

MINUTES BOOKTOWN OF COEYMANS**
December 8, 2022 – Public Hearing – 6:00pm

A Public Hearing was held Thursday December 8, 2022 at 6:00pm at Town Hall, 18 Russell Avenue, Ravena, New York

PRESENT: George D. McHugh, Supervisor
Linda S. Bruno, Council Member
Brandon L. LeFevre, Council Member
Marisa Tutay, Council Member
Stephen J. Schmitt, Council Member

Absent:

ALSO PRESENT: Candace McHugh, Town Clerk
Daniel Baker, Superintendent of Highways

Supervisor McHugh called the meeting to order and led the audience in the Pledge of Allegiance. Council member Bruno led the room in prayer. Supervisor McHugh asked that the record reflect that all members were present.

Supervisor McHugh opened the Public Hearing and asked the clerk to read the notice.

**NOTICE
OF
PUBLIC HEARING**

NOTICE IS HEREBY GIVEN, that the Town Board of the Town of Coeymans will hold a Public Hearing on December 8, 2022 at 6:00pm at Town Hall, 18 Russell Avenue, Ravena, NY on the proposed Town of Coeymans Local Law to authorize the establishment of a three (3) month moratorium to temporarily halt the processing and issuing of any applications, permits, certificates of occupancy, approvals, denials, determinations or interpretations for any land uses relating to the storage of liquified petroleum gases.

PLEASE TAKE FURTHER NOTICE, at the above date, time and place all interested persons are welcome to attend and will be heard. Comments can also be submitted by letter, email or telephone call to the Town Clerk's Office at townclerk@coeymans.org or 518-756-6006, Ext. 3 until 4:00pm the date of the meeting.

**By Order of the Town of
Coeymans Town Board
Candace McHugh
Town Clerk**

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Supervisor McHugh read a statement into the record before the public hearing began:

The Coeymans Town Code currently does not define the term “Trucking Terminal”, even though a “Trucking Terminal” is a Principal Use in 2 zoning districts – C1P and C2P – both Planned Commercial.

The Coeymans Town Code is silent on Bulk Fuel Storage facilities, Fuel Distribution Terminals, and Propane Truck Terminals.

All of these deficiencies in the Town Code were brought to light upon an application being made to site a large Propane Distribution Truck Terminal in Coeymans.

Without a definition for “Trucking Terminal”, the Building Department, Planning Board, and Zoning Board of Appeals, as well as current and future applicants and town residents are at the mercy of subjective interpretation of undefined terms, and thoughtless planning and development.

The Town Board is seeking this relatively short moratorium so that they may consider a local law to provide a definition to the term “Trucking Terminal”, and if necessary other terms and definitions so that applications for large fuel storage and/or terminals, amongst other applications, may be properly and thoughtfully considered in the Town of Coeymans.

The Town Board has not predetermined anything with regard to the current application pending with the Planning Board. And we are not interested in commenting on or deliberating the merits of that application, as that is the job of the Planning Board to consider. But what we are interested in doing is providing the Planning Board with an adequate code with defined terminology, which provides specific definitions for terms like “Trucking Terminal”, so that the Building Department and the Planning Board can do their job and not have to guess as to what those definitions should be.

This is nearly a mirror image of the process that the Coeymans Town Board used a couple of years ago when we received an application for a large Solar Farm of over 400 acres along Route 101, but our Town Code at that time did not contain a Solar Law. The Town Board at that time established a 6 month moratorium, worked on drafting a Solar Law, adopted the Solar Law after public hearing, and the Solar Project is currently under construction. This is the same type of process we are proposing to implement in this matter.

I can speak for myself and I believe for the members of this Town Board when I say that no one on this Board is against new business coming to Coeymans. We welcome new business to Coeymans, assist them whenever possible, and have certainly shown that over the past 3 years. However, it is our duty as a Town Board to make sure that our Building Department and Planning Board have a Town Code that contains specific definitions and unambiguous terminology, so that they can do their jobs and insure proper siting and development of industry and business, consistent with our Comprehensive Master Plan and our code.

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The Town Board's responsibility is limited to providing an unambiguous Zoning Code with clear definitions for its terminology, so that applications like the current pending application can be carefully and thoughtfully considered without the need of guessing what such an important term like "Trucking Terminal" should mean. That is the only goal of this short moratorium. We owe it to our Building Department, our Planning Board, and most of all our residents, to insure that our Town Code is complete and adequate to address applications like the one before us today. This Public Hearing is about the proposed moratorium local law so that the Town Board may amend the Town Code to provide a definition for "Trucking Terminal", and to adequately address fuel storage and distribution facilities in Coeymans. It is not a Public Hearing on the merits of the application currently pending with the Planning Board/Zoning Board of Appeals.

At this time I would like to enter into the public hearing record the following:¹

- a. Letter from RCS School Superintendent Brian Bailey dated November 14, 2022;
- b. Letter from our Town Engineers MJ Engineering dated December 8, 2022;
- c. Letter from Lafarge Holcim Cement dated December 8, 2022;
- d. 40 pages of public documents from the City of South Portland, Maine, illustrating the moratorium process that they endured in 2016 when they had nearly the exact same circumstance that we have today in Coeymans, with a Propane Fuel company attempting to locate a distribution terminal in their city while their code did not adequately address such a business. These documents merely illustrate the benefits of a short term moratorium, which allowed their City Council ample opportunity to amend their Zoning Code to properly consider LP Gas storage and distribution facilities in their city.

Public Comment:

Jim Feuerbach lives in the Town: He asked how have previous propane companies been dealt with and what is the difference now? He asked if the board talked to other municipalities about how they handled similar situations. He feels it is important to not reinvent the wheel and look to others for their ideas.

Bob Long, President of Long Energy: He stated his company has been delivering fuel and servicing this area for decades. Long energy has employees that live here and an office right on Main Street. He believes this project will help the people of Coeymans and keep prices competitive. Mr. Long stated this company has been investing in our community by participating in community-based

¹ All documents referenced above are attached to the end of the official minutes and are on file in the office of the Coeymans Town Clerk.

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events and plans to continue to do so along with creating jobs as they expand. He asked that the town board listen to the community and oppose the moratorium.

Jim Warren is a Lawyer representing Marebo who is the applicant for a propane distribution on route 9W. Mr. Warren stated this is the third board he has been before regarding this case and would like to summarize how we got to this point. Marebo began this process in Late August by submitting an application for a propane distribution facility as a trucking terminal which are allowed in the C1P zoning district. An extensive site plan was prepared by an engineer which was also reviewed by the town engineers. As the site plan was proceeding before the planning board Mr. McHugh filed an appeal with the Zoning Board of Appeals as an Officer of the Town, which Mr. Warren stated he has a right to do under Town Law, Section 267 A. The Appeal was arguing that the plan was not a trucking terminal. This term is not defined in our town code and Mr. McHugh feels as though it needs to be defined. It is not uncommon for a term to not be defined in an ordinance. And when that happens the ordinary or customary usage of the term is adopted. Mr. Warren gave the following as the customary usage of the term: "It's a facility where goods are transported by truck, they're stored there temporarily, and then they're reloaded on other trucks in this case, bobtails." Several examples were brought to the attention of the PB/ZBA by Beth Carrie, general counsel of similar situations. Mr. Warren felt that these examples were making the PB/ZBA consider denying the appeal but the appeal has not been decided upon due to the introduction of the moratorium. Mr. Warren feels that all legal precedents indicate that Jason Chmielewski made the correct decision when he defined the facility as a trucking terminal and permitted its use in the C1P district. Supervisor McHugh made Mr. Warren aware of the time limitation in our meeting rules. Mr. Warren continued discussing how the Town Board considers this a safety concern. Mr. Warren stated there is safety issues with any application and that is why we have a PB/ZBA and legal counsel during these decisions. He does not believe the moratorium is necessary as an imminently dangerous process is not being forced on the town. Mr. Warren concluded that he feels as there is no substitute for competition.

John Crain is an attorney with the law firm Whiteman, Osterman and Hanna: Mr. Crain submitted to the record a petition with 243 signatures² opposing the moratorium and the following letter:

Dear Supervisor McHugh and Members of the Town Board:

This firm, together with co-counsel Jim Warren, represents Marebo, LLC (the "Applicant" or "Marebo"), the owner of property located at US Route 9W in the C1-P District (SBLs 156.-2- 1.3 and 156.-2-1.6) (the "Property"). 1 As you are aware, the Applicant has a site plan application pending before the Town Planning Board, related to the proposed development of a trucking terminal for the distribution of propane at the Property (the "Project"). The Applicant respectfully submits this letter in opposition to the Town Board's proposed moratorium, which seeks to unlawfully target and thwart the Project (the "Proposed Moratorium").

²All documents referenced above are attached to the end of the official minutes and are on file in the office of the Coeymans Town Clerk.

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- I. The Proposed Moratorium is unlawful, arbitrary, and capricious, because it targets the Project and serves no legitimate governmental purpose.

The Town Board's authority to adopt a moratorium is limited by New York law. To constitute a valid exercise of the Town's police powers, a moratorium must "be a reasonable, necessary, and limited response directed at redressing a genuine crisis or emergency" (Cellular Tel. Co. v Vil. of Tarrytown, 209 AD2d 57, 66 [2d Dept 1995] [invalidating a moratorium]). "To justify interference with the beneficial enjoyment of property," a municipality proposing a moratorium must establish that: (1) it is acting in response to a "dire necessity;" (2) that the proposed moratorium is "reasonably calculated" to alleviate or prevent the "crisis condition," and; (3) that the municipality is otherwise presently taking steps to rectify the crisis (Westwood Forest Estates v Village of South Nyack, 23 NY2d 424 [1969]; see also Matter of Belle Harbor Realty Corp. v Kerr, 35 NY2d 507, 512 [1974]).

1 More specifically, Mr. Warren is land use counsel for the Applicant, and this firm is litigation counsel in connection with the Project

Furthermore, a moratorium is only valid where it (1) has a reasonable time frame for the action to be accomplished during the term; (2) has a valid public purpose; (3) is shared substantially by the public at large and not targeting a particular property or group; (4) the municipality strictly adheres to procedure for adoption, and (5) the moratorium has a time certain when the moratorium will expire (see James A. Coon Local Government Technical Series "Land Use Moratoria," available at <https://dos.ny.gov/system/files/documents/2021/09/land-use-moratoria.pdf>).

Most critically, a moratorium cannot, as the Proposed Moratorium does here, target particular landowners or land uses for the purpose of prohibiting their development absent any legitimate public benefit. "[T]he crucial factor, perhaps even the decisive one, is whether the ultimate economic cost of the benefit is being shared by the members of the community at large, or, rather, is being hidden from the public by the placement of the entire burden upon particular property owners" (Charles v Diamond, 41 NY2d 318, 325 [1977]). Additionally, if a moratorium applies a temporary restriction on zoning but serves no purpose other than to delay the development of property, "such a measure would have no relationship to the health, safety and welfare and would constitute an unconstitutional taking of property" (1989 N.Y. Op. Atty. Gen. [Inf.] 73, 1989 WL 435016). The Proposed Moratorium is an arbitrary and transparent effort to target and prevent the development of the Project. The Applicant's Project is the only pending land use application in the Town that involves the storage and distribution of liquified petroleum. Thus, the burden of the Proposed Moratorium will not be shared with the public; it will be tailored only to Marebo's Project, which is impermissible as a matter of New York law. The timing of the Proposed Moratorium makes this conclusion undeniable. Indeed:

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- Applicant submitted its site plan application for the Project on August 30, 2022.
- The Town Code Enforcement Officer determined that the Project is a permitted use in the C1P District, because it is a trucking terminal (the “CEO Determination”).
- On September 12, 2022, Applicant appeared before the Planning Board (chaired by Robert Nolan, the owner of Nolan Propane – a direct competitor of Applicant and friend of Supervisor McHugh) and presented its Project.
- On October 4, 2022, Supervisor McHugh filed an appeal to the Town ZBA, challenging the CEO Determination, and arguing that the Project is not a “trucking terminal,” but rather a gasoline station (permitted only in residential districts). A copy of the appeal is enclosed.
- On November 14, 2022, a public hearing was conducted by the ZBA on Supervisor McHugh’s appeal. At that meeting, our co-counsel, Mr. Warren, made clear that the CEO Determination was correct and the Supervisor’s appeal should be denied.
- At the very next Town Board meeting, on November 21, 2022, Supervisor McHugh proposed the Moratorium, which specifically halts the processing of applications for land uses related to the storage of propane – i.e., the exact land use proposed by the Project. The conclusion is inescapable: after it became clear that the Supervisor’s appeal lacks legal merit, the Supervisor proposed the Moratorium, which prevents the ZBA from deciding his appeal for three months, thus buying him and Mr. Nolan time to change the law to stop the Project.

The draft Moratorium itself makes clear that it is not intended to serve any legitimate public or government purpose. The “Legislative Purpose” section of the Moratorium makes a conclusory and blanket assertion that the “[c]urrent laws and regulations regarding such uses, if any, are inadequate for the protection, order, conduct, safety, health and well-being of persons or property within the Town.” The Town Board also claims, without support and in conclusory fashion, that the Moratorium is necessary “to prevent serious public harm,” and to further ensure that uses related to the storage of liquified petroleum gases are not located on “lots without adequate quantity, dimensional, safety and other regulations in place, including but not limited to risks associated with fire and explosion.”

These findings are conclusory and unsupported. The Town Board has not explained how the Town’s current laws and regulations with respect to uses related to the storage of liquified petroleum (like Marebo’s proposed trucking terminal) are inadequate for the protection of the public, nor identified what “serious public harm” will result absent a moratorium on development. Indeed, the Town’s site plan requirements, which the Project is subject to, very clearly set forth numerous review elements and criteria that the Town’s Planning Board is permitted to consider in reviewing uses that propose the storage of petroleum gas, such as “pedestrian safety,” “fire protection equipment,” “impact of the proposed use on adjacent land uses,” and “effects of smoke, noise, glare, vibration, odors and/or other noxious and offensive conditions” (see Town Zoning Code, Section 136-6). The Town Planning Board, where appropriate, is also permitted to ascribe reasonable conditions on proposed uses in furtherance of these elements.

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The Town Board's contention that "land uses related to the storage of liquified petroleum gases" might be located in "unsuitable areas" is, frankly, absurd. The Town revised its Comprehensive Plan as recently as 2020. In its Comprehensive Plan, the Town Board specifically recognized that the C-1P district where the Project is proposed "is a special planned commercial zone that allows" industrial uses, including uses that contemplate the storage of liquified petroleum gases, such as "automatic service facilities," "trucking terminals," and "public utility facilities." If the Town had genuine concerns regarding the location of uses involving the storage of petroleum gases, it would not have specifically zoned and planned the C-1P district to embrace such uses in the first place.

The Town Board's comments during its November 21 meeting further confirm that it is not seeking to address any legitimate health or safety concerns associated with the storage of liquid petroleum. Instead, the Town Board explicitly acknowledged that it is simply using the Proposed Moratorium as an opportunity to define the term "trucking terminal" – which is, conveniently, Marebo's proposed use – in the Town Zoning Code for the first time, for the transparent purpose of creating a definition that would prohibit the development of the Project.

II. The public opposes the Proposed Moratorium.

Residents of the Town overwhelmingly oppose this Moratorium. Enclosed herewith is a Petition bearing over 200 signatures of residents of the Town and surrounding areas, all of whom oppose the Proposed Moratorium, and believe strongly that "Our local government officials should not use their positions to advance their own personal business interests, especially when doing so would prevent job creation within the Town and hinder competition that benefits the community."

The Town Board represents Town residents, and, given the overwhelming opposition to the Proposed Moratorium, should not adopt the Moratorium.

III. The Proposed Moratorium is tainted by the Supervisor's conflict of interest, and therefore would be annulled by the courts as arbitrary and capricious if adopted.

As you are undoubtedly aware, the Project is opposed by a small group of local Town officials. This notably includes the Town Supervisor, who chairs this Board. The Town Board nonetheless proposed the Moratorium, which directly impacts the Supervisor's pending appeal, and in fact is transparently intended to prevent a decision denying that appeal.

It is well established that, where a board member fails to recuse himself despite a conflict of interest, that conflict of interest may be imputed to the entire board and presents a basis for annulment of any action taken by the Board. Indeed, New York courts have recognized that "the appearance of bias and actual bias . . . require annulment" of a land use determination (see, e.g., *Schweichler v Vil. of Caledonia*, 45 AD3d 1281, 1284 [4th Dept 2007] [annulling planning board's site plan determination due to bias of board members]; see also *Matter of Zagoreos v Conklin*, 109 AD2d 281, 287 [2d Dept 1985]). This includes where board members appear to "impermissibly

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prejudge” an application or “manifest actual bias” by taking a public position in favor of or against a project (id.; see also Zagoreos, 109 AD2d at 287).

