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STATE OF NEW YORK : COUNTY OF ORANGE
TOWN OF NEWBURGH TOWN BOARD

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In the Matter of

PROPOSED LOCAL LAW

REGULATION OF ADULT OR SEXUALLY-ORIENTED BUSINESSES

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PUBLIC HEARING

Date: October 15, 2012
Time: 7:05 p.m.
Place: Town of Newburgh
Town Hall
1496 Route 300
Newburgh, NY 12550

BOARD MEMBERS: WAYNE C. BOOTH, Supervisor
ERNEST C. BELLO, JR., Councilman
GEORGE A. WOOLSEY, SR., Councilman
GILBERT J. PIAQUADIO, Councilman
ELIZABETH J. GREENE, Councilwoman

ALSO PRESENT: MARK C. TAYLOR, ESQ.
JEFFREY S.E. SCULLEY, ESQ.
JAMES W. OSBORNE, Town Engineer
ANDREW J. ZARUTSKIE, Town Clerk
DEBORAH A. SMITH, Deputy Town Clerk

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MICHELLE L. CONERO
10 Westview Drive
Wallkill, New York 12589
(845)895-3018

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MR. ZARUTSKIE: If there's not, we will move on to item number 5. This is a public hearing, proposed local law, regulation of adult or sexually-oriented businesses. This meeting -- this hearing was scheduled for 7 p.m. Since it's now 7:05, it is perfectly legal to proceed.

SUPERVISOR BOOTH: Thank you, Mr. Zarutskie. Have all the proper publications and postings been completed at this time?

MR. ZARUTSKIE: Legal notice of this public hearing has been on our website since September 28th. It's been posted in the lobby of Town Hall since October 2nd. A legal ad appeared in The Sentinel on October 2nd and in The Mid-Hudson Times on October 3rd. This fulfills all the requirements under New York State Law for the conduct of a public hearing.

And may I note for the record, Mr. Supervisor, we do have a Court Stenographer with us this evening.

SUPERVISOR BOOTH: Thank you.

MS. GREENE: I'll make a motion that we open our public hearing.

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MR. PIAQUADIO: I'll second it.

MR. ZARUTSKIE: The motion was made and seconded to open the public hearing at 7:05 p.m.

Mr. Woolsey?

MR. WOOLSEY: Yes.

MR. ZARUTSKIE: Mr. Piaquadio?

MR. PIAQUADIO: Yes.

MR. ZARUTSKIE: Mrs. Greene?

MS. GREENE: Yes.

MR. ZARUTSKIE: Mr. Bello?

MR. BELLO: Yes.

MR. ZARUTSKIE: Mr. Booth?

SUPERVISOR BOOTH: Yes. Thank you.

At this time I'll turn this over to Jeff Sculley, our Attorney.

MR. SCULLEY: Thank you, Mr.

Supervisor. This proposed local law regulating adult and sexually-oriented businesses has been available for review as Clerk Zarutskie had mentioned.

At its core the local law proposes to require adult-oriented and sexually-oriented businesses to locate in certain specified zoning districts within the Town. And in addition to

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that locational requirement, to also require them to be separated from certain sensitive sites, such as the boundaries of residential districts by 1,000 feet as well as separated from each other, in other words adult-oriented uses separated from each other, by 500 feet. The local law sets the definitions of all the required terms, such as adult-oriented and sexually-oriented businesses, sensitive sites. It determines and specifies how the separation requirements are measured. It also provides a provision for the amortization or termination of adult-oriented uses that are not in conformity with the new locational requirements of the local law. There is a two-year period of time in which those uses can recoup their financial investments as well as a provision to allow for an additional period of time of up to three years to recoup those significant financial investments made by the owners of adult-oriented businesses.

What the local law does not do, is also important to note, it does not in any way regulate the content of the free expression and the free speech activity that goes on at adult-

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oriented businesses, nor does it regulate in any way or restrict the content available to adults who wish to view and partake in adult-oriented speech that is Constitutionally protected.

So with that summary of the adult law, I would move on to the next step of the hearing.

SUPERVISOR BOOTH: Okay. Thank you.

Are there any questions or comments from Town Board Members at this time?

MR. WOOLSEY: No.

MR. BELLO: No.

MR. PIAQUADIO: No.

MS. GREENE: No.

