

Meeting of the Town Board, Town of Yorktown held on July 18, 2017 at the Town Hall, 363 Underhill Avenue, Yorktown Heights, New York 10598.

Present: Michael J. Grace, Supervisor
Vishnu V. Patel, Councilman
Gregory M. Bernard, Councilman
Thomas P. Diana, Councilman

Also Present: Diana L. Quast, Town Clerk
Michael McDermott, Town Attorney

Absent: Edward Lachterman, Councilman

TOWN BOARD MEETING

Supervisor Michael Grace called the meeting to order.

EXECUTIVE SESSION

Upon motion made by Supervisor Grace, seconded by Councilman Bernard, the Town Board moved into Executive Session to discuss contract negotiations. Upon motion made by Councilman Diana, seconded by Councilman Patel, the Town Board moved out of Executive Session and proceeded with the meeting.

PLEDGE OF ALLEGIANCE

Supervisor Grace led the Pledge of Allegiance.

MOMENT OF SILENCE

A moment of silence was observed in honor of our men and women serving in the Armed Forces.

REPORT FROM THE TOWN COUNCIL

Councilman Patel made a statement in reference to the Granite Knolls property. He spoke in favor of the development and said he will keep a watchful eye on the spending. A copy of his full statement is on file in the Town Clerk's office.

PRESENTATION

Highway Superintendent David Paganelli gave a presentation on how his department determines which town roads get paved first. There is an unprecedented amount of money being spent on road paving this year. He explained the budget for the last few years and how money was allocated. The investment cycle the Town has been on puts it on a 37-year plan of repaving; roads paved in 2017 will most likely not be paved again until 2054. Determination to pave a road includes, but is not limited to road condition (as reported by residents and inspection by the Superintendent or department staff), traffic count & average speed, overall safety, and area of town. He and the Supervisor spoke of how the sewer project may postpone some of the roads but will be done when that project is finished. Mr. Paganelli spoke of the different kinds of paving procedures and how they work, specifically the mill and fill method. Approximately 20 miles of roadway will be paved this year. Areas will be done as opposed to spot paving and being all over the place. Fog lines will be painted to increase visibility along the sides of the roads. Supervisor Grace spoke of recurring maintenance expenses. A regular replacement of trucks had to be established, which is why the new Highway Garage is so important in order to extend the life of the newer trucks. He also addressed the issue of budgeting for capital projects.

The Town Board and Supervisor Paganelli thanked Robyn Steinberg from the Planning Department for her help in putting together the presentation.

APPROVE TUITION REIMBURSEMENT FOR MASTERS PROGRAM
POLICE OFFICER JOHN DOHERTY
RESOLUTION #254

Upon motion made by Councilman Bernard, seconded by Councilman Diana,

RESOLVED, Police Officer John Doherty is authorized to enroll in the Masters of Public Administration Degree in the Fall 2017 Semester at Marist College and if he qualifies tuition for the course shall be reimbursed pursuant to the Collective Bargaining Agreement with the Town of Yorktown.

Grace, Patel, Bernard, Diana Voting Aye
Resolution adopted.

APPOINTMENT – JOHN H. LANDI AS BUILDING INSPECTOR
RESOLUTION #255

Upon motion made by Councilman Bernard, seconded by Councilman Diana,

BE IT RESOLVED, that John H. Landi of Putnam Valley, NY, is hereby appointed contingent upon successful completion of a drug test and Westchester County's approval of transfer to the civil service title, Building Inspector, job class code 0518-01, to be paid \$110,000.00 annually,

BE IT RESOLVED, that John H. Landi will report to work at the Yorktown Building Department on August 28, 2017 and this date will be used as the first date of appointment,

BE IT FURTHER RESOLVED, that this appointment is subject to a probationary period of not less than 12 nor more than 52 weeks, commencing on the first date of appointment on August 28, 2017.

Grace, Patel, Bernard, Diana Voting Aye
Resolution adopted.

APPOINTMENT – CHRISTOPHER SOI AS ASSISTANT SUPERINTENDENT OF
PARKS AND RECREATION
RESOLUTION #256

Upon motion made by Councilman Bernard, seconded by Councilman Patel,

BE IT RESOLVED, that Christopher M. Soi of Wappingers Falls, NY, is hereby appointed contingent upon successful completion of a drug test and Westchester County's approval of transfer to the civil service title, Assistant Superintendent of Recreation, job class code 0261-01, to be paid \$89,000.00 annually,

BE IT RESOLVED, that Christopher M. Soi will report to work at the Yorktown Parks & Recreation Department on August 28, 2017 and this date will be used as the first date of appointment,

BE IT FURTHER RESOLVED, that this appointment is subject to a probationary period of not less than 12 nor more than 52 weeks, commencing on the first date of appointment on August 28, 2017.

Grace, Patel, Bernard, Diana Voting Aye
Resolution adopted.

APPOINTMENT – MARIA FAMA TO THE SENIOR ADVISORY COMMITTEE
RESOLUTION #257

Upon motion made by Councilman Diana, seconded by Councilman Bernard,

Be It Resolved, that Maria Fama is hereby appointed as a member of the Senior Advisory Committee.

Grace, Patel, Bernard, Diana Voting Aye
Resolution adopted.

APPOINTMENT – DARYL LINDHOLM TO THE SENIOR ADVISORY COMMITTEE
RESOLUTION #258

Upon motion made by Councilman Diana, seconded by Councilman Bernard,

Be It Resolved, that Daryl Lindholm is hereby appointed as a member of the Senior Advisory Committee.

Grace, Patel, Bernard, Diana Voting Aye
Resolution adopted.

APPOINTMENT – BARBARA LEIFELS TO THE SENIOR ADVISORY COMMITTEE
RESOLUTION #259

Upon motion made by Councilman Diana, seconded by Councilman Bernard,

Be It Resolved, that Barbara Leifels is hereby appointed as an alternate member of the Senior Advisory Committee.

Grace, Patel, Bernard, Diana Voting Aye
Resolution adopted.

APPROVE AMENDMENT TO PESTICIDE USE RESOLUTIONS PASSED ON MAY 9,
2009 AND MARCH 23, 2010

RESOLUTION #260

Upon motion made by Councilman Diana, seconded by Councilman Bernard,

WHEREAS, on May 9, 2009 and March 23, 2010, the Town Board passed resolutions calling for the elimination of all pesticide use, including insecticides and herbicides on all town-owned property as part of its commitment to protecting the health and well-being of all its residents, and

WHEREAS, the Town Board believes that the aforementioned resolutions should be specifically amended to allow herbicide use on walkways, parking lots, sidewalks and curbsides but maintaining the prohibition of herbicide use on playing fields and playground surfaces, and

NOW THEREFORE BE IT RESOLVED that the Town Board amends the May 9, 2009 and March 23, 2010 resolutions only to clarify that herbicides may be used on Town property for the removal of vegetative growth on walkways, parking lots, sidewalks and curbsides but the prohibition of herbicide use on playing fields and playground surfaces remains in effect.

Grace, Patel, Bernard, Diana Voting Aye
Resolution adopted.

AUTHORIZE REQUEST FOR PROPOSALS TO PURCHASE A PRE-OWNED MOBILE
STAGE

RESOLUTION #261

Upon motion made by Councilman Diana, seconded by Councilman Bernard,

WHEREAS, the mobile stage currently owned by the Town is old and in need of repair;

WHEREAS, the cost to refurbish the current mobile stage exceeds the value of the stage;

WHEREAS, the Town proposes to purchase a pre-owned mobile stage, the value of which may exceed the limits in the Town's procurement policy;

NOW THEREFORE BE IT RESOLVED, that the Town is authorized to issue a request for proposals for the purchase of a pre-owned mobile stage.

Grace, Patel, Bernard, Diana Voting Aye
Resolution adopted.

Councilman Diana mentioned that the Chamber of Commerce has made a commitment to give at least \$5,000 towards the cost. Supervisor Grace mentioned they might be getting other commitments, as well.

AUTHORIZE COMPTROLLER TO PAYOUT UNUSED TIME AS OF RETIREMENT DATE – ELIZABETH TRACY
RESOLUTION #262

Upon motion made by Councilman Patel, seconded by Councilman Diana,

Be It Resolved, that the Town Board hereby authorizes the Town Comptroller to pay Elizabeth Tracy the cash value of unused time as of her retirement date

Rate of Pay:	\$41.2857				
Sick	47.75 hours	@	50%	=	23.88 hours
	23.88 hours	x	\$41.2857	=	\$ 985.91
Vacation	39.75 hours	x	\$41.2857	=	\$1,641.11
Longevity					
	\$1,100 / 260 days = \$4.23 per day				
	07/19/16 to 07/07/17 = 253 days				
	253 days	x	\$4.23	=	\$1,070.19
Total	\$3,697.21				

Be It Further Resolved, that the Comptroller is hereby authorized to transfer funds for the purpose of this payout at retirement as follows:

From:		
A909.8	General Fund Reserve for Employee Accrued Benefits	\$ 985.91
A1315.101	Finance Salary	\$1,641.11
A1315.106	Finance Longevity	\$1,070.19
To:		
A1315.108	Finance Lump Sum Payments	\$3,697.21

Grace, Patel, Bernard, Diana Voting Aye
 Resolution adopted.

AUTHORIZE BUDGET TRANSFER FOR AMAZON BEACH PARK DISTRICT
RESOLUTION #263

Upon motion made by Councilman Diana, seconded by Councilman Bernard,

Be It Resolved, that the Town Board authorizes the following 2017 Budget Transfer for the Amazon Beach Park District to disburse payment for work to be performed to replace the clubhouse roof

From:		
AP.909	Fund Balance	\$8,240.00
To:		
AP7180.454	Property Improvements	\$8,240.00

AUTHORIZE SUPERVISOR TO SIGN A CONSTRUCTION WORK PERMIT WITH ALGONQUIN GAS TRANSMISSION, LLC THROUGH SEVERAL PARCELS IN THE TOWN OF YORKTOWN
RESOLUTION #264

Upon motion made by Councilman Diana, seconded by Councilman Bernard,

RESOLVED, the Town Supervisor is authorized to sign the Construction Work Permit with Algonquin Gas Transmission, LLC in the amount of \$3,850,000.00 in connection with the

replacement of the existing 26 inch diameter natural gas pipeline with a new 42 inch diameter natural gas pipeline through several parcels in the Town of Yorktown as part of the Atlantic Bridge Project;

Grace, Bernard, Diana Voting Aye
Patel Voting Nay
Resolution adopted.

AUTHORIZE SUPERVISOR TO SIGN A SIDE AGREEMENT WITH ALGONQUIN GAS TRANSMISSION, LLC TO PROVIDE TEMPORARY WORKSPACE RESOLUTION #265

Upon motion made by Councilman Diana, seconded by Councilman Bernard,

RESOLVED, the Town Supervisor is authorized to sign a Side Agreement with Algonquin Gas Transmission, LLC in the amount of \$250,000.00 to provide Algonquin Gas Transmission, LLC with a temporary workspace for the construction of a new 42-inch diameter natural gas pipeline as part of the Atlantic Bridge Project.

Grace, Bernard, Diana Voting Aye
Patel Voting Nay
Resolution adopted.

AUTHORIZE TOWN ATTORNEY TO FILE THE ORDER OF TAKING IN THE ACTION ENTITLED ALGONQUIN TRANSMISSION, LLC RESOLUTION #266

Upon motion made by Councilman Diana, seconded by Councilman Bernard,

BE IT RESOLVED that the Town Attorney is authorized to file the order of taking in the amount of \$500,000.00 in the action entitled *Algonquin Gas Transmission, LLC v. 3.86 Acres of Land, more or less, in the Town of Yorktown, et al* pending in the United States District Court, Southern District of New York under Docket Number 17-CV-05295.

Grace, Bernard, Diana Voting Aye
Patel Voting Nay
Resolution adopted.

