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AGENDA

PUBLIC TOWN COUNCIL MEETING

Monday, October 15, 2012
7:00 p.m.

1. ROLL CALL
2. PLEDGE OF ALLEGIANCE TO THE FLAG & MOMENT OF SILENCE
3. CHANGES TO AGENDA
4. COMMENTS ON AGENDA ITEMS
5. (7:00 p.m.) PUBLIC HEARING: Proposed Local Law—Regulation of Adult or Sexually Oriented Businesses
6. POLICE DEPARTMENT: NYCOMCO Contract Renewal
7. HICKORY SHADOW II SUBDIVISION:
 - A. Resolution of Town Board Determining Default with respect to the Completion of the Roads, Drainage, Stormwater Management Facilities
 - B. Resolution of Town Board Determining Default with Respect to the Completion of the Landscaping Improvements
8. ROCKY HEIGHTS III SUBDIVISION:
 - A. Resolution of Town Board Determining Default with Respect to the Completion of the Roads, Drainage, Stormwater Management Facilities
 - B. Resolution of the Town Board Determining Default with Respect to the Completion of the Landscaping Improvements
9. PALMERONE SUBDIVISION: Resolution of the Town Board Determining Default with Respect to the Completion of the Landscaping Improvements
10. GARDNERTOWN COMMONS RESIDENTIAL SITE PLAN: Resolution of the Town Board Determining to call Letter of Credit for Off-Site Improvements, Stormwater Management Facilities and Landscaping
11. RESOLUTION: Supporting Request to Restrict Intersection of Old South Plank Road with NYS Route 52 to Right Turn In Only
12. RECREATION: Chadwick Lake Pavillion Request
13. SET PUBLIC HEARING DATE for 2013 Budget
14. PROCLAMATION: 2012 Halloween Curfew
15. ANNOUNCEMENTS
16. PUBLIC COMMENTS
17. ADJOURNMENT

5. (7:00 p.m.) PUBLIC HEARING: Proposed Local Law—Regulation of Adult or Sexually Oriented Businesses

**INTRODUCTORY LOCAL LAW NO. 7 OF 2012
A LOCAL LAW AMENDING CHAPTER 185 ENTITLED
"ZONING"
OF THE CODE OF THE TOWN OF NEWBURGH
TO PROVIDE FOR THE REGULATION OF
ADULT-ORIENTED BUSINESSES**

SECTION 1 - TITLE.

This Local Law shall be referred to as "A Local Law Amending Chapter 185 Entitled "Zoning" of the Code of the Town of Newburgh to Provide for the Regulation of Adult-Oriented Businesses."

SECTION 2 - AMENDMENT OF CHAPTER 185 - SECTION 185-10.

A new subsection 185-10D entitled "Adult-oriented businesses is hereby added to Section 185-10 entitled "Utililization of Use Table" of Chapter 185 entitled "Zoning" of the Code of the Town of Newburgh, Orange County, New York to read as follows:

"D. Adult-oriented businesses. A use meeting the definition of "adult-oriented business" contained in §185-67 shall additionally be subject to the supplementary regulations contained in Article XVI of this Chapter."

SECTION 3 - AMENDMENT OF CHAPTER 185 – ADDITION OF NEW ARTICLE XVI.

A new Article XVI entitled "Adult-Oriented Businesses" is hereby added to Chapter 185 entitled "Zoning" of the Code of the Town of Newburgh, Orange County, New York to read as follows:

**"ARTICLE XVI
Adult-Oriented Businesses**

§185-65. Legislative Findings. The Town Board of the Town of Newburgh is familiar with the Town, the location of adult-oriented business within the Town and the issues raised by such business in the Town and throughout the country. Based on the Board's local knowledge, the input of Town residents and business owners obtained during a public input session held on August 14, 2012 2004 and evidence and studies concerning the possible impacts or "secondary effects" of adult-oriented businesses on the surrounding community, as presented in judicial decisions such as, but not limited to, *City of Erie v. Pap's A.M. d/b/a "Kandyland"*, 529 U.S. 277 (2000); *Barnes v. Glen Theater, Inc.*, 501 U.S. 560 (1991); *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theaters, Inc.*, 427 U.S. 50 (1976); *Stringfellow's of New York, Ltd. v. City of New York*, 671 N.Y.S.2d 406 (1998); *Town of Islip v. Caviglia*, 73 N.Y. 2d 544 (1989) and *Singer v. Town of East Hartford*, 736 F.Supp. 430 (D. Conn.1989), *aff'd* 901 F.2d 297 (2d Cir. 1990) (affirming judgment on basis of district court opinion); and on studies conducted by other communities including, but not limited to, *REPORT*

ON THE SECONDARY EFFECTS OF THE CONCENTRATION OF ADULT USE ESTABLISHMENTS IN THE TIMES SQUARE AREA; STUDY OF POLICE ACTIVITY MILFORD: TESTING FOR NEGATIVE SECONDARY EFFECTS OF ADULT BUSINESS; ADULT BUSINESS – STUDY (PLANNING DEPARTMENT, CITY OF PHOENIX); ADULT USE STUDY (NEWPORT NEWS DEPARTMENT OF PLANNING AND DEVELOPMENT); RURAL HOT SPOTS: THE CASE OF ADULT BUSINESSES (BY RICHARD McCLEARY); ADULT ENTERTAINMENT BUSINESSES IN INDIANAPOLIS AN ANALYSIS, REPORT ON ADULT ORIENTED BUSINESSES IN AUSTIN (OFFICE OF LAND DEVELOPMENT SERVICES); SURVEY OF FLORIDA APPRAISERS: EFFECT OF LAND USES ON MARKET VALUES; ADULT ENTERTAINMENT STUDY (DEPARTMENT OF CITY PLANNING CITY OF NEW YORK); EFFECTS OF ADULT ENTERTAINMENT BUSINESSES ON RESIDENTIAL NEIGHBORHOODS (OFFICE OF THE CITY ATTORNEY, CITY OF EL PASO); THE SECONDARY EFFECTS DOCTRINE SINCE ALAMEDA: AN EMPIRICAL RE-EXAMINATION OF THE JUSTIFICATION FOR LAWS LIMITING FIRST AMENDMENT PROTECTION (BY CHRISTOPHER SEAMAN and DANIEL LINZAND); and SURVEY OF TEXAS APPRAISERS SECONDARY EFFECTS OF SEXUALLY-ORIENTED BUSINESSES ON MARKET VALUES, the Board finds:

1. Adult-oriented businesses are unavoidably associated with unlawful, unhealthy and detrimental activities ancillary to the constitutionally protected speech activities of such businesses.
2. Employees of adult-oriented businesses engage in or may be requested to engage in sexual behavior as a result of the type of business by which they are employed.
3. People present in the vicinity of an adult-oriented business are often assumed by third parties to be engaged in, or amenable to, the types of unlawful, unhealthy and detrimental activities ancillary to such businesses. As a result, such persons are subjected to unwanted advances or attention by persons frequenting such adult-oriented business.
4. People who choose not to frequent adult-oriented businesses tend to avoid areas in which such businesses locate. As a result, areas in which adult-oriented businesses and massage establishments locate often become “dead zones”, *i.e.*, areas in which owners of non-adult-oriented businesses tend to choose not to locate in the first instance, or choose to migrate away from, because of diminished pedestrian traffic due to the presence of adult-oriented businesses and massage establishments.
5. Because non-adult-oriented businesses tend not to locate near, or migrate away from, adult-oriented businesses, the presence of one such business tends to attract other adult-oriented businesses into the dead zone, thereby increasing the pace and intensity of the unlawful, unhealthy and detrimental activities unavoidably associated with such businesses and contributing to the blighting of the area surrounding such businesses. The smaller the municipality, including the Town, the larger the effects of a dead zone because such a zone would encompass a larger proportion of the municipality’s businesses as opposed to a similar zone situated in a larger municipality.
6. Due to the small geographical area of the Town of Newburgh, the probability increases that adult-oriented businesses will have substantial effects upon residential areas within the

Town. Further, smaller municipalities, including the Town, are more likely to have fewer days and hours of commercial activity than a larger municipality. This increases the likelihood that an adult-oriented business or massage establishment will have a larger effect on the area in which it is located during the off-hours of non-adult-oriented businesses.

7. Sexual acts, including masturbation, occur at adult-oriented businesses, especially those which provide enclosed rooms, booths or other cubicles for viewing of films, videos or live sex shows, thereby creating unhealthy and unsanitary conditions within the premises of such businesses.

8. Sexual activity is often a secondary effect of the constitutionally protected speech activities presented at adult-oriented businesses, thereby creating unhealthy and unsanitary conditions.