SUPERVISOR BOOTH: At this time I'll open up to the floor. If you would please come to the microphone, state your name and your address and we'll try -- I'll take in your comments and try to answer any questions we can. Anyone?

MR. STEWART: Hi. My name is Fred Stewart, I live on 53 Albany Post Road, right down the road from where the location is. I've lived there about ten years now.

It's right on 9W. It's a main road. The place has never been any hassle. I've never seen

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any police there. I don't understand why the Town

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now is asking Keith to relocate this place. My

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kids have grown up in the area. We've never had

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any incidents, and I feel it is his right as a

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property owner. He bought the location and it

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was existing before he -- before he bought the

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place as that type of location. I don't

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understand why the Town now is coming up with

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something to try to relocate it or restrict the

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area that it has to be in.

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Thank you.

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SUPERVISOR BOOTH: Okay. And I'll let

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-- as far as the location, go ahead.

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MR. SCULLEY: I would just observe that

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the proposed local law is a Town-wide ordinance.

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It is not directed at any single use, any single

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owner or any single location. It would apply Town

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wide if it were to be enacted into law.

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SUPERVISOR BOOTH: Yes.

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MR. KRITIS: Good evening. Jeff Kritis,

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29 Hopeview Court, Newburgh. I just wanted to

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come tonight. We looked at this law and it looks

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like it's a positive law for the entire Town.

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Again, as you were saying, it is a

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Town-wide solution to protect now our Town in the future. It's about not allowing secondary negative effects to happen in the future, and that's what I think is great about this law. I think it will do -- nothing is perfect about anything but we just wanted -- I wanted to come out tonight and tell you that I'm very supportive. I think it's a great thing, this law, and it should be passed, and it's positive for families and businesses in the Town of Newburgh for the future, and I think for the present too.

Thanks.

SUPERVISOR BOOTH: You're welcome.

Anyone else?

MR. RUGERO: Yeah. Hi. My name is Rich Rugero, I'm a Town resident. I have known the owner of both of the places for over twenty some years. I knew his father, he did business in the Town for many, many years.

The thing about this is it's great, limit it. But what do we want to have, a strip where there's going to be problems or keep the existing the way it is, no problems, people come and go? I think it's very simple to say

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grandfather these two places.

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He spent a lot of money to get approval to do the building. He started the building after the Town gave him the approvals to do it, and now you're going to say stop after he spent close to a million dollars.

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I've been to his place in Kingston. Gorgeous. He wants to make it a nice restaurant, a little different than we're used to up here in Newburgh, where if you were in the city you'd go into a nice men's club and get a nice steak dinner. Well it's not -- he doesn't run shabby establishments. And like Fred had mentioned, you never see the police there, unless they're there, not in uniform.

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Thank you.

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SUPERVISOR BOOTH: You're welcome.

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MR. ZARUTSKIE: Mr. Rugero, could you

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tell us please what part of Town you live in?
You don't have to give an exact address.

MR. RUGERO: I live off of Lakeside
Road.

MR. ZARUTSKIE: Thank you.

MR. RUGERO: Very close to Pleasure
Island.

MR. SCULLEY: I would just observe that
the proposed local law would, as I believe I
mentioned, require a 500-foot separation between
covered adult-oriented businesses. So there
would be an ante-concentration element to the
proposed local law in that uses -- covered uses
would not be able to stack one immediately next
to the other because of the 500-foot separation
requirement.

SUPERVISOR BOOTH: Thank you.

Anyone else?

MR. RUGERO: To add to that. He
doesn't throw up flashing lights saying girls,
girls, girls and this and that. It doesn't, in my
mind -- you don't have little kids riding by on
the school bus, mommy, what's going on in there,
you know. Simple. Low profile.

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SUPERVISOR BOOTH: Thank you.

MR. STEWART: I'd like to add one more thing, too. Now you're restricting one specific type of industry. What's to say now the alcohol industry, maybe it should have all the bars in one place. Maybe you should have all the Quik Cheks in one place, all the gasoline stations in one place. What I see you doing is you're keying in on one industry, and I think it's unfair.

SUPERVISOR BOOTH: Anyone else?