The Town Supervisor failed to recuse himself from this matter. Instead, he was responsible for proposing this Moratorium and placing it before the Board for consideration. The Moratorium is simply the latest effort to perpetuate a local government campaign against the Project. Where, as here, the premise of a moratorium “is not to promote the comprehensive zoning plan of the community, but simply to further the interests of particular groups opposed to [a] particular development,” it is not a reasonable exercise of the locality’s authority (Unanue v Town of Gardiner, 105 AD2d 1025, 1027 [3d Dept 1984] [emphasis added]).

The Supervisor’s failure to recuse himself has tainted the entire Board, rendering any decision to adopt the Proposed Moratorium unlawful. At a minimum, the Town Supervisor must recuse himself from any proceedings moving forward, as his ZBA appeal disqualifies him from acting with respect to the Moratorium (see 1988 Ops. Atty. Gen. 88-59 [holding that opposition to a proposed project should disqualify the individual from acting as a member of a board with respect to the project]; see also 1988 Ops. Atty. Gen. 88-60 [holding that a project opponent must recuse himself from participating in any board proceedings on the application]).

For the foregoing reasons, Applicant requests that the Town Board decline to adopt the Proposed Moratorium. Applicant reserves all remedies at law and in equity.

Respectfully Submitted,

s/Jon E. Crain Jon E. Crain

Beth Carey is an employee of Long Energy who works in the Ravena Office. She has met many community members and has found them to be very supportive. Ms. Carey feels as though the moratorium was only presented to stop the proposed project. She feels this project is clearly a trucking terminal. She feels this moratorium is doing nothing but preventing a local business from expanding.

Jean Biernacki lives in the town of New Baltimore but was born and raised in Coeymans. She stated she is speaking on behalf of the 900 customers served by Long Energy. She believes the moratorium is unjust and wrong.

Mark Deyo lives on Harris Ave in Ravena: he believes we are fortunate to have had Long Energy coming in and partner with Persico Oil which is a 75-year-old family run business. Mr. Deyo feels that competition can only improve service and prices. He hopes this moratorium doesn’t convince Long Energy to leave our community.

Pat Farrell lives on John St. in the Hamlett: He asked if each member of the board voted on this moratorium. Supervisor McHugh stated that yes, all the board members voted on this, not only him as implied by Mr. Farrell. Council member Tutay wanted to make it clear that we voted to

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bring it to a public hearing, we haven't voted on the moratorium. He feels it is regretful it has come this far and would like the board members to be more of a voice on this board.

Randy Lent owns Albright's Garage and supports what Long Energy is trying to do. He was in a similar situation a few years ago and pledged his support to Mr. Long.

Brian Bagley lives on Orchard Ave. Mr. Bagley has known Mr. Long for a several years and believes everyone deserves a chance. He supports business in the town beyond the Port of Coeymans.

Cindy Rowzee lives in Ravena. Mrs. Rowzee stated that the South Portland project that was presented by the Supervisor does not compare since they are a much larger municipality and other factors to consider. She did not feel the solar company was delayed due to the moratorium and that this current moratorium will delay Long Energy. She believes our PB/ZBA council is very good and believes if they have said it is safe to move forward then the town should.

Mr. Farrell asked long the process takes. Supervisor McHugh stated the steps which need to be completed are have a public hearing and close the hearing out. The board could vote on it after a recommendation comes back from the Albany County Planning Board so this would not be acted upon before December 22, 2022. Mr. Farrell asked if it could happen faster. Supervisor McHugh informed Mr. Farrell we have to wait for Albany County to have a meeting. He explained it is the law that these matters have to be sent to the Albany County Planning Board.

Supervisor McHugh asked if anyone else wished to be heard. No one approached the podium.

Motion to Close the Public Hearing was made by Council member McHugh and Seconded by Council member Bruno- APPROVED – VOTE – AYES 5 – NAYS 0 – ABSTAIN 0 – SO MOVED

Respectfully Submitted,



Candace McHugh, Town Clerk

Footnote 1



www.rcscsd.org

Dr. Brian Bailey, *Superintendent of Schools, Ext. 6003*
C. Fred Engelhardt Jr., *Assistant Superintendent for C&I, Ext. 6003*
Joanne Moran, *School Business Manager, Ext. 6000*
Suzanne Starr, *District Clerk, Ext. 6000*

RAVENA-COEYMANS-SELKIRK CSD • PO Box 100, 15 Mountain Road, Ravenna, NY 12143 • Phone: 518-756-5200 • Fax: 518-756-4561

November 14, 2022

Town of Coeymans
Attn. Town Board
18 Russell Ave.
Ravenna, New York 12143

[via Hand Delivery]

Dear Members of the Coeymans Town Board,

It has come to the school district's attention that there is a proposal for a new facility to be built on the corner of Rt. 101 and Rt. 9W, approximately .5 mile south of our middle/high school campus. We have heard mixed reports on the potential purpose of this facility, which have included trucking and/or propane storage. As you consider permits and approvals for property development near our middle/high school campus, I wanted to inform members of the Coeymans Town Board of the school district's current environmental and transportation challenges.

The intersection of US Rt. 9W and County Rt. 101 is passed by employees and our transportation department hundreds of times daily. It is the primary conduit between all of our buildings on all three campuses. Our transportation department deploys their buses from our middle/high school campus onto Rt. 101 in order to go to, or return from, every home in our district that is south of the main campus. Young and inexperienced student drivers also pass through that intersection in the early morning hours or in the afternoon and evening. This is obviously an already well-travelled part of our community and turning on Rt. 101 while heading north on 9W, or turning in either direction while coming from Rt. 101 onto 9W, can be a harrowing experience for even the most experienced driver.

The school district typically conducts an annual "table-top" exercises to practice our emergency response skills. We do so in conjunction with various first responder agencies. The practice and evaluation of our procedures regularly reminds us that our middle/high school campus is already in close proximity to various "high-risk" industrial activities. Both Rt. 101 and 9W are active trucking lanes for every kind of over-the-road hazardous material. There is an active CSX rail line less than a quarter of a mile from our schools. Lafarge/Holcim is operating heavy machinery, completing various industrial processes, and running a large kiln with smoke stack, also less than a quarter mile from the school. Both Rt. 101 and 9W have a conveyor belt passing overhead which moves materials from their quarry, where they regularly detonate explosions as part of their mining process. A catastrophic event in any of these areas, or even a precautionary shut down and evacuation, has the potential to close our school(s) and place our students and staff in harms way.

You are the stewards of our Town and we have a valuable partnership in protecting the safety of our students and community members. It is the district's hope that you continue to consider ways to limit or reduce high-risk industrial activities around our school properties.

Sincerely,


Brian Bailey, Ed.D.

Superintendent of Schools



Engineering and
Land Surveying, P.C.

1533 Crescent Road
Clifton Park, NY 12065
Phone: 518.371.0799
mjelspc@mjels.com
mjels.com

Via Email: gmchugh@coeymans.org

December 8, 2022

George McHugh, Supervisor
Town Hall
18 Russell Avenue
Ravena, NY 12143

Re: Local Law Implementing Moratorium on Liquefied Petroleum Gas (LPG) Storage and Distribution Facilities

Dear Supervisor McHugh:

MJ understands the Town of Coeymans (Town) is considering the adoption of a local law implementing a moratorium on processing of applications and issuance of permits, certificates of occupancy, approvals, denials, determinations, or interpretations for land uses related to liquefied petroleum gas (LPG) storage and distribution facilities. The purpose of the proposed moratorium is to protect the public health, safety and welfare of the community residents while allowing the Town Board time to analyze potential revisions and amendments to the Town Zoning Code for this use.

The Town's May 27, 2021 adopted Comprehensive Plan Update includes a recommendation to *"Update the zoning code to reflect the current needs of the community and for consistency with the Comprehensive Plan Update. Possible updates may include revising definitions and evaluating the zoning code for consistency with New York State Town Law."* (Source: *Town of Coeymans Comprehensive Plan, May 27, 2021, Recommended Action LZ1, Page 27*)

Moratoria is a tool that municipalities may decide to implement to preserve the status quo while reviewing local land use regulations for consistency with the Comprehensive Plan and to be reflective of the community vision and needs. New York State Department of State recognizes that moratoria are *"appropriate mechanisms for addressing long range community planning and zoning objectives."* (Source: *Land Use Moratoria, James A. Coon Local Government Technical Series, New York State Department of State Division of Local Government Services, September 2021, page 2.*)

Under the intentions that the Town Board is initiating the implementation of its Comprehensive Plan to analyze potential updates to the Zoning Code and should the Town Board desire to preserve the status quo related to land uses while that analysis occurs, the moratorium is an appropriate mechanism to allow for that based on applicable guidance. While the adoption of a local law implementing a moratorium is a decision to be made by the Town Board, it is recommended the Town consult their attorney to verify the legal ramifications and legal language of the local law.

If you have any questions, please feel free to contact me at (518) 371-0799 or by email at jhakes@mjels.com.

Sincerely,

Jaclyn S. Hakes, AICP
Associate / Director of Planning Services

CC: Coeymans Town Board



MEMO IN SUPPORT OF COEYMANS THREE-MONTH MORATORIUM ON NEW PROPANE INSTALLATIONS

The Lafarge Ravena plant strongly supports the three-month moratorium on new propane installations before the Coeymans Zoning Board of Appeals (ZBA),

Though we recognize the importance of bolstering the local economy and encouraging business growth to strengthen the tax base, these efforts must be undertaken in a manner that ensures public safety.

This short moratorium will ensure sufficient time to address outstanding issues that have come to light as a result of an application to construct a large propane distribution truck terminal in the town in close proximity to the RCS High School and a well-traveled road (Rt. 9W), as well as our cement plant.

A moratorium will enable the drafting of a local law to formally define the term “trucking terminal” and – if necessary – projects of a similar nature, to ensure thoughtful planning for future development.

To be clear, we are not formally taking a position on this specific project, though we reserve the right to do so in the future, as it has the potential to significantly impact our operations. We are at this moment merely expressing support for a reasonable three-month waiting period, during which appropriate research and can be conducted and actions taken to ensure the project – if undertaken – is executed in an appropriate manner, taking into consideration all potential impact of the surrounding businesses, residents, and facilities.

It is our understanding that a moratorium would not be unprecedented, and a similar approach was utilized in the case of a proposed large-scale solar farm along Rt. 101, on which the Town Code was also silent.

The resulting six-month moratorium enabled local leaders to draft and pass a Solar Law, establishing guidelines and regulations for the project, which is now under construction and will contribute to important clean energy goals.

To reiterate, we support fellow businesses and welcome smart, well-planned growth in the Town of Coeymans. We appreciate the long-standing support the plant has received for past and current projects, which we believe contribute in a positive manner to the local community. A measured and sustainable approach to economic development is in everyone's best interest and will ensure Coeymans is prosperous for years to come.

AGENDA ITEM #3
Meeting of January 12, 2016

Planning Department Memorandum to Planning Board

Subject: Zoning Text Amendment – City of South Portland – Chapter 27 Zoning Ordinance Enacting a Moratorium on Development Proposals Involving Liquefied Petroleum Gas (LPG) Storage and Distribution Facilities

INTRODUCTION

The South Portland City Council is requesting a Planning Board land use recommendation regarding a proposed amendment to the Zoning Ordinance enacting a moratorium on development proposals involving liquefied natural gas (LPG) storage and distribution facilities in South Portland. Pursuant to Ordinance Section 27-115(g), the Planning Board will, after close of the public hearing, make a recommendation to the City Council regarding the proposed amendment.

Legal advertisements regarding this request appeared in the Portland Press Herald on December 30, 2015, and January 4, 2016, and a public notice was posted at City Hall and Public libraries on December 30, 2015.

The submission will be reviewed pursuant to South Portland Code of Ordinances Chapter 27 Zoning, Ordinance Section 27-115 Changes and amendments.

Discussion

With or without a moratorium, it seems clear that, at a minimum, wording improvements are needed to the Zoning Ordinance section that limits gas storage in the INR zone to 10,000 cubic feet (Sec. 27-964(14)). The poor construction of the language in this section has led to a disagreement over interpretation that has yet to be resolved (please see the enclosed January 8, 2016 determination letter from the Director of code Enforcement). Beyond this, it may be appropriate based on what has been learned through citizen initiative about the dangers of liquid propane transshipment to revisit the policies related to propane in the Zoning Ordinance and in other Chapters of the Code (e.g., Chapter 8 Fire Protection and Prevention) and to amend the City's ordinances accordingly.

Important to the entire discussion is the need to gain a clearer understanding of the degree to which the City can regulate liquid propane without violating federal preemptions related to such laws as the Hazardous Materials Transportation Act (HMTA), the Commerce Clause, and the ICC Termination Act (ICCTA). We similarly need to know the extent to which Home Rule applies under State statutes.

The City's Comprehensive Plan designates the site of the proposed NGL terminal as being in a Non-Residential Industrial Growth area (Figure 6.10 Future Land Use Plan, p. 6-53). On the other hand, one of the key vision statements in the Plan is that:

South Portland offers its residents a variety of lifestyles in livable, walkable neighborhoods. While each neighborhood has its own character, strong identity, and sense of plan, all neighborhoods are **safe**, walkable, and provide convenient access to services and community facilities. (Chapter Four: Community Vision, p. 4-1, **emphasis added**).

In this regard, it seems significant that out of the entire 201 acre Pan Am (Portland Terminal Co.) parcel, the area proposed to be leased to NGL is the part of the property that is most narrow and thus closest to residential homes. This is one of the main reasons behind the call for a moratorium.

There are many considerations for whether to enact a moratorium that halts a development proposal under review, such as fairness to an applicant who has complied with City application requirements or the impact a moratorium might have on the image of the City and on its efforts to attract and retain businesses. In this instance the Fire Department seems confident that under present City ordinances it can require enough redundant safety equipment as to reduce the risk to neighboring residents and businesses to very small odds. Yet given the Comprehensive Plan's requirement for safe neighborhoods, the unfortunate proximity to residential properties of the chosen propane terminal site, and the information provided by knowledgeable residents about liquid propane transshipment, it may not be unreasonable to enact a moratorium that would pause the NGL application while giving the community time to review its policies and ordinances.

RECOMMENDATION

[I move to] to send a *positive or negative recommendation* to the City Council to (*not*) approve the zoning text amendments to Chapter 27 Zoning; a Moratorium on Development Proposals Involving Liquefied Petroleum Gas (LPG) Storage and Distribution Facilities in South Portland.

A handwritten signature in cursive script that reads "Steve Puleo".

Community Planner

1/12/2016

Attachments

1. Position Paper of the City Manger to the City Council dated December 21, 2015, and City Council #6 15/16: Article XVI. Moratorium on Development Proposals Involving Liquefied Petroleum Gas Storage and Distribution Facilities in South Portland.
2. City Council Workshop dated December 28, 2015: Amendment to Chapter 8, Fire Protection and Prevention: Draft Fire Amendment.
3. City Council Workshop dated November 9, 2015: Potential Moratorium on LPG Storage and Distribution Facilities/Amendments to City's Fire Protection and Prevention Ordinance.
4. Determination Letter from the Director of Code Enforcement to NGL Supply Terminal Company dated January 8, 2016.

South Portland City Council

Position Paper of the City Manager

Subject:

ORDINANCE #6-15/16. Amending Chapter 27, "Zoning Ordinance," regarding moratorium on development proposals involving liquefied petroleum gas (LPG) storage and distribution facilities. First reading. Passage requires majority vote.

Position:

At City Council workshop meetings on October 14, 2015 and November 9, 2015, the topic of a potential moratorium on new liquefied petroleum gas (LPG) storage and distribution facilities was discussed. At the conclusion of the November 9, 2015 workshop meeting, there was a request to bring forward a proposed moratorium ordinance that would catch the pending Planning Board site plan application of NGL Supply Terminal Company, LLC so that any future changes of law would apply to its project. The site plan review and approval process is set forth in the City's Zoning Ordinance, Chapter 27 of the Code of Ordinances, and that is why a moratorium under Chapter 27 of the Code of Ordinances is proposed.

A moratorium is a temporary ban on land use activity or development to give City officials time and the opportunity to plan for accommodating or managing development. Development moratoria are specifically authorized by State statute, 30-A M.R.S.A. § 4356, subject to certain requirements set forth in the statute. The principal statutory requirement for a moratorium ordinance is that it be necessary either (1) to prevent a shortage or overburdening of public facilities (e.g., sewer, water, roads, schools, public safety), or (2) because existing plans, ordinances or regulations, if any, are inadequate to prevent serious public harm.

Because the proposed moratorium ordinance constitutes an amendment of the Zoning Ordinance (Chapter 27), at least 5 affirmative votes are required for the City Council to adopt the moratorium ordinance after second reading. See Sec. 27-115 of the Zoning Ordinance. (Passage of first reading only requires four affirmative votes.) Because the proposed moratorium ordinance involves a temporary ban on land use activity and is an

amendment of the Zoning Ordinance, the Planning Board must conduct a public hearing on the ordinance.