AUTHORIZE TOWN SUPERVISOR TO SIGN A PROFESSIONAL SERVICES AGREEMENT WITH WSP USA, INC. FOR STUDY AND CONCEPTUAL DESIGN SERVICES FOR TWO CULVERTS – OLD CROMPOND ROAD AND OLD KITCHAWAN ROAD RESOLUTION #267

Upon motion made by Councilman Bernard, seconded by Councilman Diana,

WHEREAS,

1. The Town and WSP USA, Inc. have been working together to evaluate the condition of Town-owned bridges and culverts and to prioritize repair and replacement projects. We identified two (2) culverts, Old Crompond Road & Old Kitchawan as high priority replacement candidates and would like to have WSP USA begin the study and conceptual design for these projects.
2. The Town previously applied for NYSDOT grants for these two projects but received awards for other projects. By undertaking the conceptual design phase at this time, the Town will be in a better position to apply for future grant opportunities since many of the unknown information and construction alternatives can be studied and resolved.
3. The detailed scope of services to be provided by WSP for each culvert:
 - a. Obtain topographical survey information in the field and collect data for approximately 150 feet along both approach roadways. Note: once the project boundaries have been established, we can evaluate whether any access easements or

land acquisition will be needed to undertake these projects. Obtain stream cross sections that will be needed for the hydraulic studies.

- b. Perform a hydraulic analysis to evaluate the different flow conditions that will be needed for the detailed design that would be done under Phase 2.
 - c. Prepare a schematic design report to include: summary of topographic and geotechnical existing conditions, design alternatives and a summary of recommended improvements with conceptual layout plans.
 - d. Cost estimate for the recommended improvement plan.
4. The professional engineering services to be provided by WSP will be on a lump sum basis in the not-to-exceed amount of \$36,900. Note: The Agreement consists of a base agreement in the amount of \$33,900 plus a contingency allowance of \$3,000 for any work that may be needed outside of the defined work scope; this work would be paid for at the firm's normal hourly rate schedule that will be included as part of the Agreement.
 5. In the professional opinion of the Town Engineer, WSP USA, Inc. provided a fair and reasonable proposal for the professional services described herein. We note the firm has previously performed satisfactory work for several projects in the Town, including design and construction of the Croton Heights Bridge Replacement and the Baptist Church Road Culvert Replacement (both completed in 2015). WSP is also working with the Town on the two NYSDOT projects that received funding, the Culvert Replacement at Veterans Road over Hallocks Mill Brook and the Bridge Replacement at Hill Boulevard over Tributary to Barger Brook.
 6. The Department will use available funds to pay for this agreement, under cost code A.1440.0479 Special Projects.

NOW, THEREFORE BE IT RESOLVED, the Town Board authorizes the Town Supervisor to sign a Professional Services Agreement with WSP USA, Inc. for the scope of work as described in the preceding section for the Not-to-Exceed Amount of \$36,900.

Grace, Patel, Bernard, Diana Voting Aye
Resolution adopted.

DECLARATION OF LEAD AGENCY – GRANITE KNOLLS SPORTS AND RECREATION COMPLEX PROJECT – STONY STREET, SECTION 26.09, BLOCK 1, LOT 22
RESOLUTION #268

Upon motion made by Councilman Diana, seconded by Councilman Bernard,

WHEREAS, the Town of Yorktown (“the applicant”) is seeking to construct a recreational complex on a fifteen acre site located at the eastern edge of Granite Knolls West Park (“the proposed action”); and

WHEREAS, the proposed action will require Town of Yorktown wetland and stormwater permits; and

WHEREAS, the proposed action has been determined to be a Type I Action under the State Environmental Quality Review Act (SEQRA); and

WHEREAS, on November 22, 2016, the Town of Yorktown Town Board circulated its intent to act as Lead Agency for the proposed action; and

WHEREAS, the declaration of intent to serve as Lead Agency, the long-form Environmental Assessment Form (EAF) and associated documents were circulated in a coordinated review of the proposed action to the following involved and interested agencies:

- US Army Corps of Engineers
- New York State Department of Transportation

- New York State Department of Environmental Conservation
- New York City Department of Environmental Protection
- Westchester County Department of Health
- Westchester County Planning Board
- Westchester County Planning Department
- Lake Mohegan Fire Department
- Yorktown Central School District
- Yorktown Chamber of Commerce
- Town of Yorktown Advisory Board on Architecture and Community Appearance
- Town of Yorktown Building Department
- Town of Yorktown Highway Department
- Town of Yorktown Conservation Board
- Town of Yorktown Environmental Consultant
- Town of Yorktown Planning Board
- Town of Yorktown Planning Department
- Town of Yorktown Police Department
- Town of Yorktown Recreation Commission
- Town of Yorktown Sewer Department
- Town of Yorktown Town Attorney
- Town of Yorktown Town Board
- Town of Yorktown Town Engineer
- Town of Yorktown Water Department

WHEREAS, the applicant has submitted a revised long-form Environmental Assessment Form (EAF) reflecting the comments received during the comment period, dated July 11, 2017 and pursuant to NYSCRR Part 617 of the State Environmental Quality Review Act the Town Board seeks to conduct an environmental review of the project: and

WHEREAS, a public hearing was opened and conducted on July 11, 2017 and after hearing public comment the public hearing was closed on July 11, 2017; and

WHEREAS, there has been no objection to the Town Board Declaration of Intent for Lead Agency dated November 22, 2016,

NOW THEREFORE BE IT RESOLVED THAT the Town Board thereby declares Lead Agency for the proposed action.

Grace, Patel, Bernard, Diana Voting Aye
Resolution adopted.

NEGATIVE DECLARATION, WETLAND PERMIT APPROVAL, STORMWATER PERMIT APPROVAL GRANITE KNOLLS SPORTS AND RECREATION COMPLEX PROJECT -TOWN OF YORKTOWN RESOLUTION #269

Upon motion made by Councilman Diana, seconded by Councilman Bernard,

WHEREAS, the Town of Yorktown (“the applicant”) proposes to construct a recreational complex consisting of two, full-size multi-purpose fields, a baseball field with dugouts and bleachers, a putting green, pickleball courts, basketball courts, a snack bar, restrooms, parking facilities, road improvements and to install connections to the town water and sewer systems on the westerly side of Stony Street on an approximately fifteen (15) acre section of town owned land known as Granite Knolls Park (“the proposed action”); and

WHEREAS, the proposed action will encroach into Town of Yorktown jurisdictional wetland and wetland buffer areas and as a result, a Town of Yorktown Wetland permit is required; and

WHEREAS, the proposed action will disturb greater than five (5) acres of land and as a result, a Town of Yorktown stormwater permit is required; and

WHEREAS, the Town Board has reviewed engineered plans for the proposed action

entitled; “Town of Yorktown-Westchester County, New York Granite Knolls Sports and Recreation Complex prepared by Site Design Consultants, dated May 1, 2017; and

WHEREAS, the applicant has submitted a Town of Yorktown a combined wetland and stormwater permit application dated July 11, 2017 in which information has been provided to mitigate impacts to the wetland buffer area; and

WHEREAS, the Town Board has reviewed and fully considered recommendations found in the following documents relative to the proposed action:

Croton-Highlands Biodiversity Plan prepared by the Metropolitan Conservation Alliance dated 2004.

Biodiversity Conservation Study-Town of Yorktown, Westchester County, New York prepared by Stearns & Wheeler dated March 2010.

Watershed Forestry Management Plan for the Property for the Property of Sylvan Glen and Granite Knolls Park Preserves prepared by Ted Kozlowski, Certified Forester, dated January 28, 2013.

Traffic Impact Analysis of the Proposed Shrub Oak School prepared by H2M Architects and Engineers dated April, 2017.

Town of Yorktown Comprehensive Plan dated adopted by the Town of Yorktown Town Board on June 15, 2010.

WHEREAS, the proposed action has been determined to be a Type I action under the State Environmental Quality Review Act (SEQRA); and

WHEREAS, the Town Board declared intent to act as Lead Agency on November 22, 2016: and

WHEREAS, the Town Board has conducted a coordinated review and circulated the long-form EAF and relevant documents from the following involved and interested agencies:

US Army Corps of Engineers
New York State Department of Transportation
New York State Department of Environmental Conservation
New York City Department of Environmental Protection
Westchester County Department of Health
Westchester County Planning Board
Westchester County Planning Department
Lake Mohegan Fire Department
Yorktown Central School District
Yorktown Chamber of Commerce
Town of Yorktown Advisory Board on Architecture and Community Appearance
Town of Yorktown Building Department
Town of Yorktown Highway Department
Town of Yorktown Conservation Board
Town of Yorktown Tree Conservation Advisory Commission
Town of Yorktown Environmental Consultant
Town of Yorktown Planning Board
Town of Yorktown Planning Department
Town of Yorktown Police Department
Town of Yorktown Recreation Commission
Town of Yorktown Sewer Department
Town of Yorktown Town Attorney
Town of Yorktown Town Board
Town of Yorktown Town Engineer
Town of Yorktown Water Department; and

WHEREAS, comments have been received from the following involved and interested agencies and fully considered by the applicant:

New York City Department of Environmental Protection: 12/20/16.
Town of Yorktown Conservation Board: 12/12/16.

Town of Yorktown Tree Conservation Advisory Commission: 7/10/17.
Town of Yorktown Planning Board: 12/6/16.
Town of Yorktown Advisory Board on Architecture & Community Appearance:
12/5/16.
Yorktown Parks and Recreation Department (Yorktown Youth Soccer Club):
12/6/16.

WHEREAS, the applicant has submitted a long-form Environmental Assessment Form (EAF) Parts I, II and III, reflecting the comments received during the comment period, dated July 11, 2017; and

WHEREAS, a public hearing on the permit applications was opened and conducted on July 11, 2017 and after hearing public comment the public hearing was closed on July 11, 2017; and

WHEREAS, the Town Board declared lead agency on July 18, 2017; and

WHEREAS, the Town Board has considered all reasonably related long-term, short-term, direct, indirect, and cumulative environmental effects associated with the proposed action including other simultaneous or subsequent actions; and

WHEREAS, the Town Board has compared the proposed action with the Criteria for Determining Significance in 6 NYCRR 617.7 (c) and determined that the proposed action will not have a significant adverse impact on the environment and makes a negative declaration which is attached to this document and incorporated by reference and

NOW BE IT RESOLVED THAT, the following plans and documents are approved subject to the below-listed conditions;

- Town of Yorktown-Westchester County, New York Granite Knolls Sports and Recreation Complex prepared by Site Design Consultants, dated May 1, 2017
- Final Stormwater Pollution Prevention prepared by Site Design Consultants.
- Town of Yorktown Wetland and Stormwater Permit Application dated July 11, 2017.
- Long-form EAF dated July 11, 2017.

BE IT FURTHER RESOLVED THAT, the Wetlands Permit and the Stormwater Permit are granted subject to the signing of the plan by the Town Supervisor. All work shall be conducted in strict compliance with the approved plans and documents. The applicant shall obtain all required permits from all regulatory agencies.

Grace, Patel, Bernard, Diana Voting Aye
Resolution adopted.