9. Some patrons frequent adult-oriented businesses for the purpose of engaging in specified sexual activities within the premises of such businesses, thereby creating unhealthy and unsanitary conditions within the premises of such businesses as demonstrated by online reports of patrons of adult-oriented businesses located within the Hudson Valley stating that some employees such businesses provide “extras”, *i.e.*, engage in specified sexual activities with patrons in exchange for monetary compensation.

10. Communicable diseases may be spread by specified sexual activities, including, but not limited to, transmission of the human immunodeficiency virus (“HIV”) and the contraction of the acquired immunodeficiency syndrome (“AIDS”), hepatitis B and venereal diseases.

11. Venereal diseases, HIV, AIDS and hepatitis B, as well as other communicable diseases spread by specified sexual activities, are serious health concerns in the local community.

12. Sanitary conditions in some adult-oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities engaged in by some patrons of such businesses and the failure of some business owners and operators to self-regulate those activities and maintain the business premises.

13. Numerous studies and reports have determined that semen and other bodily fluids are found in certain areas of adult-oriented businesses, particularly where persons view, in enclosed rooms, booths or other cubicles, adult materials or entertainments characterized by an emphasis on nudity or specified sexual activities or specified anatomical areas.

14. Adult-oriented businesses have operational characteristics which should be reasonably regulated in order to protect the substantial governmental concerns raised by the various findings herein while permitting patrons and owners of such businesses to engage in constitutionally-protected speech activities.

15. The unregulated presence of adult-oriented businesses is associated with declining property values.

16. The unregulated presence of adult-oriented businesses is associated with increased crime rates against both property and persons.

17. Children and teenagers are more likely to be exposed to graphic sexual images because of the unregulated presence of adult-oriented businesses.

18. Because persons patronizing adult-oriented businesses often travel a significant distance to such businesses these persons tend to not share with Town residents the concerns for the quality of life in the Town. Consequently, persons from outside the Town patronizing such businesses tend to place an inordinate strain on Town services and facilities such as parking, usage of Town streets, and trash collection and removal.

19. The unregulated presence of adult-oriented businesses tends to alter the character of the community in which they are located and quality of life for the residents of such community. The Town is presently in the process of addressing legislative and administrative Action Items recommended by the adoption of the Town's Comprehensive Plan Update in a deliberate process in an effort to alter and improve both the character and quality of life in the Town. The alterations to character and quality of life associated with the unregulated presence of adult-oriented businesses are at odds with the goals of the alteration and improvement the Town is undergoing and, consequently, the failure to properly regulate adult-oriented businesses and massage establishments could undermine this process.

20. The Town's intent in regulating adult-oriented businesses is not to restrict constitutionally-protected speech activities but rather to provide constitutionally sufficient alternate avenues for persons to engage in such activities in a manner consistent with the constitutions of the United States and New York State while addressing the unlawful, unhealthy and detrimental activities ancillary to such speech and ameliorating these secondary effects on the peace, good order, commercial viability and safety of Town residents and non-adult-oriented businesses.

21. The Town has granted a franchise to both Verizon and Time-Warner for the provision of cable television and these franchisees additionally provide high-speed internet services within the Town and such access is available to all Town residents. This universal availability of cable television and high-speed internet access throughout the Town provides additional alternate avenues for residents to view constitutionally-protected adult materials and adult entertainment if they exercise their right to do so.

22. The regulations set forth in this local law are the least intrusive method available to ameliorate the negative secondary effects of adult-oriented businesses within the Town without infringing on constitutionally-protected speech activities. The Town considered imposing separation restrictions from cemeteries and establishments serving alcoholic beverages, but declined to do so in order to ensure the availability of a sufficient number of commercially-viable sites for the location of adult-oriented businesses within the Town. Similarly, the Town considered, but declined, to implement a prohibition on nudity in live adult entertainment offered by adult-oriented businesses as it was determined that such a restriction would impose an unjustified burden on the underlying expressive activity. The Town also rejected creating any type of licensing scheme for adult-oriented businesses as the Board believed doing so might create, either on facially or as applied, an unconstitutional system of prior restraint. Finally, the

Board rejected dedicating additional police resources toward the more aggressive enforcement of existing penal and public nuisance laws, because of both budgetary limitations and to avoid possibly chilling the free-speech activities of law-abiding adult-business owners and their patrons.

23. The studies conducted by other communities that were reviewed by the Board, particularly, but not limited to, the 1994 study prepared by New York City, are applicable to the particular circumstances and experiences of the Town regarding adult-oriented businesses. Although most of the studies reviewed by the Board were conducted by larger municipalities, the studies themselves often focused their factual sampling and analysis on small, discrete areas of the municipality rather than the whole municipality. The relatively small size of the “study areas” in which secondary effects were found to occur is far more analogous to the geographic area of the Town. As such, the experiences and conclusions documented in the secondary effects studies are valid predictors of the effects of adult-oriented businesses within the Town. In order to screen the quality of secondary effects studies considered, the Board reviewed and relied on only those studies that were based on collected data, *e.g.*, crime statistics, property value assessments, etc., rather than on anecdotal statements.

24. The separation of adult-oriented businesses from sensitive sites and the boundaries of residential zoning distances mandated by this local law, and the requirement that such businesses locate in non-residential districts, will ameliorate the negative secondary effects of such businesses by creating a spatial buffer between those portions of the Town most subject to the harms of increased crime, decreased property values, influx of patrons from outside of the Town, late night traffic and parking congestion, noise, unhygienic conditions, and the likely exposure of children and teenagers nudity, specified anatomical areas or specified sexual activities.

25. This local law provides for alternative sites on which adult-oriented business may locate and these sites are both physically and legally available, within the Town’s borders. These alternate sites are part of an actual business real estate market within the Town. The local law makes available for adult-oriented businesses approximately forty-one (41%) percent of the total area of the Town open for commercial activity. Applying a 500 foot separation requirement between adult-oriented businesses in addition to separation requirements between adult-oriented businesses and residential zoning district boundaries and sensitive sites, approximately thirty-nine (39%) percent of the land area of the IB Zoning District and 40% of the land area in the B Zoning District outside the latter separation requirements remains available for adult-oriented businesses. These alternate sites have been identified and reviewed and are accessible to the public, have some likelihood of being available for use by adult-oriented businesses, and are suitable for commercial activity as they have access to the necessary public infrastructure required to support a commercial activity, *e.g.*, water, sewage and electrical service, as well as a reasonable ability for patrons to lawfully ingress and egress such sites.

26. Massage establishments are associated with many of the same unavoidably unlawful, unhealthy and detrimental activities associated with adult-oriented business that offer adult materials or adult entertainment.

27. The general welfare, health, comfort and safety of the citizens of the Town will be promoted by the enactment of this section and it is, therefore, necessary to do so.

28. The intent of the Town Board in enacting this Local Law is to ameliorate the negative secondary effects of adult-oriented businesses. The intent of the Board is not to limit constitutionally-protected expressive activity and, to this end, this Local Law is not intended to prohibit the establishment or operation of adult-oriented businesses in compliance with the content-neutral, time, place and manner restrictions established by this enactment.

§185-66. Legislative Purpose. The primary purposes of this Article are as follows:

1. To preserve the character and quality of the life of the Town's neighborhoods and business and maintain the viability of the Town's alteration and improvement pursuant to the Comprehensive Plan Update;

2. To ameliorate the documented adverse secondary effects that are ancillary to adult-oriented businesses as set forth in §185-65 including, but not limited to: decreased property values; attraction of transients; parking and traffic problems; increased crimes against persons and property; loss of business for surrounding non-adult-oriented businesses; and deterioration of neighborhoods;

3. To maintain property values;

4. To prevent crime;

5. To safeguard the continued commercial viability of currently existing non-adult-oriented businesses;

6. To insure the continued commercial viability of the Town as a location for new non-adult-oriented businesses;

7. To restrict minors' inadvertent exposure to nudity, specified anatomical areas or specified sexual activities;

8. To preserve and protect public hygiene, health and sanitation; and

9. To maintain the general welfare, health, comfort and safety of Town residents and businesses.

So as to effectuate these purposes, and based upon the findings set forth in §185-65 such uses shall be subject to the standards and regulations set forth in this section.

§185-67. Definitions: As used in this Article, the enumerated terms shall be defined as follows:

ADULT-ORIENTED BUSINESS - The term "adult-oriented business" shall mean a use of a building, structure, or property for a business which includes the regular offering, for economic gain or other consideration, of adult materials or adult entertainment as a substantial or significant portion of its stock-in-trade for the purposes of sale, rental, lease, trade, gift or display of such adult materials or adult entertainment. For the purposes of this law adult-oriented businesses shall include any restaurant, nightclub, bar, tavern, eating and drinking place or

establishment, arcade, theater, video store, motel, hotel, or any other establishment that regularly offers, for economic gain or other consideration, adult entertainment, a retail store that offers adult materials as hereinafter defined and any massage establishment.