This moratorium ordinance is brought forward to impose a moratorium that, if enacted, would provide the City Council with time to study liquefied petroleum gas (LPG) storage and distribution facilities and to develop any appropriate ordinance amendments to address development proposals involving the same. The moratorium would be applicable retroactive to December 9, 2015 so that even if it takes a couple of months for the Planning Board public hearing and City Council process to run its course, it would still apply to any pending or new applications filed between now and the effective date of the moratorium ordinance. The moratorium would be effective for 180 days from December 9, 2015 (*i.e.*, until June 6, 2016), but could be terminated early if appropriate (or extended if necessary).

Requested Action:

Council action on first reading; referral of the ordinance to the Planning Board so it can conduct its public hearing on the ordinance if it passes first reading; and set a date for the City Council's public hearing and action on the ordinance if it passes first reading.


City Manager



CITY OF SOUTH PORTLAND

THOMAS E. BLAKE
Mayor

JAMES H. GAILEY
City Manager

EMILY F. CARRINGTON
City Clerk

SALLY J. DAGGETT
Jensen Baird Gardner & Henry

District One
CLAUDE V. Z. MORGAN

District Two
PATRICIA A. SMITH

District Three
EBEN C. ROSE

District Four
LINDA C. COHEN

District Five
BRAD FOX

At Large
MAXINE R. BEECHER

At Large
THOMAS E. BLAKE

IN CITY COUNCIL

ORDINANCE #6-15/16

THE COUNCIL of the City of South Portland hereby ordains that Chapter 27, "Zoning," of the "Code of Ordinances of the City of South Portland, Maine" be and hereby is amended by the enactment of a new Article XVI as follows (deletions are ~~struck through~~; additions are underlined):

CHAPTER 27

ZONING

• • •

**ARTICLE XVI. MORATORIUM ON DEVELOPMENT PROPOSALS
INVOLVING LIQUEFIED PETROLEUM GAS STORAGE AND
DISTRIBUTION FACILITIES**

Sec. 27-1601. Moratorium declared.

WHEREAS, in early 2015, the City's Planning Department received a site plan application for a liquefied petroleum gas (LPG) storage and distribution facility to be located at the Rigby Rail Yard, which is adjacent to several residential neighborhoods within the City's Main Street/Route 1 Corridor; and

WHEREAS, the City's Zoning Ordinance contains performance standards relating to above ground storage tanks, but it does not contain performance standards specific to LPG storage and distribution facilities or the associated loading and unloading of LPG; and

WHEREAS, residents of the adjacent neighborhoods and property owners have raised concerns about the fire and public safety risks attendant to the various methods for loading, unloading, and/or storage of LPG adjacent to residential neighborhoods; and

WHEREAS, residents of the adjacent neighborhoods and property owners have raised concerns about the environmental impact of LPG storage and distribution facility development proposals as a general matter and in the event of a worst-case spill or explosion; and

WHEREAS, residents of the adjacent neighborhoods and property owners have raised concerns about the impact of LPG storage and distribution facility development proposals and the anticipated increased tractor-trailer traffic of such development proposals on City maintained streets; and

WHEREAS, development proposals involving LPG storage and distribution facilities raise legitimate and substantial questions about the impact of such development on the City, including questions of the compatibility of the development proposals with existing uses and developments in the City; the adequacy of streets to handle additional traffic associated with the development proposals; and the potential adverse health and safety effects of the development proposals on the community if not properly regulated; and

WHEREAS, the possible effect of the development proposals involving LPG storage and distribution facilities has implications for the health, safety and welfare of the City and its citizens; and

WHEREAS, there are at least three sets of federal statutes (and accompanying regulations) that may provide the basis for federal preemption of local regulation of LPG storage and distribution facilities under the Supremacy Clause of the U.S. Constitution: (a) the ICC Termination Act (the "ICCTA"); (b) the Federal Rail Safety Act (the "FRSA"); and (c) the Hazardous Materials Transportation Act (the "HMTA"); and

WHEREAS, the City needs time to study its own ordinances to determine the implications of future development proposals involving LPG storage and distribution facilities and to develop reasonable ordinances for the protection of the health, safety, and welfare of South Portland's residents, property owners and natural resources, and to make recommendations for the City Council's consideration regarding the same; and

WHEREAS, the City needs time to study the experience of other municipalities that regulate LPG storage and distribution facilities and the loading, unloading and/or storage of LPG to develop an understanding of best regulatory practices and to make recommendations for the City Council's consideration regarding the same; and

WHEREAS, the City needs time to review the City's existing regulatory scheme and determine what, if any, additional regulations are appropriate from a public health, safety and welfare prospective; to determine whether the City has authority to

implement any proposed additional regulations in light of the complex regulatory environment already in place surrounding rail carriers and hazardous materials; and to consider appropriate enforcement mechanisms for any proposed additional regulations; and

WHEREAS, the City, under its home rule authority, its police power generally and as otherwise provided by law, may have the authority to impose reasonable restrictions, conditions, and limitations on development proposals involving LPG storage and distribution facilities subject to the complex regulatory environment already in place surrounding rail carriers and hazardous materials; and

WHEREAS, the City Council, with such professional advice and assistance as it deems necessary and appropriate, shall study the Code of Ordinances to determine the land use, environmental and other regulatory implications of future proposed development proposals involving LPG storage and distribution facilities and consider what regulations might be appropriate for such activity; and

WHEREAS, the existing Code of Ordinances and other applicable laws, if any, are not adequate to prevent serious public harm possibly to be caused by future proposed development proposals involving LPG storage and distribution facilities; and

WHEREAS, a moratorium is necessary to prevent an overburdening of public facilities that is reasonably foreseeable as the result of future proposed development proposals involving LPG storage and distribution facilities; and

WHEREAS, it is anticipated that such a study, review, and development of recommended ordinance changes will take at least one hundred and eighty (180) days from the date the City first considers this moratorium on development proposals involving LPG storage and distribution facilities;

NOW, THEREFORE, the City of South Portland, acting through its elected City Council, does hereby ordain that the following Article be, and hereby is, enacted, and, in furtherance thereof, the City does hereby declare a moratorium on development proposals involving LPG storage and distribution facilities. This Article shall take effect in accordance with the provisions of the City Charter, but shall be applicable as of December 9, 2015, as expressly provided below. The moratorium shall remain in effect for one hundred and eighty (180) days from the date of applicability of this Article, unless extended, repealed, or modified by the City Council, for the express purpose of drafting an amendment or amendments to the South Portland Code of Ordinances to protect the public from health and safety risks including, but not limited to, the potential adverse environmental, public health and public safety effects of development proposals involving LPG storage and distribution facilities if not properly regulated; and

BE IT FURTHER ORDAINED, that this Article shall apply to any new development proposals involving LPG storage and distribution facilities after the December 9, 2015 applicability date of this Article; and

BE IT FURTHER ORDAINED, that notwithstanding the provisions of 1 M.R.S.A. § 302 or any other law to the contrary, this Article, when enacted, shall govern any new development proposal involving LPG storage and distribution facilities for which an application for a license, building permit, certificate of occupancy, special exception review, site plan review and/or any other required land use approval has not been submitted and finally acted on by the Building Inspector, Code Enforcement Officer, Planning Board, Board of Appeals or other City official or administrative board or agency prior to December 9, 2015, the applicability date of this Article; and

BE IT FURTHER ORDAINED, that no person or organization shall start or engage in the construction or operation of LPG storage and distribution facility on or after the December 9, 2015 applicability date of this Article without complying with whatever ordinance amendment or amendments the City Council may enact as a result of this Article; and

BE IT FURTHER ORDAINED, that during the time this moratorium is in effect, no officer, official, employee, office, administrative board or agency of the City shall accept, process, approve, deny, or in any other way act upon any application for a license, building permit, certificate of occupancy, special exception review, site plan review and/or any other permits, licenses or approvals related to a LPG storage and distribution facility under Chapter 27 of the Code of Ordinances; and

BE IT FURTHER ORDAINED, that those provisions of Chapter 27 of the Code of Ordinances that are inconsistent or conflicting with the provisions of this Article, are hereby repealed to the extent that they are applicable for the duration of the moratorium hereby ordained, and as it may be extended as permitted by law, but not otherwise; and

BE IT FURTHER ORDAINED, that if the construction or operation of LPG storage and distribution facility is established in violation of this Article, each day of any continuing violation shall constitute a separate violation of this Article, and the City shall be entitled to all rights available to it in law and equity, including, but not limited to, fines and penalties, injunctive relief, and its reasonable attorney's fees and costs in prosecuting any such violations; and

BE IT FURTHER ORDAINED, that should any section or provision of this Article be declared by any court of competent jurisdiction to be invalid, such a declaration shall not invalidate any other section or provision.

Sec. 27-1602. Applicability date.

The applicability date of this Article is October 14, 2015.

Fiscal Note: Less than \$1,000

Dated: December 9, 2015

City Council Workshop

Agenda Item #1

December 28, 2015

Amendments to Chapter 8, Fire
Protection and Prevention

Councilor Fox has brought forth a proposal to amend Chapter 8 Fire Protection and Prevention. The proposal goes further than incorporating the most recent editions to NFPA (National Fire Protection Association) codes.

In November, the City Council directed staff to work towards amending Chapter 8 to incorporate updated NFPA editions in the Fire Code. Changing the Fire Code to incorporate these newer NFPA editions brings a greater complexity to the discussion. This workshop is solely on the proposed ordinance amendment brought forth by Councilor Fox.

Staff is looking for guidance from the City Council on this proposal.


City Manager

WHEREAS, the City of South Portland intends to protect the health, safety, and welfare of its residents, neighborhoods, and natural resources; and

WHEREAS, propane (sometimes known as Liquefied Petroleum Gas (LPG) and are defined herein as one in the same) in either a liquid or gaseous states, is highly flammable petroleum based product; and

WHEREAS, when propane leaks through small apertures or cracks, it may generate a static electric charge which when discharged is sufficient to trigger a fire or explosion of the same gaseous or liquid propane; and

WHEREAS, liquid propane expands at sea level to 270 times the volume of the liquid amount and then must expand at least 7 times more to reach the flammability limit that can trigger an explosion, which is what makes a propane leak so dangerous; and

WHEREAS, propane undergoes phase changes from a gas into a liquid and back again into a gas at fairly low pressures changes making it suitable for fuel, illumination, heating and more but also making it more of a fire and explosive risk; and

WHEREAS, some contend modern day commercial propane accidents are relics to the 1970's, we note some examples like:

- The destruction by fire and explosions of a propane tank farm in Phoenix, Arizona on September 9, 2015
- The damage or destruction 9 propane rail cars by fire and explosions outside of Edmonton, Canada on Oct 19, 2013 caused by a design defect in propane rail cars currently in use in the US and Canada.
- On Tuesday, Aug. 23, 2011 in Lincoln, CA, a suburb north of Sacramento,

a 29,000-gallon rail car loaded with liquid propane caught fire midday as a result of an employee not wearing grounded shoes while unloading the rail car. The fire burned for nearly 40 hours and required fire fighters to put as much as 5,000 gallons of water on it per minute to cool it to prevent an explosion. 4,800 homes were contained in the one-mile evacuation area and the propane fire occurred in proximity to between 170,000 to 500,000 gallons of liquid propane in storage.

- On the morning of August 10, 2008, a large explosion occurred at Sunrise Propane Industrial Gases, located outside of Toronto, Canada. This was followed by a series of explosions, which sent large fireballs, and clouds of smoke billowing into the sky. Large pieces of metal from the exploding propane tanks were ejected onto nearby streets and properties. Many homes and offices were damaged, windows were shattered, and doors were ripped from their hinges. About 200 firefighters battled the five-alarm fire that resulted from the explosions; and

WHEREAS, propane is known to generate explosions and fires during the unloading or loading process to and from storage vessels which can be classified as follows: jet fire (projected under pressure through an aperture or crack), pool fire, flash fire, confined vapor cloud explosion (CVCE), unconfined vapor cloud explosion (UVCE) and boiling liquid expanding vapor cloud explosion (BLEVE). In propane storage systems, explosions and fire accidents, which are most catastrophic, come from overflow and overfills, failures of tanks (via accidents, defects, derailments and more) and from conduit failures (e.g. hoses, pipes) and malfunctioning or defective valves; and

WHEREAS, considering the nature of propane storage and distribution facility, accidental releases of propane may result from rail cars delivery propane for storage, propane storage tanks or the interconnecting piping system at the propane tank farm, and the propane transport trucks; and

WHEREAS, liquid propane is transported into and within the state and South Portland by rail, truck and other modes of transport, all subject to accidents, unforeseen container failures or terrorist attacks; and

WHEREAS, one of the most common modes of transport for liquid propane in Maine is by rail in standardized propane rail cars each holding 30,000 gallons of liquid propane; and

WHEREAS, the propane rail cars used to transport propane in Maine have design defect that further endangers propane terminals that use such rail cars, which was illustrated in a 2013 propane rail car explosion. On Oct 19, 2013 in Gainford, Alberta, a train carrying liquefied petroleum gas (LPG) derailed. Nine of the thirteen derailed tank cars were carrying propane and four carried crude oil. One of the cars carrying propane exploded and three others caught fire. Gainford residents and others living within a mile or more of the derailment site were evacuated for four days due to the fear of additional explosions, fires, and noxious fumes. The intensity of the fire was so severe that firefighters were forced to let the fire burn itself out, which took four days. The main east-west highway and the main east-west rail line (Trans-Continental) through western Canada were closed for five days. (Chicago Tribune Oct 19/13, CBC News Oct 19/13).

What is remarkable about this accident is how virtually all the rail safety measures failed and one propane rail car rammed and pierced a second car because of a design fault which is in nearly every US and Canadian propane rail tank car today - known as the DOT-112J. And this was a low speed accident.

The rear section of the train derailed. It consisted of four DOT-111/CPC-1232 crude oil tank cars, followed by nine DOT112J propane tank cars, two of which were breached and burned. One of these two cars cold BLEVE'd, producing a large fireball that extended across nearby HWY 16, scorching its surface, the other produced a jet fire that impinged on a third tanker. The third tanker, which was heated by the jet fire, lost its contents through its pressure relief valve whereupon the lost gas ignited and burned. The nine DOT-112J cars derailed concertina-style, with six of the cars coming nose-up to the side or belly of another car.

Eight of the DOT-112J double-shelf couplers in this train uncoupled (these are special couplers designed to prevent propane rail cars from piercing other propane rail cars and hence reduce the potential for explosions), which was not supposed to happen. In fact one of the couplers uncoupled by

shearing off, becoming a sharp battering ram, breaching the unprotected underbelly of the next DOT-112J car with a jagged 2- or 3-foot hole, which is also not supposed to happen. This caused immediate loss of its pressurized contents in a cold BLEVE, “which exploded in a fireball. Belly breaches like this are not supposed to happen because the new double shelf couplers in DOT-112J tanker cars that are supposed to stay together without shearing or of piercing any other rail car, least of all another propane rail car.

The Canadian Transportation Safety Board (TSB) investigation report R13E0142 (Published Feb 24, 2015) cites critical design faults in DOT112J340W. Essentially, propane rail cars are not test crashed to demonstrate that the tanks will not breach. And computer simulations are inadequate.

These design failures in the DOT-112J propane rail cars used in both the United States and Canada have not been corrected and it may take decades to do so by which time a new propane rail car will probably be use. And DOT-112J propane rail cars were designed in 1978, making it the last major upgrade in propane rail cars - 27 years ago. (The prior rail car was called the DOT-112A.); and

WHEREAS, propane distribution terminals are supposed to be in compliance with the basic propane fire code entitled NFPA (National Fire Protection Association located in Quincy, MA) 58 but this fire code is only considered a “minimum requirement” (see <http://catalog.nfpa.org/NFPA-58-Liquefied-Petroleum-Gas-Code-P1187.aspx?icid=B484>) for propane facilities – not actually the safest, despite claims by others; and

WHEREAS, the NFPA says of NFPA 58 and the other codes which they promulgate:

“...the document contained herein is ... developed through a consensus standards development process approved by the American National Standards Institute. This process brings together volunteers ... it does not independently test, evaluate, or verify the accuracy of any information or the soundness of any judgments contained in its codes and standards.”

"[And] The NFPA disclaims liability for any personal injury, property or other damages of any nature whatsoever, whether special, indirect, consequential or compensatory, directly or indirectly resulting from the publication, use of, or reliance on this document; and

WHEREAS, a US federal government report to Congress in 1978 by the Comptroller General entitled

Liquefied Energy Gases Safety
VOLUME 1 OF THREE VOLUMES
EMD-78-28
July 31, 1978

Liquefied energy gases (LEG) includes propane, butane and natural gas and the report recommends:

- - - -

"-Future facilities for storing large quantities of these gases should be built in remote areas."

"- Facilities already in other than remote areas should not be permitted to expand in size or in use, and the safety of each should be evaluated by the Federal Government."

