held on Monday, April 22, 2013 at 7:05 P.M. in the third floor Council Chambers at City Hall, 83 Broadway, Newburgh, NY.

The Prayer was led by Dr. Bruce Davis, Pastor of Ebenezer Baptist Church, followed by the Pledge of Allegiance.

Mayor Kennedy pointed out the t-shirt she is wearing tonight of the Horizons-On-the-Hudson School. She is wearing it in solidarity with that school in keeping it open in the City of Newburgh. The school board meeting is also taking place this evening.

Present: Mayor Kennedy, presiding; Councilwoman Angelo, Councilman Brown, Councilwoman Lee - 4

Absent: Councilman Dillard- 1

REPORTS

Councilwoman Angelo moved and Councilwoman Lee seconded that the City Clerk's Report and the Registrar of Vital Statistics Report for March be received, filed and made available to the public.

Ayes - Councilwoman Angelo, Councilman Brown, Councilwoman Lee, Mayor Kennedy - 4

CARRIED

Councilwoman Angelo moved and Councilwoman Lee seconded that the Civil Service Administrator's Report for March and April be received and filed only.

Ayes- Councilwoman Angelo, Councilman Brown, Councilwoman Lee, Mayor Kennedy- 4

CARRIED

PRESENTATIONS

Mayor Kennedy issued Certificates of Appreciation for the partners involved in the 2013 Gun Buy Back Initiative. The City of Newburgh Police Department and Auxiliary Police, Shop Rite, Greater Newburgh Partnership, Orange County District Attorney's Office, Orange County Sheriff's Office, Orange County Executive, NCAC and House of Refuge were some of the partners included in the initiative.

COMMUNICATIONS

Councilwoman Angelo moved and Councilwoman Lee seconded that the Minutes of the April 4, 2013 Work Session and the April 8, 2013 City Council Meeting be approved.

Ayes - Councilwoman Angelo, Councilman Brown, Councilwoman Lee, Mayor Kennedy - 4

CARRIED

Councilwoman Angelo moved and Councilwoman Lee seconded that the Notices of Claims be referred to Corporation Counsel with power to act.

Ayes - Councilwoman Angelo, Councilman Brown, Councilwoman Lee, Mayor Kennedy - 4

CARRIED

PUBLIC HEARING

Mayor Kennedy called a public hearing concerning an ordinance to amend Article VII, entitled "Special Use Permits" of Chapter 300 entitled "Zoning" of the Code of Ordinances to add a section related to *large-scale mixed use development special use permit*. She pointed out that this specifically pertains to the mid-Broadway lot.

A power-point presentation of the zoning was made before the council one month ago. The council was previously given draft zoning text amendments to the Tourist/Commercial District regulations to allow a new special use permit for large-scale mixed use developments. What is before us tonight is the zoning text amendment, *not* an actual development site. The new special use permit would only apply to parcels with frontage along Broadway, between Concord and Grand Streets. Any future application for development would still be subject to special permit review and site plan review, as well as site-specific review under SEQRA. This is just a preliminary step in terms of the zoning process. The Special-Use permit would be approved by the City Council, *not* the Planning Board. This zoning text amendment is completely compatible with the future Land Use Plan that was adopted in 2011.

Yakov Sullivan commented that the most important and healthy goal of city government is to distribute the tax levies as widely and as equitably as possible among the largest segments of the population. Newburgh takes pride in promoting itself as a diverse community- racially, economically and socially. People including himself, who have bought homes and invested here, do so on the very basis of that diversity. He has made substantial improvements to the exterior and the interior of his property since he purchased it in 2008. None of us want to see a repeat of the hefty tax levy we experienced in 2011 that reduced city services too. The taxpaying segment of our population will be further reduced with the proposed development of 100 housing units. Also he does not feel that the project is clearly defined. If we do not include a mixed-income housing project, then our chances for economic development in our downtown area would be greatly reduced. Sullivan stated that this project is not what Newburgh needs, as it is unbalanced. It would give the diminishing segment of taxpaying people in our city a heavier tax burden and eventually price people out of their homes. It is incumbent on our elected officials to rethink this project as it is presently conceived.

Stuart Sachs is concerned that the council is considering a bypass of the planning board. Our Master Plan states that Newburgh must increase tax revenue to relieve the burden on real property taxpayers. He feels that this

project will do the opposite. State law declares that land use must be consistent with the Master Plan. He pointed out that the planning board is given special training to meet State requirements. They are far more qualified to comply with a future land use plan than the council members, who do not receive this training. Furthermore it raises an appearance of a conflict of interest for the city to offer a special use permit to one of the developers and not the other. If the special permit was included from the beginning, then we may have received better proposals. He cautioned the council not to hand out special use permits solely based on party talk. All of the proposed units are government-subsidized, which further reduces tax contribution. Also the use of a PILOT will drastically reduce the tax contribution to the tax rolls. He mentioned that Varick Homes used the PILOT when it was built several decades ago. But even today, the total taxes on the site would be over \$312K, but Varick Homes only pays \$125K. This difference of \$187K has to be paid by other taxpayers. When there is a need for affordable housing, sustainable planning includes a mix of affordable and market rate housing in every development. It also should be spread across the County, so that the burden is not just placed on one community. He urged the council to vote against this special use permit process. (SEE COMMENTS ATTACHED)

Barbara Smith stated that the analysis of this says to her, based on the review of the TC-1 zoned lots with frontage along Broadway, only two potential development sites exist and are likely to be developed under the proposed rules. Why are we doing this? And why are we not going through the natural, normal and everyday process that any developer must go through? You have to look at the city on a whole. We are certainly not in need of extra workforce development units in Newburgh. The city is supposedly in *good* shape. What is going to happen when current businesses go out of business, and then we end up with additional empty stores? She does not feel that we have a well balanced idea. We have bodega owners and other owners, who are truly dependent on our community, and it seems as though we are just putting them out of business with the idea of a supermarket. What happened to the possibility of a civic center in Newburgh? The channels of the process we have now actually work. So why are we changing them?

Drew Kartiganer pointed out that he owns buildings located right behind the proposed sites. Most of the apartments he owns are 2,3 and 4-bedroom units. They are constructed for families. It is his understanding that this proposal is for the construction of 91 1-bedroom units. This is a problem that has to stop, because it attracts the dumping of people into our community. The dumping into Newburgh began about 50 years ago. Newburgh is the place that other cities send people they do not want. People released from the jail are placed here. The creation of these 91 housing units is set up for people who really do not have a place to go. Kartiganer said that he would feel differently

if it was set up for senior or family housing. By having the council approve a special use permit, we are subverting the procedure already in place. The parking layout is not good either. If you are unable to provide efficient onsite parking, then we need to question whether this project should be moving forward. He stated that a supermarket is not going to survive at that location. We already had one ten years ago. CDBG monies were used to fund it, and then two years later it closed down. It does not have the parking to sustain a supermarket project. He urged the council to vote this down.

Dick Peterson stated that he is always insulted when people casually throw out figures as if they are accountants with the ledgers in front of them. He has been a landlord in Newburgh for 38 years, and he finds it quite interesting when he hears comments, such as "The PILOT sustained [Varick Homes]" He sees Newburgh as a partner. He is in the business of affordable housing. He sees people charging \$900-1300 per month for a 1-bedroom apartment on Lander Street. These people are in the business of *affordable robbery*. The PILOT is merely an institution that goes out and leans itself to help sustain poor people and help them secure decent and affordable housing. He has a top rating. His housing units are beautiful and they overlook the Hudson River. We have to remind ourselves of the Latin phrase *Quid Pro Quo*. You have to give something for something that is quantitative. You are not going to build Newburgh on a promise. Peterson is against the construction of a supermarket, but we desperately need housing here. Unless we plan on returning government funds that were earmarked for affordable housing, an easy court action would stop all future monies from coming into our city. He has no gripes with anybody here, because he sees City government as his partner. If we do not start developing housing for poor people who live here, then they will be living on our streets. The motto at Varick Homes is *We Do Housing Right*.

Timothy Hayes-el spoke in favor of building a supermarket and housing unit on Broadway. He does not know why these landlords are saying that there is more than enough housing, because there is not. We have some landlords that come in and get houses dirt cheap with a promise of offering affordable housing. Then when you turn around they are charging anywhere from \$1500-1800 per month for their apartment units. Yet some people have the audacity to come to City Hall and speak out against anyone else wanting to offer affordable housing projects.

Kippy Boyle urged the council to strongly consider postponement until it digests all public input. She was informed that the agenda was not even made available until after 6 P.M. this evening. She would like for us to look at the process. An RFP went out, and we now have a Memorandum of

Understanding with the developers. Now you are supposed to be finalizing the dollar amounts of a PILOT program. All three segments are underway before we have even had a chance to discuss the Special Permit use. How is this *not* spot-permitting? Also she is unclear of what type of housing we are discussing. Are we going to have low-income housing in our lower Broadway business district? She would like to see a map illustrating all of the low and moderate income housing throughout the City. The process is totally out of order. It looks questionable.

There being no further comments in favor of or in opposition to this public hearing, this portion of the meeting was closed.

Stuart Sachs
28-30 Lander Street
Newburgh, NY 12550

04/22/13

Comments for Public Hearing on the Large Scale Mixed Use Development Special Permit

Dear Mayor and City Council Members,

I am concerned with this proposal, and the Special Permit this Council is considering to bypass the Planning Board. Our Master Plan states that Newburgh must increase tax revenue to relieve the burden on Real Property taxpayers. This project will do the opposite both because of the PILOT and because the project fails to mix market rate with affordable housing as is considered to be best practice.

The Sustainable Master Plan was adopted by the Council in '08. State law declares that land use must be consistent with this plan. The Planning Board is given special training to meet State requirements, and thus they are far more qualified to comply with the Future Land Use Plan than Council Members who do not receive this training. Further, it raises an appearance of conflict of interest for the City to offer a Special Permit for ONLY ONE of the developers, and not the others. If the Special Permit was included from the beginning we might even have received more and better proposals.

The MU2 zone includes residential upstairs with commercial downstairs. This proposal fails to provide a secured commercial tenant. They hope a supermarket might move from the mall, but there is no actual agreement. This Council should not give out Special Use Permits based on party talk.

Our Plan guides the City to development that will spur vitality and ease the tax burden on residential property. This project will do the opposite:

- Without commercial property, taxes will be based on the lower residential rate,
- The project density is lower than the MU2 zone reducing tax revenue, and
- All of the units are government subsidized which further lowers their tax contribution, and
- The use of a PILOT will drastically reduce the contribution to the City Tax rolls.