APPROVE AMENDED SPECIAL USE PERMIT - TOMPKINS GARAGE, INC.
RESOLUTION #270

Upon motion made by Councilman Diana, seconded by Councilman Bernard,

WHEREAS, James Tompkins (“Tompkins” or the “Applicant”) operates the Tompkins’ Garage, which is located and doing business on certain real property, at 1440 Croton Lake Road (Route 129), also known on the Town Tax Map as Section 58.06, Block 1, and Lot 20 (the “Property”), which is situated within a County Commercial zoning district; and

WHEREAS, in order to facilitate the re-installation of the gasoline dispensers, including underground storage tank replacement (“Proposed Tompkins Station” or the “Action”), Tompkins submitted a letter of application from Albert A. Capellini dated April 25, 2017, to the Town Board of the Town of Yorktown for a Special Use Permit for a Gasoline Filling Station pursuant to Town Code Section §300-46; and

WHEREAS, the gas station would consist of one (1) fuel pump, with a total of two (2) fueling stations, all covered by a new 120 square foot canopy providing cover for customers and a state-of-the-art fire suppression system, and the existing repair garage in the existing building, all of which would be operated by the Applicant; and

WHEREAS, since the original gas station was established in 1932, a gasoline filling station use is permitted pursuant to Town Code §300-170 and §300-177 by special permit; and

WHEREAS, in accordance with the New York State Environmental Quality Review Act (“SEQRA”), a Short Environmental Assessment Form prepared by Joseph C. Riina, P.E. of Site Design Consultants dated April 21, 2017, was submitted together with site plan documents as follows:

1. A drawing, sheet 1 of 4, titled “Site Plan,” prepared by Site Design Consultants, dated April 21, 2017, with no revisions; and
2. A drawing, sheet 2 of 4, titled “Fire Suppression Plan,” prepared by Site Design Consultants, dated April 21, 2017, with no revisions; and
3. A drawing, sheet 3 of 4, titled “Site Details,” prepared by Site Design Consultants, dated April 21, 2017, with no revisions; and
4. A drawing, sheet 4 of 4, titled “Site Plan,” prepared by Site Design Consultants, dated April 21, 2017, with no revisions; and

WHEREAS, at meetings on March 28, 2017 and May 9, 2017, the Applicant and their development team presented the Action to the Town Board, and addressed preliminary questions; and

WHEREAS, on May 22, 2017, the Yorktown Planning Board reviewed the application and issued a Memorandum, which stated no objection to the Proposed Tompkins Station provided the New York State Department of Transportation approved any improvement proposed in the right-of-way; and

WHEREAS, the Town Board has concluded that the EAF and supplemental materials submitted in connection with the Action “has identified, analyzed, and shown mitigation for all possible significant impacts,” and

WHEREAS, the notice and hearing requirements for this Application as provided for in the Code of the Town of Yorktown and New York State law have been satisfied; and

WHEREAS, the Application was presented to the Town Board at a duly noticed Public Hearing held on said application commencing and closing on June 20, 2017 at the Town Hall, 363 Underhill Avenue in Yorktown Heights, New York; and

WHEREAS, the Town Board has fully considered the Application, including the general “standards applicable to all special uses,” set forth in Section §300-36 of the Town Zoning Code, and adopts the following findings of fact:

1. The location and size of the Proposed Tompkins Station, the nature and intensity of the operation involved in or conducted in connection with it, the size of the site in relation to it and the location of the site with respect to streets giving access to it is in harmony with the appropriate and orderly development of the Country Commercial zoning district in which it is located.
2. The location, nature and height of buildings and other associated structures is such that the Proposed Tompkins Station will not hinder or discourage the appropriate development and use of adjacent land and buildings or impair the value thereof.
3. The operations in connection with the Proposed Tompkins Station will not be more objectionable to nearby properties by reason of noise, vibration, excessive light, smoke, gas, fumes, odor or other atmospheric pollutants than would be the operations of any permitted uses.
4. The associated parking areas are of adequate size for the Proposed Tompkins Station, and are properly located and suitably screened from adjoining residential uses, and the entrance and exit drives are laid out so as to prevent traffic hazards and nuisances.

WHEREAS, the Tompkins Station is being considered by the Town Board pursuant to §300-177 of the Town Zoning Code and therefore all bulk regulations set forth in said code are not applicable to this Action, however the Board has also considered the specific special

use permit standards applicable to “gasoline filling stations,” set forth in Section §300-46 of the Town Zoning Code, and adopts the following additional findings of fact:

1. The use of the Proposed Tompkins Station is limited to the existing repair garage and the proposed re-installed gasoline filling station. No sales or rental of new or used motor vehicles is proposed or permitted.
2. The Proposed Tompkins Station is located at least 300 feet from any building or place of public assembly.
3. Approval of the Proposed Tompkins Station would not result in more than two (2) gasoline filling stations within 1,000 feet.
4. The Proposed Tompkins Station complies with the maximum driveway requirement.
5. The canopy is approximately 18 feet in height and complies with the maximum height allowed of 18 feet.
6. The Proposed Tompkins Station proposes no new signs.

NOW, THEREFORE BE IT RESOLVED by the Town Board that, upon review of the EAF and plans and other related materials submitted by the Applicant, as well as all comments, memoranda and correspondence from its professional consultants and staff, the Planning Board, the public and neighbors residing in the vicinity of the Property, and in accordance with SEQRA, the Town Board declares itself Lead Agency and adopts the attached Negative Declaration dated July 11, 2017; and

RESOLVED, that the application for the Proposed Special Permit is granted, subject to the following conditions:

1. The Applicant obtain variance approval from the Department of State for not having adequate setback of the pump from the property line.
2. The proposed canopy height shall comply with the maximum height allowed of 18 feet and final elevations of the pump island and canopy shall be submitted.
3. All lighting on the proposed canopy shall have a shielded light source so as not to cause glare on the adjacent road. The Applicant shall show all proposed lighting along with specifications for all the lighting fixtures or bulbs on the plans.
4. The Applicant shall provide a final site plan set for signature by the Town Supervisor.
5. All area standards of Section 300-46 are hereby varied, with the exception of the height of the canopy, so as to allow the location of the proposed canopy, pump aisle and tanks shown on the aforesaid site plan documents.

Grace, Patel, Bernard, Diana Voting Aye
Resolution adopted.

CONVENE PUBLIC HEARING ON PROPOSED LOCAL LAW TO ELIMINATE REQUIREMENT OF CERTIFIED MAIL ON LAND USE MATTERS

Supervisor Grace convened a public hearing to consider a proposed Local Law amending several sections of the Town Code with regard to the elimination requirement of certified mail on land use matters. Affidavits of Posting and Publication were presented by the Town Clerk.

The following Chapters and Subsections are proposed to be amended:

Section 195-22E(2) of the Code of the Town of Yorktown entitled “APPROVAL OF MINOR SUBDIVISION”; a LOCAL LAW to amend Section 195-23C(2) of the Code of the Town of Yorktown entitled “PRELIMINARY PLAT FOR MAJOR SUBDIVISION”; a LOCAL LAW to amend Section 205-3 of the Code of the Town of Yorktown entitled “NOTIFICATION OF PROPOSED LAND USE ACTIVITY OR REGULATION”; a LOCAL LAW to amend Section 300-38C(2) of the Code of the Town of Yorktown entitled “ACCESSORY DWELLING IN SINGLE FAMILY HOMES” is amended as follows: a LOCAL LAW to amend Section 300-202(B) of the Code of the Town of Yorktown entitled “APPEALS.”

Supervisor Grace explained that this proposed local law will require just proof of mailing instead of certified return receipt mailing. Town Attorney Michael McDermott stated that this was to help reduce the cost in noticing applications before the Planning Board, the Zoning Board, and the Town Board but the Town will still require a proof of service issued by the post office.

Alice Roker, former Town Clerk, asked how applicants would provide proof of mailing. Mr. McDermott explained that if you go to the post office and ask the postal inspector to issue a proof of service, they will provide you one for a nominal fee. Ms. Roker asked what the difference between proof of service and certified mail. Mr. McDermott stated that there is a difference between proving that someone actually received a piece of mail (which is sometimes impossible) and proving you sent the mail. Proof of service allows the applicant to show that they did what they were supposed to do in notifying their neighbors.

All those present having been given the opportunity to be heard and there being no further discussion, the public hearing was closed. Upon motion made by Supervisor Grace, seconded by Councilman Diana and carried.

ADOPT LOCAL LAW #11 of 2017 TO ELIMINATE REQUIREMENT OF CERTIFIED MAIL ON LAND USE MATTERS
RESOLUTION #271

Upon motion made by Councilman Diana, seconded by Councilman Bernard,

WHEREAS, a public hearing was held on July 18, 2017, pursuant to notice duly published as required by law amending the following Sections of the Code of the Town of Yorktown: Section 195-22E(2) entitled “APPROVAL OF MINOR SUBDIVISION”; Section 195-23C(2) entitled “PRELIMINARY PLAT FOR MAJOR SUBDIVISION”; Section 205-3 entitled “NOTIFICATION OF PROPOSED LAND USE ACTIVITY OR REGULATION”; Section 300-38C(2) entitled “ACCESSORY DWELLING IN SINGLE FAMILY HOMES”; Section 300-202(B) entitled “APPEALS.”

RESOLVED, that Local Law #11 of 2017, as annexed hereto, be and is hereby adopted.

The question of the adoption of the foregoing Local Law was duly put to a vote on roll call, which resulted as follows:

Supervisor Michael Grace	Voting	Aye
Councilman Vishnu Patel	Voting	Aye
Councilman Gregory Bernard	Voting	Aye
Councilman Thomas Diana	Voting	Aye

Local Law #11 of 2017 is hereby decaled duly adopted.

FRONT STREET – REZONING REQUEST – GEORGE ROBERTA

Supervisor Grace convened a public hearing to consider the application received from Petitioner, George Roberta, in connection with property known on the Yorktown Tax Rolls as Section 48.07, Block 2, Lot 11, located at Front Street and Edgewood Street, Yorktown Heights, NY seeking a zoning map amendment from R1-20 to a Transitional Zone in order to construct two buildings that will be a mix of commercial space and residential units. Affidavits of Posting and Publication were presented by the Town Clerk.

Joseph Riina of Site Design Consultants, project engineer for Osceola Entertainment, LLC, presented the plan of the proposed construction on the property. The property is currently zoned R1-20 and Mr. Roberta’s request is to change this to a Transitional Zone which he believes is well suited for this location since there are both residential and industrial areas in the neighborhood. Two buildings are proposed: approximately 2100 square foot single story retail or commercial use building; approximately 5400 square foot two-story building – first floor retail or commercial use, second floor will have 5 residential apartment market rate rental units. Mr. Riina explained the parking plans, retaining wall, landscaping, plant screening, trash containment, etc. for the site. Lighting will be worked out as part of the planning process.

Supervisor Grace stated that a resident's (Mr. Hoyt) concern was the visual from the residential properties be appropriate for the neighbors. Supervisor Grace also stated that the architectural design not be industrial architecture. Mr. Riina showed renderings of the buildings to show how they are not industrial in design and will work on a streetscape with the Planning Department.

Mr. Hoyt, Summit Street, came before the Board to voice his concern over changes to the plans since May. In May there was a buffer of 10 feet and now it seems to be down to 2-3 feet – is that enough to maintain the evergreen screen that has been planned? The trash dumpsters are on the property lines – the noise from the trucks picking up will affect the residents' quality of life. He is concerned that the noise from the tenants on the second floor will carry across Summit Street. The elevated loop seems to have a steep incline that will be difficult in the winter. It also looks like an interstate ramp. The storm sewer runs under the property line on the north end and is close to the surface. After a recent rain, it burst and flooded the house on Front Street. What will happen when there is a really bad rainstorm? Right now the property acts as a natural catchbasin – what will happen when this is paved over? How will all of the water be handled? Mr. Hoyt also asked the Board to require a performance bond Mr. Roberta before he clears any more property. He is concerned about completion of the project since he said there are already two abandoned eyesores on Front Street already and he does not want to see another one in his backyard.

Ed Ciffone, resident, asked if this is project is before the Planning Board. Councilman Bernard said the approval process is before the Town Board. The Planning Board will review the technical details – lighting, plantings, location of dumpsters, etc. – and make recommendation to the Town Board, as will other advisory boards. The Town Board is the approving authority. There was a dispute as to whether or not the Planning Board saw the site plan for the Granite Knolls project.

Mel Tanzman, resident, stated that he thinks the concept of rental units over businesses is a good idea. However, as an expert regarding disability accessibility, he stated that the design of the access to the second level is poor. The slope of ramp appears to be too steep. He does not believe it can be considered handicapped accessible. Unless the handicapped person has a car to get down the ramp, there would be no other way to get to the street level.

Dan Strauss, resident, wanted clarification of the statement about the project going to the Planning Board. Supervisor Grace said that it has gone, and will continue to go, to the Planning Board and discuss their recommendations. He asked if this current proposal has gone to the Planning Board and was told that it has.

Susan Siegel, resident, said that she supports the concept of the mixed use. She is asking why the Town Board is considering transitional zone and not C2-R, which allows the mixed use. How would this proposal work out under a C2-R zone? What would be the difference between the two zones mean to this project? The C2-R zone would be reviewed and discussed and approved through the Planning Board who has the expertise. When this was brought before the Planning Board in May, they had issues with the slope of the driveway, the streetscape, etc. which would have been worked out at the Planning Board level. How can someone comment on the site plan without having the comments of the Planning Board? The Town Board has used more of the transitional zone as a way to get around the current zoning requirements. When you do a transitional zone, it is a blank slate to do whatever you want. She would like comments from the Director of Planning, John Tegeder.