"-Large quantities of liquefied energy gases should not be transported through densely populated areas unless delivery is otherwise impossible.

"-The Congress should create a Federal Hazardous Materials Compensation Fund to supplement private liability insurance.."

- - - -

However, the petroleum industry lobbied Congress and none of the above was implemented as federal policy. However, these recommendations to Congress came 3 years after the passage of the 1975 Hazardous Materials Transportation Act which was supposed to have addressed such issues in part; and

WHEREAS, the explosive yield of a single 30,000 gallon propane rail car is slightly more than .6+ kilotons of TNT (normalized to BTU equivalency); and

WHEREAS, the explosion of a single 30,000 gallon liquid propane rail car can send projectiles an average distance of 2,700 feet based on an analysis from 52 actual propane rail car BLEVEs (Boiling Liquid Expanding Vapor Explosion), with longer distances extending to approximately 3,600 feet having been recorded. However, 80 to 90% of the projectiles from such an explosion travel 1,800 feet or less. See in part Campbell, J. A., **Estimating the Magnitude of Macro-Hazards, Society of Fire Protection Engineers, Report 81-2**, Boston, Massachusetts, 1981; and

WHEREAS, the loading, unloading, and/or storage of propane in where the entire volume of the transport vehicle empties its propane contents into a storage vessel of a smaller volume is an inherently unsafe activity that presents significant risk to the health, safety, and welfare of the residents, neighborhoods, and natural resources within South Portland; and

WHEREAS, as reported by Peter Mantijs, in *After Congress Gutted Propane Market Reform, Industry Doubles Down on Secretive Storage Plan* on March 16th, 2015 from the DC Bureau of Natural Resources News Service:

“Accidents that are the result of explicit human errors, but do not involve failures of components, are not included in typical failure rate data bases [of propane storage sites]. Examples of such accidents include overfilling a tank (resulting in a liquid spill) ...”

He adds that:

“Overfilling a tank” has been implicated in a number of serious accidents, including a propane leak at a storage facility in rural Brenham, Tex., in 1992, where propane detonated with the estimated force of a three-kiloton bomb. The explosion was reportedly heard 150 miles away in San Antonio. ... ”

Source: <http://www.dcbureau.org/2015031610231/natural-resources-news-service...market-reform-industry-doubles-down-on-sective-storage-plan.html>; see generally James I. Changa, Cheng-Chung Linb, *A study of storage tank accidents*, 19 Journal of Loss Prevention in the Process Industries 51–59 (2006); and

WHEREAS, when a propane distribution storage facility (e.g. less than 30,000 gallons capacity) is designed to accept less than a tank load of product (a 30,000 gallon propane full rail car delivery), the risk of and overfill or overflow accident increases for a variety of reasons including physics, human factors and more; and,

WHEREAS, an unclassified US Army guideline entitled “*Improvised Explosive Device (IED) Safe Standoff Distance Cheat Sheet*” recommends a safe evacuation distance of 1,996 feet for a 10,000 gallon liquid propane cargo truck, which has just 1/3 the capacity of a standard propane rail car; and

WHEREAS, the US Department of Transportation has set 1,257 feet from incidents involving propane rail cars as the minimum safe distance for emergency personnel. US Department of Transportation, **Emergency Responders Guidebook** (ERG) page 367 (2012);

WHEREAS, the concept of “safe distance” is used by various government agencies (e.g. Defense, Transportation, etc.) and various no-governmental organizations and

WHEREAS, in physics, the inverse-square law states that a specified physical intensity is inversely proportional to the square of the distance from the source of that energy source, which means that energy twice as far from its original source (or point) is spread out over four times the area, hence is only one-fourth the intensity – making distance one of the best safety buffers against an adverse propane event and is one of underlying tenets of the concept of “safe distance”; and

WHEREAS, the explosive and fire risks increase during the loading, unloading, and/or storage of propane in excess of 25,000 gallons or more using “transloading” and/or other methodologies that rapidly transfer propane from essentially one mobile container to another mobile container (including from a rail car to a truck, even if it temporarily passes through a storage tank which acts in large part as an oversized pipe) is considered transloading; and

WHEREAS, this risk is also elaborated in part in a report which states that:

“Since transloading requires the handling of the goods at different points in the supply chain, there is an inherent risk of damage or the loss of expensive materials that could potentially harm the environment or personnel.” See Ted Ratcliff, *Transloading Efficiency* in Storage Terminals Magazine 91 et seq (Summer 2013 issue).

WHEREAS, volumes of propane in excess of 25,000 gallons in multiple adjacent containers increase the possibility of chain-reaction combustion or explosion, which significantly increases the risk to the health, safety, and welfare of the community and critical infrastructure within South Portland; and

WHEREAS, for example, a portion of Toronto, Ontario was devastated by an August 10, 2008 propane explosion (the Sunrise Propane explosion) caused by “tank-to-tank transfers” (sometimes known as transloading) and related leaks, which injured more than forty people, caused the evacuation of 12,000 families, and destroyed approximately 100 homes, apart from the injuries to its residents; and

WHEREAS, a propane rail car fire in 1973 in the Arizona town of Kingman killed 11 firefighters and a gas company worker when the rail car carrying a propane tank exploded. The resulting fireball injured more than 100 others nearby showering the surrounding area with shrapnel. And the propane tank was projected over a quarter of a mile and its impact dug a crater; and

WHEREAS, two other similar incidents since 1993 involving propane has resulted in the death of six fire fighters. The first incident in Ste. Elisabeth de Warwick, Quebec, Canada, on June 27, 1993, resulted in the death of four fire fighters. The other propane fire followed by an explosion occurred in Burnside, Illinois, which resulted in two fatalities on October 2, 1997; and

WHEREAS, portions of South Portland such as Rigby Yard can hold up to more than 100 propane rail cars a day, sometimes more depending on weather and rail conditions north of the city; where holding such quantities increases risks to those areas surrounding Rigby Yard including to facilities for food storage, heavy equipment and more; and

WHEREAS, Rigby Yard, the largest rail yard in Maine, has had derailments as recently as March 2, 2013 where a Pa AM Railways tank car derailed and damaged 5 other rail cars, some of which were carrying liquid propane; and

WHEREAS, the owner of Rigby Yard has stated its intention to increase the velocity of rail cars through the Yard, as reported in the 2014 Maine State Rail Plan, which reads in part:

“The driving factor in utilization of Rigby for the last several years is the operating strategy of Pan Am Railway. Traditionally, Rigby was a location where train crews were changed and trains were “re-blocked” both entering and leaving Maine. Pan Am has been using Waterville Yard and yards in Massachusetts to perform more of the functions previously provided at Rigby. The intent is to reduce operating cost and increase the average velocity of freight trains that can generally run through Rigby ... “

Pages 2.14 - 2.15; and

WHEREAS an increase in train speed increases the severity of rail accidents, which in turn poses a greater threat of derailments, see in part R. Andersen, *Quantitative analysis of factors affecting railroad accident probability and severity* (Master's Thesis, Civil Engineering, University of Illinois at Urbana, 2005) which reads in part:

Table 2.2

From 1992 - 2001

<i>Number of derailments</i>	<i>671</i>	<i>921</i>	<i>1,136</i>
<i>Average Speed(mph)</i>	<i>8.7</i>	<i>17.7</i>	<i>26.3</i>

Page 11

"It has been shown that the speed at which a derailment occurs can be a predictive measure of the severity of derailment." Page 86; and

WHEREAS, Isaiah Thompson of the New England Center for Investigative Reporting discovered in his research for an article entitled "*Rail safety fact check: Fires, spills up despite industry claims*" published May 20, 2015:

"A review of federal reports and railroad safety data by the New England Center for Investigative Reporting suggests that while rail remains much safer than it was in recent decades, at least some indicators of safety have gotten worse, not better, over the past few years:

- Accidents involving fires have at least doubled in the past year.*
- Hazardous materials releases have increased two years in a row.*
- Projections buried in government reports indicate that the same agencies issuing new safety rules themselves expect derailments to more than double over the next few years."*

WHEREAS, South Portland already holds within its borders (i) 87 large tower based oil storage containers and (ii) holds or will hold (depending on the number of proposals approved) up 1,000,000 gallons of liquid propane and (iii) holds 100,000 gallons of gasoline for the US Department of Energy Northeast Gasoline Supply Reserve program, all of which makes South Portland one of the largest petroleum based fuel storage sites in New England and constitutes one of the highest amounts of fuel per person in northern New England; and

WHEREAS, the risks in handling liquid propane increase during snow and ice periods in winter, as South Portland experiences as is evidenced by a supplement issued to NFPA 58 for snowfalls and where snow and ice together can alter the topology and flow of liquid propane which is spilled or leaked in ways that may not be controllable; and

WHEREAS, sometimes propane distribution facilities are controlled by programmable logic controllers (PLCs) and the proper functioning of such requires high reliability process control software designed and tested for multiple failure scenarios, and tested against the operating manual to check that the software parallels manual instructions and if not, why not. It has been shown that 80% of the problems with PLC can be traced to input /output modules like sensors or field equipment and this can result in the failure to detect a fire or leak. In addition, if a valve malfunctions the valve requires sensors adequate enough to allow the PLC to determine the core problem. So the PLC needs significant diagnostic and self-diagnostic capabilities to alert the operators to a variety of failure modes. In addition, a PLC may encounter problems caused by loss of power quality or by loss of power all together, which requires power filtering and power back up systems. And if the system is designed with an inadequate number of sensors or ones, which are compromised operating environments or other limitations, then the system is structurally deficient. All of these factors can contribute to malfunctioning of the entire propane facility that can cause unintended consequences including propane spills and overflows; and

WHEREAS, the city of South Portland is not provided with any ongoing, specific, significant additional resources from the state or federal governments to help to mitigate the enhanced fire and explosive risks posed by this massive petroleum fuel storage, most of which is classified as hazardous materials; and

WHEREAS, under Federal Railway Safety Act (FRSA), Congress allowed states and localities to adopt or continue in force any law, regulation, focused on where it; and

- is necessary to eliminate or **reduce an essentially local safety hazard**;
- is not incompatible with a law, regulation, or order of the United States Government; and
- does not unreasonably burden interstate commerce. See 49 U.S.C. 20106 (emphasis added).

And great care was taken to fashioning a very limited fire code amendment ordinance focused on the most essential safety feature for protecting the public infrastructure – namely spacing explosive risk away from critical infrastructure – in a locality already burdened with extensive petroleum based fuel storage; and

WHEREAS, the Hazardous Materials Transportation Act (HMTA) (administered by the US Department of Transportation) governs the “transportation” of hazardous materials and protects against the inherent risks associated with such transportation. Under HMTA, however, a city can regulate the construction and operation of any storage tanks on “private tracks or sidings” without being subject to preemption under the HMTA. And when an amendment to a fire code is based on research conducted by the industry, universities and the federal government, it is not usually deemed to be burdensome or unreasonable in an area where the federal government has not sought to regulate. And where the federal government sets certain maximum time standards within HMTA which do not explicitly preclude shorter time periods and where in fact regulations allow designation of shorter dwell times, where such shorter times may help mitigate risks in localities where there is already a high density of petroleum based fuel storage, then preemption is neither appropriate nor rational; and,

WHEREAS, amending the fire code to provide for a safe distance is far less restrictive than other community’s amendment to their national fire codes, like:

(i) Garibaldi, Oregon Municipal Code

15.15.080 Liquefied petroleum gases.

The bulk storage of liquefied petroleum gas, referred to in Section 21.61 of the Fire Prevention Code, is prohibited within the city limits. [Ord. 89 § 8, 1979.]

and

(ii) Geneva, Ill. Ordinance

10-4-2: CERTAIN DISTRICT LIMITS ESTABLISHED:

D. Establishment Of Limits In Which Bulk Storage Of Liquefied Petroleum Gases Is Restricted: The aboveground storage (over 100 gallons water capacity) of liquefied petroleum gases is prohibited within the corporate limits of the city except by a special permit issued by the fire chief; and

WHEREAS, propane fires and explosions constitute a significant risk to first responders including fire, police and medical workers, where circumstances may place them at great personal risk unless additional precautions are provided; and

WHEREAS, gaseous propane which is heavier than air and hugs the ground upon release is considered an asphyxiant capable of disabling propane facility personnel and first responders; and

WHEREAS, in addition to the risk attendant to propane explosions and fires, propane in liquid form, is a super critical fluid which acts like a universal solvent, which if spilled may destabilize contaminants in the soil and retrain them towards aquifers and other water-bodies; and

WHEREAS, Congress has recognized the right of local communities to regulate certain operations such as enforcement of fire codes without being preempted as was pointed out, for example in; and

[House Hearing, 110 Congress] [From the U.S. Government Printing Office]
RAILROAD-OWNED SOLID WASTE TRANSLOAD FACILITIES

HEARING BEFORE THE SUBCOMMITTEE ON RAILROADS,
PIPELINES, AND HAZARDOUS MATERIALS OF THE COMMITTEE
ON TRANSPORTATION AND INFRASTRUCTURE
HOUSE OF REPRESENTATIVES ONE HUNDRED TENTH CONGRESS
FIRST SESSION OCTOBER 16, 2007

Printed for the use of the Committee on Transportation and Infrastructure
U.S. GOVERNMENT PRINTING OFFICE WASHINGTON: 2008 38-517

Excerpt from statement of Congressman BILL SHUSTER, Pennsylvania:

"While communities are not allowed to have upfront permitting requirements, they can still enforce their local codes. Local codes for electrical, building, fire, plumbing, sanitation and rodent control still apply even if the site is run by a railroad. The only limitation is that local codes cannot discriminate against railroads or burden interstate commerce. Unfortunately, some people have used phony preemption claims to evade legitimate local regulations. People have claimed to be railroads even when they do not own a single train. People have claimed to be exempt from local health and safety regulations, when that was never the intent of the Federal law. (emphasis added) At page 7 of 85

Excerpt of testimony of Nottingham, Hon. Charles D. "Chip," ex-Chairman, Surface Transportation Board:

"... And I understand it is hard when you get sharp lawyers saying, hey, there are 19 reasons you can't touch our operation, and people think we are going to get sued and we are a small village or town. So I understand the challenge, but they are broad. First of all, fire inspection and compliance, code compliance, electrical, some of the things you heard today. We had a witness who came to our hearing from I believe a State entity saying we can't even regulate for fire code. And that is just not the case. And so the powers are broad..." (emphasis added) At page 25 of 85

Source: <http://www.gpo.gov/fdsys/pkg/CHRG-110hhrg38517/html/CHRG-110hhrg38517.htm> (as of August 27, 2015)

WHEREAS, the existing South Portland Fire Code does not adequately address the concerns listed above, since it primarily sets minimum on-site requirements for such facilities; and

WHEREAS, the current South Portland ordinances and state law do not adequately address the concerns listed above; and

WHEREAS, the existing Code of Ordinances and other applicable laws are not adequate to prevent serious public infrastructure damage from facilities involved in the loading, unloading, and storage of propane in excess of 25,000 gallons in an urban setting like South Portland.

The City of South Portland hereby adopts the following Article to be added to Chapter 8 of Code of City Ordinances:

Art. XIV Special Circumstances

I. Notwithstanding any provision of South Portland's Code of Ordinances to the contrary, including any subsequently adopted or revised national building or national fire codes enacted after this date, unless explicitly stated otherwise:

(i) no commercial propane distribution facility built after November 9, 2015 and

(ii) no facility resuming operations after being idle for more than 120 days after November 9, 2015,

shall be permitted to operate without a new municipal fire permit and no fire permit (nor any functional equivalent thereof) shall be promised, granted, issued or transferred to any commercial propane distribution facility, either proposed, constructed or resuming operations, located less than 1,257 feet from any critical infrastructure within the city of South Portland.

II. Enforcement of this ordinance is mandatory, and supersedes **Sec. 8-4.3 Modification of Code for Specific Cases** or any substantially equivalent provision, and such enforcement shall not be avoided, abated, reduced, modified, canceled, withdrawn nor otherwise neglected for any reason.

III. This Article amends and supersedes any inconsistent provision to the extent necessary in Chapter 14 and in any other city ordinance needed to effectuate the purpose of this ordinance.

IV. The Fire Chief or a designee shall collect, retain and promptly distribute the following information about a commercial propane distribution facility to protect both first responders and critical infrastructure within the city within 60 days or less from the issuance of any such fire permit, including but not limited to:

- the name and physical, mailing e-mail and messaging addresses for the facility;
- the name and physical address and phone number of the owner(s) of the facility, along with a fax and e-mail and messaging addresses;
- the names, addresses and phone numbers and e-mail and messaging addresses of at least two employees or contracted parties responsible for such facility who can be reached 24 hours a day, 7 days a week including all holidays;
- a copy of the site plan of the facility as of the date of the fire permit application with a notation of any changes made over the past year that may effect, impair or mislead any first responder to the facility in the event of an emergency at that facility;
- a copy of any emergency and evacuation plans for the facility (which shall include a description and illustration of the fire suppression system) and the surrounding neighborhood(s) including methods of notification of danger; and
- list of propane and odorant release incidents (time, date, amount, source) at that site and any fires, explosions or damage of any kind to the site, personnel or the public, and any structural damage and corrective actions taken or yet to be undertaken for the benefit of first responders.