This development will use more City services than it will pay for in taxes. It will lead to more layoffs of City workers, and more homeowners losing their homes to tax lien foreclosure. I live down the block from this site. Over the last year, at least 4 buildings on my block have been taken over by the City for tax lien foreclosure. One building occupied by it's owner who put on the uniform of the US Air Force every day and went to work at Stewart AFB as a mechanic. He was proud of his house, but he could not make the tax payments. His home is now boarded up and vacant.

The PILOT, trades a one time payment for long term tax income. For example, the Varick Homes used a PILOT when it was built several decades ago, but even today, the total taxes on the site would be \$312,164, but it pays only \$125,000. This reduction of \$187,164 has to be paid by other taxpayers.

When there is a need for affordable housing, sustainable planning includes a mix of affordable and market rate housing in every development. It also spreads out affordable housing across the county so that we can help meet the real needs of our neighbors without placing the entire burden on any one community. A typical mix for a sustainable economy is 80% market rate, 20% affordable in any given

development.

This permit violates the letter and intent of our Future Land Use Plan, it violates the fairness of a blind proposal process, and it increases the burden of real property taxpayers. I urge you to vote against the Special Permit.

Respectfully Submitted,

Stuart Sachs
28-30 Lander Street

COMMENTS FROM THE PUBLIC REGARDING THE AGENDA

Kippy Boyle commented about Ord. #5-2013. She stated that the council concentrated on the fee schedule and the penalty for an absentee landlord at the work session. She would like the wording in the ordinance changed. We should include a tangible and measurable number to the 'radius' requirement. She would like the ordinance to read that *any property owner living outside of a 25-mile radius should then have a local contact who resides within a 10-mile radius*. This would be better stated than just using the 'more than 1 hour away' standard. If there is any dispute later, then at least we would have that number in place. And we will be covered.

Timothy Hayes-el remarked about Res. #81-2013. He stated that City Hall does not reflect the City of Newburgh. He feels that Richard Herbek's work does not reflect this city. When it is time to call people for jobs, the people of his community are not called. A lot of money comes into this city, but it is not reaching the residents. He is not going to support a workforce development. Who gets to say that people are qualified or not? Hayes-el does not trust City Hall one bit when it comes to jobs. There is a high record of nepotism and people hiring their friends.

Ben Weiss spoke about the very first agenda item- The Prayer. He did not want to offend anyone tonight. He fully recognizes that everyone has their own beliefs, yet he does think it is inappropriate to begin a public meeting with a prayer of that type. It is inappropriate to ask the general public, who may or may not share in the same beliefs, to stand up and engage in a prayer. Second, he supports the council's opposition of the CH Energy Group merger in Resolution #24-2013. The history of the energy provider is well documented, and it is not a very good one in terms of the rates and services it provides.

Yakov Sullivan seconded Mr. Weiss' comments. He stated that he is Jewish and he has the highest respect for Christians. But in a secular civic meeting, to state a prayer that is so clearly denominational, is inappropriate. He hopes that the council will make it clear to the clergyperson that it be something that can address all faiths.

Mary Ellen Korchinsky stated that as a Christian she would feel ashamed if she did not speak out in support of the speakers. We need to encourage ourselves to find our commonalities, and not our differences. She hopes that our future spiritual meditations, if we choose to have that segment at the meeting, would incorporate all beliefs, and realize that *that* is our strength.

There being no further comments, this portion of the meeting was closed.

COMMENTS FROM THE COUNCIL REGARDING THE AGENDA

Councilman Brown spoke about Res. #81-2013. He stated that he supports Workforce Development moving forward because of the change in direction, in terms of finding real jobs to support the residents of this city. He is going to be looking at WDI very closely going forward. He hopes that the \$50K, plus the efforts that WDI intends to put into the project as a real partner with the city, will help develop some real jobs in this city. Second, he spoke about Ord. #5-2013. It is a good idea to rethink the radius element worded in the ordinance. It would be better if people are closer to the City of Newburgh. An hour ride is a significant amount of time, and he wished that he heard the idea prior to the last work session. He suggested that the council table the matter and possibly changing it.

Mayor Kennedy commented on Res. #81-2013. We have pushed for WDI to change the course of direction and to really be focused on working with employers versus training people to do jobs that do not exist. We are working toward a \$50K contract, and WDI has agreed to put in over \$50K of its own effort to make it work. We talk about PILOTS all the time, but this is different. It is a PILOT in developing a new kind of service that has not been out there before. It is an opportunity to see this in a new way. She supports it completely, and we are going to be working closely with WDI to ensure we are making progress. She is cautious, but optimistic that we are moving in the right direction. Second, she agreed that the radius element in Ord. #5-2013 should be looked at further. But she does support the whole concept of the Vacant Building Registry.

***Corporation Counsel Michelle Kelson stated for the record that the ordinance reads "*45-mile radius.*" ***

Kennedy stated that she has heard a lot of good information and comments about the zoning ordinance. We can discuss it more when we reach the actual ordinance. There are a lot of things that she needs to ponder over as we think about it. Specifically, she is concerned that the matters are not going to go before the planning board. Developers have always done so in previous situations.

City Manager Richard Herbek commented that we can not act on it tonight, because we do not have the comments back from Orange County. The main purpose of having it on the agenda is for the public hearing. It would be

ill-advisable for the council to take this up without at least reviewing all of the comments.

There being no further discussion, this portion of the meeting was closed.

CITY MANAGER'S REPORT

Herbek reminded everyone that next Saturday (4/27) is Newburgh Cleanup Day sponsored by Safe Harbors. There is a final preparatory meeting scheduled to take place tomorrow at 5 P.M., at Safe Harbors. He and DPW Superintendant George Garrison will be in attendance. Anyone interested in participating and helping with the overall coordination and follow through on Saturday is welcome to attend the meeting.

RESOLUTION NO.: 81 - 2013

OF

APRIL 22, 2013

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A
CONTRACT WITH WORKFORCE DEVELOPMENT INSTITUTE
TO DEVELOP A BUSINESS ADVISORY COUNCIL OF LOCAL EMPLOYERS TO
PROVIDE EMPLOYMENT OPPORTUNITIES FOR QUALIFIED CITY OF
NEWBURGH RESIDENTS AT A COST TO THE CITY OF \$50,000.00

WHEREAS, by Resolution No. 185-2011 of September 12, 2011, the City Council of the City of Newburgh authorized the City Manager to execute a contract with the Workforce Development Institute (hereinafter "WDI") to recruit and hire a Program Coordinator, establish a specific selection and assessment criteria within the Newburgh population, review caseloads and establish enrollment, engagement and reporting requirements and protocols with community organizations; and

WHEREAS, the term of the initial contract for the first phase of such services was effective through December of 2011 and by Resolution No. 18-2012 of February 14, 2012, the City Council extended the term of this contract to April 30, 2012; and

WHEREAS, WDI completed the initial phase of the project and by Resolution No. 52-2012 of April 23, 2012, the City Council authorized the City Manager to execute a contract with WDI to provide the next phase of services; and

WHEREAS, WDI has completed the second phase of its services and now proposes to assist the City of Newburgh in developing a Business Advisory Council of local employers to provide employment opportunities for qualified City of Newburgh Residents as set forth in the "Scope of Services" of the contract annexed hereto and made part hereof; and

WHEREAS, this Council has determined that entering into a new contract with WDI for the purpose of developing a Business Advisory Council is in the best interests of the City of Newburgh and its residents and citizens alike;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to a contract

with Workforce Development Institute to provide assistance in the development of a Business Advisory Council at a cost to the City of \$50,000.00.

Councilwoman Angelo moved and Councilwoman Lee seconded that the resolution be adopted.

Ayes- Councilwoman Angelo, Councilman Brown, Councilwoman Lee, Mayor Kennedy-4

ADOPTED

RESOLUTION NO.: 82 - 2013

OF

APRIL 22, 2013

A RESOLUTION AUTHORIZING THE CITY MANAGER
TO ENTER INTO NATURAL GAS AND ELECTRIC CONTRACTS WITH HESS
CORP. THROUGH THE MUNICIPAL ELECTRIC AND GAS ALLIANCE
("MEGA")
FOR A TWO (2) YEAR TERM AT A FIXED RATE

WHEREAS, by Resolution No. 276-2010 of December 13, 2010, the City Council of the City of Newburgh authorized the City Manager to execute contracts for the provision of natural gas and electric for a two (2) year term at a fixed rate with Hess Corporation as the Municipal Electric and Gas Alliance's ("MEGA") endorsed supplier for the Central Hudson Utility Service; and

WHEREAS, , Municipal Electric and Gas Alliance ("MEGA") has been promoting utility savings to Municipalities across New York State and the purpose of entering into the contracts with Hess Corporation for the supply of natural gas and electric was to lower the City's utility costs; and

WHEREAS, pursuant to the last twelve (12) months of the initial two-year contract with Hess Corporation, the City of Newburgh has realized a savings of \$28,735.00; and

WHEREAS, this Council finds that continuing to maintain the City's utility cost savings through the renewal of such contracts is in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager be and he is hereby authorized to execute contracts for the provision of Natural Gas and Electric for a two (2) year term at a fixed rate to the City of Newburgh in the general form attached hereto with Hess Corporation, with all such terms and conditions as may be required by the Corporation Counsel.

Councilwoman Angelo moved and Councilwoman Lee seconded that the resolution be adopted.

Ayes- Councilwoman Angelo, Councilman Brown, Councilwoman Lee, Mayor Kennedy-4

ADOPTED

RESOLUTION NO.: 83 - 2013

OF

APRIL 22, 2013

RESOLUTION AMENDING RESOLUTION NO: 223 - 2012,
THE 2013 BUDGET FOR THE CITY OF NEWBURGH, NEW YORK
TO TRANSFER \$1,004,000.00 FROM
GENERAL "FUND BALANCE" TO CAPITAL FUND
FOR THE PURPOSE OF PURCHASING VEHICLES

WHEREAS, by Resolution No. 24-2013 of January 28, 2013, the City Council of the City of Newburgh authorized the issuance of bond anticipation notes to finance the purchase of replacement vehicles for the Fire Department and the Department of Public Works; and

WHEREAS, the City of Newburgh has the opportunity to purchase the replacement vehicles through a New York State contract; and

WHEREAS, the purchase orders for the replacement vehicles must be submitted prior to the closing of the bond financing; and

WHEREAS, the funds for the purchase of the vehicles is available from the General Fund and will be replaced when the bond anticipation notes have been issued; and

WHEREAS, this Council finds that it is in the best interests of the City of Newburgh to make the funds available to purchase the replacement vehicles from the New York State contract.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, that Resolution No: 223-2012, the 2013 Budget of the City of Newburgh, is hereby amended as follows:

	<u>Decrease</u>	<u>Increase</u>
A.0000.0911 Fund Balance	\$1,004,000.00	
H1.3412 Fire Department		
.0202.8101.2013 Motor Equipment		\$ 465,000.00

H1.5132 DPW-Garage \$ 144,000.00
.0202.8101.2013 Motor Equipment

H1.5133 DPW-Police Garage \$ 175,000.00
.0202.8101.2013 Motor Equipment

HS.8160 Sanitation \$ 220,000.00
.0202.8101.2013 Motor Equipment

Councilwoman Angelo moved and Councilwoman Lee seconded that the resolution be adopted.