Supervisor Grace said the thinking behind the transitional zone was because it had been designed for properties located between different zoning districts where the predominant zone might not fit. This project has been discussed in work sessions, and the best thing to do on this property would be to customize the zone to give maximum flexibility to address the sensitivities of the neighbors.

All those present having been given the opportunity to be heard and there being no further discussion, the public hearing was adjourned. Upon motion made by Councilman Bernard, seconded by Councilman Diana and carried.

Comments were again issued by Supervisor Grace and Mrs. Siegel regarding the differences between transitional and C2-R zones.

HARWOOD PLACE, LLC – REZONING REQUEST – ANGELO FERRI

Supervisor Grace convened a public hearing to consider the request from Harwood Place LLC, the owners of premises located at 200 Harwood Place, Yorktown Heights, NY, also known as Section 37.19, Block 1, Lot 69 on the Yorktown Tax Rolls. The request is to amend the zoning of the parcel from an R-2 Zone to an R-3 Zone in order to legalize the two lower apartments. Affidavits of Posting and Publication were presented by the Town Clerk.

Supervisor Grace stated that this is essentially an application to legalize existing conditions on the property. Albert Capellini, attorney for the applicant, said that the building was built in 1973 in the urban renewal area as a four-family house. The second and third level was occupied by four apartments. The lower level, over time, was developed with two other apartments. Essentially, there now exists a four-family house in a two-family zone and they are asking to make it and R3 zone to take it of a non-conforming status. They can then proceed with the Building Department and ZBA to attempt to legalize the lower apartments. The lower apartments have been occupied for about eight years. The owner of the premises has been trying to legalize the apartments since last December.

All those present having been given the opportunity to be heard and there being no further discussion, the public hearing was closed. Upon motion made by Councilman Bernard, seconded by Councilman Diana and carried.

712 KITCHAWAN ROAD – REZONING REQUEST – STEVEN SPIRO AND MICHAEL KATZ

Supervisor Grace convened a public hearing to consider the request from Steven Spiro and Michael Katz, the contract vendees for premises located at 712 Kitchawan Road, Yorktown, NY, also known as Section 70.06, Block 1, Lot 4 on the Yorktown Tax Rolls. The request is to amend the zoning of the parcel from a One-family Residential (R1-200) Zone to a Transitional Zoning District in accordance with Chapter 300 of the Zoning Code of the Town of Yorktown in order to permit the continued use of the existing office building as an office. Affidavits of Posting and Publication were presented by the Town Clerk.

Supervisor Grace stated that this is the old Brooklyn Botanical Gardens site, a one-time research lab, and then it was a non-for-profit publishing company and has been empty for many years. Westchester County has had an easement on the property for years and many years ago issued restrictions to only not-for-profit usage. Steven Spiro, CEO for Tracer Imaging, introduced his company that took technology that has been in existence for many years and updated it with current technology to create their product that can incorporate 2-3 seconds of video into 3-D print. They employ engineers and graphic designers. They also will do printing at the location, similar to ink jet printing that is done at home, as well as doing laminating. They are looking to create research and development and office space on the site. The building has fallen into disrepair, but no major work needs to be done.

Taylor Palmer, attorney for the applicant, came before the Board to explain the applicant's proposal. The applicant is not preparing any modification to the building; just bring it to code standards. No new impervious surfaces will be added and a site plan was provided. The building will be used as a limited printing business and executive offices. The Planning Board has seen the plans and has given positive commentary. There is an access easement over the County's property and the applicant has demonstrated to the County that there is no change in use of the easement with their project and it is consistent with the prior use of the property. They will also provide improvements to the easement area that is south of the Kitchawan Preserve (better access to the park areas, benches, etc.) at the request of the County. The County has waived its right of first refusal on the property and the applicant has provided a future right of first refusal should the applicant choose to sell the property in the future, so that the next owner would have to go through the County.

Supervisor Grace stated that this is being considered for transitional zone because no current zoning district classification fits this project; there are no changes to anything on the property except to bring it up to standards.

Lee Pollock, resident, who lives across the road from the subject property, approached the Board to voice his concerns. He said that based up his reading of the file, he is concerned the project will disturb the neighborhood. He approved of the recommendation to transitional zone; however, Mr. Pollock said he does not see where the property meets the requirements for transitional zone since it lies right in the middle of a residential zone and it does not lie in an environmentally challenged area. He does not see why the zoning has to change at all – the property should be developed as residential. Has a full environmental review of the property been undertaken? First the greenhouses and building were used for the Brooklyn Botanical Gardens, then it was used for the Warren Institute where, rumor has it, they were testing for tropical diseases on animals. What kinds of materials were being disposed of and what impact did these former uses have on the environment? Mr. Pollock also questioned the septic system on the property. There are 43 parking spaces, which presumably are for at least that many workers – this represents a heavy use on a system installed in the 1950s. The septic is placed on one side of the Kitchawan Preserve with a stream running into the reservoir. Has a study been done on the efficacy of the septic system? What kind of impact will the proposed printing business have – what kinds of truck traffic will be coming and going from the property? Have the DEP been notified since it is close to the reservoir and have they commented? Mr. Pollock feels this project is not an appropriate use of the property in this area. He stated that if the project receives the transitional zoning that limitations on any additional development be stipulated (including increase of footprint, height of building, use of the greenhouse/building on the greenhouse, limited hours of operation, exterior lighting, evergreen buffer to screen property in the winter, etc.).

Holly Ross, resident, read a statement from her husband, Tim Hartung, as well as her neighbors, Mr. & Mrs. Carroll. As long time Yorktown residents, they oppose the zoning change. Mr. Hartung's statement quoted from Yorktown's Comprehensive Plan. A park-like setting had been created in this area. In less than ten years, this area has become one of the most beautiful areas in Westchester. Ms. Ross stated that the land use chapter of the Comprehensive Plan is its keystone; specifically citing that "land uses, densities, and development patterns should be compatible with the existing and planned sewer, road, and water infrastructure in the area. Where adequate infrastructure is not present or sensitive environmental features are present, development should be restricted. This includes appropriate up zoning of larger contiguous vacant or underdeveloped parcels in areas that rely on well or septic systems and/or that are located within or adjacent areas that contain sensitive environmental issues or of highly impacted travel conditions."

Since the IBM Thomas Watson Research Center was built and the road was widened and straightened, more cars come down the road flying around the corner and there have been many accidents at the site. Another concern is this rezoning will not be "office light." Ms. Ross quoted that according to Rob Astorino, the County Executive, the applicant is seeking to repurpose the site as flex space, including but not limited to, use for digital printing, cutting, and laminating business. The real long-term concern is if the owners of this business decide to sell and move away. Yes, the County has right of first refusal but what is the likelihood of them buying the property? The next buyer can rely on the precedent that the property is already semi-industrial and that it would be no big deal to increase the manufacturing intensity. Ms. Ross said that it is hard to understand how this change of zone is compatible with the Comprehensive Plan; in fact, "it defies the very purpose of ever having written one" because "in any guise, office or transitional, this creeping commercialization only sets the stage for more."

Carolyn Cochran, resident, spoke of the history of the property and its original purpose of remaining open space. She stated that the property would be best served to remain residential zoning and opposed the request for transitional zone.

Supervisor Grace said there may be another work session and invited those who spoke to attend and speak. The Town Board's concern is that the property is lying fallow and is not doing anybody any good. He understands the concerns of the speakers; especially the limitations of use that Mr. Pollock asked to be required. Past projects, including residential development, were not agreeable to past Board.

All those present having been given the opportunity to be heard and there being no further discussion, the public hearing was adjourned. Upon motion made by Councilman Bernard, seconded by Councilman Diana and carried.

VILLAGE TRADITIONS, LLC – REZONING REQUEST – TIMOTHY MALLON

Supervisor Grace convened a public hearing to consider the request from Village Traditions, LLC, the owners of premises located at 1821 East Main Street, Mohegan Lake, NY, also known as Section 15.16, Block 1, Lot 32 on the Yorktown Tax Rolls. The request is to amend the zoning of the parcel from a C-2/O Zone to C-2R Zone in order to change two structures: one 3,000 square foot 2-story office structure to a 3,000 square foot building with one apartment, and change to a C2-R zoning for the second building also have an apartment. Affidavits of Posting and Publication were presented by the Town Clerk.

Tim Mallon, owner and applicant, stated how this has been a work in progress and gave a history of the property. He said his property could be an entrance and an exit for the entire street. He would like to zone the property to C-2R so he can have apartments in the front and retail in the back. Mr. Mallon said that he is planning to develop the building so that what faces the neighbors is appealing and looks more residential. He has tried to lease the property, with no success.

Supervisor Grace said the property is currently O zoned. He said that most of the properties in that area were already C2 or C2-R. He would like to take a look at some of the architectural drawings. Councilman Bernard asked John Tegeder, Director of Planning, where the Planning Board is at with this application. Mr. Tegeder said the Planning Board has been working on this a long time and that Mr. Mallon has done a wonderful job in turning the building from Mohegan Lighting to what is there now. He went on to explain the history that has led them to this point in the application. Mr. Mallon wants to expand the lower footprint of the back building – the footprint is not changing significantly. The retail zoning will give Mr. Mallon more flexibility.

All those present having been given the opportunity to be heard and there being no further discussion, the public hearing was adjourned. Upon motion made by Councilman Bernard, seconded by Councilman Diana and carried.

SOBER LIVING RESIDENCE – MCCROSSAN AND MCGOLDRICK

Supervisor Grace convened a public hearing pursuant to Town Code §300-33 to ascertain whether the Special Use Permit issued to applicants Thomas McCrossan and Mark McGoldrick to operate a Sober Living Residence at 482 Underhill Avenue (Tax Map Designation Section 48.06, Block 1, Lot 25) should be revoked.

Supervisor Grace turned the proceedings over to the Town Attorney Michael McDermott to set the parameters regarding this case.

Michael McDermott, Town Attorney, stated the following:

The Town Board met on June 13, 2017 and scheduled a public hearing which was required pursuant to the terms and conditions of the special use permit which had been issued to Thomas McCrossan and Mark McGoldrick in connection with the operation of a convalescent home at the property located at 482 Underhill Avenue. The property at Underhill Avenue was issued a special use permit specifically to Mr. McCrossan and Mr. McGoldrick so the resolution of June 13, 2017 was whether or not the special use permit issued to those individuals should be revoked. The genesis of how this came to pass was that the Town Board or the Town learned in May of this year that the property had been transferred from Mr. McCrossan and Mr. McGoldrick to Justin Gurland, Matthew Rinklin and Zachary Clark. A review back to the terms and conditions of the special use permit, Section 15, has a specific provision that states that if the title is passed to another person then the special use permit becomes null and void. There are provisions within Section 15 by which a proposed new owner can petition the Town Board in connection with their own special use permit. However, the terms and conditions of Chapter 15 require that if there is a change in ownership, the application for continuation of the special use permit must be made within the thirty days. There has not been any specific application made by the Town Board in connection with this; there has been correspondence between me and Mr.

Schonfeld, as well as Mr. Martabano. All the correspondence that has been between us has been provided to you. The information that we were provided is that Mr. McGoldrick and Mr. McCrossan claim to be operators of the Sober Living Residence; however, as the resolution scheduling this public hearing indicates, the change of ownership is a triggering provision that makes the special use permit null and void.

Supervisor Grace stated that just for clarification purposes, he had some questions. The conditions of the last special use permit make it very clear that change of ownership is what triggered the necessity to make a new application to the Board for a continuation of the special use permit. Town Attorney Michael McDermott stated that this is right.

Supervisor Grace stated: This is not unusual in our code because it is also the same case for accessory apartments. Town Attorney Michael McDermott said that is correct. Supervisor Grace asked: Is it not the same for accessory apartments?

Councilman Bernard stated: Yes, it is.