IV. For purposes of this provision:

“Commercial propane distribution facility” means any site for holding, storing (based on intent or behavior, not hours) or distributing propane destined for third parties, in whole or in part, (whether or not such third parties are owned or controlled, directly or indirectly, by the same owners or the operators of the site) where such site maintains in the aggregate 25,000 gallons capacity or more of propane."

“Critical infrastructure” means all buildings or structures (owned, leased or used or portions thereof) which are above ground - including but not limited to garages (but not parking lots), storage locations, heating or power plants and related operations providing: Air transport, Ambulance services or search and rescue operations or post-emergency recovery services; Any other site with a capacity to hold 25,000 gallons or more above ground of any flammable liquid as defined by U.S. 49 CFR 173.120 or any waste composed of 20% of the same type of liquid except that this shall not include crude oil nor No. 6 heating oil ; City Hall and all municipal service buildings; Court houses; Correctional facilities; Emergency preparedness and management services (including emergency shelter, food and water storage and distribution); Homeland Security; Hospitals and medical clinics, health clinics and storage locations for medical supplies, medical equipment and medicines; Law enforcement including all local, country, state and federal, including any other government department exercising policing functions; Other county, state and federal government buildings providing emergency or recovery services or aid; Power generation facilities and high power transmission lines and substations (but not intracity power lines); Schools which are run or licensed by the government; Telecommunications means any telephone offices including but not limited to switching stations, above ground trunk lines but not other telephone poles or wires), licensed commercial or government radio transmitters and offices, television studios and transmitters, and community cable offices (but not above ground cable to provide local service) ; Public works facilities including but not limited water pumping or sewerage stations, road clearing and repair facilities; Utilities including above ground natural gas control structures but not above ground monitoring devices.

“Distance” shall be measured as follows:

(i) When measuring the required distance, such as the minimum distance between a “commercial propane distribution facility” and “critical infrastructure”, if on separate lots, then the shortest straight line along a horizontal plane between the two closest lot lines shall be used. These distances are not measured by following the topography or slope of the land.

(ii) When a “commercial propane distribution facility” and “critical infrastructure” sit on the same lot, the measurement used shall be the closest or shortest distance between the two objects. All distances are measured along a horizontal plane using a straight line from the appropriate line, edge of building, structure, storage area or tank, parking area, or other object considered part of such. These distances are not measured by following the topography or slope of the land.

Measurements involving a structure are made to the closest support element of the structure. Structures or portions of structures that are entirely underground are not included in measuring required distances.

(iii) Fractions of one-half or greater shall be rounded up to the nearest whole number and fractions of less than one-half shall be rounded down to the nearest whole number, except as otherwise provided.

“Idle” means where a facility has remained closed or ceased operating for any reason including but not limited to bankruptcy or other creditor dispute, or (i) ceased receiving or making third- party distributions of propane for any reason or (ii) not regularly maintained under any local, state or federal requirement.

“Oil” means oil (except crude oil) or distillate derived from petroleum and any flammable synthetic oil used for the same purposes.

“Propane” means any gas, gel or liquefied gas composed of forty (40) percent or more of the chemical compound known as propane, which is delivered, stored, used or distributed.

- - - -

Annotation to the ordinance:

This ordinance requires a fire permit for the operation of any commercial propane distribution facility within the city, where such facility must be a minimum of 1,257 feet from certain critical infrastructures.

This distance was established in part by the US Department of Transportation as the minimum distance at which emergency personnel remain from an active propane incident. This distance is also beyond the distance normally associated with causing first and second degree burns in people outdoors exposed to the thermal radiation from a single exploding propane rail car (e.g. 1,000 feet). And this distance is less than the 1,800 feet range at which 80 to 90% of the projectiles from an exploding single propane rail car may generate (but not including smaller projectiles including screws, nuts and bolts, etc.). And this distance is considerably less than a typical evacuation distance for a burning propane rail car, which may range from one-half to one mile from such location.

Critical infrastructure includes most basic government buildings as well as hospitals, schools and includes flammable fuel storage facilities with a capacity of 25,000 gallons or more of gasoline and petroleum distillates including refined oil (pure or contaminated) but not No. 6 heating oil nor other commercial propane distribution facilities - which means that propane distribution facilities may co-locate next to one another as well as next to certain crude oil and No. 6 heating oil storage sites if need be.

The concept of “safe distance” is used in many settings to provide some minimum level of protection from fire or risk of explosions or other dangers.

City Council Workshop

Agenda Item #2

November 9, 2015

Potential Moratorium on LPG Storage and Distribution Facilities/Amendments to City's Fire Protection and Prevention Ordinance

This workshop is a follow up to the City Council's October 14, 2015 workshop at which a potential moratorium on new liquefied petroleum gas (LPG) storage and distribution facilities was discussed. Several Councilors indicated support for a moratorium, several Councilors questioned the objective of a moratorium, and one Councilor expressed opposition to a moratorium.

Current Regulatory Scheme

The City's existing regulatory scheme relating to LPG storage and distribution facilities includes the following:

*Chapter 8 of the Code of Ordinances: The City's Fire Protection and Prevention Ordinance prohibits the storage of flammable liquids in outside above-ground storage tanks in certain zoning districts and prohibits the bulk storage of LPG in certain zoning districts. Any storage, use or handling of LPG of 125 gallons aggregate (water) capacity first requires a permit issued pursuant to the ordinance. Chapter 8 also adopts the 2009 edition of National Fire Protection Association (NFPA) 1, Fire Code. In turn, NFPA 1 (2009 ed.) incorporates the requirements of a number of other NFPA publications, including NFPA 30 (2008 ed.), the Flammable and Combustible Liquids Code, and NFPA 58 (2008 ed.), the Liquefied Petroleum Gas Code.

*National Fire Protection Association Codes: See above regarding NFPA 30 (2008 ed.) and NFPA 58 (2008 ed.).

*Chapter 14 of the Code of Ordinances: The City's licensing ordinance requires that an annual license be obtained from the City Clerk for the storage, handling or use of flammable liquids or hazardous materials. Issuance of such a license requires a positive recommendation from the Fire Chief. There are currently 49 such licenses in the City.

*Chapter 27 of the Code of Ordinances: The City's Zoning Ordinance regulates where LPG storage and distribution facility uses are allowed in the City, and it generally requires Planning Board site plan review and approval for such uses. The Zoning Ordinance also contains performance standards for above-ground storage tanks.

In reviewing this regulatory scheme with the Fire Department, an inquiry was made about any fire codes that the City might want to update. The Fire Department indicated that it has been requiring persons, firms and corporations to comply with the requirements of the

latest version of applicable NFPA publications for all projects that it reviews. However, the City has not necessarily adopted the latest edition of the various NFPA publications simply by virtue of its adoption of the 2009 edition of NFPA 1; there is a more recent edition of NFPA 1, the 2015 edition, which incorporates the requirements of a number of more editions of various NFPA publications. The 2015 edition of NFPA 1 incorporates the requirements of a number of other NFPA publications, including the 2014 edition of NFPA 30 and the 2014 edition of NFPA 58. In South Portland, it is technically only the 2008 editions of NFPA 30 and 58 that have been formally adopted by the City Council.

The City Council could adopt the 2015 edition of NFPA 1. If the City Council were to do so, it would be adopting the 2014 edition of NFPA 30 and 58. (In 2012, when the City Council last enacted a major update of Chapter 8, the Council did not want to require the sprinklering of new one or two-family dwelling units. To the extent that the City Council does not want to adopt the latest edition of NFPA requirements for the installation of sprinklers in new one or two-family dwelling units, it is easy enough for the City to modify/opt out of those requirements if it were to adopt the 2015 edition of NFPA 1.)

Adoption of the 2015 edition of NFPA 1 would require some amendments to Chapter 8 and compliance with the procedural requirements of State statute regarding a municipality's adoption of a code by reference, but it could be done with or without a moratorium.

Moratorium Background

A moratorium is a temporary ban on land use activity or development to give City officials time and the opportunity to plan for accommodating or managing development. Development moratoria are specifically authorized by State statute, 30-A M.R.S.A. § 4356, subject to certain requirements set forth in the statute. A copy of the Corporation Counsel's 2013 memorandum on the general procedures and requirements of a moratorium is attached. A copy of the 2013 moratorium timeline is also attached to give Councilors a general sense of the timing involved.

Federal Preemption of Local Regulatory Authority Issues

The Corporation Counsel has provided the following general overview of the legal issues associated with local regulation of LPG storage and distribution facilities that involve rail transportation.

To the extent that the City wants to add additional regulations relating to LPG storage and distribution facilities to its Code of Ordinances, there are at least three sets of federal statutes (and accompanying regulations) that may provide the basis for federal preemption of local regulation under the Supremacy Clause of the U.S. Constitution: (a) the ICC Termination Act (the "ICCTA"); (b) the Federal Rail Safety Act (the "FRSA"); and (c) the Hazardous Materials Transportation Act (the "HMTA").

Under the ICCTA, the Surface Transportation Board (formerly the Interstate Commerce Commission) has sole jurisdiction over most rail operations and proceedings, including (1) transportation by rail carriers, and the remedies provided in the statute with respect to rates, classifications, rules, practices, routes, services, and facilities of such carriers; and (2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities. Therefore, if a proposed LPG

storage and distribution facility is not owned and operated by, on behalf of, or under the control of, a rail carrier, then preemption under the ICCTA will not apply.

A primary purpose of the FRSA is to establish nationally uniform laws, regulations, and orders relating to railroad safety. As a result, the FRSA authorizes the Secretary of Transportation (and the Secretary in turn has delegated authority to the Federal Railroad Administration) to issue regulations and orders to supplement every aspect of railroad safety that was covered by statute as of October 16, 1970, and provides that, with two specific exceptions, these regulations preempt all non-federal rules related to railway safety. However, these two preemption exemptions apply only to State laws, regulations, and orders and not to those issued by any political subdivision of a State, including a municipality. It is not yet clear whether any new fire code or land use regulations contemplated by the City with regard to LPG storage and distribution facilities would actually regulate "railroad safety."


The HMTA presents a much more certain and formidable preemption obstacle, at least as to any proposal that would prohibit construction and operation of LPG storage and distribution facilities. The HMTA governs the "transportation" of hazardous materials by any mode, protects against the inherent risks associated with such transportation, and is regulated by the federal Department of Transportation. The HMTA defines "transportation" to mean "the movement of property and loading, unloading, or storage incidental to the movement." It contains three preemption provisions. The first preempts all non-federal regulations addressing five enumerated topics, including "the packing, repacking, handling, labeling, marking, and placarding of hazardous material," if those regulations are not substantively the same as an existing HMTA regulation (also known as "covered subject preemption"). The second preempts hazardous materials regulations imposed by states, subdivisions of states, and Indian tribes when it is not possible to comply with both the non-federal requirement and an HMTA requirement (the "dual compliance test"). The third preempts hazardous materials regulations imposed by states, subdivisions of states, and Indian tribes when the non-federal requirement, as applied or enforced, is an obstacle to carrying out the HMTA (the "obstacle test").

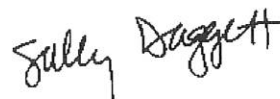
The HMTA regulations are extremely complex, running to just less than 1200 pages in the 2014 version of the Code of Federal Regulations, exclusive of those provisions that apply only to pipeline safety. A summary of our review of the HMTA regulations is that the City can regulate the construction and operation of any storage tanks that are next to and filled from "private tracks or sidings" (a defined term under the HMTA regulations) without being subject to preemption under the HMTA or the ICCTA. The City may also regulate the use of those private tracks or sidings without dealing with such preemption. If, however, a local regulation becomes too burdensome and unreasonable, or arbitrary, then it is possible that it would violate the Commerce Clause of the U.S. Constitution and be struck down on that ground. Additionally, burdensome or costly regulation might result in a LPG distributor agreeing with a rail carrier to have LPG transloaded from the rail cars to tank trucks directly from the rail carrier's tracks. Because transloading is considered a part of transportation, this type of operation would be subject to preemption arguments under both the HMTA and the ICCTA.

The recent experience of the City of Portsmouth, New Hampshire in this regard is instructive. Sea-3, Inc. owns and operates a propane distribution facility in Newington, New Hampshire. It proposed to expand its existing distribution facility. The project was approved by the Newington Planning Board, and the abutting municipality of Portsmouth opposed the expansion of the propane distribution facility both at the administrative level and in state court. As a result of such opposition, Boston and Maine Corporation and Springfield Terminal Railway Company are now in the process of establishing a distribution facility on property they own and operate at the Portsmouth rail yard. The two rail carriers have recently filed a civil lawsuit in U.S. District Court in New Hampshire against the City of Portsmouth and its City Manager asserting ICCTA and FRSA preemption of a Portsmouth zoning ordinance provision that purports to prohibit the storage, processing, disposal or transfer of liquid petroleum products in all zoning districts in the city, including the Portsmouth rail yard. In other words, the risk of a LPG distributor turning to transloading may increase if a municipality is overzealous in its regulation of what happens on "private tracks or sidings," and the risk of litigation against a municipality increases substantially if the municipality attempts to regulate transloading from a rail carrier's tracks.

Suggested Objective of Any Moratorium

To the extent that the City Council wants to proceed with the adoption of a moratorium on new LPG storage and distribution facilities, the moratorium could provide time to (i) review the City's existing regulatory scheme and determine what, if any, additional regulations might be appropriate from a public health, safety and welfare perspective; (ii) determine whether the City has authority to implement any proposed additional regulations in light of the complex regulatory environment already in place surrounding rail carriers and hazardous materials; and (iii) consider appropriate enforcement mechanisms for any proposed additional regulations.


City Manager



Corporation Counsel



MEMORANDUM

TO: South Portland City Council
James H. Gailey, City Manager

FROM: Sally J. Daggett, Esq.

RE: Moratorium Ordinance Requirements and Procedures

DATE: November 6, 2013

Statutory Authority and Requirements

A moratorium is a temporary ban on land use activity or development to give City officials time and the opportunity to plan for accommodating or managing development. Development moratoria are specifically authorized by State statute, 30-A M.R.S.A. § 4356 (copy attached), subject to certain requirements set forth in the statute. The statutory requirements are express limitations on municipal home rule authority. Therefore, any moratorium ordinance must comply with the statutory requirements; the City has no other legal alternative for temporarily halting development for which it may be unprepared.

The principal statutory requirement for a moratorium ordinance is that it be necessary either (1) to prevent a shortage or overburdening of public facilities (*e.g.*, sewer, water, roads, schools, public safety), or (2) because existing plans, ordinances or regulations, if any, are inadequate to prevent serious public harm. Either of these rationales will suffice, though the City may cite both as justification for a moratorium ordinance if there is a factual basis for doing so. In order to create a record for a reviewing court in the event the ordinance is challenged, every moratorium ordinance should include a preamble that recites the facts that demonstrate the necessity for the moratorium. While factual justification is critical, courts will not second-guess the City's determination of necessity; a moratorium ordinance, like any other municipal ordinance, is presumed valid, and the challenger must establish "the complete absence" of any facts supporting the need for a moratorium. The moratorium ordinance must be adopted by the City Council. (Note that because the moratorium ordinance constitutes an amendment of the Zoning Ordinance, at least 5 affirmative votes are required for the City Council to adopt the moratorium ordinance. *See* Sec. 27-115 of the Zoning Ordinance.) If the

moratorium involves a temporary ban on land use activity, the Planning Board must conduct a public hearing on the proposed moratorium ordinance.

Duration of Moratorium

State statute limits the duration of a moratorium ordinance to a definite term of not more than 180 days. A moratorium may, after notice and hearing, be extended by the City Council for additional 180-day periods if the City finds that (1) the problem necessitating the moratorium still exists, and (2) reasonable progress is being made to alleviate the problem. Both findings are important, but the second clearly implies an affirmative duty on the City's part to address the underlying circumstances and to do so in a responsible, timely fashion.

Maine Revised Statutes
Title 30-A: MUNICIPALITIES AND COUNTIES
HEADING: PL 1987, c. 737, Pt. A, §2 (new)
Chapter 187: PLANNING AND LAND USE REGULATION
HEADING: PL 1989, c. 104, Pt. A, §45 (new)

§4356. MORATORIA

Any moratorium adopted by a municipality on the processing or issuance of development permits or licenses must meet the following requirements. [1989, c. 104, Pt. A, §45 (NEW); 1989, c. 104, Pt. C, §10 (NEW).]

1. Necessity. The moratorium must be needed:

A. To prevent a shortage or an overburden of public facilities that would otherwise occur during the effective period of the moratorium or that is reasonably foreseeable as a result of any proposed or anticipated development; or [1989, c. 104, Pt. A, §45 (NEW); 1989, c. 104, Pt. C, §10 (NEW).]