ADULT MATERIALS -

(a) The term “adult materials” shall include any literature, books, magazines, pamphlets, newspapers, papers, comic books, drawings, articles, computer or other images, motion pictures, films, photographs, digital video discs, video cassettes, slides; or other visual representations, mechanical devices, instruments, clothing or any other writings, materials or accessories which are distinguished or characterized by their emphasis on matter depicted described or related to nudity, specified sexual activities or specified anatomical areas as defined herein.

(b) Exceptions. An item otherwise falling within the definition set forth in (a) shall not be considered to be within such definition if:

- (i) the item is printed matter that does not contain at least one visual depiction of nudity or specified sexual activities or specified anatomical areas; or
- (ii) the item is printed matter containing at least one visual depiction of nudity or specified sexual activities or specified anatomical areas and:
 - (a) the item, when viewed as a whole, presents such depiction for educational or scholarly purposes; and
 - (b) the item is offered for sale by an establishment in which not more than ten (10) percent of the establishment’s total interior square footage which is open to the general public is devoted to the sale, rental, lease, trade, gift or display of adult materials.

ADULT ENTERTAINMENT –

(a) The term “adult entertainment” shall include all entertainment in any live or recorded form or format which includes nudity or the depiction or display of specified sexual activities, specified anatomical areas or adult materials, as well as employees of any establishment who, as part of their employment duties, are required to wear costumes or uniforms or engage in live performances, in addition to their non-performance employment duties, where, during any portion of the discharge of their employment duties, such employees are in a state of nudity or depict or describe specified sexual activities or specified anatomical areas as defined herein.

(b) Exceptions. Any entertainment otherwise falling within the definition set forth in (a) shall not be considered to be within such definition if:

- (i) the entertainment does not include at least one visual depiction of nudity or specified sexual activities or specified anatomical areas; or

- (ii) the entertainment includes at least one visual depiction of nudity or specified sexual activities or specified anatomical areas and:
 - (a) the entertainment, when viewed as a whole, presents such depiction for educational or scholarly purposes; and
 - (b) such depiction constitutes less than ten (10) percent of total duration of the entertainment.

EMPLOYEE – The term “employee” shall mean any person who provides services or any other type of labor, including live performances, on the premises of an adult-oriented business, as such term is defined herein, regardless of the nature of the legal relationship between such person and the adult-oriented business in which such services or labor occur and whether such services or labor are performed for economic gain or other consideration.

FINANCIAL EXPENDITURES - The term “financial expenditures” shall mean any improvements or other capital outlay made by an owner of an adult-oriented business to establish such business, exclusive of the fair market value of the building, structure, and/or property in or on which such business is located at the time of any application pursuant to section 185-75(D) and exclusive of any improvements or other capital outlay unrelated to the offering of adult materials or adult entertainment which renders the use a non-conforming adult-oriented business.

NUDITY - The term “nudity” shall mean the showing of the human male or female genitals, public areas, buttocks, or anus, any part of the nipple or any part of a female breast below a point immediately above the top of the areola with less than a fully opaque covering.

MASSAGE ESTABLISHMENT -

(a) The term “massage establishment” shall mean any establishment having a fixed place of business where massages are administered for pay, including but not limited to massage parlors, sauna baths and steam baths.

(b) Exceptions. The definition provided for under (a) above shall not be construed to include the following:

- (i) Hospitals, nursing homes, medical clinics, or the offices of a physician, surgeon, chiropractor, osteopath, or duly licensed physical therapists, occupational therapists, or duly licensed massage therapists;
- (ii) Barber shops, beauty salons or nail salons in which massages are administered only to the scalp, face, neck or shoulders; or
- (iii) Health clubs or Fitness Facilities and recreational Membership Clubs which have facilities for physical exercise, such as tennis courts, racquet ball courts, ice skating rinks, or exercise rooms, and which do not receive their primary source of revenue through the administration of massages.

NON-ADULT MATERIALS - The term “non-adult materials” shall mean any literature, books, magazines, pamphlets, newspapers, papers, comic books, drawings, articles, computer or other images, motion pictures, films, photographs, digital video discs, video cassettes, slides; or other visual representations, mechanical devices, instruments, clothing or any other writings, materials or accessories not within the definition of adult materials.

NON-ADULT ENTERTAINMENT - The term “non-adult entertainment” shall mean all entertainment in any live or recorded form or format not within the definition of adult entertainment.

SENSITIVE SITE - The term “sensitive site” shall mean any one of the following: churches, synagogues, mosques or other places of worship, schools, child or day nursery facilities, public or semi-public parks or recreational facilities in existence as of September 15, 2012.

SPECIFIED ANATOMICAL AREAS - The term “specified anatomical areas” shall include:

- (a) Less than completely or opaquely covered:
 - (i) Human genitals;
 - (ii) Pubic Region;
 - (iii) Buttock; or
 - (iv) Female breast below a point immediately above the top of the areola.
- (b) Human male genitals in a discernible turgid state, even if completely and opaquely covered.

SPECIFIED SEXUAL ACTIVITIES - The term “specified sexual activities” shall include:

- (a) Actual or simulated fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breast;
- (b) Actual or simulated acts of human masturbation, sexual intercourse, contact between the mouth and genitals, contact between the mouth and anus, contact between the mouth and breast;
- (c) Human genitals in a state of sexual stimulation or arousal;
- (d) Actual or simulated sexual acts between humans and animals; or
- (e) Excretory functions as part of or in connection with any of the activities set forth in (a), (b), (c) or (d) above.

SUBSTANTIAL OR SIGNIFICANT PORTION -

(a) General Rule. An establishment that regularly offers, for economic gain or other consideration, adult materials or adult entertainment shall be considered to include adult materials or adult entertainment as a "substantial or significant portion" of its stock-in-trade where only a portion or section of such establishment's area is set aside for the sale, rental, lease, trade, gift or display of adult materials or adult entertainment.

(b) Ten-Percent Safe Harbor Exception. Any establishment that would otherwise be subject to this article that can prove that adult materials are contained, or adult entertainment are permitted to occur, in not more than ten (10) percent of the establishment's total interior square footage which is open to the general public, shall be exempt from the provisions of this article so long as such adult materials are kept out of the reach of minors and the method of operation of such establishment does not permit minors to view nudity, specified sexual activities or specified anatomical areas.

(c) Exception to Ten-Percent Safe Harbor Exception. The ten-percent safe harbor exception otherwise provided for under this definition shall not apply to any establishment possessing one or more of the following features:

- (i) An interior configuration and layout requiring customers to pass through an area of the establishment with adult materials or adult entertainment in order to access an area of the establishment with non-adult materials or non-adult entertainment;
- (ii) One or more individual enclosures where adult materials or adult entertainment are available for viewing by customers;
- (iii) A method of operation requiring customer transactions with respect to non-adult materials or non-adult entertainment to be made in an area in which nudity, specified sexual activities or specified anatomical areas are visible;
- (iv) A method of operation under which non-adult materials or non-adult entertainment are offered for sale only and adult materials or adult entertainment are offered for sale or rental;
- (v) A greater number of different titles of adult materials than the number of different titles of non-adult materials;
- (vi) A method of operation excluding or restricting minors from the establishment as a whole or from any section of the establishment with non-adult materials or non-adult entertainment;
- (vii) A sign advertising the availability of adult materials or adult entertainment which is disproportionate in size relative to a sign advertising the availability of non-adult materials or non-adult entertainment, when compared with: the proportions of adult materials or adult entertainment and non-adult materials or non-adult entertainment offered for sale or rent in the establishment; or the proportions of the establishment's total interior square footage open to the general public

containing adult materials, or in which adult entertainment is permitted to occur, and such square footage containing non-adult materials or in which non-adult entertainment is permitted to occur; or

- (viii) A window display in which the number of products or area of display of adult materials or adult entertainment is disproportionate in size relative to the number of products or area of display of non-adult materials or adult entertainment, when compared with: the proportions of adult materials or adult entertainment and non-adult materials or non-adult entertainment offered for sale or rent in the establishment; or the proportions of the establishment's total interior square footage open to the general public containing adult materials, or in which adult entertainment is permitted to occur, and such square footage containing non-adult materials or in which non-adult entertainment is permitted to occur.

ZONING BOARD OF APPEALS - The terms "Board", "Board of Appeals" and "Zoning Board of Appeals of the Town of Newburgh" shall mean the Zoning Board of Appeals of the Town of Newburgh.

§185-68. Prohibition on Massage Establishments. Massage establishments shall not be a permitted use within the Town of Newburgh.

§185-69. Location of Adult-Oriented Business. An adult-oriented business shall be permitted, in accordance with the requirements of this section, only in the B, IB or I zoning districts as shown on the August 19, 1974, Zoning Map, Town of Newburgh, last amended on June 4, 2012, which accompanies and which, with all explanatory matter thereon, is hereby adopted and made a part of this local law. The exact location of each zoning district boundary is recorded on the Official Zoning Map in the office of the Town Clerk in accordance with § 264 of Town Law and § 185-5 of the Town's Zoning Law.