Supervisor Grace stated: The old permit condition to accommodate the transfer of ownership to a new owner or contract vendee would have ninety days before closing to try to obtain their own special use permit, but that permit had to be obtained within the ninety-day window or at least thirty days thereafter of the closing, otherwise the property reverted back to its single-family use and special use permit expired on its own terms.

Town Attorney Michael McDermott stated: This is correct. In fact, the resolution of June 2017 was after the expiration of the thirty days after the closing. We do not have a precise date of the closing, but we do have a date by which the new deed was recorded.

Supervisor Grace asked what that date was.

Town Attorney Michael McDermott stated that the deed was recorded in May 11, 2017.

Supervisor Grace asked what the deed recited.

Town Attorney Michael McDermott stated it was the date of the scheduled public hearing.

Supervisor Grace asked if the grant or grantees are recited in the deed?

Town Attorney Michael McDermott stated that it is May 10th.

Supervisor Grace stated: All right – the prior owners were fully divested on it?

Town Attorney Michael McDermott stated that is right.

Supervisor Grace asked if that was based upon that deed.

Town Attorney Micheal McDermott stated: The deed is dated May 10th, 2017 and was recorded May 11th, 2017.

Supervisor Grace stated: So, prima facie, the special use permit has terminated.

Michael McDermott stated: That is right. Pursuant to the terms and conditions, the special use permit is null and void.

Supervisor Grace asked if the attorney was here to speak on behalf of the applicant.

Mr. Robert Schonfeld state: Yes, I am Mr. Grace. My name is Robert Schonfeld.

Supervisor Grace asked if the owners were present.

Robert Schonfeld stated: Yes, the present owners/operators who are Mr. McCrossan, Mr. Rinklin, and Mr. Gurland. The other two operators are not here. My name is Robert

Schonfeld. I'm from the law firm of Moritt Hock & Hamroff in Garden City and we respectfully disagree with Mr. McDermott's reading of the agreement.

Town Attorney Michael McDermott stated that all the correspondence which has occurred between me and Mr. Schonfeld and Mr. Martebano have been provided to the Town Board.

Robert Schonfeld asked the Town Attorney if all the materials he emailed to Mr. McDermott this morning have also been given to the Town Board.

Town Attorney McDermott stated: Yes.

Robert Schonfeld stated the following: This has been a very contentious matter that went on for many, many months back in the year 2015. The Town Board did pass it but agreed to the special use permit by a 3:2 vote with the conditions. The issue tonight is not whether it is a good or bad idea to have this type of housing at that site; that has already been argued for many, many months, years ago. The issue here, on which I think Mr. McDermott is correct, is whether the special permit is still in effect or is it void. That is what the issue is tonight, not whether it is good or bad. I see lots of people here tonight who are going to testify how terrible this home is; that's not really relevant to consideration this evening. The consideration this evening is that we disagree with Mr. McDermott and we have an affidavit here from Mr. Davis who was the attorney for Mr. McCrossan and Mr. McGoldrick two years ago who was involved in drafting the special permit, and his affidavit basically says it could be the operator, if the operator stays the same, therefore the permit is still in effect. The operator still remains Mr. McCrossan and Mr. McGoldrick or Mr. Rinklin and Mr. Clark and Mr. Gurland. What is kind of sad about this is that Mr. Gurland and Mr. Rinklin and Mr. Clark bring a lot of expertise to the table here, maybe more expertise than Mr. McCrossan had. And what seems to make no sense is to shut out people who have a perfect track record. Mr. McCrossan is not on the deed and that could easily be accomplished by putting Mr. McCrossan on the deed. There are a considerable amount of people here tonight, the people who opposed this three years ago when all of you were on the board at that point in time responding to people who have an animus to people with disabilities, that's just as bad as having an animus yourself and that could also hold you liable under the Federal Fair Housing Act or the ADA. We think some of the issues are pretextual; I think that the town was searching around for a reason to get rid of the site because of neighborhood opposition. There was another letter written about the question whether Mr. McCrossan had a meeting a year later and yet there's something in the record of this Board saying that Mr. McCrossan didn't need that meeting since he was no longer running the residence at that point in 2016. So we tend to think at this moment that this is pretextual and aimed at appeasing the neighbors in an election year.

Town Attorney Michael McDermott stated the following: No, I'm going to stop you, sir. I'm going to stop you because I framed out the issue as a very specific legal issue and for you to enflame the Board now, to accuse the Board of pretextual allegations, no one from the public has spoken except you. In fact, the only document that relates to any public involvement was provided by you to me today in connection with an article from The Somers Record, The Yorktown News, rather.

Robert Schonfeld explained to Mr. McDermott that he was not here two years ago, but this Board was all here and they heard the opposition.

Town Attorney McDermott stated: No, I take great offense to that.

Councilman Greg Bernard stated: If you want to be factual about it, two members of this board voted against it. And we didn't vote against it based on the fact we are against people with disabilities.

Robert Schonfeld stated: No, I appreciate the fact that two of you did vote for it.

Councilman Greg Bernard stated that he didn't vote for it.

Robert Schonfeld stated: I know Mr. Grace and Mr. Diana and Mrs. Siegel, who's in the audience, did too.

Councilman Bernard stated that during the whole process Mr. Grace went to lengths to say that we do need these types of services. The location is what was in question. So that should be left along and it should be argued on its legal merits.

Councilman Bernard asked: Why don't you argue on legal merits and not throw accusations at us?

Councilman Thomas Diana stated: You've been poking fun at all of us and I hold great umbrage in that because I was one of the ones that stood by my ground and voted for this and I take great exception in the way you're addressing this board and I believe Mr. McDermott has expressed that to you.

Robert Schonfeld stated: No, I appreciate that.

Councilman Diana stated: I don't appreciate you.

Robert Schonfeld said that there is still the issue of pretext here and that this is an issue. People in the year 2017 generally don't want to say bad things.

Supervisor Grace stated: I've got your arguments and we've all sort of discussed this. I'm going to make it very clear before you dig yourself a deeper hole. You know my profession - I'm an attorney and a lot of your stuff goes in one ear and out the other; it doesn't stick very much in the middle of the brain. You know what, when this came up a couple of years ago, and I don't know if I see Mr. McCrossan, if he's here, oh, there you are. There was a lot of headwind, you're right, and there was a lot of concerns, a lot of very valid concerns and there was a lot of hyperbole, as well. And we had to sort through the hyperbole and this is a land use, and a land use issue only. And the thing is that when we got to the end of the process, there were conditions put on the permit. And there were conditions put on the permit for very specific reasons. And I don't know, Bob Davis, I'm not going to try to delve into the workings of his mind and what he believed the conditions represented. I know what the conditions represented to me. I also made a very firm commitment to the neighborhood that we were going to hold their feet to the fire on every one of the conditions. And because it wasn't an issue of the nature of the disability or that it was a home with people with recognized disabilities under the law. We were a community that was on the cutting edge of providing these services which I think every community understands is necessary. But they are not without their difficulties. It was my hope upon all hopes, especially in providing a lot of wind in the sails of the applicant that this thing would be a successful program. It was sold on the fact that it would be; that there would be off-site treatment, there would be good management, etc., etc. The nature of the beast, however, was that this was transitional living for people that had issues with substance abuse of one kind or another. Transition from a therapeutic 24 hour setting or a heavy therapeutic setting into a setting would reflect more as to what they would do when they would be back home in the surroundings of which they had ... where ever they had come from in order to transition back to that of normal, I guess quote/unquote normal living. The nature of the beast was always such that you were asking us to approve a special use permit in a residential single family zone designation. And the problem with that and taking out all the hyperbole that existed as to the issue as to the nature of the disability or the people or whatever - we heard plenty of that, I suppose - was that the real issue was, are we approving a commercial use in a residential district? There was a strict land use issue. In regard to that, the code is very clear. You are in a single family zone - single family means single family - as we all know what single meant when they wrote the code and what single family is now interpreted to mean under present law is completely different. Single family used to be the nuclear family - mother, father, kids - now you can't define family as anything because there's so many different variations and I suppose you can say we've been enlightened, although some people may disagree but, nevertheless, we don't dig or look under people's covers to see how they live. The code, the history of the code under the convalescent home section of the code had to do with the fact that when you had unrelated adults living in a common setting, that wouldn't fit the definition of a family, as a family was traditionally known. So the code provided for unrelated adults to live together with having a common ailment or condition and the idea was that they could live together and own a property together and live basically as the equivalent of a single family. So when we

went through this whole process, and the hyperbole on one side was ... at one point the argument was made “we don’t need a permit because we’ll just live as the equivalent of a single family; we don’t even really have to be here but we’re doing you the courtesy do it.” That was as much hyperbole as somebody saying “we don’t want these type of people in our town.” Absolutely incorrect. It was an argument but an incorrect argument because they were in front of us because they weren’t the functional equivalent of a family because they were unrelated adults living together and transient people. So the idea wasn’t that I’ve got five, six people who are committed to sobriety decide to buy a residence and decide to live together as a functional equivalent of a family. I had a management group that was going to recruit in, process, and house people in transient living. And there was this whole thing ... we had lot of conditions, conditions of the operation ... Why? Because we wanted to assure to the community that this home was going to operate as the functional equivalent of a single family and the nature of the beast was that it wasn’t going to have a lot of managerial oversight because it was supposed to be transitional living which means that these people were going to learn how to live without a lot of 24 hour management, 24-7 management, that the therapeutic care was going to be offsite. There was a Dr. Washburn, I think, from the city that said he was going to set up an office in town and that the people were going to be transported from the house to wherever their office was going to be set up and he was going to provide not only services to the people but he was going to reach out to the rest of the community where, you know what, I think there’s not a person in this room for or against the Sober House that doesn’t agree that people with this type of disability need help. And as a matter of fact, it came out in the hearing that there’s dozens, dozens, of either NA or AA meetings in Yorktown alone on a weekly basis. We understand the dark underbelly of addictions does exist in all socio-economic levels. I thought, as a community, we showed great courage in being innovative and on the edge of approving one of the first types of these residences in the county, and we hoped and we hoped and we hoped that that with much success and I think I even made it clear to the applicant that your success is not only the town’s success but it’s the community’s success and it’s the larger community’s success because all eyes are going to be on you to make sure that this is something that would grow and be an asset to all the communities and take out all your skeptics and prove them wrong. Unfortunately, your skeptics were proved right because what happens is that there was more than a single incident that occurred within a very short period of time at that place. I think it’s common knowledge that one was an allegation of a sexual assault with somebody in the house and somebody who worked at the house and then there was a death in the house, as well. And what was becoming clear that the management ... whatever the management was that was going on there was leaving a lot to be desired. And, you know what, you proved that it leaved a lot to be desired because now the owners go out to get a professional ... you’re telling me that these guys have a lot of expertise ... so now they go out to get the professional management group for a sober living residence that didn’t exist before because under the paradigm in the conditions under which they got the approval, it wasn’t working. So it was extremely short lived. I don’t think, I think it’s six months into the thing, it one was issue after the other when one part of the requirements was to come to the Town Board do updates, I guess at some point they decided they stopped running the home altogether but it didn’t absolve them from coming in front of the board and give us updates, you know, an update would have been ... we’re not doing anything ... we’re closed ... we’re not getting anybody in ... but that was a condition. And not ... failing to fulfill that condition alone would be enough to revoke the special use permit. But I guess everybody’s understanding was didn’t have to because they weren’t operating. The idea behind a condition in the approving resolution for having to come back to the town board on a change of ownership or operation was because we wanted to take a look to make sure that what was going to go on over there didn’t morph itself into a commercial basically enterprise no longer mimicking a single family use but now is mimicking, or was more akin to, a therapeutic setting dealing with actual treatment, medical treatment, therapeutic treatment onsite, and management onsite and all sorts of other things because now I’m outside of the single family use or akin to what is a single family use and I’m now moved over or crossed the line into what is now a commercial enterprise. And everything that has occurred tells me that the paradigm or the method or what we were told was going to happen and how it was going to operate all fell apart in very short order because it can’t sustain itself under the method under which they were approved. And you proved the point by having sold it to guys who are experts in it that are going to now management and it morphs and it no longer operates akin to single family residence so it no longer should be in a zoning district that is a single family zoning district. And it’s got nothing to do with the disability, or the relative

disability, or the nature of the disability; it has to do with land use. And you know what, I am a little miffed because I went out on a limb on this thing a bunch of years ago based upon the fact that I was ... the amount of heat I got from all over the place was absolutely remarkable. Actually, they insulted my own family at points in time. And, you know, I stood on a principle basis that based upon the way this was going to function, the way it was represented how it was going to function, that this was akin to a single family use and did not cross the line into a more commercial use. And where does it cross the line? It is a transient population that gets referred in/referred out, and was not operating under the type of loose management that really it was represented that all it needed. So now you bring in three heavy hitters, put them on a deed, the notion that you can circumvent us by accomplishing ... by putting the old owners on the deed and giving them a share just tells me it's a ruse. I don't believe you for one second. You're absolutely not credible to tell me that either McGoldrick or McCrossan have anything to with it other than it's just a ruse to get around on the permit.