B. Because the application of existing comprehensive plans, land use ordinances or regulations or other applicable laws, if any, is inadequate to prevent serious public harm from residential, commercial or industrial development in the affected geographic area. [1989, c. 104, Pt. A, §45 (NEW); 1989, c. 104, Pt. C, §10 (NEW).]

[1989, c. 104, Pt. A, §45 (NEW); 1989, c. 104, Pt. C, §10 (NEW) .]

2. Definite term. The moratorium must be of a definite term of not more than 180 days. The moratorium may be extended for additional 180-day periods if the municipality adopting the moratorium finds that:

A. The problem giving rise to the need for the moratorium still exists; and [1989, c. 104, Pt. A, §45 (NEW); 1989, c. 104, Pt. C, §10 (NEW) .]

B. Reasonable progress is being made to alleviate the problem giving rise to the need for the moratorium. [1989, c. 104, Pt. A, §45 (NEW); 1989, c. 104, Pt. C, §10 (NEW) .]

[1989, c. 104, Pt. A, §45 (NEW); 1989, c. 104, Pt. C, §10 (NEW) .]

3. Extension by selectmen. In municipalities where the municipal legislative body is the town meeting, the selectmen may extend the moratorium in compliance with subsection 2 after notice and hearing.

[1989, c. 104, Pt. A, §45 (NEW); 1989, c. 104, Pt. C, §10 (NEW) .]

SECTION HISTORY

1989, c. 104, §§A45, C10 (NEW) .

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**MORATORIUM SCHEDULE
(INCLUDING SCHEDULE OF MEETING NOTICES)**

Nov. 6, 2013 Wednesday	City Council workshop #1
Nov. 13, 2013 Wednesday	City Council workshop #2
Nov. 18, 2013 Monday	City Council first reading
Nov. 19, 2013 Tuesday	Notify PPH re Planning Board Public Hearing Notice to be published on Nov. 21, 2013 and Nov. 25, 2013
Nov. 20, 2013 Wednesday	Post Notice of Planning Board Public Hearing at City Hall – at least 13 days before public hearing; send individual notices to oil terminal property owners with copy of proposed moratorium ordinance
Nov. 21, 2013 Thursday	1st Newspaper Notice of Planning Board Public Hearing – at least 12 days before public hearing
Nov. 22, 2013 Friday	Post ordinance at City Hall (City Clerk) (Charter Sec. 222)
Nov. 25, 2013 Monday	2nd Newspaper Notice of Planning Board Public Hearing – at least 7 days before public hearing
Dec. 3, 2013 Tuesday	Planning Board Public Hearing
Dec. 16, 2013 Monday	City Council second reading and public hearing

CITY OF SOUTH PORTLAND



DEPARTMENT OF
PLANNING & DEVELOPMENT

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PATRICIA DOUCETTE
Code Enforcement Director
Deputy Director of
Planning & Development

January 8, 2016

Stephen R. Bushey, P.E.
Fay, Spofford & Thorndike
778 Main Street, Suite 8
South Portland, ME 04106

Re: NGL Supply Terminal Company, LLC / NGL Terminal Relocation Project /
20 Rigby Yard, South Portland

Dear Steve:

I am writing to follow up Planning Director Tex Haeuser's December 21, 2015 letter to you regarding NGL Supply Terminal Company, LLC's (NGL) pending site plan application and related Zoning Ordinance interpretation issues.

A number of residents have inquired of the Planning Department whether the rail cars themselves constitute "storage" and, if so, whether the amount of LPG product that NGL proposes to have on site (the leased premises) at any one time complies with the limitations on gas storage set forth in Sec. 27-964(14) of the Zoning Ordinance. The Planning Director and the City Manager have asked me to make a formal use determination pursuant to Sec. 27-131 of the Zoning Ordinance regarding this issue.

While I addressed the above ground storage tank storage limitations set forth in the Zoning Ordinance in my September 11, 2015 letter to you, I did not address the rail car storage issue in that letter. (Note that I do not consider rail cars to be above ground storage tanks within the meaning of Sec. 27-1517 of the Zoning Ordinance.) The term "storage or permanent storage" is defined in Sec. 27-201 of the Zoning Ordinance as "retention on site for any period longer than twenty-four (24) consecutive hours."

I have carefully reviewed NGL's September 18, 2015 site plan application and NGL's supplemental application materials dated November 20, 2015. As I understand the specifics of NGL's proposed rail car off-loading, storage and truck loading operations from start to finish, the maximum number of rail cars that will be present on the leased premises at any one time is 16 full rail cars and 8 empty rail cars. This will be in addition to the single above ground storage tank capable of storing 24,000 gallons of LPG product. As I understand the nature of propane, it is one of a group of liquefied petroleum gases (LP gases). It exists as a liquid and a gas. It is normally a gas, but

compressible to a transportable liquid. It is considered a petroleum product, and it is either a gas or a liquid when contained in a pressurized container. Any space in a pressurized container, such as a rail car, that is not filled with liquid propane is filled with propane gas. Ten thousand cubic feet of gas is equivalent to approximately 75,000 gallons of empty liquid storage vessel capacity (1 cu. ft. gas = 7.48052 liquid gallons).

Section 27-962 of the Zoning Ordinance lists the allowed uses in the INR zoning district, which includes a storage and distribution facility as an allowed use. Sec. 27-964 of the Zoning Ordinance lists the prohibited uses in the INR zoning district, and Sec. 27-964(14) of the Zoning Ordinance provides, in part, that gas (fuel or illuminating) storage in excess of 10,000 cubic feet of gas is prohibited in the INR zoning district, with some exceptions to the prohibition included therein. It is my interpretation of the Zoning Ordinance that none of the exceptions to the Sec. 27-964(14) prohibition apply to NGL's proposed project.

Given the nature of propane as either a liquid or a gas when contained in a pressurized container, I interpret the definition of "storage" in the Zoning Ordinance in conjunction with Sec. 27-964(14) of the Zoning Ordinance's prohibition on the storage of more than 10,000 cubic feet of gas in the INR zoning district to mean that NGL is allowed to store 74,805 gallons of LPG product on site for no more than 24 hours at a time ($7.48052 \text{ gallons} \times 10,000 \text{ cu. ft.} = 74,805 \text{ gallons}$). Thus, if NGL has its one proposed above ground storage tank filled with 24,000 gallons of LPG product, that leaves 50,805 gallons of LPG product storage capacity in the rail cars available to NGL without it exceeding the gas storage limitation set forth in Sec. 27-964(14) of the Zoning Ordinance. Because NGL proposes to have as much as 504,000 gallons of LPG product (24,000 gallons [1 above ground storage tank] + 480,000 gallons [16 full rail cars \times 30,000 gallons of LPG product per rail car = 480,000 gallons] = 504,000 gallons grand total) retained on site for more than 24 hours, I hereby determine that NGL's proposed use as set forth in its September 18, 2015 site plan application does not comply with Sec. 27-964(14) of the Zoning Ordinance's 10,000 cubic feet gas storage limitation for the INR zoning district. NGL will need to amend its site plan application to comply with Sec. 27-964(14)'s storage limitation if it wants the Planning Board review process to proceed further.

To the extent that this formal use determination differs from my prior memos on NGL's proposed use from March and April of last year, this determination supersedes those two prior memos. A new site plan application was filed by NGL with the Planning Board on September 23, 2015 containing a revised proposal; additional information was submitted by NGL to the Planning Department in November of 2015; and the Planning Department has received more information on the specifics of NGL's proposed use, the technical aspects of LPG and its storage/transfer/distribution, and the regulatory scheme governing LPG on the federal, state and local level since I wrote those two memos last spring. In other words, a lot of new information has been provided to the Planning Department and me over the last 7-8 months that I had not considered last spring. This is a very complex proposed project and it has taken everyone involved a significant amount of time to understand the project and the applicable regulatory

scheme. Thank you for your patience and cooperation with Planning Department staff to date.

If NGL wishes to dispute this determination, an appeal may be filed within 30 days with the Board of Appeals pursuant to Section 27-152 of the Zoning Ordinance.

If you have any questions, please do not hesitate to contact me. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Patricia Doucette". The signature is written in dark ink and is positioned above the printed name and title.

Patricia Doucette
Director of Code Enforcement

cc: Kevin Fitzgerald, NGL Manager of Terminal Operations
Charles (Tex) Haeuser, Planning Director
Steve Puleo, Community Planner

Footnote 2

WHITEMAN
OSTERMAN
& HANNA LLP

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Albany, New York 12260
518.487.7600

Jon E. Crain
Partner
518.487.7672 phone
jcrain@woh.com

December 8, 2022

VIA EMAIL AND PERSONAL DELIVERY

Town Board of Coeymans
18 Russell Avenue
Ravena, New York 12143

Re: **Proposed Moratorium**

Dear Supervisor McHugh and Members of the Town Board:

This firm, together with co-counsel Jim Warren, represents Marebo, LLC (the “Applicant” or “Marebo”), the owner of property located at US Route 9W in the C1-P District (SBLs 156.-2-1.3 and 156.-2-1.6) (the “Property”).¹ As you are aware, the Applicant has a site plan application pending before the Town Planning Board, related to the proposed development of a trucking terminal for the distribution of propane at the Property (the “Project”). The Applicant respectfully submits this letter in opposition to the Town Board’s proposed moratorium, which seeks to unlawfully target and thwart the Project (the “Proposed Moratorium”).

- I. The Proposed Moratorium is unlawful, arbitrary, and capricious, because it targets the Project and serves no legitimate governmental purpose.

The Town Board’s authority to adopt a moratorium is limited by New York law. To constitute a valid exercise of the Town’s police powers, a moratorium must “be a reasonable, necessary, and limited response directed at redressing a genuine crisis or emergency” (*Cellular Tel. Co. v Vil. of Tarrytown*, 209 AD2d 57, 66 [2d Dept 1995] [invalidating a moratorium]). “To justify interference with the beneficial enjoyment of property,” a municipality proposing a moratorium must establish that: (1) it is acting in response to a “dire necessity;” (2) that the proposed moratorium is “reasonably calculated” to alleviate or prevent the “crisis condition,” and; (3) that the municipality is otherwise presently taking steps to rectify the crisis (*Westwood Forest Estates v Village of South Nyack*, 23 NY2d 424 [1969]; see also *Matter of Belle Harbor Realty Corp. v Kerr*, 35 NY2d 507, 512 [1974]).

¹ More specifically, Mr. Warren is land use counsel for the Applicant, and this firm is litigation counsel in connection with the Project.

Furthermore, a moratorium is only valid where it (1) has a reasonable time frame for the action to be accomplished during the term; (2) has a valid public purpose; (3) is shared substantially by the public at large and not targeting a particular property or group; (4) the municipality strictly adheres to procedure for adoption, and (5) the moratorium has a time certain when the moratorium will expire (*see* James A. Coon Local Government Technical Series “Land Use Moratoria,” available at <https://dos.ny.gov/system/files/documents/2021/09/land-use-moratoria.pdf>).

Most critically, a moratorium cannot, as the Proposed Moratorium does here, target particular landowners or land uses for the purpose of prohibiting their development absent any legitimate public benefit. “[T]he crucial factor, perhaps even the decisive one, is whether the ultimate economic cost of the benefit is being shared by the members of the community at large, or, rather, is being hidden from the public by the placement of the entire burden upon particular property owners” (*Charles v Diamond*, 41 NY2d 318, 325 [1977]). Additionally, if a moratorium applies a temporary restriction on zoning but serves no purpose other than to delay the development of property, “such a measure would have no relationship to the health, safety and welfare and would constitute an unconstitutional taking of property” (1989 N.Y. Op. Atty. Gen. [Inf.] 73, 1989 WL 435016).

The Proposed Moratorium is an arbitrary and transparent effort to target and prevent the development of the Project. The Applicant’s Project is the only pending land use application in the Town that involves the storage and distribution of liquified petroleum. Thus, the burden of the Proposed Moratorium will not be shared with the public; it will be tailored only to Marebo’s Project, which is impermissible as a matter of New York law. The timing of the Proposed Moratorium makes this conclusion undeniable. Indeed:

- Applicant submitted its site plan application for the Project on August 30, 2022.
- The Town Code Enforcement Officer determined that the Project is a permitted use in the C1P District, because it is a trucking terminal (the “CEO Determination”).
- On September 12, 2022, Applicant appeared before the Planning Board (chaired by Robert Nolan, the owner of Nolan Propane – a direct competitor of Applicant and friend of Supervisor McHugh) and presented its Project.
- On October 4, 2022, Supervisor McHugh filed an appeal to the Town ZBA, challenging the CEO Determination, and arguing that the Project is not a “trucking terminal,” but rather a gasoline station (permitted only in residential districts). A copy of the appeal is enclosed.
- On November 14, 2022, a public hearing was conducted by the ZBA on Supervisor McHugh’s appeal. At that meeting, our co-counsel, Mr. Warren, made clear that the CEO Determination was correct and the Supervisor’s appeal should be denied.
- At the very next Town Board meeting, on November 21, 2022, Supervisor McHugh proposed the Moratorium, which specifically halts the processing of applications for land uses related to the storage of propane – i.e., the exact land use proposed by the Project.

The conclusion is inescapable: after it became clear that the Supervisor's appeal lacks legal merit, the Supervisor proposed the Moratorium, which prevents the ZBA from deciding his appeal for three months, thus buying him and Mr. Nolan time to change the law to stop the Project.

The draft Moratorium itself makes clear that it is not intended to serve any legitimate public or government purpose. The "Legislative Purpose" section of the Moratorium makes a conclusory and blanket assertion that the "[c]urrent laws and regulations regarding such uses, if any, are inadequate for the protection, order, conduct, safety, health and well-being of persons or property within the Town." The Town Board also claims, without support and in conclusory fashion, that the Moratorium is necessary "to prevent serious public harm," and to further ensure that uses related to the storage of liquified petroleum gases are not located on "lots without adequate quantity, dimensional, safety and other regulations in place, including but not limited to risks associated with fire and explosion."

These findings are conclusory and unsupported. The Town Board has not explained how the Town's current laws and regulations with respect to uses related to the storage of liquified petroleum (like Marebo's proposed trucking terminal) are inadequate for the protection of the public, nor identified what "serious public harm" will result absent a moratorium on development. Indeed, the Town's site plan requirements, which the Project is subject to, very clearly set forth numerous review elements and criteria that the Town's Planning Board is permitted to consider in reviewing uses that propose the storage of petroleum gas, such as "pedestrian safety," "fire protection equipment," "impact of the proposed use on adjacent land uses," and "effects of smoke, noise, glare, vibration, odors and/or other noxious and offensive conditions" (*see* Town Zoning Code, Section 136-6). The Town Planning Board, where appropriate, is also permitted to ascribe reasonable conditions on proposed uses in furtherance of these elements.

The Town Board's contention that "land uses related to the storage of liquified petroleum gases" might be located in "unsuitable areas" is, frankly, absurd. The Town revised its Comprehensive Plan as recently as 2020. In its Comprehensive Plan, the Town Board specifically recognized that the C-1P district where the Project is proposed "is a special planned commercial zone that allows" industrial uses, including uses that contemplate the storage of liquified petroleum gases, such as "automatic service facilities," "trucking terminals," and "public utility facilities." If the Town had genuine concerns regarding the location of uses involving the storage of petroleum gases, it would not have specifically zoned and planned the C-1P district to embrace such uses in the first place.

The Town Board's comments during its November 21 meeting further confirm that it is not seeking to address any legitimate health or safety concerns associated with the storage of liquid petroleum. Instead, the Town Board explicitly acknowledged that it is simply using the Proposed Moratorium as an opportunity to define the term "trucking terminal" – which is, conveniently, Marebo's proposed use – in the Town Zoning Code for the first time, for the transparent purpose of creating a definition that would prohibit the development of the Project.

II. The public opposes the Proposed Moratorium.

Residents of the Town overwhelmingly oppose this Moratorium. Enclosed herewith is a Petition bearing over 200 signatures of residents of the Town and surrounding areas, all of whom oppose the Proposed Moratorium, and believe strongly that “Our local government officials should not use their positions to advance their own personal business interests, especially when doing so would prevent job creation within the Town and hinder competition that benefits the community.”

The Town Board represents Town residents, and, given the overwhelming opposition to the Proposed Moratorium, should not adopt the Moratorium.

III. The Proposed Moratorium is tainted by the Supervisor’s conflict of interest, and therefore would be annulled by the courts as arbitrary and capricious if adopted.

As you are undoubtedly aware, the Project is opposed by a small group of local Town officials. This notably includes the Town Supervisor, who chairs this Board. The Town Board nonetheless proposed the Moratorium, which directly impacts the Supervisor’s pending appeal, and in fact is transparently intended to prevent a decision denying that appeal.

