

Wilson, Elser, Moskowitz, Edelman & Dicker, LLP
Attorneys for Petitioner/Plaintiff
Attn: John M. Flannery
Fax: (914) 323-7001

SEP #17

RECEIVED

JUN 27 2014

CHIEF CLERK
WESTCHESTER SUPREME
AND COUNTY COURTS

At an Individual Assignment Part ___ of the
Supreme Court of the State of New York,
held in and for the County of Westchester at
the Courthouse located at 111 Martin Luther
King, Jr. Blvd., White Plains, New York, on
June 30, 2014

P R E S E N T :

HON. Joan B. Lefkowitz
Justice of the Supreme Court

----- X
GREENTREE REALTY, LLC,

Petitioner/Plaintiff,

- against -

THE VILLAGE OF CROTON-ON-HUDSON, THE
VILLAGE BOARD OF TRUSTEES OF THE VILLAGE
OF CROTON-ON-HUDSON, THE VILLAGE OF
CROTON-ON-HUDSON ZONING BOARD OF
APPEALS, and DANIEL O'CONNOR, in his official
capacity, as the VILLAGE BUILDING INSPECTOR,

Respondents/Defendants.
----- X

Index No. 05-11872

**ENVIRONMENTAL
CLAIMS PART**

Assigned Justice:

Hon. Joan B. Lefkowitz

ORDER TO SHOW CAUSE

FILED
SEP 23 2014
TIMOTHY C. IDONI
COUNTY CLERK
OF WESTCHESTER



Upon reading and filing the Affirmation of John M. Flannery, dated June 27, 2014 and
the exhibits annexed thereto;

LET the respondents/defendants, the Village of Croton-on-Hudson, the Village Board of
Trustees of the Village of Croton-on-Hudson, The Village of Croton-on-Hudson Zoning Board
of Appeals, and Daniel O'Conner, in his official capacity, as the Village Building Inspector
(collectively, the "Village") show cause before this Court, at the Courthouse located at 111
Martin Luther King Jr., Blvd., White Plains, New York on the 21st day of July, 2014 at 9:30

o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, why an order should not be entered granting the following relief:

- a) Pursuant to CPLR § 3126, striking the answer of the Village for its blatant failure to provide routine discovery demanded by petitioner/plaintiff, Greentree Realty, LLC; or in the alternative,
- b) Pursuant to CPLR § 3126, precluding the Village from offering evidence at the time of trial; and,
- c) Granting such other and further relief as this Court deems just and equitable in the circumstances.

SUFFICIENT reason appearing therefor, let service of a copy of this Order upon the Village by its counsel, MIRANDA SOKOLOFF SAMBURSKY SLONE VERVENIOTIS LLP, 240 Mineola Boulevard, Mineola, New York 11501, together with the papers upon which it was granted, via overnight delivery on or before July ^{2nd}, 2014, be deemed good and sufficient.

NO APPEARANCE IS REQUIRED ON THE RETURN DATE; THE INSTANT APPLICATION WILL BE DETERMINED ON SUBMISSION.

ENTER:

John B. Lefkowitz
Hon. John B. Lefkowitz J.S.C.

JBL
JBL
JSC

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

----- X
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GREENTREE REALTY, LLC, :
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Petitioner/Plaintiff, :
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- against - :
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THE VILLAGE OF CROTON-ON-HUDSON, THE :
VILLAGE BOARD OF TRUSTEES OF THE VILLAGE :
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APPEALS, and DANIEL O’CONNOR, in his official :
capacity, as the VILLAGE BUILDING INSPECTOR, :
:
Respondents/Defendants. :
:
----- X

Index No. 05-11872

**ENVIRONMENTAL
CLAIMS PART**

Assigned Justice:
Hon. Joan B. Lefkowitz

**AFFIRMATION OF GOOD
FAITH**

JOHN M. FLANNERY, an attorney duly admitted to practice law before the courts of the State of New York, hereby affirms the following statements to be true under the penalties of perjury:

1. Prior to making this application to the Court, and in compliance with the Rules of the Supreme Court, this office made good faith requests for the outstanding discovery in an attempt to resolve the issues raised in this motion without the intervention of the Court.