Robert Schonfeld asked: Why don't you ask them? I have Mr. Rinklin and Mr. Gurland here.

Supervisor Grace stated: I'm not because I don't need to. Because I know you had an attorney write a letter, right, that said.

Town Attorney Michael McDermott stated there were several letters.

Supervisor Grace stated: The first contract to sell the place was based upon a contingency that the new owners apply for a special use permit and obtain it. All right, the whole thing is, I can't remember who I met with, but I said you're going to sell it, you're going to go through the same process again because that's what the permit says. And at that point, somebody decided "well, we'll just leave somebody on the deed or leave somebody as an operator and this way we can show that this really didn't happen" and this is just a ruse. I don't buy it, and I don't care what you tell or present to me I don't buy, and the other problem I have is, look – you know what – I made, I went out on a limb and I made a commitment to those people in that neighborhood that I would hold these people's feet to the fire. I had two incidents within 6 months which drove me nuts to have to listen to because I'm thinking, "all right, you know what, maybe these people were actually right in their criticism on this." And then, I'm still holding, I made a commitment to them and I hope and I hoped and I hoped that this thing would be successful. It turned out not to be. And you proved the point by having to sell it within such short time to a group of people that are supposedly professionals with expertise in this. You moved it from a use that's akin to a single family which would be okay in a single family zone to a use that's commercial. And that goes over the line which you can't recover from. You know what, I may have gone on a little too long, as far as I'm concerned under the facts the special use permit is revoked.

Councilman Bernard stated: This is a public hearing, so do we want to hear from the public?

Robert Schonfeld stated: Let me just add a couple of things for the record. Number one, I do appreciate Mr. Grace and Mr. Diana and Ms. Siegel and the courage you had in voting for that permit two years ago. However, the issues are different. I don't agree with Mr. McDermott's characterization, but the issues are more what Mr. McDermott said and that is "were the conditions of the special permit revoked?" The special permit, by the way, calls us a convalescent home, not a single family home, interestingly enough. And whatever happened, whatever allegation and an allegation is not proof ... you understand that, you're an attorney.

Supervisor Grace stated: I understand that very well.

Robert Schonfeld stated: There was a death; I'm not going to deny the death or the purpose of the death. But it seems kind of a shame that you're going to reject this home because people who may have more expertise than Mr. McCrossan and Mr. McGoldrick to run this are going to try to turn this around. That's kind of a shame; after all you called this is the permit a convalescent home not a single family home.

Supervisor Grace stated: But do you understand, just listen to yourself. What you're doing is, you're telling me the idea behind approving it and behind our code ... if you look at our zoning code ... you know, I struggled with this I don't know how many public hearings ... you look at our zoning code – it's a single family zone. That's not the only property in single family zone. I got a lot in town. So what I do over here is going to have application to every other single family zone in town. Do you understand that, right? So what happens is that we have these special use permits which you either have to comply with the conditions and you get it or you don't comply with the issues and you don't get it – that's just that simple. The idea behind it was that uses are allowed by special use permit in a particular zone is because they're deemed to be compatible or akin to the underlying zoning; so the convalescent home was supposed to be akin to a single family residence – operating like a single family residence. So if I get unrelated adults living together with a common ailment you know, then basically I can define it ... Once I decide I'm going to get nursing care or I'm going to give ... it's going to be a therapeutic center, as well. Or what I'm going to do is, I'm going to have a referral basis where I get people to come in and people to leave and they're going to be in and they're going to be out – all of a sudden, that doesn't happen in something that is akin to a single family residence, that is more ... you're free to go find a piece of property where that use is allowable but it's not allowable in a single family zone.

Robert Schonfeld stated: I'll give you the offer. I have Mr. Rinklin and Mr. Gurland.

Councilman Bernard stated: What we'd like to do is hear from the public. So, we've heard your argument, we understand where you're coming from; we have a public hearing scheduled and we'd like to hear from the public. If there's anyone who'd like to speak to this.

Town Attorney McDermott stated: We're not going to preclude people from speaking, but I think it's important the issue framed is frankly a very specific legal issue. I don't want to turn this into an indictment of whether or not we should or should not have sober homes in town.

Supervisor Grace stated: I'm not going to re-litigate.

Town Attorney McDermott stated: That issue is past us. This is all just a very specific legal issue.

Pia Riverso: Good evening, my name is Pia Riverso, I'm a resident of Yorktown. I'm also an attorney in a practicing law firm and a partner of Rifkin Radner and my firm has worked very often with Mr. Schonfeld and quite frankly, I'm appalled at what he just said, but I'll put the hyperbole aside and I will stand by my board.

Robert Schonfeld stated: I never worked with you in my life.

Pia Riverso stated: No, I've worked with many partners in your firm. And I will stand by this board, I will stand by my board and I will support my board in their decision. I may have disagreed in their first decision but I will support my board in their decision and what they do in the interests of this town. Now, I stood here many years ago (not that long ago), and I read through every single one of those special conditions and, boy, were they negotiated by Mr. Davis, who is an incredibly competent attorney, and we went through that language torturously and precisely. And if you look at that section of the code, it is abundantly clear that it says that if they change the ownership of the property or – it doesn't say and, it doesn't say anything to indicate that both are a condition – it says if you change the ownership of the property or the operator of the property and they changed the ownership of the property. And, quite frankly, any statement, any effort to go back and put these people on the deed is illusory and any court of law is going to see through that. That, to me, is conduct that is not going to be sanctioned by any court because it is quite clear what went on here: they weren't on the mortgage and I don't know if the town received a copy of the mortgage; it is, in fact, a public document. These gentlemen's names were not on the mortgage and the security interest. They were not on the original deed. This is an effort to go back and try and circumvent what was a very specific provision and what was very specifically negotiated. And for anybody to come before this board and now tell them

that “oh, well, you know if we stay on as an operator, we’re good” – well, you know what? I’d like to take the deposition and see exactly what term “operator” is being used. I would enjoy that tremendously. Where’s the liability policies? Where’s all the issues that these people that these people stayed on as an operator? This is a purely legal issue, as our town attorney has said and as our board has recognized and there is absolutely no support to allow these people to circumvent what was very, very specifically negotiated terms that they openly agreed to in court and understood. And any claim to the opposite is completely false and illusory. And you know what? The credibility, unfortunately, of whoever these applicants may be, but the credibility of certain people who have come before this board, is truly in question given the responses that went on to the tragedy in this home. And I question anybody who comes before us now and says “oh, well, now I’m an owner” when their credibility publically has been put to question. So I thank the board for its time, I support the board and I will not go into the hyperbole, and I think all of you gentlemen did the right thing and, personally, don’t tell the residents of Yorktown (and I’m glad you defended us) that we are in any manner discriminatory towards people with disabilities because this town does more for people who are addicted to drugs, to prevent our children from getting drugs, we have Senator Murphy fighting left and right and fighting against all the abuses of heroin, so there is no support for any statement that there are people in this town that are discriminating against people who have disabilities. That is the furthest from the truth. So, thank you, gentlemen.

Supervisor Grace thanked Ms. Riverso for her comments.

Ilan Gilbert stated: I just want to say there are times when we’re in a political season but that isn’t why I am up here because I want to simply say I respect everything I have heard from the board on this and you should know that.

Ed Ciffone thanked Mr. Gilbert for explaining the whole situation. He stated: I was standing there trying to figure out what to do. The only question I have is the original owners – are they still in court with the death of that young man that died? Because they’re part of the situation here.

Supervisor Grace stated: This is not a factor, can’t be, and won’t be a factor in our consideration.

Ed Ciffone asked why if it’s the same people?

Supervisor Grace stated: Because we have nothing to do with it. Those are allegations which we can’t deal with.

Jay Kopstein stated: Supervisor Grace mentioned the difference between a family and a business and you’re a hundred percent correct and listen to the words of the counsel that was up here at this podium a little while ago and he said “oh, these other people are coming in to turn it around.” You don’t turn around a family, you turn around a business.

Mel Tanzman stated: I guess my biggest question is, and I do understand there has been troubled history, however with the opiate crisis in our community, I think that, yes, families can be turned around as well. I think we all know that – it’s not just businesses that can be turned around. The question I have is since the change of ownership, have there been any additional problems or issues on that site? When there is a new program or project or, in this case a sober home, there are trials and tribulations just like there are in the start of anything and I’m wondering if there have been any recent incidents because, unfortunately, when you have people who have a history of substance abuse, there may be incidents that go on. And, yes, in my eyes, there is a discriminatory attitude at times against people with that type of disability. You know, if you’re blind or you’re paralyzed, you’re treated a lot differently than if you have either a psychiatric or substance abuse issue. You know, you have the good disabled and the bad disabled. And let’s be honest, I think that a lot of the hyperbole that went on when the sober home was first proposed was because of a fear of people with that type of disability being in those communities. So, I am a little bit confused, Supervisor Grace, because on the one hand you’re saying this is clearly just a land use issue, a zoning issue, and on the other hand we’re talking about the incidents that happened. It’s either one

or the other. Clearly, it seems that this decision is not just because of the breaking of that agreement that it's because of incidents that occurred. Let's be honest about it.

Supervisor Grace stated: I don't think there's a person in this room who hasn't been touched by this terrible affliction. And the last time I think I took a lot of heat because, you know, things very close to my household. It has nothing to do with that. But there are certain ... We were advised that the property was going to operate in such a manner, and the manner was so that it would be akin to a single family use because it's in a single family zoning designation. If they want to find another piece of property to operate one of these things that is in a different zoning designation, it may be approved. But we made a commitment to the community that had its concerns, a lot of it hyperbole which we had to put aside, because we always had to fight this notion that if we say "boo" about it, it's discriminatory. Or if we say "boo" about it, we're just picking on these people. I personally resent that because it was painstaking.

Mel Tanzman stated: It was not a personal attack, Supervisor Grace.

Supervisor Grace stated: I know, but it hangs in the air. To me, maybe I'm a little oversensitive because, you know, the issue hasn't been far from my door and so the thing is I'm not one to look down on these people or to say that they don't have issues that need to be addressed or that society doesn't have any obligation to address them. That's not the issue, but what's unfair is to say anything contrary to the application.

Mel Tanzman said: That's not what was said. What I did say was that the original application had to do with reaction to that population. I didn't accuse you of that, Supervisor Grace, and I don't know why you're reacting in that kind of a defensive manner.

Supervisor Grace said: I misunderstood you. I apologize.

Mel Tanzman said okay.

Supervisor Grace stated: Absolutely. That's why we communicate so then I try to get it straight from you.

Mel Tanzman stated that he wanted to know one answer that he didn't get, though, is have there been problems and incidents since the change of ownership?

Supervisor Grace stated: They've only operated – it shouldn't be operated at this point and shouldn't have been.

Mel Tanzman said: That's my question.

Supervisor Grace stated: No, not that we know of.

Mel Tanzman thanked the Supervisor.