Ayes- Councilwoman Angelo, Councilman Brown, Councilwoman Lee, Mayor Kennedy-4

ADOPTED

RESOLUTION NO.: 84 - 2013

OF

APRIL 22, 2013

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE AN AGREEMENT WITH
INTERNATIONAL DATA BASE CORP D/B/A
INTERACTIVE PROCUREMENT TECHNOLOGIES BY BIDNET
TO PROVIDE FOR WEB-BASED SOLICITATION AND BIDDING SERVICES**

WHEREAS, the City of Newburgh wishes to enter into the attached Agreement with International Data Base Corp., d/b/a Interactive Procurement Technologies by BidNet ("IPT"); and

WHEREAS, this agreement will authorize IPT to provide web-based solicitation and bidding services, including maintenance and support services; and

WHEREAS, these services will expand the City's vendor base for competitive bidding and streamlining some of the documents for the solicitations; and

WHEREAS, there is no subscription fee for the services with the exception of reimbursement for postage fees incurred to produce the mailing to suppliers and a programming fee if customized work is requested at a rate of One Hundred and Twenty-Five (\$125.00) Dollars per hour; and

WHEREAS, this Council has reviewed such agreement and has determined it to be in the best interest of the City;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to enter into and execute the attached agreement to provide for web-based solicitation system, providing on-line bidding services, including maintenance and support services in the general form attached hereto, with such other terms and conditions as may be required by Corporation Counsel and the City Manager, same as being in the best interest of the City of Newburgh.

Councilwoman Angelo moved and Councilwoman Lee seconded that the resolution be adopted.

Ayes- Councilwoman Angelo, Councilman Brown, Councilwoman Lee, Mayor Kennedy-4

ADOPTED

RESOLUTION NO.: 85 - 2013

OF

APRIL 22, 2013

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE A LICENSE AGREEMENT WITH PRECISION PIPELINE
SOLUTIONS TO ALLOW ACCESS TO CITY-OWNED PROPERTY AS A
STAGING AREA FOR PIPE, EQUIPMENT AND RELATED MATERIALS FOR
VARIOUS PROJECTS DURING THE 2013 CONSTRUCTION SEASON**

WHEREAS, the Precision Pipeline Solutions has requested access to City-owned property located at 207 Carpenter Avenue and identified as Section 17, Block 5, Lot 6, on the tax map of the City of Newburgh for the purpose of temporary storage of pipe, equipment and related material for various projects during the 2013 construction season; and

WHEREAS, such access to the subject property requires the parties to execute a license agreement, a copy of which is attached hereto and made a part of hereof; and

WHEREAS, this Council has reviewed such license agreement and has determined that entering into the same would be in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to enter into the attached license agreement with Precision Pipeline Solutions to allow access to City-owned property for the purpose of temporary storage of equipment and materials as a staging area for work to be performed during the 2013 construction season.

Councilwoman Angelo moved and Councilwoman Lee seconded that the resolution be adopted.

Ayes- Councilwoman Angelo, Councilman Brown, Councilwoman Lee, Mayor Kennedy-4

ADOPTED

LICENSE AGREEMENT

This Agreement, made this ____ day of _____, two thousand and thirteen by and between the CITY OF NEWBURGH, a municipal corporation organized and existing under the laws of the State of New York with offices at 83 Broadway, City Hall, Newburgh, New York 12550 as "LICENSOR," and PRECISION PIPELINE SOLUTIONS, a private business organization having an address at 617 Little Britain Road, New Windsor, New York 12553 and its consultants and sub-contractors, as "LICENSEE";

WITNESSETH THAT:

WHEREAS, Licensee desires the license or privilege of gaining access to the premises of Licensor on behalf of itself and its employees, agents and contractors in substantially the location and position shown as set forth on the map or plan hereto attached and made a part hereof and bearing the following address:

Property identified as lands of the City of Newburgh, 207 Carpenter Avenue, Section 17, Block 5, Lot 6 on the tax map of the City of Newburgh;

AND WHEREAS, Licensor is willing to give said license or privilege on the following terms and conditions:

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and conditions hereinafter contained, it is hereby agreed as follows:

First: Licensor hereby gives to Licensee and Licensee's employees, agents and contractors, upon the conditions hereinafter stated, the license or privilege of entering upon Licensor's property identified as 207 Carpenter Avenue, Section 17, Block 5, Lot 6, and taking thereupon such vehicles, equipment, tools, machinery and other materials as may be necessary and for the use of said property for the storage, parking, operation and management of vehicles, equipment and materials as a staging area for work to be performed during the 2013 construction season.

Second: Licensee agrees to do such work and perform such tasks in such manner as will comply fully with the provisions of any laws, ordinances or other lawful authority, obtaining any and all permits required thereby.

Third: Licensee hereby agrees to defend, indemnify and hold Licensor harmless against any claims, actions and proceedings brought against Licensor arising out of, in connection with and/or relating to Licensee's use of the premises. Licensee has posted evidence of and shall maintain throughout the term of this License public liability

insurance naming the Licensor as additional insured in a minimum coverage amount of One Million (\$1,000,000.00) Dollars.

Fourth: Licensee may retain certain employees, agents, contractors and consultants to perform the subject work. In the contract by which Licensee retains such agents, contractors and/or consultants, Licensee and such agents, contractors and/or consultants shall name and/or treat and hold Licensor as additional insured under insurance coverage concerning Licensee's performance of the tasks referenced herein.

Fifth: This Agreement and the license or privilege hereby given shall expire and terminate upon the completion of the work by Licensee and its agents, employees and contractors, and the restoration of the property to a clean and orderly state and in the same condition as existed prior to the granting of this license, normal wear and tear excepted.

Sixth: It is understood and agreed that no vested right in said premises is hereby granted or conveyed from either party to the other, and that the privileges hereby given are subject to any and all encumbrances, conditions, restrictions and reservations upon or under which the parties held said premises prior to the granting of this license.

Seventh: Without limitation to the general provisions of this Agreement, it is understood and agreed that said staging work shall be performed in substantially the location of 207 Carpenter Avenue, Section 17, Block 5, Lot 6, and in accordance with details and specifications as set forth on map or plan hereto attached and hereby made a part hereof.

Eighth: Licensee agrees to give Licensor no less than twenty-four (24) hours advance notice of its intention to enter upon the subject property and to perform the subject work.

WITNESSETH:

THE CITY OF NEWBURGH

LICENSOR

By:

Richard F. Herbek, City Manager

PRECISION PIPELINE SOLUTIONS

LICENSEE

By:

Name:

Title:

RESOLUTION NO.: 86 - 2013

OF

APRIL 22, 2013

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE A LICENSE AGREEMENT WITH KISKA CONSTRUCTION TO
ALLOW ACCESS TO CITY-OWNED PROPERTY AS A STAGING AREA AND
FOR PURPOSES RELATING TO MAINTENANCE AND REPAIR OF THE
ROUTE 9W BRIDGE BY THE NEW YORK STATE DEPARTMENT OF
TRANSPORTATION**

WHEREAS, the New York State Department of Transportation has commenced a maintenance and repair project for the Route 9W Bridge; and

WHEREAS, KISKA Construction has requested access to City-owned property in between the north side of Quassaick Creek and south side of the CSX Rail Road line that runs east to west below the above subject bridge identified as Section 43, Block 1, Lot 31, Section 43, Block 1, Lot 28, Section 43, Block 1, Lot 29.2 and Section 47, Block 2, Lot 12 on the tax map of the City of Newburgh for the purpose of temporary storage and management of equipment and materials as a temporary staging area for work to be performed on the Route 9W Bridge and adjacent property; and

WHEREAS, such access to the subject property requires the parties to execute a license agreement, a copy of which is attached hereto and made a part of hereof; and

WHEREAS, this Council has reviewed such license and has determined that entering into the same would be in the best interests of the City of Newburgh and its further development;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to enter into the attached license agreement with KISKA Construction to allow access to City-owned property for the purpose of storage and management of equipment and materials as a staging area for work to be performed on the Route 9W Bridge and adjacent property.

Councilwoman Angelo moved and Councilwoman Lee seconded that the resolution be adopted.

Ayes- Councilwoman Angelo, Councilman Brown, Councilwoman Lee, Mayor Kennedy-4

ADOPTED

LICENSE AGREEMENT

This Agreement, made this _____ day of _____, two thousand and thirteen by and between the CITY OF NEWBURGH, a municipal corporation organized and existing under the laws of the State of New York with offices at 83 Broadway, City Hall, Newburgh, New York 12550 as "LICENSOR," and KISKA CONSTRUCTION, a private business organization having an address at 110 W. Crooked Hill Road, Pearl River, New York 10965 and its consultants and sub-contractors, as "LICENSEE";

WITNESSETH THAT:

WHEREAS, Licensee desires the license or privilege of gaining access to and performing work upon the premises of Licensor on behalf of itself and its employees, agents and contractors in substantially the location and position shown as set forth on the map or plan hereto attached and made a part hereof and bearing the following title:

SCHEDULE "A":

Properties identified as lands of the City of Newburgh as Section 43, Block 1, Lot 31, Section 43, Block 1, Lot 28, Section 43, block 1, Lot 29.2 and Section 47, Block 2, Lot 12 on the tax map of the City of Newburgh;

AND WHEREAS, Licensor is willing to give said license or privilege on the following terms and conditions:

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and conditions hereinafter contained, it is hereby agreed as follows:

First: Licensor hereby gives to Licensee and Licensee's employees, agents and contractors, upon the conditions hereinafter stated, the license or privilege of entering upon Licensor's properties as indicated in Schedule "A", and taking thereupon such vehicles, equipment, tools, machinery and other materials as may be necessary; for the purposes of and to perform certain tasks on property owned by Licensor, for the use of said property for the storage, parking, operation and management of vehicles, equipment and materials as a staging area for work to be performed on adjacent and nearby properties for the purposes of and to perform maintenance, repairs and improvements to the Route 9W bridge in accordance with NYSDOT D261778.

Second: Licensee agrees to do such work and perform such tasks in such manner as will comply fully with the provisions of any laws, ordinances or other lawful authority, obtaining any and all permits required thereby.

Third: Licensee hereby agrees to defend, indemnify and hold Licensor harmless against any claims, actions and proceedings brought against Licensor arising out of, in connection with and/or relating to Licensee's use of the premises. Licensee has posted evidence of and shall maintain throughout the term of this License public liability insurance naming the Licensor as additional insured in a minimum coverage amount of One Million (\$1,000,000.00) Dollars.