2. On January 31, 2014, petitioner/plaintiff, Greentree Realty, LLC (“Greentree”), agreed to a thirty-day extension of the respondents/defendants’, the Village of Croton-on-Hudson, the Village Board of Trustees of the Village of Croton-on-Hudson, The Village of Croton-on-Hudson Zoning Board of Appeals, and Daniel O’Conner, in his official capacity, as the Village Building Inspector (collectively, the “Village”), time to respond to Greentree’s Notice to Admit, and Notice for Discovery and Inspection, both dated January 15, 2014. See

Exhibit C; D.¹ The stipulation memorializing this agreement, drafted by counsel for the Village, did not reflect the extension of the time to respond to Greentree's Notice for Discovery and Inspection because, as counsel for the Village explained to my office by telephone, unlike a failure to timely respond to the Notice to Admit, there was no penalty for untimely disclosure of documents. Exhibit F.

3. By email dated February 21, 2014, this office informed counsel for the Village, Mr. Michael Miranda, Esq., that the Village's First Set of Interrogatories dated February 4, 2014, mistakenly referenced Greentree's First Amended Petition and Complaint, and not its Second Amended Petition and Complaint. Exhibit H. This office asked whether the Village intended on serving supplemental interrogatories in light of this error.

4. On February 24, 2014, this office, having not heard back from Mr. Miranda, forwarded the February 21, 2014 email to Mr. Robert Hewitt, Esq., an associate of Mr. Miranda. Mr. Hewitt responded that he would serve supplemental interrogatories sometime that week. Exhibit I.

5. By letter dated March 27, 2014, Greentree requested a court conference to discuss outstanding discovery, which was scheduled for May 12, 2014. Exhibit J.

6. On April 29, 2014, this office called Mr. Hewitt to inquire when the Village intended on serving the supplemental interrogatories. Mr. Hewitt apologized and stated that he had thought that the interrogatories had already been served. He stated that they would be served later that week.

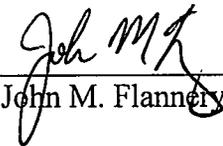
7. A court conference, originally scheduled for May 12, 2014, was rescheduled for and held on May 19, 2014. This court ordered the Village to serve amended interrogatories on

¹ All exhibits referenced herein are annexed to the affirmation of John M. Flannery in Support of Greentree's Order to Show Cause, dated June 26, 2014.

Greentree within two weeks of the conference, by June 2, 2014; and to produce documents in response to Greentree's Notice for Discovery and Inspection dated January 14, 2014, within thirty (30) days of the conference, by June 20, 2014. Exhibit L at 3:21-4:7. This Court denied Mr. Hewitt's request for forty-five (45) days to respond to Greentree's discovery demand. Exhibit L at 3:21-24. The Village has failed to comply with either part of this Court's order. To date, the Village has not served Greentree with supplemental interrogatories and has not produced any documents in response to Greentree's Notice for Discovery and Inspection.

8. Greentree has attempted to conduct discovery in good faith, but despite its efforts, the outstanding discovery has not been produced, thereby necessitating the making of the instant application to this Court.

Dated: White Plains, New York
June 26, 2014



John M. Flannery

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF WESTCHESTER

----- X	:	
GREENTREE REALTY, LLC,	:	Index No. 05-11872
	:	
Petitioner/Plaintiff,	:	ENVIRONMENTAL
	:	CLAIMS PART
- against -	:	
	:	Assigned Justice:
THE VILLAGE OF CROTON-ON-HUDSON, THE	:	Hon. Joan B. Lefkowitz
VILLAGE BOARD OF TRUSTEES OF THE VILLAGE	:	
OF CROTON-ON-HUDSON, THE VILLAGE OF	:	AFFIRMATION IN
CROTON-ON-HUDSON ZONING BOARD OF	:	SUPPORT OF ORDER TO
APPEALS, and DANIEL O’CONNOR, in his official	:	SHOW CAUSE
capacity, as the VILLAGE BUILDING INSPECTOR,	:	
	:	
Respondents/Defendants.	:	
	:	
----- X	:	

JOHN M. FLANNERY, an attorney duly admitted to practice law before the courts of the State of New York, hereby affirms the following statements to be true under the penalties of perjury:

1. I am a member of the law firm of Wilson Elser Moskowitz Edelman & Dicker, LLP, the attorneys for the petitioner/plaintiff in this action, Greentree Realty, LLC (“Greentree”). As such, I am fully familiar with the facts and circumstances of this case based upon my review of the legal file maintained by my office.