Jim McWilliam: I'm a physician in Westchester, I don't live in Yorktown. I'm speaking as a father. My son was Hank McWilliam who was under the care of Constellation Sober Living when he passed away. So he was found unresponsive, taken to the hospital, he later died at the hospital, the cause of death was determined by the medical examiner to be drug intoxication or overdose. I'm not here to present allegations; I'm not here under pretext. I won't use allegations certainly in the context of my son's death as the attorney did because that's not an allegation – he did die there. If my comments are not legal or are out of the scope of this conversation, feel free to stop me and I'll gladly step down. But I think my comments are germane to any discussion. First of all I'd like to thank, I guess, and applaud the council allowing Constellation to open; I think it was very forward thinking. It didn't turn out as you'd hoped; it didn't turn out as we hoped but I think these facilities are critical – not these facilities but I think a facility to allow for an appropriate recovery of an alcoholic or a drug addict or someone with mental health issues is important and I don't think that anybody here has a "not in my backyard" mentality and I thank you for that. Let me read because it's harder for me to talk without the script because I become a little bit emotional. So forgive me, if I could open this up. In any case, discussion was made of the expertise of

the new owners. I would suggest to you that it's hard to quantify the expertise of new owners because there's no standard to which these sober living facilities are required to meet. There's no government regulation, there's no government agency on the municipal, state, or federal level that these sober living facilities have to operate under. The attorney made some allusion to the Fair Housing Act and perhaps to the American with Disabilities Act with regards to why these sober living facilities are allowed to exist and, Mr. Grace, made allusion to the pretext that this sober living facility was a single family unit and that's one of the reasons why the sober living facility's special use permit was allowed. These aren't facilities where a bunch of like-minded individuals who are hoping to recover from addiction are coming together to support each other. These are commercial entities, these are very lucrative commercial entities. In the case of Constellation, this was a very expensive, commercial entity who provides a very real and tangible service even though they may posit that they do not provide a service, but they do provide service. They advertise services provided. I'm not sure if legally that makes the definition of a commercial entity but it certainly doesn't fit the definition of a single family. I can assure you that the Constellation's family has not been at our side supporting us in the loss of their "family" member – me and my son, Hank. So this doesn't fit any of the traditional definitions of a family. These facilities are unregulated, there are absolutely no rules regarding their operation; so there's no requirements regarding credentials or training of staff, there's no rules or regulations or laws regarding medical training of staff, they're not in any statutory way required to recognize or know how to respond to intoxication, they don't necessarily ... there's no statute that says "well this is a sober living facility – your staff has to have this training and has to be able to recognize these signs of drug intoxication. And also you have to be able to know how to respond to drug intoxication. There's nothing there. I'm not alleging that anything happen when my son passed away that was untoward in this meeting; I'm just saying that these are the facts. There's absolutely no regulation that states how these sober living facilities are best run – there's no "best" standards; there no gold standard to which these facilities are statutorily required to meet. As such, there's a tremendous variability in terms of, I imagine, staffing and ability of members. There's no statute in state, city or federal law that these facilities have to have Narcan or Flumazenil; these are life-saving drugs that, at the sign of overdose, you can give to someone and immediately save their lives. There's no requirement; there's no way to check these homes to see if they have these requirements. So, basically, there's no standard these homes are run under. So, it's a commercial entity with no oversight on the federal, state, or local level. There's no way for you to determine whether the site is run well because there are no guidelines as to how they should be run. We had some discussions with Westchester County District Attorney for homicide and he said that based upon his understanding of law, which I assume he understands the law, and his interpretation of the law, there's no requirement for a member of the facility, a member of the sober living facility staff, to recognize or even respond to someone who's in distress from overdose, so there's nothing. So if you have these facilities, inevitably there's going to be an untoward event; it's just the nature of addiction. But there's no way to go back to the facility and say where were mistakes made, how can we make this better, how can we prevent these untoward events because there's no agency, there's no laws that govern these and there's no oversight. So I would urge you to consider that and like I said, I think this is beyond the scope of the legal discussion but if this comes up again, I urge you to consider that when thinking about providing permits at all or extending this special use permit or transferring this special use permit and I thank you for my time. Or for your time, actually.

Supervisor Grace stated: I wanted to comment before I lose my train of thought. You've actually hit the nail on the head, so to speak. The idea behind, and again this is a land use issue, the idea of a convalescent home was to have people of like-minded or common disability living in common with each other giving the moral support that they need or the physical support or whatever they need and that was the idea behind a convalescent home and that's why an exception was allowed or a special use permit to a single family residentially zoned property. And the thing is, is that this is basically how this was presented to us in the beginning and I'm not going to re-litigate everything but this was the idea and I think it was Dr. Washburn who said the models for NA or AA was always peer support in maintaining and continuing sobriety or abstinence and that this is the way it was set up. So we were advised, and everything that you brought up, the fact that they're unregulated, there's no recourse and there's no parameters on how these things operate and everything else, that was a concern because once you start to have to ... if by the nature of

the beast all of those things have to come into play. Now the use has morphed from akin to a single family use to a commercial use. So the idea is that I think you know you can't ... you know everyone wants us to say you know what not to recognize the elephant in the room, if it's a disability, it's a very specific disability that actually is not the same as autism or other mental disabilities with other types of group homes that you have. This is a very difficult animal to deal with. I think if anybody that's been touched by it, knows it, or has dealt with anybody, it is a very difficult situation. People say it's a disease, some people say it's not. But the thing is, the nature of the beast, kind of lends itself to the fact that you need more of an intense management or therapeutic setting even in transitional type living than you're going to get in what was presented to us. And that moves it from something that was akin to a single family use to a commercial use. Thank you.

Supervisor Grace stated: You elucidated that and I'm sorry for your loss and the pain you must have suffered from even before.

Cassie McWilliam: I am Hank McWilliam's mother who died while in the care of Constellation. I also would like to say to all of you and you said that you took a beating from everybody after you stood up for Constellation and put your neck out for them; I kind of feel how all of you must feel because we, as parents, and obviously my husband's a physician, we're both educated people – when we were told – Hank had gone into rehab before he went – he was only 18 years old; he was judge-ordered into rehab for a few things he had done, I don't know, the judge really didn't – anyway, so went to rehab, he came out, before he got out he actually asked to stay at rehab longer and was doing really well and the rehab facility that he was in said that ... suggested that he not come back to our home but to go to sober living. And because he was still in high school, one of the reasons we chose Constellations was because we are familiar with Yorktown, we knew that Hank would like being out here in this town and he wanted to graduate that year and in order to do that he had to go ... had to stay in New York State. The only other really one that was recommended to us was, I think, in Connecticut. So, you know, we toured the house, we researched anything and getting back to my point that I understand how you feel – we researched everything and in the end the one thing that if I had known before because I would never had known any of this ... someone had sent us a documentary, I don't know if any of you have seen it, it's called "The Business of Recovery" and it's a very, very good documentary and if, in fact, if I had seen this before Hank went into sober living, he would have not only not gone into sober living but he probably would not have gone into rehab. So I urge anybody in the room ... I think everyone should see this documentary, please write it down. You can look online, you can watch it and, if nothing else, there's a lot to be learned from it but in the title it tells you, it's all business. It's a money-making business that preys on people who are unwell, who are struggling. It preys on their families. These businesses prey their families; they charge an exorbitant amount of money and we cannot speak to what we know because we're not legally able to tell you certain things, but please understand that this facility, and actually the counsel for Mr. McCrossan he admitted it himself by saying that these new people that want to come in and take over know what they're doing. They're experts which only implies one thing which I already knew and my husband knew that Mr. McCrossan and his team were not only not experts, they had no idea what they were doing. And that's all I can say. Please watch the documentary. I'm ... you know the stigma of addiction is a terrible one and, you know, after going through something as horrible as we have, I can tell you he was an eighteen year old who was not what you're thinking he was. He was a good student, he was a good kid, he went to church, he believed in God, he had strong faith and I know Mr. McCrossan can get up and only say good things about this boy and, to me, but you know people do think and the stigma is one that's out there and needs to change and after this tragedy, my husband and I and all of our friends and family are fighting to change that because addiction is something that is so prevalent in the world right now and I know that, I do agree, I don't know who said it, but Yorktown is doing a really good job – we've obviously had many conversations with the police and detectives and they really are great, you know, and I can't say enough for how they're taking on this whole epidemic. But make no mistake about it but these sober living places are only about making money and they really, really ... It'll change, it's just taking some time. It will change because Hank's death is not the only death, there's been many deaths and this should not have happened but thank you for your time, and I think you guys are doing the best job that you can and there's no way ... I feel bad because I feel the same way you might feel that there's no way you can really know that, yeah, until you've gone through it and even going

through it like we didn't know until a few weeks later – people came to us and told us stuff; people came out of the woodwork who knew things and contacted us and told us and it should never have happened.

Supervisor Grace: I appreciate your comments and God bless you; hopefully, he gives you peace. I think you make the very point of what we're talking about. We hoped and I think Yorktown has been on the forefront of this thing. We have the Yorktown Taskforce Against Heroin, we're looking to start a drug court on a town level which would be the first of its kind in the state of New York. Again, we put ourselves out to hopefully make this thing work, we put all our faith and hope in that it would work. I'm sure just the way you did to put your son in their hands. It is a complicated issue; it serves no purposes to just say it's a disability which the community can't address and that it falls into the category of every other disability under the Federal Housing law and therefore we can't do anything about it. I think it does a disservice to everyone. Again, I know there's people in this room, I can tell you, that are going through your same kind of pain and continue to go through your pain and hopefully not suffer the ultimate loss that you did. But it requires a lot of things – we are very grateful for ... Terrence Murphy sat through this thing. You got somebody up in the state Senate who's really an advocate for this to finally – you know, it was amazing in the last presidential election you had one candidate who was surprised there was a problem. Now it's finally getting to the point where the federal government is stepping in and actually making commitments of real money to it. And I think you're right that, you know, these are good, good, good people and for anyone to say that they're not is completely amiss.

Cassie McWilliam: I had my own misconceptions before I had to go through this about what being a drug addict was. But, you know, I guess, please anybody in this room who knows anybody with any type of addiction please watch that documentary. I'm telling you ... in my opinion the things that have been discovered ... it's a documentary, so it's not, you know ... I think things are going to change in rehab in general. Like a lot of things we've been doing wrong, treating it in the wrong way, it's a very valuable piece of film work that everyone should see.

Supervisor Grace: I also want to make myself clear. There's nothing against the gentlemen who bought this property, there's nothing against the gentlemen who previously owned the property. I'm sure, you know, they were all dedicated themselves to doing the right thing, helping people. I don't impugn any malice or failure to be committed to helping the people. I don't think the present owners; they're probably of the same mind. I don't impugn any wrong behavior or malfeasance or, you know, motivated to do anything but the right thing.

Cassie McWilliam stated: You're a better man than I am. Because that's not my feeling.

Supervisor Grace stated: For me, it just has to do with the land use issue. It's just crossed the line.

Cassie McWilliam: Yeah, no, I get that. Thank you so much.

Supervisor Grace thanked Mrs. McWilliam for her comments.

Councilman Bernard stated: Motion to close the public hearing.

Supervisor Grace asked Mr. Anthony Grasso if he wanted to speak. Otherwise, he would close the public hearing.

Anthony Grasso: As you know, I've spoken before this committee many, many times. As Tom knows, we experienced this problem in our very own family and my condolences to the two people who just spoke. We were fortunate that we solved that problem at great cost. But, as I see it, going to these meetings time after time, it's strictly a case of violating a local code. There's no case here. In the beginning I was in favor of this but when it started falling apart and I knew the conditions the board set up when they approved this, there's no doubt in my mind – there's no doubt in anybody's mind with common sense would know that this is a strict of Yorktown's code. And as long as we set the code, that's what the code is and we will certainly stick by it. And I thank the town attorney for the diligence that he put behind this. Thank you, Mike.

Supervisor Grace thanked Mr. Grasso for his comments.

All those present having been given the opportunity to be heard and there being no further discussion, the hearing was closed. Upon motion made by Councilman Bernard, seconded by Councilman Diana and carried.

Supervisor Grace made a motion to deem this special use permit revoked.

Town Attorney McDermott stated: Before the board votes, I know a lot of people did speak on a lot of different topics and I want to reiterate based on what the board did and the resolution passed on June 13, 2017 that scheduled the public hearing for tonight. The basis for the application or the vote refers around the strict reading of the special use permit that Chapter 15 that if there has been a change of ownership of the property that would be a basis to find that the special use permit is null and void not an indictment of sober houses in general or anyone in particular. It is a strict reading. And since the proof is that the property did change ownership in May 2017 and there was not an application brought before the board within the parameters set forth ... the time frame set forth in Chapter 15 of the special use permit that is what the ... I'm going to ask the board to consider as the basis to whether the special use permit should be revoked or not.