§185-70. Separation, lot, bulk and parking requirements.

A. Minimum separation requirements.

(a) General provision. No adult-oriented business shall be located within 1,000 feet of the property line of any sensitive site or the boundary lines of the RR, AR, R1, R2 or R3 residential zoning districts.

(b) Separation between adult-oriented businesses. No adult oriented business shall be located within 500 feet of any other adult-oriented business.

B. Measurement.

(a) General provision. For purposes of this section, all distances shall be measured in a straight line, without regard to intervening structures, from the nearest point of the building or structure in which the adult-oriented business is or will be located to the nearest property line of any sensitive site defined in §185-67, or nearest boundary line of any zoning district described in

subsection A of this section, or to the nearest point of the building or structure or part thereof occupied or leased by the adult-oriented business if less than the entire structure is occupied by or proposed to be occupied by an adult-oriented business..

(b) Multi-tenant facility. Where a multi-tenant facility such as a shopping center is involved, measurement shall be made from the most proximate point along the boundary of the leasehold interest of such business or such site rather than the lot line of the facility containing such business or such site.

C. Buildings containing residential uses. No adult-oriented business shall be established or permitted in any building of which any part is used for residential purposes. No residential use shall be established in a building of which any part is used as an adult-oriented business.

D. Bulk, parking and supplemental regulations. Adult-oriented businesses shall conform to applicable , bulk regulations for the B, IB or I zoning districts and the applicable bulk and supplemental regulations set forth in this chapter for the appropriate classification of permitted use or use subject to site plan review by the Planning Board, as such regulations may be enacted or amended from time to time.

E. Limitation per zoning lot. No more than one adult-oriented business permitted under this section shall be established on a zoning lot.

F. Maximum square footage. The total interior square footage open to the general public of any adult-oriented business shall not exceed, in total, 10,000 square feet.

§185-71. Signs and Displays.

A. Signs and displays shall not depict or describe specified sexual activities or specified anatomical areas.

B. Signs and displays shall not depict nudity.

C. Signs and displays visible from the outside of an adult-oriented business may be illuminated or composed of lighted material such as neon but shall not feature flashing illumination.

D. Additional regulations applicable. In addition to the provisions of this section, signs and displays identifying or portraying an adult-oriented business shall be subject to all regulations applicable to signs and displays within the Town of Newburgh in addition to the requirements of this section.

§185-72. Interior and exterior lighting. During the period that an adult-oriented business is occupied, it shall be illuminated by sufficient natural or non-flashing artificial light to permit safe ingress and egress to and from the premises.

§185-73. Live entertainment security. Each adult-oriented business offering entertainment consisting of live performances shall maintain adequate security during hours of operation to

ensure the public peace and order. The provisions of this subsection shall require each adult-oriented business offering live performance to employ not less than one uniformed security guard per every 50 or fewer patrons on the premises. For any number of patrons over 50, each adult-oriented business offering live performances shall employ not less than two uniformed security guards. All uniformed security guards shall be employed in accordance with the New York State Security Guard Act of 1992, as may be amended from time to time

§185-74. Non-conforming Buildings or Lots. No non-conforming building or lot shall be used for an adult-oriented business, unless a variance has been obtained from the Zoning Board of Appeals. No existing building, lot or use shall be added to, enlarged, expanded in size or converted for purposes of conducting an adult-oriented business so as to render such building, lot or use non-conforming.

§185-75. Termination and Amortization of Non-Conforming Adult-Oriented Businesses.

A. Termination of Non-Conforming Adult-Oriented Businesses. Any establishment in existence or which has obtained vested rights to exist prior to the effective date of this local law which:

(a) has made financial expenditures for the purpose of operating or to commence operating an adult-oriented business;

(b) falls within the definition of an adult-oriented business; and

(c) is not in conformity with the requirements of this Article shall either conform to the requirements of this Article or terminate its operation as an adult-oriented business within two (2) years following the effective date of this local law or, if later, the date of issuance of a certificate of occupancy for a use which includes an adult-oriented business, or such later date as hereinafter provided. Such nonconforming uses shall not be increased, enlarged, extended, or altered within the two-year period or any extension thereof, except that the use may be changed to a conforming use.

B. Notice of Termination.

(1) Following the effective date of this Local Law, the Building Inspector shall serve a notice of termination upon the owners of the real property and the mortgagee, if any, of any recorded mortgage on real property, notifying them that the operation of the nonconforming adult-oriented business shall terminate on the date specified in the notice. The notice shall further state that the owner or mortgagee, or both, may, within the time period set forth in Subsection C below, file an application with the Zoning Board of Appeals for an extension of the termination date.

(2) If no such application is filed within the time set forth herein, it shall be presumptive proof that the termination date set forth in said notice is reasonable and that the nonconforming adult oriented

business aspect of the use has been fully amortized, and the use shall terminate on the date specified in the notice.

- (3) The notice of termination shall be sent by certified mail, return receipt requested, to the owner of the real property at the address set forth on the most recent tax rolls of the Town and to any mortgagee at the address set forth on any recorded mortgage.
- (4) In the event that the certified letter is not accepted by the owner, the posting of a copy of the notice on the property and the mailing of a copy by regular mail to the owner's address shall be deemed sufficient notice.

C. Board of Appeals Jurisdiction. The Board of Appeals of the Town of Newburgh shall have the power to hear and decide applications submitted to the Board for the continuation of a non-conforming adult-oriented business made pursuant to this subsection. The Board shall hear and decide such applications using the same procedures by which it hears applications for use and area variances pursuant to New York State Town Law Section 267-A and Town of Newburgh Code Section 185-55 and subject to the same time constraints for rendering a decision. Submissions of such applications to the Board shall be subject to payment of the same fees and costs as are required by the Town of Newburgh from time to time for zoning variance applications. The applicant shall not be required to obtain an order, requirement, decision, interpretation or determination by an administrative official of the town in order to submit an application for continuation.

D. Amortization of Certain Non-Conforming Adult-Oriented Businesses. Notwithstanding subsection A, the Board, may permit an adult-oriented business subject to termination to continue for a limited period of time not to exceed three years beyond the two-year period established in subsection A, for a maximum total of five years, provided that:

- (1) an application is made by the owner of such adult-oriented business to the Board at least one hundred and twenty (120) days prior to the date on which such business must terminate;
- (2) the Board shall find, in connection with such adult-oriented business, that:
 - (a) the owner of such a business had made, prior to the non-conformity, substantial financial expenditures related to such business;
 - (b) the owner has not recovered substantially all of such financial expenditures;
 - (c) the period for which such business may be permitted to continue is the minimum period sufficient for the owner of such business to recover substantially all of such financial expenditures; and
 - (d) without such continuation the owner will not have a reasonable opportunity to recover substantially all of such financial expenditures; and
- (3) in any application for a continuation beyond the two-year period established in Subsection A, the owner shall bear the burden of proving by substantial evidence each item set

forth in Subsection D(2) via competent expert and/or scientific testimony supported by reliable documentary proof, including audited financial data, regarding the subject adult-oriented business.

E. Should any nonconforming adult-oriented business cease operation for a period exceeding six consecutive months within the amortization period or at any other time, the adult-oriented business shall be deemed to terminate its nonconforming status and shall not be continued or reopened at the location unless the adult business is in full conformity with the provisions of this Article.

§185-76. Prohibited Activities. The following shall not be permitted on the premises of any adult-oriented business within the Town of Newburgh:

1. Appearance by a person knowingly or intentionally engaging in specified sexual activities; or

2. The use of sound amplification equipment to amplify a description or discussion of nudity, specified anatomical areas or specified sexual activities if:

(a) such description or discussion is audible beyond the exterior of the structure from which the description or discussion originates; or

(b) such description or discussion is amplified in a public place.

M. Enforcement and penalties. Violations of this article are subject to enforcement and penalties as provided for in Code Section 185-52 and in case any adult-oriented business or massage establishment is operating or has been established in violation of this section or any regulations made under authority conferred hereby, the Town Board of the Town of Newburgh or, with its approval, the Building and Code Enforcement Officer or other proper official, in addition to other remedies, may institute any appropriate action or proceedings to prevent, correct or abate such violation.

SECTION 4 - TITLES

Any title enumerated under this local law is for organization purposes only and shall not be deemed part of the text of this local law.

SECTION 5 - JUDICIAL REVIEW

Those wishing to challenge the validity of this Article are advised that judicial review of same is available under, *inter alia*, 42 U.S.C. §1983 and Article 78 of the New York Civil Practice Law and Rules.