It is well established that, where a board member fails to recuse himself despite a conflict of interest, that conflict of interest may be imputed to the entire board and presents a basis for annulment of any action taken by the Board. Indeed, New York courts have recognized that “the appearance of bias and actual bias . . . require annulment” of a land use determination (*see, e.g., Schweichler v Vil. of Caledonia*, 45 AD3d 1281, 1284 [4th Dept 2007] [annulling planning board’s site plan determination due to bias of board members]; *see also Matter of Zagoreos v Conklin*, 109 AD2d 281, 287 [2d Dept 1985]). This includes where board members appear to “impermissibly prejudice” an application or “manifest actual bias” by taking a public position in favor of or against a project (*id.*; *see also Zagoreos*, 109 AD2d at 287).

The Town Supervisor failed to recuse himself from this matter. Instead, he was responsible for proposing this Moratorium and placing it before the Board for consideration. The Moratorium is simply the latest effort to perpetuate a local government campaign against the Project. Where, as here, the premise of a moratorium “is not to promote the comprehensive zoning plan of the community, but simply to further the interests of particular groups opposed to [a] particular development,” it is not a reasonable exercise of the locality’s authority (*Unanue v Town of Gardiner*, 105 AD2d 1025, 1027 [3d Dept 1984] [emphasis added]).

The Supervisor’s failure to recuse himself has tainted the entire Board, rendering any decision to adopt the Proposed Moratorium unlawful. At a minimum, the Town Supervisor must recuse himself from any proceedings moving forward, as his ZBA appeal disqualifies him from acting with respect to the Moratorium (*see* 1988 Ops. Atty. Gen. 88-59 [holding that opposition to a proposed project should disqualify the individual from acting as a member of a board with respect to the project]; *see also* 1988 Ops. Atty. Gen. 88-60 [holding that a project opponent must recuse himself from participating in any board proceedings on the application]).

WHITEMAN OSTERMAN & HANNA LLP
Crain to Coeymans Town Board, December 8, 2022
Page 5 of 5

For the foregoing reasons, Applicant requests that the Town Board decline to adopt the Proposed Moratorium. Applicant reserves all remedies at law and in equity.

Respectfully Submitted,

s/Jon E. Crain

Jon E. Crain

Enclosures

Enclosure 1

TOWN OF COEYMANS

Zoning Board of Appeals

Robert Nolan, Chairman

18 RUSSELL AVENUE

RAVENA, NEW YORK 12143

Office: (518) 756-2850

Fax: (518) 756-9257

Application for an Appeal

Date: 10/04/2022

Appeal concerns property at the following address:

Tax Map: 156. Block: -2- Lot: 1.3; 1.6 Application # _____

Name: 156. GEORGE D. McHUGH, TOWN SUPERVISOR
-1- 6.2; 6.3

Property Location: US ROUTE 9W, (COEYMANS) RAVENA, NY 12143
City State Zip Code

Mailing Address: 18 RUSSELL AVE RAVENA, NY 12143

Applicant (If Different): FLACH PROPERTIES, LLC, P.O. Box 295, SELDEN, NY 12158
AND ON MIRABEAU APPLICATION City State Zip Code

Is the Property owned by the Applicant? ☒ YES ☐ NO

>>>> IF NO, PLEASE COMPLETE AND ATTACH THE REQUIRED CONSENT OF AUTHORIZATION FORM. <<<<

Date of Code Enforcement Officer's decision: 8/30/2022

Relevant section(s) of zoning code: 165-20 NINH

Code Enforcement Officer's decision being appealed: THE CEO INCORRECTLY
CHARACTERIZED THIS APPLICATION AS A "TRUCK TERMINAL", NEEDING ONLY
A SITE PLAN REVIEW. THIS APPLICATION REQUIRES A USE VARIANCE.

What is the basis of your appeal (DESCRIPTION): PLEASE SEE ATTACHED.

Signature: George D. McHugh, TOWN SUPERVISOR Date: 10/04/2022

Town of Coeymans
Application for an Appeal
October 4, 2022

The basis of this appeal is as follows: The subject parcels lie within the Planned Commercial (C-1P) Zoning District of the Town of Coeymans, and admittedly, "Trucking Terminals" are a Principal Use within this district. However, bulk fuel storage and distribution is neither a principal use nor is it an accessory use or permissible use upon issuance of a Special Permit. The Applicant has characterized the subject application as one for a Trucking Terminal, which is not defined in the Coeymans Code. However, in legal dictionaries, the term Truck Terminal is defined as 1. *"A building, structure or place where, for the purposes of a common carrier, trucks or transports are rented, leased, kept for hire, or stored, or parked for remuneration or from which trucks or transports are dispatched."* 2. *"A building, structure or land where trucks and/or tractor trailers are rented, leased, or stored, or are dispatched for hire as common carriers."* 3. *"A warehouse and distribution facility where trucks and trailers are parked or stored as a principal use."* 4. *"A principal use of land or building where there are dock facilities for trucks, either partially enclosed or unenclosed, for the purposes of transferring goods or breaking down and assembling tractor-trailer transport."* And although there are several other similar definitions for "Truck Terminal" that can be found, I have found no definition that would include bulk fuel storage and distribution in the definition of Truck Terminal.

The Coeymans Code does allow for "Gasoline Stations", as Permissible upon issuance of a Special Permit in both Residential and Agricultural (R-A), Residential Agricultural Limited (R-A1), and General Business (B-1) zoning districts, insinuating that "fuel" and "fuel stations" were certainly considered when the Zoning Ordinance was adopted. It is reasonable to conclude that a bulk fuel storage and distribution facility could have a nexus to a "Gasoline Station", but it is not reasonable to conclude that a bulk fuel storage and distribution facility is somehow the same as a Truck Terminal, when nowhere does the definition of Truck Terminal reference fuel, fuel storage, or fuel distribution. Without a reasonable nexus, the Code Enforcement Officer cannot reasonably conclude that this application is for a Truck Terminal, and allow this application to move forward as a Site Plan review instead of a Use Variance application, simply because the applicant chooses to call it a Truck Terminal for expediency purposes. By doing so, this board, as well as the public at large, loses the protections, due process, and the scrutiny afforded it under the process by which a Use Variance guarantees.

I would like to turn the Board's attention to my email communication with the Code Enforcement Officer dated October 3, 2022, at which time I asked him to provide me with any written determination or reasoning behind his decision to classify this application as a "Truck Terminal", and allow this application to move forward under a site plan review. His response, as you can read, simply states that he *"reviewed the application and researched the principle use of a C1-P zone. All principle uses are required for a site plan review."* Did the Code Enforcement Officer ever Google the term "Truck Terminal" to see exactly how it was defined? Had he done so, he would have quickly realized that storing 60,000 gallons of highly flammable and combustible liquid propane on site, then distributing this fuel to residential and commercial customers does not fit into any reasonable definition of "Truck Terminal" simply because you use trucks to receive the fuel and deliver the fuel. And as if this was not enough, to show that this application is for a bulk fuel storage and distribution facility rather than a Truck Terminal, the

applicant filed with the Code Enforcement Officer a "Fire Safety Analysis Manual for LP-Gas Storage Facilities", based on the 2014 Edition of FPA 58 Liquid Petroleum Gas Code. This submission is not indicative of a Truck Terminal, but rather suggests that the primary purpose of this application is for the siting of a bulk fuel storage and distribution facility, in particular, a propane storage and distribution facility, which requires approval of a use variance prior to conducting a Site Plan review.

For the reasons stated above, I respectfully request that this board grant my appeal, and instruct the applicant to make application for a Use Variance, given that this application seeks approval for a Propane Fuel Storage and Distribution facility, which is not a principal, allowable, or permitted use in this zoning district, and cannot be reasonably interpreted to be included in the principal use of a Truck Terminal. Thank you for your time and attention to this important matter.

Enclosure 2

PETITION OPPOSING LOCAL LAW TO ESTABLISH MORATORIUM

The residents of the Town of Coeymans and surrounding towns **strongly oppose** the proposed Town of Coeymans Local Law to authorize the establishment of a three (3) month moratorium to temporarily halt the processing and issuing of any applications, permits, certificates of occupancy, approvals, denials, determinations or interpretations for any land uses relating to the storage of liquified petroleum gases (the "Proposed Moratorium").

The Proposed Moratorium serves no legitimate government purpose. Instead, it is a transparent effort by certain Town officials to prevent the development of a specific project proposed by Long Energy, which is a competitor of a planning board member's propane business. Our local government officials should not use their positions to advance their own personal business interests, especially when doing so would prevent job creation within the Town and hinder competition that benefits the community.

We, the undersigned, residents of the Town of Coeymans and surrounding towns, have personally signed this Petition. Our residence addresses are correctly written after our names.

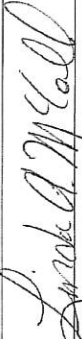
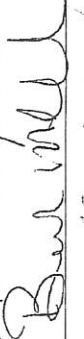


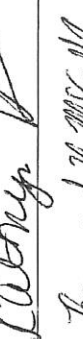



Print Name	Signature	Current Address	Date
Amada Leonardo	<i>Amada Leonardo</i>	8 Magnolia Cir. Ravenna	11/30/22
K. LEONARDO	<i>K. Leonardo</i>	8 MAGNOLIA CR. RAVENNA	11/30/22
D. OLMEIDA	<i>D. Almeida</i>	10 MAGNOLIA CR RAVENNA	11/30/22
E. OLMEIDA	<i>E. Almeida</i>	10 Magnolia CR Ravenna	11/30/22
Pete Barfried	<i>Pete Barfried</i>	1 Magnolia CR Ravenna	11/30/22
Kimberly Snyder	<i>Kimberly Snyder</i>	9 Magnolia Circle Ravenna	11/30/22
Joseph Snyder	<i>Joseph Snyder</i>	9 Magnolia Circle Ravenna	11/30/22
Lynn Smith	<i>Lynn Smith</i>	14 Magnolia Cir Ravenna	11/30/22

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Print Name	Signature	Current Address	Date
Linda A. McCall		208 Old Ravenna Road Selkirk, NY 12158	12/3/22
Bernard McCall		208 Old Ravenna Rd. Selkirk, NY 12158	12/3/22
Mary Ann McCall		55 South Avenue Selkirk, NY 12158	12/3/22
Ryan J McCall		208 Old Ravenna Rd., Selkirk, NY 12158	12/4/22
Kate Holmen		62 Wenden Street Ravenna, NY 12143	12/7/22
Bernard McCall Jr.		62 Wendell St. - Ravenna, NY 12143	12/7/22
Gary Rusik		57 Lasher Rd Selkirk NY 12158	12/7/22
Susan McQueen		138 Main St New Baltimore	12/8/22

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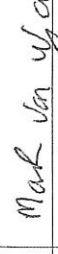




Print Name	Signature	Current Address	Date
Mike Zakens	Mike Zakens	1255 River Rd Selkirk	12/6/22
ED HENION	Ed Henion	30 LETSUPPER LN. SELKIRK NY	12/6/22
Mike Zakens	Mike Zakens Jr	1255 River Rd	12-7-22
Susan Zakens	Susan Zakens	1255 River Rd-Selkirk, NY	12-7-22
Jessie Leonard	Jessie Leonard	16 old School Rd Selkirk NY	12-8-22
James Shear	James M Shear	4 Edna Ave Ravenna NY	12/8/22
Jeanne Diernacki	Jeanne Diernacki	359 Shady Ln Coeymans Hollow NY	12/18/22

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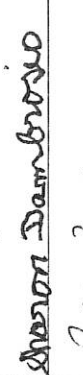
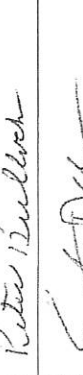

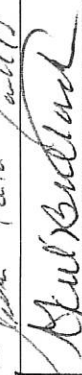

Print Name	Signature	Current Address	Date
Hugh Stenith		116-11 Rd New Baltimore NY 12124	12-5-22
J.R. Ingraham		1373 Acqueduct Rd Ravena NY 12143	12-5-22
Mark VanWarmer		12223 Rt 9W West Coxsack N.Y. 12192	12-5-22
G. Empie		660 Kings Road Hennepoer NY 12087	12/5/22
Paul J. Davis		60 GILL Rd New Baltimore NY 12124	12/5/22
Paul Foster		14004 Rt 9W New Baltimore	12/5/22
James June		15 Wthe Blvd. Coeymans NY 12095	12/5/22

PETITION OPPOSING LOCAL LAW TO ESTABLISH MORATORIUM

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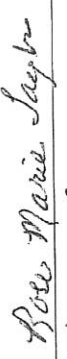
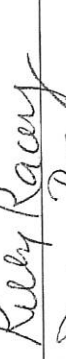
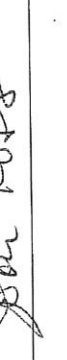
Print Name	Signature	Current Address	Date
Rudolph E. Bialosky		43 Dempster St Ravenna NY 12143	Dec 1
Santana Wade		14 Western Ave Ravenna NY 12143	12/14/22
Kyleen J. Dambrosio		59 Wendell St Ravenna NY 12143	12/16/22
Sharon Dambrosio		17 Summit Terrace, Ravenna NY 12143	12/16/2022
PETER BULLOCK		18 Summit Ter Ravenna, NY 12143	12/16/2022
Scott Dambrosio		59 Wendell St Ravenna NY 12143	06 Dec 2022
Juan Castillo		45 Dempster St Ravenna NY 12143	12/17/22
Eric Bullock		18 Summit Ter. Ravenna, NY 12143	12/17/22

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Print Name	Signature	Current Address	Date
Charles Mike		342 Maple Ave Seneca	12/7/22
Charles Mike		621 St Rt 144 Seneca	12/7/22
Gerald Gerald		621 St Rt 144 Seneca	12/7/22
THOMAS NIEL		38 WHITEHEAD ST. SECT 12, NY	12/7/22
Rose Marie Taylor		44 Woodlawn Dr. Seneca	12/7/22
Kelly Racey		35 Wenden-Vue Dr. Seneca NY	12/7/22
JOAN ROSS		36 MADISON AVE. EAST. NY	12/7/22

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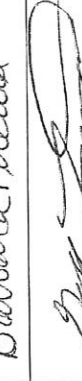
Print Name	Signature	Current Address	Date
Dawn LaMountain	Dawn LaMountain	71 Kinley Rd Selkirk NY 12158	12/6/22
Braet Hotelling	Braet Hotelling	Main St Ravenna NY	12-6-22
Ken Robertson	Ken Robertson	440 CR III Hannacroix NY 12084	12/7/22
Evelyn Stone	Evelyn Stone	459 W. Deans Mill Rd, W. Coeymans, NY 12192	12/7/22
Bob Waple	Robert Waple	14 W. Ave., Ravenna, N.Y. 12143	12/7/22
Annette Demitraszek	Annette Demitraszek	10 Hillcrest Drive, Ravenna, NY 12143	12/7/22
Linda Muller	Linda Muller	56 Western Ave Ravenna NY 12143	12/7/22
Joan Mims	Joan Mims	372 Maple Ave	12/7/22

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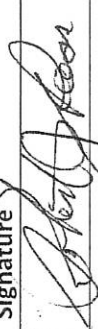







Print Name	Signature	Current Address	Date
Jennifer Jaskolka		188 Bushendorf Rd, 12143	12/5/22
Joe Jaskolka		188 Bushendorf Rd, 12143	12/6/22
Alex Hopkins		82 Main St 12041	12/6/22
Bill Taylor		5 BEEZARDE TERRACE 12143	12/7/22
RONALD RACEY		35 Wonder Vue Ravenna 12143	12/7/22
Barbara Perinai		1079 River Rd. Selkirk 12158	12/7/22
George LaMountain		71 Kinley Rd Coeymans	12-7-22

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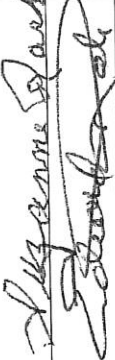


Print Name	Signature	Current Address	Date
Robert J Ross		36 Madison Ave East New Baltimore NY 12124	12/7/22
Alicia Nieves		25 Willis Ave Ravena NY 12143	12/1/22
NANCY NEWKIRK		51 MAPLE AVE SELKIRK	12/7/22
Blon Newkirk		51 Maple Ave Selkirk	12/7/22
Cindy Rowzee		25 Orchard Ave Ravena NY 12143	12/7/22
Bryan Rowzee		25 Orchard Ave RAVENA NY 12143	12-7-22
Heather Mahar		10 John Street Selkirk NY 12158	12/8/22
Mike Mahar		10 John Street SELKIRK NY 12158	12/8/22

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Print Name	Signature	Current Address	Date
Sozawase Rash		99 Annabelle Rd Albion	12/7/22
Edward Rash		" "	
ROSEMARY COURT		6 Bleeckend Ter Buena	12/18/2022
Brian Swier	B Swier	1 Country Manor TP Voorhees	12/18/22
Geo, Boyd	George C. Boyd	213 The Lane	12/8/22
Robert Galgana	Robert Galgana	753 Clarksville SW Rd. Clarksville NY 12041	12/8/22
Tracy L. Millett	Tracy L. Millett	17 Four Seasons, Ravena, NY 12143	12/8/22