Fourth: Licensee may retain certain employees, agents, contractors and consultants to perform the subject work. In the contract by which Licensee retains such agents, contractors and/or consultants, Licensee and such agents, contractors and/or consultants shall name and/or treat and hold Licensor as additional insured under insurance coverage concerning Licensee's performance of the tasks referenced herein.

Fifth: This Agreement and the license or privilege hereby given shall expire and terminate upon the completion of the work by Licensee and its agents, employees and contractors, and the restoration of the property to a clean and orderly state and in the same condition as existed prior to the granting of this license, normal wear and tear excepted.

Sixth: It is understood and agreed that no vested right in said premises is hereby granted or conveyed from either party to the other, and that the privileges hereby given are subject to any and all encumbrances, conditions, restrictions and reservations upon or under which the parties held said premises prior to the granting of this license.

Seventh: Without limitation to the general provisions of this Agreement, it is understood and agreed that said work shall be performed in substantially the location and position shown in Schedule "A", and in accordance with details and specifications as set forth on map or plan hereto attached and hereby made a part hereof.

Eighth: Licensee agrees to give Licensor no less than twenty-four (24) hours advance notice of its intention to enter upon the subject property and to perform the subject work.

WITNESSETH:

THE CITY OF NEWBURGH

LICENSOR

By:

Richard F. Herbek, City Manager

KISKA CONSTRUCTION

LICENSEE

By:

Name:

Title:

RESOLUTION NO.: 87 - 2013

OF

APRIL 22, 2013

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO ENTER INTO AGREEMENTS WITH VARIOUS PARTIES
TO PROVIDE PERFORMING ARTISTS AND RELATED SERVICES
IN CONNECTION WITH THE NEWBURGH ILLUMINATED FESTIVAL**

WHEREAS, the Newburgh Illuminated Festival will be held in June 2013; and

WHEREAS, it is appropriate and necessary to authorize the City Manager to enter into agreements by which performing artists, production services and necessary equipment and facilities shall be provided; and

WHEREAS, there is funding from donations available in a Trust and Agency Account; and

WHEREAS, such agreements shall not exceed the funds in the Trust and Agency Account;

NOW, THEREFORE, BE IT RESOLVED, that the Council of the City of Newburgh, New York hereby authorizes the City Manager to enter into the referenced agreements in a form subject to approval of the Corporation Counsel with such other terms and conditions as Corporation Counsel may require, with the performing artists and providers of related necessary services in connection with the Newburgh Illuminated Festival, with the net cost to the City of such agreements not to exceed the available funds in the Trust and Agency Account.

Councilwoman Angelo moved and Councilwoman Lee seconded that the resolution be adopted.

Ayes- Councilwoman Angelo, Councilman Brown, Councilwoman Lee, Mayor Kennedy-4

ADOPTED

RESOLUTION NO. 88-2013

OF

APRIL 22, 2013

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH
OPPOSING THE PROPOSED MERGER OF CH ENERGY GROUP, INC. WITH
FORTIS, INC.

WHEREAS, Fortis, Inc. ("Fortis"), a multinational corporation with headquarters in Canada made an offer to purchase CH Energy Group, Inc. ("Central Hudson"), a publicly traded utility located in the Hudson Valley; and

WHEREAS, there are approximately 375,000 Central Hudson customers, representing approximately 680,000 persons, many of whom live in the City of Newburgh; and

WHEREAS, the Public Service Commission (PSC) must approve of this merger and in order to be approved the applicant must prove a net public benefit; and

WHEREAS, the PSC held only two hearings, on the same day, one of which was held at 3:30 in the afternoon, when much of the population was still at work; and

WHEREAS, the PSC staff recommended \$85 million in community benefit funds for areas covered by Central Hudson, to which Fortis initially offered only \$20 million before ultimately settling for less than \$50 million in aid to our area; and

WHEREAS, Fortis has only guaranteed a rate freeze for 12 months; and

WHEREAS, Fortis is not committed to expanding its Alternative Energy portfolio and has publicly said they will continue to rely on natural gas; and

WHEREAS, Fortis has not committed to increase the resilience of the region's electricity system to major storms like Irene, Lee and Sandy, including through investment in a distributed generation network; and

WHEREAS, the public benefits offered by Fortis are not only one-time and short-term, and are outweighed by the future risks to Hudson Valley residents of achieving an affordable, sustainable and reliable supply of power; and

WHEREAS, the possible use of the North American Free Trade Agreement ("NAFTA") to override the PSC and New York State requirements to modernize energy should be of major concern to our State; and

WHEREAS, Assemblyman Kevin Cahill, former chair of the Assembly Energy Committee, has highlighted the possible use of NAFTA as a way to severely restrict the ability of the PSC to fully regulate merged Fortis/Central Hudson; and

WHEREAS, Fortis partner, Abitibi, initiated a NAFTA claim against Canada when Newfoundland expropriated property there, including some belonging to Exploits Hydro Partnership, in which Fortis owns 51% and Abitibi 49%; and

WHEREAS, Central Hudson workers would only be guaranteed jobs for a two year period, after which Fortis can begin to outsource work; and

WHEREAS, IBEW Local 320 is strongly opposed to this merger due to the loss of long term local jobs, which would devastate the Hudson Valley;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Newburgh, at this time, cannot support the proposed merger of Central Hudson and the multinational corporation Fortis, Inc. as it has been proposed; and

BE IT FURTHER RESOLVED, that the City Council of the City of Newburgh urges the Public Service Commission to extend the period for public comment so that the City Council and other interested parties can have time to assess the full implications and potential impacts of the Central Hudson/Fortis merger; and

BE IT FURTHER RESOLVED, that the City Council urges the PSC to have a Public Recommended Decision, which will provide for a more transparent decision; and

BE IT FURTHER RESOLVED, that the City Clerk of the City of Newburgh be and hereby is directed to forward copies of this resolution to Governor Andrew Cuomo, members of the Public Service Commission c/o Jeffrey C. Cohen, Acting Secretary, Public Service Commission, New York State Senator William Larkin, Jr. and New York State Assemblyman Frank Skartados.

Councilwoman Angelo moved and Councilwoman Lee seconded that the resolution be adopted.

Ayes- Councilwoman Angelo, Councilman Brown, Councilwoman Lee, Mayor Kennedy-4

ADOPTED

RESOLUTION NO.: 89-2013

OF

APRIL 22, 2013

**A RESOLUTION AUTHORIZING THE EXECUTION
OF A RELEASE OF RESTRICTIVE COVENANTS AND RIGHT OF RE-ENTRY
FROM A DEED ISSUED TO WATANABE STUDIO LTD
TO THE PREMISES KNOWN AS 1 EDWARD STREET
(SECTION 46, BLOCK 2, LOT 11)**

WHEREAS, on March 15, 2005, the City of Newburgh conveyed property located at 1 Edward Street, being more accurately described on the official Tax Map of the City of Newburgh as Section 46, Block 2, Lot 11, to Watanabe Studio Ltd.; and

WHEREAS, the owner, by his attorney, has requested a release of the restrictive covenants contained in said deed; and

WHEREAS, this Council believes it is in the best interest of the City of Newburgh to grant such request;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute the release, annexed hereto and made a part of this resolution, of restrictive covenants numbered 1, 2, 3, 4 and 5 of the aforementioned deed.

Councilwoman Angelo moved and Councilwoman Lee seconded that the resolution be adopted.

Ayes- Councilwoman Angelo, Councilman Brown, Councilwoman Lee, Mayor Kennedy-4

ADOPTED

**RELEASE OF COVENANTS AND
RIGHT OF RE-ENTRY**

KNOWN ALL PERSONS BY THESE PRESENTS, that the City of Newburgh, a municipal corporation organized and existing under the Laws of the State of New York, and having its principal office at City Hall, 83 Broadway, Newburgh, New York 12550, in consideration of TEN (\$10.00) DOLLARS lawful money of the United States and other good and valuable consideration, receipt of which is hereby acknowledged, does hereby release and forever quitclaim the premises described as 1 Edward Street, Section 46, Block 2, Lot 11, on the Official Tax Map of the City of Newburgh, from those restrictive covenants numbered 1, 2, 3, 4 and 5 in a deed dated March 15, 2005, from the CITY OF NEWBURGH to WATANABE STUDIO LTD., recorded in the Orange County Clerk's Office on March 17, 2005, in Liber 11781 of Deeds at Page 0091 and does further release said premises from the right of re-entry reserved in favor of the City of Newburgh as set forth in said deed.

Dated: _____, 2013

THE CITY OF NEWBURGH

By:

RICHARD F. HERBEK,
City Manager

STATE OF NEW YORK)
)ss.:
COUNTY OF ORANGE)

On the _____ day of April in the year 2013, before me, the undersigned, a Commissioner of Deeds in and for said State, personally appeared RICHARD F. HERBEK, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted; executed the instrument.

Ordinance #4-2013

**** Postponed until the council receives comments from Orange County, and
until the council has the time to digest public comments heard this evening ****

Ordinance #5-2013 (Renumbered as Ordinance #4-2013)

ORDINANCE NO.: 4-2013

OF

APRIL 22, 2013

**AN ORDINANCE RESCINDING THE LANGUAGE CONTAINED IN
CHAPTER 121 ENTITLED "BUILDINGS, VACANT"
OF THE CODE OF ORDINANCES OF THE CITY OF NEWBURGH AND
AMENDING CHAPTER 121 ENTITLED "BUILDINGS, VACANT" TO REQUIRE
THE MAINTENANCE OF VACANT PROPERTIES IN THE CITY OF
NEWBURGH, ESTABLISHING REGISTRATION REQUIREMENTS, AND
LEVYING A REGISTRATION FEE ON OWNERS OF VACANT PROPERTIES**

BE IT ORDAINED, by the Council of the City of Newburgh, New York that the language contained in Section 121, Buildings, Vacant, be and is hereby repealed in its entirety and that the same is hereby amended to read as follows:

§ 121-1 Findings and purpose.

The City of Newburgh contains many structures that are vacant in whole or large part; and in many cases the owners or other responsible parties of these structures are neglectful of them and are failing to maintain them or secure them to adequate standard or restore them to productive use. Many of these structures are in violation of state and local housing and property maintenance codes. It has been established that vacant and abandoned structures cause severe harm to the health, safety, and general welfare of the community, including diminution of neighboring property values, loss of property tax revenues, accumulations of trash and debris, increased risk of fire, and potential increases in criminal activity and public health risk, and the City of Newburgh incurs disproportionate costs in order to deal with the problems of vacant and abandoned structures, including but not limited to police calls, fire calls, and property inspections. It is in the public interest for the City of Newburgh to establish minimum standards of accountability for the owners or other responsible parties of vacant and abandoned structures in order to protect the health, safety, and general welfare of the residents of the

City of Newburgh, and it is in the public interest for the City of Newburgh to impose a fee in conjunction with a registration ordinance for vacant and abandoned structures in light of the disproportionate costs imposed on the City by the presence of these structures.