MR. CAPPELLO: My name is John Cappello, I'm an Attorney with Jacobowitz & Gubits and I'm here on behalf of Santa Monica Holdings, Inc. Santa Monica Holdings is the owner of both of the adult entertainment establishments here within the Town. They are the only people affected by this law because it will, in effect, close both of their existing businesses they have operated in this Town for over twenty years or more. It would effectively close down both of those businesses, including the business that just went through a process before your Town Planning Board, received all the necessary approvals to approve their establishment in

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accordance with the law.

This law was -- your comprehensive plan was adopted in 2006. Over the six years between 2006 and now you've taken no action as it relates to regulating adult uses. It wasn't until this place -- this establishment on 9W was reviewed and approved that any law was adopted. The law, as I said, would close both the only two existing establishments featuring adult entertainment within the Town. It would effectively close them both down. So you can state that it's Town-wide and it's not impacting, but the facts state otherwise.

I've submitted a letter to the Board today. I hope you pay attention to it, review it.

One of the conclusions is you have a secondary use study. I was here on the evening of the meeting and I heard your attorney ask countless times to the people who were speaking regarding any actual secondary effects associated with these uses, can you give me any specifics? Can you give me any specifics? I think I heard them say that at least ten to twelve times. Please listen to the tape of the meeting to hear

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that. You've received no specifics yet. I saw adopted a secondary use study that makes several conclusions that are clearly belied by the facts. The conclusion that these facilities had secondary impacts on the property values in the area, once again, is belied directly by the facts that were provided to you at the hearing where there was discussion about the subdivision that was approved while the facility on 9W was up and operating, where homes were selling in the \$800,000 range. There is a Quick Chek, recently approved, under construction, directly adjacent to this facility. There are numerous -- a daycare center that expanded while this facility was open.

The facility on 17K, there is an office building directly across the street that was recently constructed. I know there's at least an accountant's office in there. Gold's Gym has expanded during that time. There's a Dunkin Donuts that was approved. I'm not sure where that is in construction. There was a Pilot that was approved.

So there are absolutely no facts in the

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record or submitted by anyone that these facilities have anything to do with the reduction in property values.

Similarly, we provided to you detailed information regarding police calls associated with these facilities. There's no evidence that there were any police calls associated with sexual activities or any other activities in greater incidence than any of the convenience stores you have within the Town, yet you're not proposing to ban the Quick Cheks and give them an amortization period.

So what we'd like to do here and what we've been trying to do is to come to some reasonable accommodation. We provided you facts, we provided you the proposals. If you're really concerned about a concentration of these uses, and I'm sure that's a legitimate concern in your minds, you can regulate it, as the gentleman said earlier. You can say we have two, they meet our needs, we're not allowing anything more, and you wouldn't be putting the taxpayers of the Town -- the great number of taxpayers, other than the few people here, in jeopardy of a long, protracted

2 lawsuit. I'm not here to threaten but if you
3 owned a business and you had that business for
4 thirty years and that business was now in effect
5 being shutdown, what would you do? You have left
6 no choice to my clients except to start this
7 protracted battle. I don't believe you have the
8 facts or any evidence that would lead to bring
9 you to the conclusions now. So we're here, you
10 know, trying to come up with a solution.

11 The last two things I'd like to add is
12 I tried to look for an environmental assessment
13 form. I saw one that was submitted on September
14 17th. I haven't seen any updates to that. I'm
15 assuming that's the last environmental assessment
16 form that's been filed.

17 And the other issue I would like to
18 bring up is just recently added to this law that
19 wasn't discussed in the law when you introduced
20 it is the clause that Mr. Sculley referred to now
21 that would restrict the ZBA from, regardless of
22 what the evidence is presented to them, from
23 extending the amortization period any more than
24 three years. So you're -- in one instance you're
25 saying you're entitled to recoup your investment,

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but then you're saying regardless of what the facts say, if it takes more than three years you're out of luck. So that was added new. I don't know when it was added. I think the new copy was there a few days ago. It's included and replaced the copy that was included in the minutes of the September 17th meeting, but it clearly wasn't the law that was before you on September 17th.

So with that, I reiterate these are businesses. You have a known quantity here. The evidence is shown that they have been run in a manner that has not created adverse secondary effects.