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Print Name	Signature	Current Address	Date
Carolee Colcan	<i>Carolee Colcan</i>	5250 Rte 312 Coeymansville, NY 12041 (Town of Coeymans)	12-6-22

DECLARATION OPPOSING LOCAL LAW TO ESTABLISH MORATORIUM

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Print Name	Signature	Current Address	Date
Dawn Keppeler	Dawn Keppeler	704 Canaday Hill Rd Berne NY 12023	12/6/22

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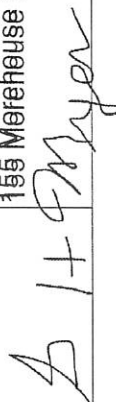
Print Name	Signature	Current Address	Date
JoAnn Morse	JoAnn Morse	420 County Route 111, Hennacroix, NY 12067	12/5/22

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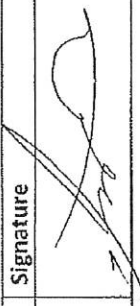
Print Name	Signature	Current Address	Date
Gregory Myer		155 Morehouse Rd Ravena NY 12143	12/2/2022

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Print Name	Signature	Current Address	Date
Randy Lent		13640 rte 9w hannacroix ny 12087	12/2/22

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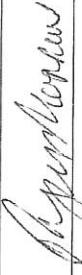

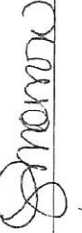





Print Name	Signature	Current Address	Date
Philip Primeau	Phil Primeau <small>Digitally signed by Phil Primeau Date: 2022.12.02 14:37:44 -05'00'</small>	163 Dugway Ln Hannacroix, NY 12087	12/2/22

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Rita Morrow		29 Beck Road (Coeymans Town)	11-30-2022
Jo Morrow		18 EDNA AVE, Ravena	11-30-22
Sarah Morrow		18 Edna Avenue, Ravena	11/30/2022
Virginia Morrow		Church St Coeymans	11/30/22
JUDITH CLOUSE		14 CLOUSETERR. COEYMAN	11/30/22
Roy, Elvis		7 MAGGOLIA CIR Ravena	11/30/22
Pete Wilson		3 Magistrate Cir. Ravena	11/30/22
Lon Barfield		1 Magnolia Cir Ravena	11/30/22

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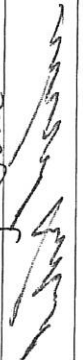



Print Name	Signature	Current Address	Date
Audra Marie Vagstad	<i>Audra Marie Vagstad</i>	48 Rocky Rd in Coeymans	12/1/22
Audra Vagstad	<i>Audra Vagstad</i>	24 Rocky Rd in Coeymans	12/1/22
Alison Dyken	<i>Alison Dyken</i>	103 Main St Ravena	12/1/22
Sandy Fastert	<i>Sandy Fastert</i>	8 Hillcrest Dr. Ravena	12/1/22
ANNE MARSHALL	<i>Anne Marshall</i>	49 Hillcock Ave TAPPA	12/2/22
Torrey Morse	<i>Torrey Morse</i>	27 Greenbush Ave Coeymans Hollow	12/2/22
Diane Fisher	<i>Diane Fisher</i>	5 Bleeker Terrace Ravena	12/2/22
ISMA Y RAYNE	<i>Isma Y Rayne</i>	1363 SR 143 Coeymans Hollow, NY	12/2/22

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Glenda Ottaviano		27 Nolan Rd Ravena, NY 12143	12-2-22
Sean Dawes		68 Star Rd. Ravena 12143	12/3/22
Herb Traver		14 First St Coeymans NY 12045	12/6/22
JANET A BROOKS Janet Brooks		PO BOX 111 963 SE 144 NEW BALDWIN RE NY 12124	12/6/22
George June		154th Blvd. Box 918 Coeymans NY 12045	12/6/22
		2285 First St Ravena NY 12143	12-6-22
John Dettino		41 Deyo Rd Albany NY 12007	12-6-22
Terrence A. Zampella		130 Whitbeck Rd. Coeymans Hollow	12-6-22

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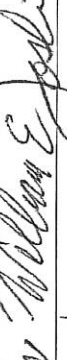

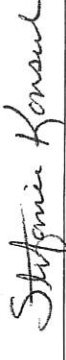
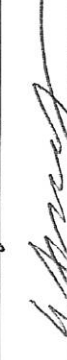

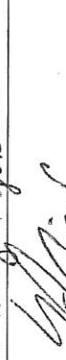
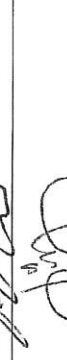
Print Name	Signature	Current Address	Date
Kathleen Rice		32 Church St Coeymans	12/5/22
Daniel W. Touchette		32 Church St. Coeymans.	12/5/22
Ellen O'Connor		191 Main St. Ravena NY	12/5/22
Patrick Farrell		32 James Drive	12/5/22
Harriet Mayde		110 Main St. Ravena, NY	12/5/22
Frank Golen		102 FARES RD RAVENNA NY	12/5/22
DANIEL W. DEGEN		149 RARICK RD SELKIRK	12/5/22
PAUL McQUADE		23 SCHUYLER AVE, RAVENNA, NY 12143	12/5/22

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Print Name	Signature	Current Address	Date
Max Ann Long		1 Laurel Lane Ravena	12/6
William Joseph		1 Main St Ravena	12/6
Stefanie White		30 Frankella Dr Coeymans	12/10
Stefanie Konsul		29 Russell Ave.	12/6
WJ Misuraca		2212 RT 9W Ravena	12/6
Molly W. Jenkins		142 Whitbeck Rd. Coeymans Hollow, NY	12/6
Eric Norris		1370 Aguehuk Rd Ravena NY	12/6
Elizabeth Johnson		46 Main St Apt 1 Ravena NY	12/6

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Print Name	Signature	Current Address	Date
CAROLE F. BROWN	Carole F. Brown	52 Wendell St. Ravena	12/6/22
Fran Frangella	Fran Frangella	29 Sparc Rd Ravena	12/06/22
CAROL J. FULLUM	Carol J. Fullum	39 McEulbeck Ave, Ravena	12/06/22
HELEN KATTARAKIS	Helen Kattarakis	424 E Honey Hollow Rd Catskill, NY	Dec 6, 22
FRED GROBER	Fred Grober	15 John St., SEAKIRK, NY	12-6-22
Dolores Storey	Dolores A Storey	239 US 126 W Ravena NY	12-6-22
ROBERT HERMAN	Robert Herman	50 Mountain Road, Ravena, NY	12-6-22

PETITION OPPOSING LOCAL LAW TO ESTABLISH MORATORIUM

The residents of the Town of Coeymans and surrounding towns **strongly oppose** the proposed Town of Coeymans Local Law to authorize the establishment of a three (3) month moratorium to temporarily halt the processing and issuing of any applications, permits, certificates of occupancy, approvals, denials, determinations or interpretations for any land uses relating to the storage of liquified petroleum gases (the "Proposed Moratorium").

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Print Name	Signature	Current Address	Date
Patricia Ann Feuerbach	<i>Patricia Ann Feuerbach</i>	1671 River Rd Seltirk, N.Y. 12158	12/6/22
FELTER EDWARD	<i>Edward L. Felle</i>	415 MITH AVE. SEELICK, N.Y. 12158	12/6/22
frances Boehlke	<i>frances Boehlke</i>	312 ALCORE Rd Coeymans Hollow NY 12046	12-6-22
EUGENE IRVING	<i>Eugene Irving</i>	PO Box 74 New Baltimore	12-6-22
Elyse KUNZ	<i>Elyse</i>	52 main St Coeymans, NY	12-6-22
Donna Conners	<i>Donna Conners</i>	42 James Dr. Coeymans NY	12-6-22
MICHAEL CONNERS	<i>Michael Conner</i>	42 JAMES DR. COEYMAN, NY	12-6-22

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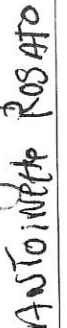
Print Name	Signature	Current Address	Date
CARMEN BRANGELLA	<i>Carmen Brangella</i>	29 Sparrow Rd Ravena NY	Dec 2, 22
Ron LeChoir	<i>Ronald L. LeChoir</i>	1 White Birch W Coxsack, NY	Dec 2, 2022
DANIEL BRONER	<i>Daniel A. Broner</i>	212 Bleckman RD. Ravena NY 12143	12/2/22
Lisa Rossman	<i>Lisa Rossman</i>	208 Bleckman Rd Apt 5 Ravena N.Y. 12143	12/2/22
Jonathan Mahon	<i>[Signature]</i>	4 Hobbie Ln, Schert NY 12158	12/2/22
Joy Infante	<i>[Signature]</i>	792 Bridge St Selkirk NY 12158	12/2/22
Kyo Brannack	<i>Kyo Brannack</i>	12 Agnew Ct. Ravena 12143	12/2/22

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Print Name	Signature	Current Address	Date
Anne Babcock		5 Edna Ave Ravena, NY 12143	11/30/22
Jason Babcock		5 Edna Ave Ravena, NY 12143	11/30/22
Debbie Arnold		3 Edna Ave Ravena, NY 12143	12/1/22
Bridget Engelhardt		21 Church St., Coeymans, NY 12045	12/1/22
Roz Dambrosio		19 Pulver Ave Ravena, NY 12143	12/1/22
Jeff Dambrosio		19 Pulver Ave Ravena, NY 12143	12/1/22
Chelsey Moore		46 Wendell St. Ravena, NY 12143	12/1/22
Antonia Rosato		2393 Rt 9W, Ravena, NY 12143	12-6-22

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Print Name	Signature	Current Address	Date
Nicholas Dottino		10 McConnell Ave, Raven NY 12143	12/3/22
Stephen Deitz		1101 Palmer Dr.	12/3/22
Don Hoffman		46 Main St Coeymans	12/3/22
W. Perrier		2111 RT 9 W.	12-3/22
Connor Lisson		9 Westerlo St. Coeymans	12/3/22
Herb Masilio Sr.		588 Monmouth Rd. Ravena	12/4/23
Nancy Turner		204 Main St, Ravena	12-1-23

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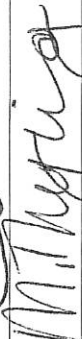
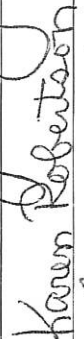

Print Name	Signature	Current Address	Date
Rebecca Rosano		189 New Balt. Rd. West Coeymans, NY	12/3/22
Thomas Rosano		189 New Balt. Rd. West Coeymans, NY	12/3/22
Sam Vick		89 Woodlawn Dr. LAUCUA NY 12143	12/3/22
Deborah Ostrom		60 Cirill Ave Coeymans, NY	12/3/22
Donna Pelton		24 Clapper Rd Selkirk NY 12158	12/3/22
Mike Pelton		24 Clapper Rd Selkirk NY	12/3/22
Roberto Gonzalez		31 Hannacroek Dr	12/3/22
Michael Barbock		87 Magnolia Circle Runkles, NY	12/3/22

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Print Name	Signature	Current Address	Date
Phyllis J Kertz		17 MAIN ST. RAVERA NY 12143	12-2-22
Tony Riccardi		37 HOLAN RD RAVERA NY	12/2/22
CATHY RICCARDI		" " " "	
James Leone		33 Dempster St Raveria NY	12-3-22
Melanie Hyring		67 Deans Mill Rd Raveria	12-3-22
Karen Robertson		425 CR III, HANNACROIX	12-5-22
Charles F. Stumpf		31 Church St. Coeymans NY	12-5-22

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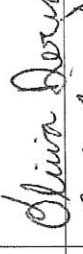



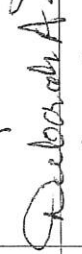

Print Name	Signature	Current Address	Date
MARK WILLIAMS	<i>Mark Williams</i>	26 HURCEST DR., RAVENNA NY	12/1/22
BRIAN JONES	<i>Brian Jones</i>	11 REMLEY LN WESTERVA NY 12193	12/1/22
David Westervelt	<i>David Westervelt</i>	27 HILLCREST DR RAVENNA NY	12/2/22
Patti Westervelt	<i>Patti Westervelt</i>	27 HILLCREST DR RAVENNA NY	12/2/22
Cherie Dottino	<i>Cherie Dottino</i>	54 Blaisdell Ave Coeymans NY	12/2/22
Charles Burns	<i>CRB</i>	24 Harris Ave RAVENNA, NY	12/2/22
ERIC DAREI	<i>Eric Darei</i>	1047 DENNIS MILL RD. RAVENNA, NY	12/3/22

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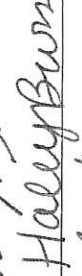




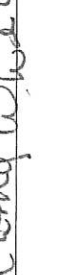
Print Name	Signature	Current Address	Date
Alan Derway		49 Church St Coeymans 12045	12/3/22
Thomas Rosario		189 New Baltimore Rd New Baltimore 12042	12/3/22
Olivia Derway		49 Church St Coeymans NY 12045	12/3/22
Adelina Deyo		29 Harris Ave Ravena NY 12143	12/3/22
RYAN WILLIAMS		49 MAIN STREET RAVENA NY 12143	12/3/22
Lynne Wallace		189 New Baltimore Rd, New Baltimore 12042	12/3/22
Debbie Davis		60 Gill Rd, New Baltimore NY 12045	12/3/22
JAMIE DAVIS		3801 County Route 51 Hannacrois NY 12047	12/3/22

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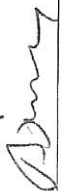

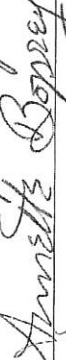




Print Name	Signature	Current Address	Date
JACKY BABCOCK		87 Magnolia Cir Ravena, NY	12-3-22
HALEY BURNS		35 WILLIS AVE Ravena NY	12/3/22
Brianna Smith		14 Magnolia Circle Ravena, NY	12/3/22
Rose Gladney		28 Westerlo St Coeymans NY	12/3/22
ROBERT DOMANICO		46 CHURCH ST, COEYMAN'S NY	12/3/22
Sharon Thurg		39 Church Street Coeymans NY	12/3/22
Cathy Wheat		Church St Coeymans	12/3/2022

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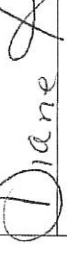

Print Name	Signature	Current Address	Date
Guy S. Persico		72 WENDELL ST	12-2-22
Brian D. Murray		41 Parker Rd Selkirk NY 12158	12-2-22
Christopher Boprey		46 Central Avenue Ravena, NY 12143	12/2/22
Annette Boprey		46 Central Ave Ravena NY 12143	12-2-22
Virginia F. Croppsey		49 Cavell Rd, Ravena NY 12143	12-2-22
Andy Prior		9 John St. Coeymans NY 12045	12-2-22
Susan S Meyers		47 Dempster St Ravena NY 12143	12-2-22
John D Meyers		47 Dempster St Ravena NY 12143	12-2-22

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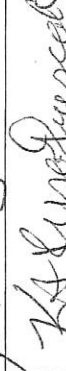
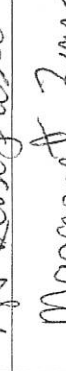

Print Name	Signature	Current Address	Date
Linda Osine		29 Dempster St Ravena NY 12143	12/2/22
Steve Bremacchi		12 CYNTHIA CT RAVENIA 12143	
Gabriel Amoroso		14 First St. Coeymans, NY 12045	12/2/22
Joseph Ambrose		14 First Coeymans NY 12045	12/2/22
Wynne Shackleton		6 Hillcrest Dr. Ravena, NY 12143	12/2/22
Diane Hoffman		2 Laramie Dr. Ravena NY 12143	12/2/22
Judith Sylvester		124 Morehouse Rd Ravena NY 12143	12/2/22

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Tina L Burns		645 SR 143 Ravena	12/1/22
Kenneth A Burns		1645 State Route 148 Ravena	12/1/22
Nicole M Lessner		17 first St Coeymans NY	12/1/22
John F. Driscoll Jr		46 McElloch Ave Ravena NY	12/1/22
Kimberly H. Driscoll		46 McElloch Ave Ravena NY	12/1/2022
M Zinzow		24 Kru ger RD Seitzirk	12/1/2022
Bela McNeilly		109 Winnie Ave Ravena	12/1/22

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Edward Smith		14 Magnolia Circle Ravena N.Y.	11/30/22
Catherine Zerkens		4 Laurel Ln Apt B Ravena NY	11/30/22
Marcia Blakesley		43 Dempster St Ravena, N.Y.	11/30/22
Kew Dottino		54 Skisdel Ave Coeymans N.Y.	11/30/22
Julie Cross		96 Main St Ravena, NY	11/30/22
Ryan Cross		96 Main St Ravena NY	11/30/22
John Biernacki		42 Rupert Rd, Selkirk NY	12/1/22