§ 121-2 Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

EVIDENCE OF VACANCY - Any condition that on its own, or combined with other conditions present, would lead a reasonable person to believe that the property is vacant. Such conditions may include, but are not limited to, overgrown or dead vegetation; accumulation of debris or abandoned personal property; and statements by neighbors, passers-by, delivery agents or government agents, among other evidence that the property is vacant.

MUNICIPAL OFFICER - The Fire Chief, Director of the Code Compliance Bureau, and the Building Inspector or such official within that department as may be designated by the Director in writing.

OWNER - The title holder, any agent of the title holder having authority to act with respect to a vacant property, and any foreclosing entity that has obtained a judgment of foreclosure and sale (RPAPL S. 1307).

VACANT PROPERTY - Any building or structure that is not at present legally occupied or at which all lawful business or construction operations or residential inhabitation, or other occupancy have substantially ceased and that is in such condition that it cannot legally be re-occupied without repair or rehabilitation, including but not limited to any property meeting the definition of abandoned property; however, any habitable property where all building systems are in sound working order, where the building and grounds are maintained in good condition, and [or] which is being actively marketed by its owner for sale or rental, shall not be deemed a vacant property for purposes of this ordinance.

§ 121-3 Registration.

(1) a. Effective on June 1, 2013, the owner of any vacant property as defined herein shall, within 30 days after the building becomes vacant property or within 30 days after assuming ownership of the vacant property, whichever is later; or within 10 days of receipt of notice by the municipality, file a registration statement for such vacant property with the municipal officer on forms provided for that purpose by the municipal officer along with any fee required by Chapter 163. Failure to receive notice by the municipality shall not constitute grounds for failing to register the property.

 b. Each property having a separate section block and lot number shall be registered separately.

c. The registration shall include the information required under section (2) of this section, the insurance certificate required under section (5) of this section unless a bond is provided, as well as any additional information that the municipal officer may reasonably require.

d. The registration shall remain valid for one year from the date of registration. The owner shall be required to renew the registration annually as long as the building remains vacant property and shall pay a registration or renewal fee in the amount prescribed in Chapter 163 for each vacant property registered.

e. The municipal officer may establish for purposes of efficient administration that all registrations shall be renewed by a single date in each year. The municipal officer shall establish this date in which case the initial registration fee shall be pro-rated for registration statements received less than 10 months prior to that date.

f. (i.) Any owner of vacant property who plans to restore the property to productive use and occupancy during the twelve month period following the date of the initial registration of the property shall file a detailed statement of the owner's plans for restoration of the property with the registration statement and shall be exempt from payment of the registration fee but shall comply with all other provisions of this ordinance. In the event that the property has not been restored to productive use and occupancy at the end of the twelve month period, the owner shall be liable for any fee waived. The municipal officer may extend the waiver of the registration fee for not more than one additional year in response to a written request by the property owner where the municipal officer finds that compelling conditions outside the owner's control made it impossible for the owner to restore the property within the initial twelve month period.

1. In addition, the statement of the owner's plans, at a minimum, must contain one of the following for the property:

- (a) If the building is to be demolished, a demolition plan indicating the proposed time frame for demolition; or
- (b) If the building is to be returned to appropriate occupancy or use, a rehabilitation plan for the property. Implementation of the rehabilitation plan shall not exceed twelve months. Any repairs, improvements, or alterations to the property must comply with any applicable zoning, housing, historic preservation, or building codes and must be secured during the rehabilitation.

2. The Building Inspector shall provide the owner with a written referral to the Planning Department for information outlining programs available that may be useful in developing the owner's rehabilitation plan.

(ii.) Where the owner is an entity experienced in rehabilitation or redevelopment of vacant properties, and where the property subject to this ordinance is being held for a project of rehabilitation or redevelopment consistent with municipal plans and ordinances, and where by virtue of financing, market, or other conditions that project may require more than one year for realization, the municipal officer may extend the waiver of the registration fee on an annual basis without limitation upon written request by the owner, as long as the municipal officer finds that the owner is making reasonable progress toward completion of the project. The owner shall provide the municipal officer with documentation of such progress, which may include plans, financing applications, applications for land use approval, or other evidence of progress.

g. The owner shall notify the municipal officer within 30 days of any change in the registration information by filing an amended registration statement on a form provided by the municipal officer for such purpose.

h. The registration statement shall be deemed prima facie proof of the statements therein contained in any administrative enforcement proceeding or court proceeding instituted by the City against the owner or owners of the building.

(2) a. The registration statement shall include:

(i) The name(s), residences and business addresses, e-mail address, telephone numbers, and birth date(s) of the principal officers if the applicant is an individual, partnership, or firm, or the names, residences and business address, e-mail address, telephone numbers, and birth dates of the principal officers if the applicant is an association or corporation.

(ii) The name, street address, e-mail address, and telephone number of a natural person 21 years of age or older, designated by the owner or owners as the authorized agent for receiving notices of code violations and for receiving process in any court proceeding or administrative enforcement proceeding on behalf of such owner or owners in connection with the enforcement of any applicable code. The agent for service of process must maintain offices or reside in the State of New York.

(iii) The name, street address, e-mail address, and telephone numbers of the firm or individual responsible for maintaining the property. The individual or a representative of the firm responsible for maintaining the property must maintain offices within 45 miles of the City and shall be available by telephone or in person on a 24-hour-per-day, seven-day-per-week basis.

(iv) A description of the premises, including street address, section block and lot, and type of building;

(v) The date the building became vacant and the period of time the building is expected to remain vacant;

(vi) A description of what will be done to secure the structure so that it will not become open to the general public; and

(vii) The status of water, sewer, natural gas, and electric utilities.

b. By designating an authorized agent under the provisions of this section, the owner consents to receive any and all notices of code violations concerning the registered vacant property and all process in any court proceeding or administrative enforcement proceeding brought to enforce code provisions concerning the registered building by service of the notice or process on the authorized agent. Any owner who has designated an authorized agent under the provisions of this section shall be deemed to consent to the continuation of the agent's designation for the purposes of this section until the owner notifies the municipal officer in writing of a change of authorized agent or until the owner files a new annual registration statement.

c. Any owner who fails to register a vacant property under the provisions of this ordinance shall further be deemed to consent to receive, by posting at the building, any and all notices of code violations and all process in an administrative proceeding brought to enforce code provisions concerning the building.

(3) a. The registration and renewal fee for each building is set forth in Chapter 163.

b. All funds collected from registration and renewal fees under this section shall be deposited in a dedicated trust fund to be used exclusively for municipal activities with respect to vacant and problem properties in the municipality, including but not limited to inspection, nuisance abatement, securing and boarding, maintaining property information systems, and reasonable administrative and legal costs associated with any of the above.

(4) The owner of any structure that has become vacant property, and any person responsible for maintaining any such building that has become vacant, shall within 30 days of the structure becoming vacant or 30 days of the owner taking title to the property:

(i.) Enclose and secure the structure as provided in the applicable codes of the City of Newburgh and the State of New York or as set forth in rules and regulations adopted by the municipal officer to supplement those codes.

(ii.) Ensure that the grounds of the structure, including yards, fences, sidewalks, walks, and driveways, are well-maintained and kept free from trash or debris.

(iii.) Post a sign affixed to the structure with the name, address, and telephone number of the owner and the owner's authorized agent for the purpose of service of process and the name, address, and telephone number of the entity responsible for maintenance of the property, which may be the same as the owner or authorized agent. If the structure is set back from the street, the sign may be posted on a well-secured post or stake in the front yard of the property. The sign shall be at least 18" x 24" in dimension, shall include the words "to report problems with this building,

call...", and shall be placed in a location where it is clearly legible from the nearest public street or sidewalk, whichever is nearer; and

(iv.) Maintain the structure in a secure and closed condition, keep the grounds in a clean and well-maintained condition, and ensure that the sign is visible and intact until the building is again occupied or demolished or until repair or rehabilitation of the building is complete.

(5) The owner of any vacant property shall acquire or otherwise maintain liability insurance in an amount of not less than \$300,000.00 for buildings designed primarily for one- and two-unit residential use and not less than \$1,000,000.00 for any other building, including but not limited to, buildings designed for multifamily, manufacturing, storage, or commercial uses, covering any damage to any person or any property caused by any physical condition of or in the building. Any insurance policy acquired or renewed after the building has become vacant shall provide for written notice to the municipal officer within 30 days of any lapse, cancellation, or change in coverage and the owner shall provide such written notice of any lapse, cancellation or change in coverage to the municipal officer. The owner shall attach evidence of the insurance to the owner's registration statement. Any registration statement submitted that does not include such evidence shall not be deemed to be a valid registration. Alternatively, an owner can choose to provide a cash bond acceptable to the municipal officer, in the sum of not less than \$10,000, to secure the continued maintenance of the property throughout its vacancy and remunerate the City for any expenses incurred in inspecting, securing, marking, or making such building safe.

(6) a. The City of Newburgh shall establish an on-line registry of all properties registered with the City under this ordinance, which shall include a procedure by which citizens can provide the municipal officer through electronic means with information on unregistered properties that may be subject to this ordinance.

b. The City of Newburgh may enter into agreements with qualified non-profit entities and neighborhood associations to assist the City to enforce this ordinance, including but not limited to identification of unregistered properties that may be subject to this ordinance.

§ 121-4 Rules and Regulations.

The municipal officer may issue rules and regulations for the administration of the provisions of this ordinance.

§ 121-5 Enforcement.

Any person who violates any provision of this ordinance or of the rules and regulations issued hereunder shall be fined not less than \$500.00 and not more than \$1,000.00 for

each offense. Every day that a violation continues shall constitute a separate and distinct offense. Fines assessed under this chapter shall be recoverable from the owner and shall be a lien on the property.

For purposes of this section, failure to file a registration statement within 30 days after a building becomes vacant property or within 30 days after assuming ownership of a vacant property, whichever is later; or within 10 days of receipt of notice by the municipality, failure to provide correct information on the registration statement, failure to comply with the provisions of § 121-3 (4) or (5) of this ordinance, or such other matters as may be established by the rules and regulations of the municipal officer shall be deemed to be violations of this ordinance.

§ 121-6 Effective Date.

This ordinance shall become effective upon publication as provided by law.

§ 121-7 Severability.

If any of the provisions of this chapter shall be held invalid, the remainder shall remain valid and enforceable as provided by law.

Councilwoman Angelo moved and Councilwoman Lee seconded that the ordinance be adopted.