SECTION 6 - VALIDITY

If any clause, sentence, paragraph, word, section or part of this local law shall be adjudged by any court of competent jurisdiction to be unconstitutional, illegal or invalid, such judgment shall not

affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, word, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

SECTION 7 - EFFECTIVE DATE

This Local Law shall take effect immediately when it is filed in the Office of the New York State Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.

g:\clients\ton\adult oriented business\ton proposed local law - draft 6.doc

617.20
Appendix A
State Environmental Quality Review
FULL ENVIRONMENTAL ASSESSMENT FORM

Purpose: The full EAF is designed to help applicants and agencies determine, in an orderly manner, whether a project or action may be significant. The question of whether an action may be significant is not always easy to answer. Frequently, there are aspects of a project that are subjective or unmeasurable. It is also understood that those who determine significance may have little or no formal knowledge of the environment or may not be technically expert in environmental analysis. In addition, many who have knowledge in one particular area may not be aware of the broader concerns affecting the question of significance.

The full EAF is intended to provide a method whereby applicants and agencies can be assured that the determination process has been orderly, comprehensive in nature, yet flexible enough to allow introduction of information to fit a project or action.

Full EAF Components: The full EAF is comprised of three parts:

- Part 1:** Provides objective data and information about a given project and its site. By identifying basic project data, it assists a reviewer in the analysis that takes place in Parts 2 and 3.
- Part 2:** Focuses on identifying the range of possible impacts that may occur from a project or action. It provides guidance as to whether an impact is likely to be considered small to moderate or whether it is a potentially-large impact. The form also identifies whether an impact can be mitigated or reduced.
- Part 3:** If any impact in Part 2 is identified as potentially-large, then Part 3 is used to evaluate whether or not the impact is actually important.

THIS AREA FOR LEAD AGENCY USE ONLY

DETERMINATION OF SIGNIFICANCE -- Type 1 and Unlisted Actions

Identify the Portions of EAF completed for this project: Part 1 Part 2 Part 3

Upon review of the information recorded on this EAF (Parts 1 and 2 and 3 if appropriate), and any other supporting information, and considering both the magnitude and importance of each impact, it is reasonably determined by the lead agency that:

- A. The project will not result in any large and important impact(s) and, therefore, is one which will not have a significant impact on the environment, therefore a **negative declaration will be prepared.**
- B. Although the project could have a significant effect on the environment, there will not be a significant effect for this Unlisted Action because the mitigation measures described in PART 3 have been required, therefore a **CONDITIONED negative declaration will be prepared.***
- C. The project may result in one or more large and important impacts that may have a significant impact on the environment, therefore a **positive declaration will be prepared.**

*A Conditioned Negative Declaration is only valid for Unlisted Actions

Adult Use Legislation

_____ Name of Action

Town of Newburgh - Town Board

_____ Name of Lead Agency

_____ Print or Type Name of Responsible Officer in Lead Agency

_____ Title of Responsible Officer

_____ Signature of Responsible Officer in Lead Agency

_____ Signature of Preparer (If different from responsible officer)

_____ Date

PART 1--PROJECT INFORMATION
Prepared by Project Sponsor

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

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

Name of Action Adult Use Legislation

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

Town of Newburgh, 1496 Route 300, Newburgh, Orange County, NY

Name of Applicant/Sponsor Town of Newburgh - Town Board

Address 1496 Route 300

City / PO Newburgh State NY Zip Code 12550

Business Telephone 845-564-4552

Name of Owner (if different) _____

Address _____

City / PO _____ State _____ Zip Code _____

Business Telephone _____

Description of Action:

Enactment of local legislation to regulate adult uses within the Town of Newburgh

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

A. SITE DESCRIPTION

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

1. Present Land Use: Urban Industrial Commercial Residential (suburban) Rural (non-farm)
 Forest Agriculture Other _____

2. Total acreage of project area: ±2300 acres.

APPROXIMATE ACREAGE	PRESENTLY	AFTER COMPLETION
Meadow or Brushland (Non-agricultural)	<u>±700</u> acres	<u>±700</u> acres
Forested	<u>±800</u> acres	<u>±800</u> acres
Agricultural (Includes orchards, cropland, pasture, etc.)	<u>0</u> acres	<u>0</u> acres
Wetland (Freshwater or tidal as per Articles 24,25 of ECL)	<u>±60</u> acres	<u>±60</u> acres
Water Surface Area	<u>±20</u> acres	<u>±20</u> acres
Unvegetated (Rock, earth or fill)	<u>±20</u> acres	<u>±20</u> acres
Roads, buildings and other paved surfaces	<u>±700</u> acres	<u>±700</u> acres
Other (Indicate type) _____	<u>0</u> acres	<u>0</u> acres

3. What is predominant soil type(s) on project site? Source: Orange County Soil Survey (OCSS)

- a. Soil drainage: Well drained ±70 % of site Moderately well drained ±20 % of site.
 Poorly drained ±10 % of site

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

4. Are there bedrock outcroppings on project site? Yes No Source: OCSS

a. What is depth to bedrock 0 to 5 (in feet)

5. Approximate percentage of proposed project site with slopes:

- 0-10% ±80 % 10- 15% ±15 % 15% or greater ±5 % Source: OCSS

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

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

8. What is the depth of the water table? 0 to 5+ (in feet)

9. Is site located over a primary, principal, or sole source aquifer? Yes No Source: OCWA

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

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

According to:

NYS DEC

Identify each species:

Upland sandpiper, peregrine falcon, bald eagle, short-nosed sturgeon, Atlantic sturgeon, woodland agrimony, red maple hardwood swamp

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

Yes No

Describe:

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

Yes No

If yes, explain:

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

Hudson River

15. Streams within or contiguous to project area:

Quassaic Creek and misc. unnamed tributaries

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

Hudson River

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

Brookside Pond

b. Size (in acres):

±17

17. Is the site served by existing public utilities? Yes No
- a. If YES, does sufficient capacity exist to allow connection? Yes No
- b. If YES, will improvements be necessary to allow connection? Yes No
18. Is the site located in an agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304? Yes No
19. Is the site located in or substantially contiguous to a Critical Environmental Area designated pursuant to Article 8 of the ECL, and 6 NYCRR 617? Yes No
20. Has the site ever been used for the disposal of solid or hazardous wastes? Yes No

B. Project Description

1. Physical dimensions and scale of project (fill in dimensions as appropriate).
- a. Total contiguous acreage owned or controlled by project sponsor: N/A acres.
- b. Project acreage to be developed: N/A acres initially; N/A acres ultimately.
- c. Project acreage to remain undeveloped: N/A acres.
- d. Length of project, in miles: N/A (if appropriate)
- e. If the project is an expansion, indicate percent of expansion proposed. N/A %
- f. Number of off-street parking spaces existing N/A; proposed N/A
- g. Maximum vehicular trips generated per hour: N/A (upon completion of project)?
- h. If residential: Number and type of housing units:
- | | One Family | Two Family | Multiple Family | Condominium |
|------------|------------|-----------------------------|-----------------------------|-----------------------------|
| Initially | <u>N/A</u> | <u> </u> | <u> </u> | <u> </u> |
| Ultimately | <u>N/A</u> | <u> </u> | <u> </u> | <u> </u> |
- i. Dimensions (in feet) of largest proposed structure: N/A height; N/A width; N/A length.
- j. Linear feet of frontage along a public thoroughfare project will occupy is? N/A ft.
2. How much natural material (i.e. rock, earth, etc.) will be removed from the site? N/A tons/cubic yards.
3. Will disturbed areas be reclaimed Yes No N/A
- a. If yes, for what intended purpose is the site being reclaimed?
-
- b. Will topsoil be stockpiled for reclamation? Yes No
- c. Will upper subsoil be stockpiled for reclamation? Yes No
4. How many acres of vegetation (trees, shrubs, ground covers) will be removed from site? N/A acres.