I looked at your map. I'm going to assume that the 41 percent is correct, but I think if you take a closer look at that map, the 41 percent is not usable property. The airport is located in the middle of that property where you make it available. Dynergy I know is going out of business but you have a remote corner of industrial areas where it probably would provide no reasonable alternative to present a site to them. But then if it did, you would be allowing

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2 and waiving a neon sign to your community to say
3 you could come in bigger and larger than the
4 facilities we have now, including the one that's
5 proposed to be expanded, which is about 6,000
6 square feet, with operators who we have no idea
7 of how they're going to locate, with a finding
8 that you made where you've already made a
9 decision that you don't want to put additional
10 police, you said you considered that, to enforce
11 the existing laws. So you are putting other areas
12 potentially at risk for an unknown quantity to
13 stop a user who has, regardless of what your case
14 is for the use, and I understand people have
15 personal feelings, they have different values,
16 and I respect those and I respect your concerns
17 regarding this, but the issue is this is a law,
18 this is a use that is permitted, it's a use
19 that's been run in your Town without a lot of
20 impact other than this expansion. How many times
21 have people been before your Board complaining
22 about these places? If they were a nuisance, I
23 think you would have heard of that a lot more
24 than just recently when someone tried to improve,
25 expand and update their facility.

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So with that, I hope you take this all into consideration, and thanks for your time.

SUPERVISOR BOOTH: Thank you.

MR. KOLKER: Hi. Mitch Kolker, 14 Hopeview Court in Newburgh. I'm not a lawyer but I've done a lot of research and Googled, you know, this whole issue as far as a moratorium and leading to a law that would, in effect, benefit the residents of the Town, and this has been done over and over and over again. This isn't a novel thing to the Town of Newburgh. This is not novel to a lot of towns in this area. It's a law which is not looking to be prejudice in the sense that they're not disallowing the existence of the business. All they're saying is, or all the law will say is that it can be conducted and it is purely and it is totally Constitutional but that it can be regulated in what areas. You know, the same, you know, example of regulating any type of business to a certain specific area.

I've lived in many different towns, you know, in the country, and basically the adult-entertainment businesses are usually not scattered, they're usually placed in an area that

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doesn't have the secondary effects that we've discussed, and we have brought up examples. I don't know if they'd ever be concrete enough, obviously, to a lawyer representing the adult-entertainment business, however it was done.

New York City is a perfect example. It was done legally, and the councilmen and the supervisor were well protected because it's absolutely in your right to vote for this law. And I think it's a great law and, you know, I commend the Town Supervisor, the Councilmen, Councilwoman for, you know, doing the right thing and voting to represent the residents and protect our community.

Thank you very much.

SUPERVISOR BOOTH: Okay. Thank you.

Anyone else?

(No response.)

SUPERVISOR BOOTH: Okay. Thank you, everyone.

Do any Board Members have any questions or comments?

MR. PIAQUADIO: No comment.

MR. WOOLSEY: No comment.

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SUPERVISOR BOOTH: Mr. Taylor?

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MR. TAYLOR: No.

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SUPERVISOR BOOTH: We haven't received

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the Orange County --

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MR. TAYLOR: The Orange County Planning

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Department has not yet submitted its review to

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the Board, so -- and the time period for its

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review has not yet expired, so the Board can not

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act to adopt the local law tonight.

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SUPERVISOR BOOTH: Okay. So we have to

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wait for the County's review. We have to go over

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that and respond to that prior to voting.

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At this time I will look for a motion

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to close the public hearing.

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MS. GREENE: So moved.

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MR. BELLO: Second.

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MR. ZARUTSKIE: The motion has been

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made to close the public hearing at 7:26 p.m.

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MR. ZARUTSKIE: Mr. Woolsey?

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MR. WOOLSEY: Yes.

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MR. ZARUTSKIE: Mr Piaquadio?

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MR. PIAQUADIO: Yes.

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MR. ZARUTSKIE: Mrs. Greene?

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MS. GREENE: Yes.

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MR. ZARUTSKIE: Mr. Bello?

MR. BELLO: Yes.

MR. ZARUTSKIE: Mr. Booth?

SUPERVISOR BOOTH: Yes.

MR. ZARUTSKIE: Thank you.

(Time noted: 7:26 p.m.)

C E R T I F I C A T I O N

I, Michelle Conero, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify that I recorded stenographically the proceedings herein at the time and place noted in the heading hereof, and that the foregoing is an accurate and complete transcript of same to the best of my knowledge and belief.

Michelle Conero

DATED: October 27, 2012