Ayes- Councilwoman Angelo, Councilman Brown, Councilwoman Lee, Mayor Kennedy-4

ADOPTED

Ordinance #6-2013 (Renumbered as Ordinance 5-2013)

ORDINANCE NO.: 5 - 2013

OF

APRIL 22, 2013

AN ORDINANCE AMENDING CHAPTER 163
ENTITLED "FEES" OF THE CODE
OF THE CITY OF NEWBURGH

BE IT ORDAINED by the City Council of the City of Newburgh that:

Section 1. Chapter 163 entitled "Fees" of the Code of the City of Newburgh be and hereby is amended as follows:

Code Section	Type of Fee	Amount
Chapter 121, Buildings, Vacant		
§ 121-3B (1)	Vacant building annual-registration <u>and renewal</u> fee	\$900 <u>250.00</u>
<u>initial fee</u>		
<u>renewal</u>		<u>\$500.00 first</u>
<u>second renewal</u>		<u>\$1,000.00</u>
<u>subsequent</u>		<u>\$2,000.00 any</u>
		<u>renewal</u>

Section 2. This ordinance shall take effect on June 1, 2013.

Councilwoman Angelo moved and Councilwoman Lee seconded that the ordinance be adopted.

Ayes- Councilwoman Angelo, Councilman Brown, Councilwoman Lee, Mayor Kennedy-4

ADOPTED

RESOLUTION NO.: 90 - 2013

OF

APRIL 22, 2013

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH
ASSUMING LEAD AGENCY STATUS UNDER STATE ENVIRONMENTAL
QUALITY REVIEW ACT (SEQRA) FOR A STORMWATER AND DRAINAGE
EASEMENT IN CONNECTION WITH SETTLEMENT OF LITIGATION IN
THE MATTER OF
CITY OF NEWBURGH V. MARK SARNA, SARNA ENTERPRISES, INC., MT.
AIRY/AIRE ESTATES INC., NEW WINDSOR DEVELOPMENT CO., LLC AND
DRAINAGE DISTRICT #6 – MT. AIRY ESTATES (THE RESERVE),
TOWN OF NEW WINDSOR, NEW YORK,
DECLARING THE EASEMENT TO BE AN UNLISTED ACTION,
ADOPTING THE ENVIRONMENTAL ASSESSMENT FORM,
ISSUING A NEGATIVE DECLARATION AND AUTHORIZING THE CITY
MANAGER TO EXECUTE ALL SEQRA DOCUMENTS**

WHEREAS, by Resolution No. 177-2009 of November 16, 2009, the City of Newburgh ratified authorizing sending Notice under the Clean Water Act, commencing litigation under the Clean Water Act for the protection of Brown's Pond, a secondary water supply and reservoir for the City of Newburgh; and

WHEREAS, by Resolution No. 235-2012 of December 10, 2012, the City of Newburgh authorized the City's attorneys to prepare a stipulation of settlement and settle the claim of the City of Newburgh against Mark Sarna, Sarna Enterprises, Inc., Mt. Airy/Aire Estates Inc., New Windsor Development Co., LLC And Drainage District #6 – Mt. Airy Estates (The Reserve), Town of New Windsor, New York under certain terms and conditions and further authorized the City Manager to execute documents as the City's attorney may require, to effectuate the settlement; and

WHEREAS, the City of Newburgh is the present owner in fee of the Newburgh Water Supply, Section 32, Block 2, Lot 53; a portion of which is located on the westerly side of Mt. Airy Road in the Town of New Windsor, County of Orange, State of New York, originally described in the deed recorded in the Orange County Clerk's Office in Liber 682 at Page 170, and more particularly depicted on that certain map entitled "Survey of the Property for City of Newburgh Brown's Pond Town of New Windsor Orange County, New York," dated August 25, 2008, by Roger J. Ferris Engineering and Land Surveying, P.C.; and

WHEREAS, by Indenture, dated May 28, 1975, filed in the Orange County Clerk's Office and recorded on June 2, 1975, in Liber 2008, page 783, the City of Newburgh conveyed to Mt. Airy Estates, Inc. a stormwater and drainage easement ("Easement"); and

WHEREAS, the stipulation of settlement requires an amendment to the Easement by an "Agreement Amending the Stormwater and Drainage Easement" ("Agreement"), a copy of which is attached here to, and review preceding execution of the Easement must comply with New York State Environmental Quality Review Act ("SEQRA") and the regulations contained within 6 NYCRR Part 617 (the "Regulations") with respect to the Easement; and

WHEREAS, pursuant to the SEQRA Regulations, the City has considered the significance of the potential environmental impacts of granting the Easement by (a) using the criteria specified in Section 617.7 of the SEQRA Regulations, and (b) examining the EAF for the Easement, including the facts and conclusions in Parts 1 and 2 of the EAF, together with other available supporting information, to identify the relevant areas of environmental concern and wishes to establish itself as Lead Agency for the granting of the Easement.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York as follows:

1. The City Council of the City of Newburgh hereby declares itself as the Lead Agency for the environmental review of the action pursuant to 6 NYCRR 617.6;
2. the Project constitutes an "Unlisted" action, as that term is defined in the SEQRA Regulations;
3. The Council hereby adopts Part 1 of the Environmental Assessment Form;
4. The Council hereby determines, based upon an examination of the EAF and other available supporting information and considering the magnitude and importance of each area of environmental concern, and based on the City's knowledge of the area surrounding the Easement, that the granting of the Easement will not have a significant adverse environmental impact, will not require the preparation of a Draft Environmental Impact Statement;
5. Having determined that there are no areas of potentially large impact of environmental concern, the Council hereby issues a Negative Declaration

pursuant to SEQRA with respect to the impact of the Easement upon the environment;

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and hereby is authorized to sign and file any/and all other documents that may be necessary to complete the SEQRA process for the Project.

Councilwoman Angelo moved and Councilwoman Lee seconded that the resolution be adopted.

Ayes- Councilwoman Angelo, Councilman Brown, Councilwoman Lee, Mayor Kennedy-4

ADOPTED

RESOLUTION NO.: 91- 2013

OF

APRIL 22, 2013

RESOLUTION AMENDING RESOLUTION NO: 223 - 2012,
THE 2013 BUDGET FOR THE CITY OF NEWBURGH, NEW YORK
TO TRANSFER \$ 40,911.00 FROM CONTINGENCY TO CODE ENFORCEMENT
TO FUND A CODE ENFORCEMENT OFFICER
DEDICATED TO BROADWAY FOR THE REMAINDER OF 2013

BE IT RESOLVED, by the Council of the City of Newburgh, that Resolution No: 223-2012, the 2013 Budget of the City of Newburgh, is hereby amended as follows:

	<u>Decrease</u>	<u>Increase</u>
A.1900 Special Items		
.1990 Contingency	\$ 40,911.00	
A.3620 Code Enforcement Department		
.0101 Salary		\$ 29,532.00
.0107 Longevity		\$ 1,600.00
.0810 Retirement		\$ 6,507.00
.0830 Social Security		\$ 2,382.00
.0835 MTA		\$ 106.00
.0880 CSEA EBF		\$ 784.00

Mayor Kennedy remarked that this a piece of a much bigger picture of us trying to figure out how we are going to tackle some of the issues with codes enforcement, and our clean up efforts. She is happy to be able to support this.

Councilwoman Angelo moved and Councilwoman Lee seconded that the resolution be adopted.

Ayes- Councilwoman Angelo, Councilman Brown, Councilwoman Lee, Mayor Kennedy-4

ADOPTED

CITY MANAGER'S REMARKS

Two vacancies have recently been filled. The City Manager welcomed Jason Morris, who was hired to the Assistant City Engineer position. He is a licensed professional engineer who has over ten years of civil engineering work experience, as well as extensive experience with planning and zoning boards. Morris was chosen from a pool of over 90 applicants for the position.

Also Keith Douglas was hired as the Director of Parking Violations. Douglas has a degree in Public Administration, with an undergraduate degree in accounting and finance. He has over 20 years work experience managing private industry. Douglas was chosen from a pool of 25 applicants for the position.

Herbek announced that we are close to making a decision for the Director of Planning and Development.

The final deadline for the acceptance of applications for City Comptroller is the 26th of this month. Shortly after that date, we will start the interviewing process for that key position.

****Councilman Brown asked if either two hirees are city residents.****

Herbek responded in the negative. However, we have been making outstanding progress in hiring city residents. With respect to these two critical positions for the city, unfortunately we were not able to hire any city residents.

There being no further discussion, the City Manager's Report was concluded.

OLD BUSINESS

Mayor Kennedy moved into an audio recording of a work session discussion of November 19, 2012, at the request of Councilman Brown. The recording was during a time when the council was discussing the budget. In preparation for the discussion, Mayor Kennedy reviewed and excerpted sections of the Charter and City Code to provide some background information. She made it clear that the council is not going to make any decisions tonight. They are simply gathering the information and trying to understand it in a way that shows respect toward each other.

Councilman Brown pointed out that when you listen to the recording, you need to listen to specific directions that the Mayor gives the City Manager, particularly the raises that were considered in the budget, and the taking back of salaries. Brown wants the process to be transparent. His argument is that the City Manager gave raises without the council's authority. He was supposed to take back raises in the budget. Yet when he received the budget, the alleged changes were done well *after* the adoption of the budget. Brown feels that the council did not have a chance to make any adjustments, because he did not see the changes until *after* the budget was adopted.

Herbek remarked that this is not 100% accurate. A stapled copy of the personnel book was in the council's hand the night it voted on the budget. This has been confirmed to him by the former Comptroller and her administrative assistant. Herbek stated that Mayor Kennedy even confirmed that to him this morning.

Brown stated Herbek's statement is not true. He did not have a stapled copy of the personnel book on the day that *he* voted on the budget. He stated that he can say this with confidence. The first thing he would have noticed was any raises in the payroll book.

Kennedy stated that what she said was that she was trying to remember when she had that book. To be honest, she does not remember, because it was a span of days almost four or five months ago. She stated that when she did receive the book, she looked through the first few pages and saw that the wages had been rolled back to the 2012 salary schedule for several of the non-bargaining employees. She stated that she *assumed* that *all* of those salaries had been rolled back. At the heart of this discussion, two salaries had not been rolled back. This is why we need to hear the tape, so that we can understand what actually happened, on what grounds it happened and what our Charter and Code says about it.

Herbek remarked that he does not intend to get into a debate on it tonight. He knows that he and Brown have had their debates in the past. We can listen to the tape tonight. They are probably going to need further discussion about it at the next work session.

**** The audio recording of Nov. 19, 2012 was played and entered into the official record****

Herbek commented that you almost have to listen to the entire conversation. You can not just take one or two sentences from it, because it is not presenting the entire picture.

Brown stated that he had asked for a copy of the recording to be placed in his mailbox last Friday. It was not there on Friday and it was not there today.