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

Yes No

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

7. If multi-phased:

a. Total number of phases anticipated _____ (number)

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

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

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

8. Will blasting occur during construction? Yes No

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

10. Number of jobs eliminated by this project N/A.

11. Will project require relocation of any projects or facilities? Yes No

If yes, explain:

12. Is surface liquid waste disposal involved? Yes No

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

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

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

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

If yes, explain:

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

16. Will the project generate solid waste? Yes No

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

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

c. If yes, give name _____; location _____

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

e. If yes, explain:

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

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

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

18. Will project use herbicides or pesticides? Yes No

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

20. Will project produce operating noise exceeding the local ambient noise levels? Yes No

21. Will project result in an increase in energy use? Yes No

If yes, indicate type(s)

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

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

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

If yes, explain:

25. Approvals Required:

			Type	Submittal Date
City, Town, Village Board	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<u>Town Board</u>	_____
			_____	_____
			_____	_____
City, Town, Village Planning Board	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<u>Planning Board (Interested)</u>	_____
			_____	_____
			_____	_____
City, Town Zoning Board	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<u>Zoning Board (Interested)</u>	_____
			_____	_____
			_____	_____
City, County Health Department	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No		_____

Other Local Agencies	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<u>OC Planning (Interested)</u>	_____
			_____	_____
			_____	_____
Other Regional Agencies	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No		_____

State Agencies	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No		_____

Federal Agencies	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No		_____

C. Zoning and Planning Information

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

If Yes, indicate decision required:

- | | | | |
|--|---|--|--------------------------------------|
| <input checked="" type="checkbox"/> Zoning amendment | <input type="checkbox"/> Zoning variance | <input type="checkbox"/> New/revision of master plan | <input type="checkbox"/> Subdivision |
| <input type="checkbox"/> Site plan | <input type="checkbox"/> Special use permit | <input type="checkbox"/> Resource management plan | <input type="checkbox"/> Other |

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

I - Industrial Business (70%)
B - Business (30%)

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

Does not change from present zoning

4. What is the proposed zoning of the site?

Does not change from present zoning

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

N/A

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

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

The proposed action applies to all areas within the Town of Newburgh and outside of a 1,000 foot (0.19 mi) buffer from residential districts (R1, R2, R3).

Zoning classifications within 1/4 mile of the site include:

I - Industrial Business
B - Business
AR - Agricultural Residence

Land uses within 1/4 mile of the site include:

Community Services
Public Services
Industrial
Commercial
Vacant Land
Residential

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

9. If the proposed action is the subdivision of land, how many lots are proposed? N/A

a. What is the minimum lot size proposed? _____

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

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

Yes No

a. If yes, is existing capacity sufficient to handle projected demand? Yes No

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

a. If yes, is the existing road network adequate to handle the additional traffic. Yes No

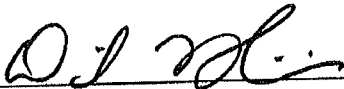
D. Informational Details

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

E. Verification

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

Applicant/Sponsor Name Town of Newburgh Town Board Date 9-17-12

Signature 

Title Planning Consultant to the Town

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

PART 2 - PROJECT IMPACTS AND THEIR MAGNITUDE

Responsibility of Lead Agency

General Information (Read Carefully)

- | In completing the form the reviewer should be guided by the question: Have my responses and determinations been **reasonable**? The reviewer is not expected to be an expert environmental analyst.
- | The **Examples** provided are to assist the reviewer by showing types of impacts and wherever possible the threshold of magnitude that would trigger a response in column 2. The examples are generally applicable throughout the State and for most situations. But, for any specific project or site other examples and/or lower thresholds may be appropriate for a Potential Large Impact response, thus requiring evaluation in Part 3.
- | The impacts of each project, on each site, in each locality, will vary. Therefore, the examples are illustrative and have been offered as guidance. They do not constitute an exhaustive list of impacts and thresholds to answer each question.
- | The number of examples per question does not indicate the importance of each question.
- | In identifying impacts, consider long term, short term and cumulative effects.

Instructions (Read carefully)

- a. Answer each of the 20 questions in PART 2. Answer **Yes** if there will be **any** impact.
- b. **Maybe** answers should be considered as **Yes** answers.
- c. If answering **Yes** to a question then check the appropriate box(column 1 or 2)to indicate the potential size of the impact. If impact threshold equals or exceeds any example provided, check column 2. If impact will occur but threshold is lower than example, check column 1.
- d. Identifying that an Impact will be potentially large (column 2) does not mean that it is also necessarily **significant**. Any large impact must be evaluated in PART 3 to determine significance. Identifying an impact in column 2 simply asks that it be looked at further.
- e. If reviewer has doubt about size of the impact then consider the impact as potentially large and proceed to PART 3.
- f. If a potentially large impact checked in column 2 can be mitigated by change(s) in the project to a small to moderate impact, also check the **Yes** box in column 3. A **No** response indicates that such a reduction is not possible. This must be explained in Part 3.

	1	2	3
	Small to Moderate Impact	Potential Large Impact	Can Impact Be Mitigated by Project Change

Impact on Land

1. Will the Proposed Action result in a physical change to the project site?

NO YES

Examples that would apply to column 2

- | | | | | |
|--|--------------------------|--------------------------|------------------------------|-----------------------------|
| • Any construction on slopes of 15% or greater, (15 foot rise per 100 foot of length), or where the general slopes in the project area exceed 10%. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Construction on land where the depth to the water table is less than 3 feet. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Construction of paved parking area for 1,000 or more vehicles. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Construction on land where bedrock is exposed or generally within 3 feet of existing ground surface. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Construction that will continue for more than 1 year or involve more than one phase or stage. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Excavation for mining purposes that would remove more than 1,000 tons of natural material (i.e., rock or soil) per year. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change	
• Construction or expansion of a sanitary landfill.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Construction in a designated floodway.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No

2. Will there be an effect to any unique or unusual land forms found on the site? (i.e., cliffs, dunes, geological formations, etc.)

NO YES

• Specific land forms:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Impact on Water

3. Will Proposed Action affect any water body designated as protected? (Under Articles 15, 24, 25 of the Environmental Conservation Law, ECL)

NO YES

Examples that would apply to column 2

• Developable area of site contains a protected water body.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Dredging more than 100 cubic yards of material from channel of a protected stream.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Extension of utility distribution facilities through a protected water body.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Construction in a designated freshwater or tidal wetland.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No

4. Will Proposed Action affect any non-protected existing or new body of water?

NO YES

Examples that would apply to column 2

• A 10% increase or decrease in the surface area of any body of water or more than a 10 acre increase or decrease.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Construction of a body of water that exceeds 10 acres of surface area.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No

1	2	3	
Small to Moderate Impact	Potential Large Impact	Can Impact Be Mitigated by Project Change	

6. Will Proposed Action alter drainage flow or patterns, or surface water runoff?
 NO YES

Examples that would apply to column 2

• Proposed Action would change flood water flows	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Proposed Action may cause substantial erosion.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Proposed Action is incompatible with existing drainage patterns.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Proposed Action will allow development in a designated floodway.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No

IMPACT ON AIR

7. Will Proposed Action affect air quality?
 NO YES

Examples that would apply to column 2

• Proposed Action will induce 1,000 or more vehicle trips in any given hour.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Proposed Action will result in the incineration of more than 1 ton of refuse per hour.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Emission rate of total contaminants will exceed 5 lbs. per hour or a heat source producing more than 10 million BTU's per hour.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Proposed Action will allow an increase in the amount of land committed to industrial use.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Proposed Action will allow an increase in the density of industrial development within existing industrial areas.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No

IMPACT ON PLANTS AND ANIMALS

8. Will Proposed Action affect any threatened or endangered species?
 NO YES

Examples that would apply to column 2

• Reduction of one or more species listed on the New York or Federal list, using the site, over or near the site, or found on the site.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
---	--------------------------	--------------------------	------------------------------	-----------------------------

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change
• Removal of any portion of a critical or significant wildlife habitat.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Application of pesticide or herbicide more than twice a year, other than for agricultural purposes.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

9. Will Proposed Action substantially affect non-threatened or non-endangered species?

NO YES

Examples that would apply to column 2

• Proposed Action would substantially interfere with any resident or migratory fish, shellfish or wildlife species.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Proposed Action requires the removal of more than 10 acres of mature forest (over 100 years of age) or other locally important vegetation.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

IMPACT ON AGRICULTURAL LAND RESOURCES

10. Will Proposed Action affect agricultural land resources?

NO YES

Examples that would apply to column 2

• The Proposed Action would sever, cross or limit access to agricultural land (includes cropland, hayfields, pasture, vineyard, orchard, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Construction activity would excavate or compact the soil profile of agricultural land.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• The Proposed Action would irreversibly convert more than 10 acres of agricultural land or, if located in an Agricultural District, more than 2.5 acres of agricultural land.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change
• The Proposed Action would disrupt or prevent installation of agricultural land management systems (e.g., subsurface drain lines, outlet ditches, strip cropping); or create a need for such measures (e.g. cause a farm field to drain poorly due to increased runoff).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

IMPACT ON AESTHETIC RESOURCES

11. Will Proposed Action affect aesthetic resources? (If necessary, use the Visual EAF Addendum in Section 617.20, Appendix B.)