Supervisor Grace stated that condition number 15 was specifically put into the approving resolution at the time in order to ensure that the operation was compatible with the underlying zoning and the fact that you know it's not just a technical violation but it's a substantive violation. And that the nature of the beast is that it lends itself to the fact that it's not compatible.

REVOCATION OF SPECIAL USE PERMIT – SOBER HOME
RESOLUTION #272

Upon motion made by Supervisor Grace, seconded by Councilman Bernard,

WHEREAS, at the Town Board meeting held on March 24, 2015, the Town Board passed a resolution granting an application made by Thomas McCrosson and Mark McGoldrick and issued a special use permit ("Special Use Permit") to operate a Sober Living Residence at 482 Underhill Avenue (Tax Map Designation Section 48.06, Block 1, Lot 25) ("Property");

WHEREAS, the Special Use Permit authorized McCrosson and McGoldrick to operate a Sober Living Residence, which is a convalescent home or sober home, at the Property for twelve (12) to fourteen (14) recovering alcoholics and substance abusers;

WHEREAS, in connection with the application for the Special Use Permit, McCrosson and McGoldrick conceded that convalescent homes, such as the Sober Living Residence, are subject to local regulation within the parameters of the special permit regulations of the Town Code;

WHEREAS, such standards are codified in Town Code §§300-28 through 300-36, which regulate the operation of the Sober Living Residence for the intended operation by McCrosson and McGoldrick;

WHEREAS, in the application for the Special Use Permit, McCrosson and McGoldrick conceded that pursuant to Town Code §300-34 the Town Board "shall attach such conditions and safeguards to the special permits as are necessary to ensure continued conformance to all applicable standards and requirements";

WHEREAS, in the application for the Special Use Permit, McCrosson and McGoldrick advised the Town Board that pursuant to Town Code §300-33 they were aware that the Special Use Permit would be revocable where "there has been a failure of compliance with any one of the terms, conditions, limitations and requirements" of the Special Use Permit;

WHEREAS, the Special Use Permit included Condition 15 which stated The provisions of Section 300-30 of the Zoning Code notwithstanding, in the event there is a change of ownership in the property, or in the operator of the convalescent home such that neither of

the Applicants, Thomas McCrossan or Mark McGoldrick, or a company in which at least one of them is a principal, an owner of the property and/or operator of the convalescent home, this permit shall be considered null and void. However, to assure a smooth transition to the new owner or operator, the new owner and/or operator may apply not less than 90 days before assuming ownership and/or operation for a renewal of this special use permit. Any new owner or operator shall be bound by the conditions of this permit and any additional reasonable conditions that the Town Board deems appropriate after the holding of a public hearing. If the new owner or operator fails to obtain a new special use permit, the convalescent home use shall be discontinued within 30 days from the expiration of the original special use permit and the use of the property shall revert to its present single family residential use.

WHEREAS, on May 11, 2017, a Deed transferring title to the Property from McCrosson and McGoldrick for the sum of \$10.00 to Justin Gurland, Matthew Rinklin and Zachary Clark was recorded with the Westchester County Clerk's Office;

WHEREAS, by the transfer of title to Gurland, Rinklin and Clark, McCrosson and McGoldrick were no longer owners of the Property;

WHEREAS, prior to the May 11, 2017 recording of the Deed, neither Gurland, Rinklin, Clark, McCrosson and/nor McGoldrick advised the Town Board that there would be a change of ownership of the Property;

WHEREAS, Condition 15 of the Special Use Permit states that in the event there is a change of ownership in the Property, subject to certain procedural requirements, the Special Use Permit shall be considered null and void;

WHEREAS, the condition making the Special Use Permit null and void in the event there was a change of ownership in the Property was to ensure that the operation of the Sober Living Residence was compatible with the residential zoning otherwise applicable to the Property, *to wit*: single family residential use;

WHEREAS, Condition 15 of the Special Use Permit provides that in the event there is a change of ownership of the Property the new owner may apply for a renewal of the Special Use Permit not less than ninety (90) days before assuming ownership;

WHEREAS, Gurland, Rinklin and/or Clark did not apply to the Town Board for a renewal of the Special Use Permit;

WHEREAS, Condition 15 of the Special Use Permit also provides that if the new owner fails to obtain a new special use permit, the convalescent home use shall be discontinued within thirty (30) days from the expiration of the original special use permit and the use of the Property shall revert to its prior single family residential use;

WHEREAS, Gurland, Rinklin and/or Clark have not applied for a Special Use Permit within thirty (30) days from May 11, 2017, the day the Deed for transfer of ownership in the Property was recorded with the Westchester County Clerk's Office;

WHEREAS, upon learning of the transfer of ownership of the Property, the Town Attorney attempted to correspond with McCrosson and McGoldrick in connection with the provisions of Condition 15 of Special Use Permit;

WHEREAS, in response, McCrosson and McGoldrick as well as Gurland, Rinklin and Clark advised that they believed that the Special Use Permit was in full force and effect;

WHEREAS, at the Town Board meeting convened on June 13, 2017, the Town Board passed a resolution scheduling a public hearing on July 18, 2017 to consider pursuant to Town Code §300-33 whether to revoke the Special Use Permit issued to McCrosson and McGoldrick. The public hearing was duly advertised and a copy of the resolution was forwarded to McCrosson, McGoldrick, Gurland, Rinklin and Clark.

WHEREAS, subsequently the attorneys for McCrosson, McGoldrick, Gurland, Rinklin and Clark forwarded letters with various additional documents to the Town in connection with the July 18, 2017 public hearing, which were forwarded to the Town Board for review;

WHEREAS, on July 18, 2017, the Town Board conducted a public hearing to determine whether the Special Use Permit issued to McCrosson and McGoldrick should be revoked;

WHEREAS, during the July 18, 2017 public hearing Robert Schonfeld, Esq. appeared before the Town Board on behalf of McCrosson, McGoldrick, Gurland, Rinklin and Clark, all of whom had an opportunity to address the Town Board at the public hearing;

WHEREAS, during the July 18, 2017 public hearing other members of the public, as reflected in the minutes of the Town Board meeting, commented before the Town Board after which the public hearing was closed;

BE IT RESOLVED, at the conclusion of the public hearing and after a review of the correspondence submitted to the Town Board as well as the terms and conditions of the Special Use Permit, the Town Board hereby revokes the Special Use Permit issued to Thomas McCrosson and Mark McGoldrick to operate the Sober Living Residence at 482 Underhill Avenue in the Town of Yorktown and the use of 482 Underhill Avenue shall revert to a single family residential use.

Grace, Patel, Bernard, Diana Voting Aye
Resolution adopted.

The Town Board accepted the following Monthly Reports:

- Building Department – Cost of Construction Report - June 2017
- Receiver of Taxes - June 2017

COURTESY OF THE FLOOR

The following people spoke at Courtesy of the Floor:

Walt Daniels, Chair of the Committee on Open Space, commented on the court dealings of transfer of ownership by eminent domain and the payment of \$500,000. If this had gone through the alienation procedure, the normal procedure is that by giving up land, you get the equivalent land or compensation to purchase equivalent land. Mr. Daniels stated he believes that the \$500,000 or a portion of that sum should be used for the purchase of equivalent parkland. Supervisor Grace stated the difference in this case is that no land is being lost. It is only a temporary closure of Legacy Field. According to Supervisor Grace, there is only a small portion of the field that will be lost. Mr. Daniels said that regardless of the size, it is still a lost piece of parkland and some of the money should be used to purchase open space. Councilman Bernard stated that the Town is currently in negotiations to purchase two pieces of property. Mr. Daniels stated he was aware of the negotiations and hopes that some of this money would help with those costs. He also said that there is large part of the trails that will not be near the Spectra project and wanted to know if they can be left open. Supervisor Grace said for public safety reasons, the area will be closed to the public. Also, one of the reasons the Town received ample compensation was because Spectra is being allowed a 24/7 operation in the area, with the addition of sound barriers, therefore the public needs to be kept out of the area. The Town wants Spectra to be able to get in and finish the project as quickly as possible.

Ilan Gilbert, resident, stated that he does not see any ill intent with the plans for Granite Knolls and is, in fact, in favor of the project. However, he does have a problem with the transparency of the Board regarding the project. The Board shows the plans for the project and says that it will cost 3.8 million. But real transparency would show that for \$3.8 million the Town is getting two dirt football fields and a dirt area for a baseball field. Mr. Gilbert acknowledged that the Town Board has said that certain things will not be covered and there is still a question of the cost of the turf, but he wants to make sure the public knows what they are getting for the \$3.8 million. Supervisor Grace said that is why they negotiated for another \$800,000. Mr. Gilbert said that numbers keep getting thrown around, i.e., the \$1.5 million from the original negotiations that was mentioned earlier in the evening but that was thrown into the General Fund. That was put in, and rightfully so, into paving the roads. He

stated that the \$1.5 million cannot be spent more than once. Councilman Bernard stated that is why there is \$10 million in the General Fund. Mr. Gilbert stated that amount only existed because certain jobs were not done over the course of a few years. Councilman Bernard stated that Mr. Gilbert was turning this into a political forum, to which Mr. Gilbert stated that this was already being done by the Town Board and that it works both ways.

Ed Ciffone, resident, asked about Sultana Pool. He mentioned that two members of the United Taxpayers of Yorktown joined a town meeting regarding Sultana Pool where they came up with a solution where the people around the pool would take the property, the town would fill it in, and the people would not have to pay back taxes. But he did not hear anything about the \$100,000 that they owe. He appreciates the solution and hopes it works out; if not, the Town should take it over and fill it in so as to save town and school taxes. At the December 6, 2016 Planning Board Meeting they discussed the Granite Knolls project. There were seven areas of questions/concerns that were not addressed at the public hearing and it was voted on anyway. Mr. Ciffone said this situation reminds him of the Highway Garage project where the Town does not really know how much the project will cost. He also mentioned something about sewers in his neighborhood and waiting for roads to be paved. He then presented the supervisor with a paper regarding the increase in the tax rate.

Supervisor Grace talked about how when he does the 2018 budget, he has to rely on the 2016 budget because he doesn't have 2017's numbers, when he did the 2017 budget he didn't have 2016's numbers because they come in 2017, so he had to rely on 2015's numbers. His goal is to keep resident taxes flat or keep them down and not increase them. You have to budget based on the numbers you have, not the numbers you wish you have. 2016 ended up with a very positive variance because the Town had been very prudent.

Howard Frank, resident, gave credit to Supervisor Grace for the work that he and the Town Attorney have done on Town projects, as well as the budget. Mr. Frank brought up the subject of illegal dumping in the town and mentioned the resolution that was passed last regarding the issue. He specifically cited the dumping, illegal trailer, and graffiti behind CVS. He said the manager there has done a good job of cleaning the graffiti, but Mr. Frank filed a police report (which he gave a copy to the Board) regarding the illegal dumping, which includes a toilet. Supervisor Grace stated that code enforcement would investigate the site the next day.

Susan Siegel, resident, asked the Board to explain the negotiations with Spectra and the taking of some of the land temporarily and some permanently – how much is being given permanently? Also, it is not only Legacy Fields that is being affected; Willow Park is also going to be affected. She asked how much of that land will be affected temporarily or permanently. Supervisor Grace stated that the prior easement area went underneath the pond and DEC wanted them to go around the pond instead. The easement area will shift from underneath the pond to underneath Tulip Drive. There is a very small couple of hundred feet that will be taken there. The new pipe at Legacy Field will run parallel to the old one and they are not excavating the old one and will be moving a little bit laterally. He again addressed the questions regarding funding for Granite Knolls.

Tony Grasso, resident, said he appreciated the talk about how budgets are set up and that people do not understand what goes into the entire process.

ADJOURN

Upon motion made by Councilman Bernard, seconded by Councilman Diana, the Town Board meeting was adjourned.

DIANA L. QUAST, RMC
TOWN CLERK
TOWN OF YORKTOWN