Herbek stated that he was unable to get to it, and that he would get a copy to him.

Brown stated that Kennedy received a copy of it, but not him.

Herbek remarked that Kennedy had requested a copy of it a few days ago.

**** The audio recording was fast-forwarded and then played some more ****

Brown commented that he did not want to hold up the meeting any further. He felt that if he was provided with a copy of the tape as he requested, then he would have had that part of the tape ready to be played tonight. He stated that this is just an attempt for the City Manager to derail this whole thing. Brown stated that he is not going to allow this to go away. There is a portion of the tape in which Mayor Kennedy states that all of the raises go back to the 2012 salaries. It was further stated that the City Engineer would get to keep half of his raise. That is the portion of the tape that he wanted played tonight.

When he received the budget and the new payroll book for 2013, City engineer received \$13K, which is more than half of his raise. Brown stated that the fire chief kept his entire raise, which was not supposed to happen. It was not what they agreed upon. Brown stated that the City Manager and the former comptroller got it wrong. Even if the fire chief's raise was not rolled back, they certainly did not give the City Engineer half of his raise. Brown stated that this is the real issue.

Brown says when he receives his copy of the tape he will address it at the next council meeting, along with a few resolutions to roll back those raises and set the budget back to the way that *he* voted for it. In its current form, the budget and payroll is *not* what he voted for.

Kennedy highlighted excerpts from the Charter, particularly officers of the city, which include both the engineer and fire chief. She pointed out Section C3.51 *Compensation of Appointive Officers* and C5.05 *Duties of the City Manager*. She stated that it appears by Charter that the City Manager is to appoint all the officers and that the Council is to regulate the compensation of the said appointed officers.

Herbek cautioned that you need a little more information than what is provided here.

Kennedy pointed out that the two raises, in question, actually occurred in August of 2012 versus the time that was stated they occurred. So they are an anomaly to the rest of the raises. She feels that the council has to resolve this.

Herbek feels that Section C3.51 was adhered to. The council did, by ordinance, set a salary scale for the non-bargaining employees. In his opinion, step increases can be provided. It is one of the tools that the Manager can use in order to regulate the workforce. It has been a practice in the city for many years. He does not feel that he deviated from that. He simply provided the step increases on the basis that the engineer was made a promise by the appointing authority, which was a former City Manager, in that his salary level was going to be at a certain point. The former authority had reneged on that. Herbek feels that all he did was make a salary adjustment.

Herbek stated that the fire chief was hired by him at \$109K. We were very lucky to get a person of his caliber at that point in time. Again, it was a salary adjustment to bring his salary back to the level that he had been promised when he came to the city. It was purely an issue of fairness and equity. Herbek said he looked at the salaries for all of the department heads. It is a management tool that the city manager can use to recruit people to the City of Newburgh into the top level positions. It is not easy. Herbek pointed out that this is the third time that we are recruiting for a planning and development director, as well as a city comptroller. We are trying to do the best that we can to try to bring in the best people at the lowest price that we can get them here. Everything that he did was in the best interest of the City of Newburgh.

Brown stated that promises are not contractual. He feels that Herbek was given clear direction *not* to give raises. He feels that the raises were given out illegally. Clearly, the authority was overstepped. No one in the State or Federal Government is receiving 6% and 13% raises in this day and time. We have taxpayers who are hollering about their tax bills every chance they get. To give anyone more than a 2% raise is ridiculous. It should have never been done.

Herbek stated that he did not want to get into a debate tonight, but he disagrees with Brown.

Councilwoman Lee stated that she heard on the tape that Mayor Kennedy asked for a resolution that rolled back the salaries. There is no resolution though. Lee pointed out that Brown discussed the fairness of it at that work session. She requested that the comptroller provide her with the total number of non-bargaining employees. She would like to receive this information by the next work session. Lee would like to know what it would look like if we gave each non-bargaining employee a \$2500 check, so that we can make this fair. Lee pointed out that non-bargaining employees were denied their raises, and they had not had an increase. It may not matter if the employee making \$100K a year does not receive a 2% increase. But if a person is making \$30K-40K per year, and he or she is a single parent, then 2% matters. If we are going to talk about fairness, then we need to give the raises across the board.

Councilwoman Angelo asked Herbek how much money is it between the two raises in question.

Brown replied that it is roughly \$20K. But if we are going to start talking about handing out checks to people, then let's start cutting checks to the property owners too. Give them back something too. The taxpayers of this City should not be holding the bill of a 6% and 13% raise.

Lee stated that she agrees with Brown 100%. All of the property owners, 30% of the population of this city, should get back at least \$1K each year until they are caught up on what was done to them in 2010. We should promise it to them, and stick to it. No behind-closed-doors business. Keep the tax increase at 2%, and how we survive is how we survive. The taxpayers have done enough.

Brown stated that the top of the issue is that you have a city manager that is consistently insubordinate to the council. When he comes to the meetings, he votes the way he wants to vote. His vote should count for something. But when his vote is not counted for what it was supposed to be

counted for then he has a problem with that. He needs to address it and fix it. Brown stated that if we are going to allow the city manager to do what he wants without any repercussions, then why does he continue to come to the meetings?

Kennedy stated that the heart of the discussion is that the three of them were under the belief that when they voted, they would roll back the wages to the 2012 salaries prior to the increases that occurred in August 2012. She believes there is a different perception by the city manager. The corporation counsel can walk us through it and look at all of the legal pieces. The next step is looking at the thing to make this better. She has heard a lot of ideas tonight. Somewhere in this discussion is a rational solution to this conflict. They are going to discuss it further at the next work session.

This portion of the meeting was closed.

Submitted:

at City Council Meeting held Monday April 22, 2013

Background notes for Salary discussion on Monday, April 22, 2013

Article III – Section C3.00

The officers of the city or municipality shall be as follows:

- A. One Mayor, four Councilmen and one city judge, elected by the qualified voters of the City.
- B. One City Manager, three civil service commissioners, one city clerk and members of the Traffic and Parking Advisory Committee, appointed by the Council
- C. One corporation council, one city comptroller, one city assessor, one city collector, one purchasing agent, one city engineer, one superintendent of public works, one superintendent of water, one police chief, one fire chief, one building inspector, one plumbing inspector, "etc."

Section C3.01 – pg

The council may, by ordinance, authorized the appointment by the city manager of deputies or assistants to any appointive office.....

Section C3.50 – Powers and duties of Appointive Officers

In additions to the powers conferred and the duties imposed upon the respective appointive officers of the City by this charter, each officer shall perform such duties, exercise such functions and have such powers as are conferred and imposed by law upon such officers generally and shall have such additional powers, exercise such additional functions and perform such additional duties as may be conferred or imposed upon them respectively by order of the city manager or by ordinance of the council

Section C3.51 – Compensation of Appointive officers

The council shall by, by ordinance, determine and regulate the compensation of all appointive officers

Article IV – City Council

C4.00 – Legislative Powers fixed in the Council

All the legislative powers of the City, however conferred or possessed by it, are hereby fixed in a board to be known as the Council of the City of Newburgh.

C4.30 – Council powers exercised by ordinance. Pg 20

The powers enumerated in sec C2.02 and Sec C2.02 hereof shall be exercised by ordinance of the council. (City shall have specific powers enumerated in sec. 20 article 2-A of the General City Law.)

C5.05 – Duties of the City Manager

- B. To appoint and to remove the heads of all departments, the members of all boards and commissions and all subordinate officers and employees of the City except as otherwise provided herein.

From Codes;

Chapter 10-1

*Budget and Finance

"Transfers of budget appropriations may be made by order of the City Manager within each department".

"Transfers of budget appropriations from one department to another may be made by the City Council.

Code: Sec. 95-1

Increases during fiscal year authorized

"The City Council of the City of Newburgh shall have the power and authority by ordinance or resolution to increase the salary or compensation of any City officer or employee at any time during any fiscal year of the City, either before or after the appointment of any such officer or employee and whether or not such salary or compensation shall have been fixed or provided for in the budget of said City for said fiscal year.

Code: Sec. 95-2

SUPERCESSION

"Supercedes any provision of Charter or Code to the extent that the same are inconsistent with this chapter".

NEW BUSINESS

There was no new business at this time.

PUBLIC COMMENTS REGARDING GENERAL MATTERS OF CITY BUSINESS

Timothy Hayes-el has heard that that WDI is changing the course of its direction. He stated that we have been through this before. Now we are going to get people trained for jobs that won't exist at the end of the training. Are we going to hire people from the City of Newburgh or not? The people need to know. *Hiring qualified people* is a vague statement. What about the programs in place, such as Section 3 and HUD. Newburgh has the highest unemployment rate in New York State. Newburgh also has one of the highest crime rates in the state. It seems like we care nothing about the people that live here.

Barbara Smith stated that she did some research on the new hire for the the Parking Tribunal. She stated that when he was running for office in another area, he listed part of his work experience as working as *the Assistant to the City Manager for the City of Newburgh*. Smith did not recall when he was ever employed in that position. And if there is any embellishment then has he ever embellished about anything else as to his qualifications. Third, she had asked for exemption forms for legalized gun owners to be able to exempt themselves from publications. She has not seen a resolution. She has not seen the forms in the City Clerk's Office either. Every other municipality has them, why don't we have them? She does not feel that she should have to go to the County Clerk's Office for them. Next, why are we concerned with giving across-the-board raises to non-bargaining employees? Don't our bargaining employees, who have not had raises in several years, count for something? If you do not have any money, then the money you do have should be spent wisely. The taxpayers have very little of anything.

**** Herbek responded that he was never employed as the assistant. He was here in an intern capacity. ****

Janet Gianopolous stated that some of the confusion we saw regarding the work session can be resolved. The public should have access to all recordings/and or minutes from the council meetings and work sessions. She implored the council to ensure that the minutes are placed online in a timely manner. Second, she has not noticed the availability of monthly reports from the fire dept. Gianopolous stated that she has seen monthly reports online from the police department. Third, in looking at best practices in hiring, ICMA (the professional City Manager's Association) indicates that a *City Manager Agreement* includes provisions for progress and evaluation. This form should also apply to people seeking employment with the City of Newburgh, who come from elsewhere.

Next, she applauded the council for mobilizing to keep Horizons School open. She wished that we also looked at alternate ways to help save money. With all the technological advances today, kids don't walk anymore. She grew up in a city where she walked to where she needed to go. Last, regarding WDI, where is the \$50K going to go? Is it going to go for someone in Newburgh to be employed with WDI? She mentioned that the Post Office is hiring. What about those jobs?