NO YES

Examples that would apply to column 2

• Proposed land uses, or project components obviously different from or in sharp contrast to current surrounding land use patterns, whether man-made or natural.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Proposed land uses, or project components visible to users of aesthetic resources which will eliminate or significantly reduce their enjoyment of the aesthetic qualities of that resource.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Project components that will result in the elimination or significant screening of scenic views known to be important to the area.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

IMPACT ON HISTORIC AND ARCHAEOLOGICAL RESOURCES

12. Will Proposed Action impact any site or structure of historic, prehistoric or paleontological importance?

NO YES

Examples that would apply to column 2

• Proposed Action occurring wholly or partially within or substantially contiguous to any facility or site listed on the State or National Register of historic places.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Any impact to an archaeological site or fossil bed located within the project site.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Proposed Action will occur in an area designated as sensitive for archaeological sites on the NYS Site Inventory.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change
• Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

IMPACT ON OPEN SPACE AND RECREATION

13. Will proposed Action affect the quantity or quality of existing or future open spaces or recreational opportunities?
 NO YES

Examples that would apply to column 2

- | | | | |
|---|--------------------------|--------------------------|--|
| • The permanent foreclosure of a future recreational opportunity. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • A major reduction of an open space important to the community. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Other impacts: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |

IMPACT ON CRITICAL ENVIRONMENTAL AREAS

14. Will Proposed Action impact the exceptional or unique characteristics of a critical environmental area (CEA) established pursuant to subdivision 8NYCRR 617.14(g)?
 NO YES

List the environmental characteristics that caused the designation of the CEA.

Examples that would apply to column 2

- | | | | |
|---|--------------------------|--------------------------|--|
| • Proposed Action to locate within the CEA? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed Action will result in a reduction in the quantity of the resource? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed Action will result in a reduction in the quality of the resource? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Proposed Action will impact the use, function or enjoyment of the resource? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| • Other impacts: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |

1	2	3	
Small to Moderate Impact	Potential Large Impact	Can Impact Be Mitigated by Project Change	

IMPACT ON TRANSPORTATION

15. Will there be an effect to existing transportation systems?

NO YES

Examples that would apply to column 2

- | | | | | |
|--|--------------------------|--------------------------|------------------------------|-----------------------------|
| • Alteration of present patterns of movement of people and/or goods. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action will result in major traffic problems. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Other impacts: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

IMPACT ON ENERGY

16. Will Proposed Action affect the community's sources of fuel or energy supply?

NO YES

Examples that would apply to column 2

- | | | | | |
|---|--------------------------|--------------------------|------------------------------|-----------------------------|
| • Proposed Action will cause a greater than 5% increase in the use of any form of energy in the municipality. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action will require the creation or extension of an energy transmission or supply system to serve more than 50 single or two family residences or to serve a major commercial or industrial use. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Other impacts: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

NOISE AND ODOR IMPACT

17. Will there be objectionable odors, noise, or vibration as a result of the Proposed Action?

NO YES

Examples that would apply to column 2

- | | | | | |
|--|--------------------------|--------------------------|------------------------------|-----------------------------|
| • Blasting within 1,500 feet of a hospital, school or other sensitive facility. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Odors will occur routinely (more than one hour per day). | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action will produce operating noise exceeding the local ambient noise levels for noise outside of structures. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Proposed Action will remove natural barriers that would act as a noise screen. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Other impacts: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change
• Proposed Action will set an important precedent for future projects.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Proposed Action will create or eliminate employment.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
• Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

20. Is there, or is there likely to be, public controversy related to potential adverse environment impacts?
 NO YES

If Any Action in Part 2 Is Identified as a Potential Large Impact or If you Cannot Determine the Magnitude of Impact, Proceed to Part 3

Part 3 - EVALUATION OF THE IMPORTANCE OF IMPACTS

Responsibility of Lead Agency

Part 3 must be prepared if one or more impact(s) is considered to be potentially large, even if the impact(s) may be mitigated.

Instructions (If you need more space, attach additional sheets)

Discuss the following for each impact identified in Column 2 of Part 2:

1. Briefly describe the impact.
2. Describe (if applicable) how the impact could be mitigated or reduced to a small to moderate impact by project change(s).
3. Based on the information available, decide if it is reasonable to conclude that this impact is **important**.

To answer the question of importance, consider:

- ! The probability of the impact occurring
- ! The duration of the impact
- ! Its irreversibility, including permanently lost resources of value
- ! Whether the impact can or will be controlled
- ! The regional consequence of the impact
- ! Its potential divergence from local needs and goals
- ! Whether known objections to the project relate to this impact.

OCT 15 2012

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TOWN OF NEWBURGH

-----*Crossroads of the Northeast*-----

OLD TOWN HALL
308 GARDNERTOWN ROAD
NEWBURGH, NEW YORK 12550

PLANNING BOARD
JOHN P. EWASUTYN, CHAIRMAN
TELEPHONE 845-564-7804 FAX 845-
564-7802

October 11, 2012

Town of Newburgh Town Board
1496 Route 300
Newburgh, New York 12550

RE: Proposed Local Law 7 (Introductory) of 2012: Adult Oriented Businesses

Members of the Board:

The planning board took up consideration of the above referenced local law during its meeting of October 4, 2012. The planning board has authorized Michael Donnelly, Esq., to prepare this letter constituting the planning board's report pursuant to Section 185-60 of the Code of the Town of Newburgh.

Section 185-60(B)(1)(a): Whether such change is consistent with the aims and principles embodied in the chapter as to the particular districts concerned.

While the proposal to define and regulate adult-oriented businesses is new (such uses are not mentioned in the current chapter), prohibiting such uses within residential districts (and within 1,000 feet of such districts) is consistent with the general aims and principles of the zoning chapter to segregate residential uses from commercial ones.

Section 185-60(B)(1)(b): Whether areas and establishments in the Town will be directly affected by such change and in what way they will be affected.

While the planning board has not conducted an actual study, it appears that three existing adult-oriented business establishments will be directly affected by the local law in that they will need to follow the amortization wind-down provisions of the local law.

Section 185-60(B)(1)(c): The indirect implications of such change in its effect on other regulations.

The indirect implications (secondary effects) the law seeks to avoid are well articulated within the local law. The planning board sees no other indirect effect on other regulations.

Section 185-60(B)(1)(d): Whether such amendment is consistent with the aims of the Master Plan of the Town.

To the extent that the local law seeks to define and regulate a new use, it is consistent with the aims of the Master Plan, which in general segregates residential uses from commercial uses.

OCT 15 2012

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RECEIVED

OCT 05 2012

Town of Newburgh

Dickover, Donnelly, Donovan & Biagi, LLP
Attorneys and Counselors at Law

James B. Biagi
David A. Donovan
Michael H. Donnelly
Robert J. Dickover

28 Bruen Place
P.O. Box 610
Goshen, NY 10924
Phone (845) 294-9447
mal@dickbiagi.com
Fax (845) 294-6553
(Not for Service of Process)

Successor Law Firm To:
Alexander Appelbaum, P.C., Florida, N.Y. (1915-1988)
Ludmerer & Vurno, Esq., Warwick, N.Y.

October 2, 2012

Wayne Booth, Supervisor
Town of Newburgh
1496 Route 300
Newburgh, New York 12550

RE: Zoning Board of Appeals Response to Proposed Town of Newburgh Local Law Amending Chapter 185 entitled "Zoning" of the Code of the Town of Newburgh to Provide for the Regulation of Adult Orientated Businesses

Dear Supervisor Booth and Town Board Members:

In response to correspondence received from the Town Attorney, Mark C. Taylor, Esq., dated September 20, 2012 the Town of Newburgh Zoning Board of Appeals, hereinafter the "ZBA," has reviewed the above referenced proposed local law which is presently scheduled for a public hearing on October 15, 2012. This correspondence shall serve as the ZBA's "review and report" as solicited in Mr. Taylor's correspondence.

The concerns of the ZBA relate specifically to subdivisions "C" and "D" of Section 185-75, entitled "***Termination and Amortization of Non-Conforming Adult Orientated Businesses.***"

Specifically, the Board is concerned that the language permitting the ZBA to extend the two year amortization provision provided in Section 185-75(A) (c), "for a limited period of time beyond the two year period established" is too vague. The ZBA would prefer a specific time period, such as "the board, may permit an adult orientated business subject to termination to continue for a limited period of time, ***not to exceed two years***, beyond the two year period established in subsection A."

Additionally, the ZBA suggests the imposition of additional requirements, or at least additional specificity, with regard to the requirements set forth in subdivision 185-75(D)(b) items (i), (ii), and (iii). It is unclear how the phrases "substantial financial expenditures" would be defined relative to an enterprise such as an adult orientated business. For example, is it intended that those expenditures relate only to site work (construction of a building, an addition or a parking lot); internal renovations, (installation of a new commercial kitchen, a new bar top, additional bathrooms); or employment (the hiring of additional staff). Additionally, the Board is concerned that the requirement that the "owner has not recovered substantially all of its final expenditures" is something that no other business owner is guaranteed and it is difficult, if not impossible, to forecast future economic climate and therefore establish, with any certainty, "the period for which such business may be permitted to continue" so as to allow "such business to recover substantially all of [its] financial expenditures."

In lieu of the foregoing standard, the Board suggests the adoption of the use variance "dollars and cents" proof established by "competent financial evidence" to allow for an extension not to exceed two years for the continuation of the nonconforming adult orientated business.