Natasha Cotton stated she attended the November work session. She is disappointed about what she heard on the recording, because she feels that the City Manager is not telling the truth. She stated that he should stop lying about many things since he became permanent city manager. It is getting redundant and it is making the city look bad. There was no discussion about hiring any extras. The most that was discussed was \$5K. Second, low income housing should not be situated downtown. We will never be able to make any money like that. There needs to be some high rises and an overall upgrade in the downtown district. We need to be *keeping up with the Jones'*. As it is now, this is not a city. Real cities have things going on in them.

Kippy Boyle reminded us that today is Earth Day. She is surprised that the map for the ward system is not clearly accessible. Finally she had to seek the help of the GIS department, in which the person in the department stated that it was "hidden". Next, she asked that the minutes for the re-zoning that is taking place be placed in a visible location. Third, it is lucky for Broadway that its area is gaining a new code enforcement officer. But what about the other neighborhoods which are bordering on destabilization? The city can not afford to lose any more tax base. Property values are decreasing, which means our taxes are steadily rising. What is the fine line between strategic enforcement on Broadway and deliberate disregard for the rest of the city? Last, at Clinton and Grand Streets there are seven buildings located around the corner from a bodega that is a repeat offender for all types of police activity. The properties are vacant, abandoned or just laden with code violations. She is concerned about the destabilization in her neighborhood.

Pastor Bruce Davis stated that we live in a great country. We respect each other's rights and we have different races, creeds, nationalities and religions. What he loves the most about the United States is that we respect each others' religions. He would like someone to explain to him what a *denominational* prayer is. He has conducted services at Ebenezer Baptist Church, in which persons of *all* religions have attended. We respected everyone's prayers, because a prayer of faith is essentially what *you* believe in. Second, EBC has over 600 members on its roll, and he is concerned about the welfare of every single member. Over the past year the church has tried its

best to go about bringing healing- first within EBC then within the community. He can only do so much to bring about a spirit of healing. But we need more jobs and housing. Davis stated that he respects all of the leaders because the Bible teaches him and commands him to respect his leaders. But there needs to be leadership on one accord.

Roxie Royal stated that she has to stand with the pastor on respecting one another. She has been in most of the churches in Newburgh. Although she has not been in a Jewish service before, that is not the only type of religious service she has not attended. She knows that she has to give respect in order to receive it. Second, we already have a building with 1-room apartments on Broadway. The addition of 91 one-bedroom apartments will do nothing for the housing needs of the families in this community.

Brenda McPhail remarked that everyone knows that we need revenue in the city. It is affecting everybody, whether one pays rent or whether one owns. We have to start learning to work together. Also we have to start avoiding the lawsuits. In the City of Newburgh, there is always a lawsuit waiting to happen. She implored the council to have some caution signs erected at the waterfront. People do not supervise their children. She has had to chase kids playing on the fishing pier. The pier needs to be repaired, as there are several areas that contain large gaps. God forbid if one of those kids get loose from their parents and fall into the river. Also dog-walkers do not clean up after their dogs. Often times you do not know what you are stepping into when you walk into the grass. Loitering signs need to be put up too. A lot of times people get caught up with saying to themselves, "*Well I'm not going to pick it up because I did not put it on the ground.*" She reminded us that it takes the efforts of the whole community. If we say that we love Newburgh, then we are going to do what we need to do to make Newburgh the city it needs to be. We do not get anywhere because everyone is on an ego trip instead of being on a *Newburgh trip*.

Pastor Austin stated that she is going to join McPhail on the *Newburgh trip*. She commended the council. It is not easy to be a public servant, especially considering the salaries that they receive for their work. She quoted a scripture in the Old Testament in which *Righteousness exalts a nation and Sin brings a reproach*. She commends the council for having this city covered in prayer. She has had a Buddhist, a Rabbi and a person of a different persuasion pray over her in the past. But since we have had prayer at the meeting, we have had no major public incidences in the city. A little research will show one thing: Jesus was born a Jew, he lived a Jew and he died a Jew. She urged us to ponder that statement.

Richard Peterson remarked that he has not attended a lot of council meetings. This meeting is being taped, and certainly there will be newspaper retorts of how the agitation is at the council meeting. But you have to have agitation in order to make things work. The agitation is good. People are wise and alert, bringing back facts from previous meetings. You can not do that haphazardly. It means that a person is using some harking recollection to be able to go back and say that he disagrees with something. It shows that people are actually thinking.

There being no further comments, this portion of the meeting was closed.

PUBLIC COMMENTS REGARDING GENERAL MATTERS OF CITY BUSINESS

Timothy Hayes-el has heard that that WDI is changing the course of its direction. He stated that we have been through this before. Now we are going to get people trained for jobs that won't exist at the end of the training. Are we going to hire people from the City of Newburgh or not? The people need to know. *Hiring qualified people* is a vague statement. What about the programs in place, such as Section 3 and HUD. Newburgh has the highest unemployment rate in New York State. Newburgh also has one of the highest crime rates in the state. It seems like we care nothing about the people that live here.

Barbara Smith stated that she did some research on the new hire for the the Parking Tribunal. She stated that when he was running for office in another area, he listed part of his work experience as working as *the Assistant to the City Manager for the City of Newburgh*. Smith did not recall when he was ever employed in that position. And if there is any embellishment then has he ever embellished about anything else as to his qualifications. Third, she had asked for exemption forms for legalized gun owners to be able to exempt themselves from publications. She has not seen a resolution. She has not seen the forms in the City Clerk's Office either. Every other municipality has them, why don't we have them? She does not feel that she should have to go to the County Clerk's Office for them. Next, why are we concerned with giving across-the-board raises to non-bargaining employees? Don't our bargaining employees, who have not had raises in several years, count for something? If you do not have any money, then the money you do have should be spent wisely. The taxpayers have very little of anything.

*** *Herbek responded that he was never employed as the assistant. He was here in an intern capacity.* ***

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FURTHER COMMENTS FROM THE COUNCIL

Councilwoman Angelo thanked Gay Lee and Chris Eachus for their viewpoints in the Record. They are disappointed at US District Court Judge, in which she made demeaning statements about Newburgh. We try not to say bad things about our own city. But Judge McMahon was quoted as saying "Newburgh is most pathetic place in the State of New York" Angelo would like to generate a letter from the City Manager's office, on behalf of the community, addressing the judge's comments. Second, we are moving along with the Memorial Day Parade. Mr Bunora donated a trolley. It will carry the veterans who are unable to walk in the parade. We need to have the churches come back with their applications. Angelo would like the praise dancers to march in the parade and carry the beautiful flag with the white doves on it. We are hoping to prepare some hot dogs at the Activities Center for the participants. We need the community to come out and be a part of it.

Councilman Brown stated that he does not come to the council meetings to make friends. He took an Oath of Office to protect the residents and taxpayers of this city. And when he casts his vote, he expects his vote to count for what he intends it to be counted for. Either we are going to rectify the situation, or we are just going to leave it alone. Second, he has been on the fence about a supermarket coming here. He does not believe that it would work well without being a serious detriment to the business owners. There should be a different idea for that site. But we do have developers who are moving forward and trying to make an effort to develop that site. We all have to agree that the site needs to be developed. We can definitely change some things, but he does not feel that we can turn back at this point in time. We certainly can go back and re-address some things about the (91) one-bedroom apartments. We need to support families. People want to make him out to be a villain. Brown stated maybe he is a villain, but he sits here with a good and honest heart. No one can ever say that what he says at this table is a lie.

Councilwoman Lee pointed out that she is not sure that the housing proposal consists of (91) single bedroom units. They are *mixed-use*. It consists of individuals and families. There are 1, 2 and 3-bedroom apartments with tandem parking. She is not sure how it got so confused. She is very excited about the project. She has seen a lot of work start, and then she has seen the public come out and stop it. We just end up with incomplete projects throughout the city. She agrees that some things about the project can change. Also she does not know if some things *should* change. She does not know how many people shop at the supermarket on Broadway, but she does. A bulk supermarket is a good idea. Also, at least one store in every ward should be open 24 hours. We spend a lot of money in the Town in any given month.

There are some things that she is going to continue to buy from store owners. We have 30K people in our city. There is room for a lot more business.

Mayor Kennedy stated that she has been taking notes voraciously throughout the evening. First she addressed *Prayer*. We ask someone to organize the prayer portion of our meetings on a yearly basis. Deborah Dresser makes certain that we include people of *all* faiths, and that we have diversity. Second, she encourages everyone's participation at the citywide cleanup on Saturday. We will be meeting at the Ritz Theatre at 8:30 A.M. She pointed out that this is not the time to have the city take responsibility for individuals' personal backyards. We have had people in the past use and abuse the cleanups. Third, we need to look at correcting the accessibility of the ward and zoning maps. They need to be visible on the website. Fourth, we are not just going to focus on the strategic codes enforcement of Broadway. Strategic codes enforcement will be occurring throughout the city. We have got a whole thing getting ready to roll out along with the partnership of the Greater Newburgh Partnership.

She stated that the council needs to look at the exact ratio of one-bedroom apartments to multi-bedroom apartments in the housing proposal. She is concerned about the survival of a large grocery store in the city. Perhaps we are in a new place and have a different mix. But she is very concerned about having an empty building in two years. Kennedy commented that we need to start enforcing a lot of things. If we start enforcing the laws on the books, especially the traffic regulations, then we could start generating some real cash for the city. It would bring back some sense of safety to our streets too.

Mayor Kennedy stated that she did issue a statement to the media about the comments that Judge McMahan made publicly. Judge McMahan blamed the City of Newburgh for the bad decisions of one particular individual. Unfortunately a very small minority of the city creates an image that is simply not true. In fact, most of the people of this city are hardworking, law abiding and taxpaying citizens. To judge the City of Newburgh by the criminals that come before Judge McMahan is unfair. Mayor Kennedy agrees with the judge in that the young criminal never really had a shot in life. But that is not because he lived in Newburgh. It is because he had an unstable life fueled by his mother's problems with substance abuse. He was also exposed to violence at home. Ultimately he joined a gang because his family failed him. Kennedy pointed out that violence is a learned behavior that begins at or close to home. If we want to heal the streets of Newburgh, then we have to work on the violence in our homes. She is looking to the churches, schools and youth programs to help the little ones who are having problems. We do not want them to have to face a judge like this young man, has faced, at age 20.

As a last tidbit of information, Mayor Kennedy announced that she had a flyer: *Night of Hope*, a free family night of fellowship at Delano-Hitch Park on April 26th, from 4 P.M. to 8 P.M. She urged us to bring the kids, bring the family and have some fun.

A NIGHT OF HOPE

FREE

FAMILY, FUN & FELLOWSHIP NIGHT



Where? at Delano Hitch Park

When? on April 26th from 4 to 8pm

ADJOURNMENT

There being no further business to come before the council, the meeting adjourned at 9:40 P.M.

Respectfully Submitted,

KATRINA COTTEN
DEPUTY CITY CLERK