Thank you for this opportunity to provide this review and report.

Very truly yours,



DAVID A. DONOVAN

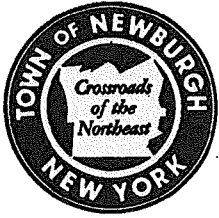
DAD/lrm

Cc: Grace Cardone, Zoning Board of Appeals Chair

6. POLICE DEPARTMENT: NYCOMCO Contract Renewal

OCT 15 2012

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TOWN OF NEWBURGH POLICE DEPARTMENT

300 Gardnertown Road, Newburgh, New York 12550

Michael Clancy
Chief of Police

(845) 564-1100

October 11, 2012

To: Town Board

From: Chief Michael Clancy


Subject: NYCOMCO Contract Renewal

I am requesting your authorization to renew the Police Department's contract with NYCOMCO. Our current contract is expiring on December 31, 2012.

I meet with Bill Tuthill from NYCOMCO several weeks ago and yesterday, October 10, 2012 he dropped off the proposed contract. In the new contract proposal offered by NYCOMCO the Police Department's monthly cost will remain the same, \$9,034.00. However the overall cost is broken down into two contracts, a seven (7) year contract at \$3,886.00 per month and a five (5) year contract at \$5,148.00 per month. This contract proposal offered by NYCOMCO will expire on October 19, 2012.

I have enclosed a copy of the proposal and request for your approval so we can make a decision as this is a time sensitive offer.

Respectfully Submitted,


Chief Michael Clancy

7. HICKORY SHADOW II SUBDIVISION:

- A. Resolution of Town Board Determining Default with respect to the Completion of the Roads, Drainage, Stormwater Management Facilities**
- B. Resolution of Town Board Determining Default with Respect to the Completion of the Landscaping Improvements**

No information available at this time

8. ROCKY HEIGHTS III SUBDIVISION:

- A. Resolution of Town Board Determining Default with Respect to the Completion of the Roads, Drainage, Stormwater Management Facilities**
- B. Resolution of the Town Board Determining Default with Respect to the Completion of the Landscaping Improvements**

No information available at this time

**9. PALMERONE SUBDIVISION: Resolution of the Town Board
Determining Default with Respect to the Completion of the
Landscaping Improvements**

10. GARDNERTOWN COMMONS RESIDENTIAL SITE PLAN: Resolution of the Town Board Determining Default with Respect to Off-Site Improvements, Stormwater Management Facilities and Landscaping

No information available at this time

11.RESOLUTION: Supporting Request to Restrict Intersection of Old South Plank Road with NYS Route 52 to Right Turn In Only

DRAFT

At a meeting of the Town Board of the Town of Newburgh, held at the Town Hall, 1496 Route 300, in the Town of Newburgh, Orange County, New York on the ___th day of October, 2012 at 7:00 P.M., Prevaling Time.

PRESENT:

- Wayne C. Booth, Supervisor
- George Woolsey, Councilman
- Gilbert J. Piaquadio, Councilman
- Elizabeth J. Greene, Councilwoman
- Ernest C. Bello, Jr., Councilman

RESOLUTION OF SUPPORT OF TOWN BOARD FOR REQUEST TO NEW YORK STATE DEPARTMENT OF TRANSPORTATION TO RESTRICT INTERSECTION OF OLD SOUTH PLANK ROAD WITH NYS ROUTE 52 TO RIGHT TURN IN ONLY SO THAT THERE WILL BE NO EXIT FROM OLD SOUTH PLANK ROAD ONTO NYS ROUTE 52

Councilman/woman _____ presented the following resolution which was seconded by Councilman/woman _____.

WHEREAS, the Town Board of the Town of Newburgh has received numerous requests from the public that traffic safety conditions on Old South Plank Road between O'Dell Circle and NYS Route 52 in the Town be improved; and

WHEREAS, the members of the Orange Lake Civic Association adopted a resolution on August 6, 2012 recommending and urging that access to NYS Route 52 from the western portion of Old South Plank Road be permanently terminated; and

WHEREAS, the Town Board of the Town of Newburgh has heretofore reviewed and examined these requests and recommendations and, in view of the limited sight distances, determined that restricting Old South Plank Road to Right Turn In Only so that there will be no exit from Old South Plank Road onto NYS Route 52 is in the interest of public safety; and

WHEREAS, authority to impose these restrictions is vested in the New York State Department of Transportation.

NOW, THEREFORE, BE IT RESOLVED that by this Resolution, the Town Board of the Town of Newburgh, in its capacity as governing body of the Town of Newburgh, does hereby fully and completely support the requests and recommendations to the New York State Department of Transportation to restrict Old South Plank Road at its intersection with NYS Route 52 to Right Turn In Only so that there will be no exit from Old South Plank Road onto NYS Route 52; and

BE IT FURTHER RESOLVED, that the Supervisor and Town Clerk are hereby authorized to deliver a copy of this Resolution, and to prepare, execute, submit and deliver, in the

name and on behalf of the Town Board, all such forms, certificates, documents and papers as may be necessary to effectuate and carry out the content of the foregoing resolutions to the appropriate offices of the New York State Department of Transportation and State officials; and

BE IF FURTHER RESOLVED, that the aforesaid resolutions shall take effect immediately.

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

George Woolsey, Councilman voting _____

Gilbert J. Piaquadio, Councilman voting _____

Elizabeth J. Greene, Councilwoman voting _____

Ernest C. Bello, Jr., Councilman voting _____

Wayne C. Booth, Supervisor voting _____

The resolution was thereupon declared duly adopted.

STATE OF NEW YORK)
COUNTY OF ORANGE) SS:
TOWN OF NEWBURGH)

I, Andrew J. Zarutskie, Town Clerk of the Town of Newburgh, DO HEREBY CERTIFY that I have compared the foregoing resolution, duly adopted by the Town Board of the Town of Newburgh on the ___th day of October, 2012, and entered in the minutes of the proceedings of said Board, and that the foregoing is a true and correct copy of said resolution and the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my name and the seal of said Town on this _____ day of October, 2012.

Andrew J. Zarutskie, Town Clerk

12. RECREATION: Chadwick Lake Pavilion Request

OCT 15 2012

12.



TOWN OF NEWBURGH RECREATION DEPARTMENT

311 ROUTE 32, NEWBURGH, NY 12550

Robert J. Petrillo
Commissioner of Parks, Recreation & Conservation

845-564-7815
FAX: 845-564-7827

October 11, 2012

TO: Wayne Booth, Supervisor
Town Board Members

FROM: Robert J. Petrillo, Commissioner

RE: Chadwick Lake Pavilion Request

We are submitting for your approval the attached letter from St. Luke's Cornwall Hospital, requesting the use of the large pavilion at Chadwick Lake Park for the 5th Anniversary Celebration of the Center for Joint Replacement on Saturday, October 27th. They are requesting the Town waive the \$200 pavilion rental fee as a sponsor of the event.

Thank you for your consideration.

Regards,

Robert J. Petrillo
Commissioner

/Attachment

St. LUKE'S CORNWALL
 HEALTH SYSTEM
FOUNDATION

70 Dubois Street

Newburgh, NY 12550

October 8, 2012

Ms. Donna Burgess

Recreation Department

311 Route 32

Newburgh, NY 12550

Dear Ms. Burgess:

St. Luke's Cornwall Hospital is proud to host the 5th Anniversary Celebration of our Center for Joint Replacement. The event is being held at Chadwick Lake Park on October 27, 2012 from noon until 3 p.m. The event is expected to have a total of 250 guests. We would need access to the pavilion from 10:00 a.m. until 4:00 p.m. on the day of the event. I am requesting sponsorship of the event by the Town of Newburgh in waiving the \$200 pavilion rental field.

Should you have any questions, please contact Kate Dabroski in the Marketing and Development department at (845) 784-3850.

Vendor List:

1. Torches on the Hudson

120 Front Street

Newburgh, NY 12550

(845) 568-0100

torchesonthehudson@yahoo.com

13.SET PUBLIC HEARING DATE for 2013 Budget

No information available at this time

14. PROCLAMATION: 2012 Halloween Curfew

OCT 15 2012

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PROCLAMATION

2012 HALLOWEEN CURFEW

The Town of Newburgh is concerned with the safety and welfare of our children, along with protection of private property.

I here by Proclaim a Town Wide curfew on door to door "Trick or Treating" and other outdoors Halloween related activities.

The curfew will run from 9:00 p.m. until 6:00 a.m. starting on Friday, October 26, 2012 through Monday, November 1, 2012.

I am requesting that parents inform their children and supervise the implementation of the Town Wide Curfew so that we may avoid problems and for the safety, health and welfare of our Town's young people and property owners.

Given Under My Hand & Seal
this 15th day of October, 2012

Supervisor Wayne C. Booth
Town of Newburgh
County of Orange
State of New York