2. I submit this affirmation in support of Greentree’s Order to Show Cause seeking the following relief from the Village of Croton-on-Hudson, the Village Board of Trustees of the Village of Croton-on-Hudson, The Village of Croton-on-Hudson Zoning Board of Appeals, and Daniel O’Conner, in his official capacity, as the Village Building Inspector (collectively, the “Village”):

- a) Pursuant to CPLR § 3126, striking the answer of the Village for its blatant failure to provide routine discovery demanded by Greentree Realty, LLC; or in the alternative,
- b) Pursuant to CPLR § 3126, precluding the Village from offering evidence at the time of trial; and,
- c) Granting such other and further relief as this Court deems just and equitable in the circumstances.

3. Greentree respectfully submits that this Court should strike the Village's answer for its willful and contumacious disobedience of Greentree's Notice for Discovery and Inspection, dated January 15, 2014, good faith efforts, and this Court's order compelling them to produce documents and information in response to the Notice for Discovery and Inspection by June 20, 2014.

4. The Village's deliberate withholding of documents and information that it has been ordered to produce has resulted in significant delay and prejudice to Greentree. The Village's deliberate refusal to provide discovery warrants the striking of its answer to Greentree's second amended petition and complaint.

Relevant Factual and Procedural History

5. This is a hybrid proceeding brought by Greentree seeking (i) a declaration, pursuant to CPLR 3001, that the operation of a construction and demolition debris processing facility and transfer station (the "Facility") in the Village of Croton-on-Hudson on property owned by Greentree (the "Property") is a pre-existing legal nonconforming use that is unaffected by the Village's adoption in 2001 of a local law, codified as § 230-18(E) of the Village Code, which prohibits solid waste transfer stations in the Village; (ii) money damages resulting from the Village's taking of the Property in derogation of Greentree's rights under the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Sections 6 and 7 of the

New York State Constitution; and (iii) an order pursuant to CPLR article 78 vacating and setting aside the determination of the respondent Building Inspector that the Facility is not a pre-existing legal nonconforming use of the Property.

6. On or about November 11, 2005, Greentree served the Village with an amended verified petition and complaint. A copy of the amended verified petition and complaint is annexed hereto as Exhibit "A."

7. On or around November 19, 2013, with leave from this Court, Greentree served on the Village a supplemental summons and second amended petition and complaint. A copy of that pleading is annexed hereto as Exhibit "B."

8. On or around January 15, 2014, Greentree served on the Village a Notice to Admit and a Notice for Discovery and Inspection. A copy of the Notice to Admit is annexed hereto as Exhibit "C." A copy of the Notice for Discovery and Inspection is annexed hereto as Exhibit "D."

9. On January 31, 2014, Greentree agreed to a thirty-day extension of the Village's time to respond to Greentree's Notice to Admit and Notice for Discovery and Inspection. A copy of the email reflecting this agreement is annexed hereto as Exhibit "E."

10. The stipulation by and between the parties memorializing this agreement, drafted by counsel for the Village, did not reflect the extension of the Village's time to respond to Greentree's Notice for Discovery and Inspection because, as counsel for the Village explained to my office by telephone, unlike a failure to timely respond to the Notice to Admit, there was no penalty for untimely disclosure of documents. A copy of the stipulation is annexed hereto as Exhibit "F."

11. On or around February 4, 2014 the Village served on Greentree its First Set of Interrogatories. A copy of the interrogatories is annexed hereto as Exhibit "G."

12. By email dated February 21, 2014, this office informed counsel for the Village, Mr. Michael Miranda, Esq., that based upon a review of the Village's First Set of Interrogatories it appeared that the Village mistakenly referenced Greentree's first amended petition and complaint, and not the current pleading, its second amended petition and complaint. A copy of that email is attached as Exhibit "H." This office asked whether the Village intended on serving supplemental interrogatories in light of this error.

13. On February 24, 2014, this office, having not heard back from Mr. Miranda, forwarded the February 21, 2014 email to Mr. Robert Hewitt, Esq., an associate of Mr. Miranda. Mr. Hewitt responded that he would serve supplemental interrogatories sometime that week. A copy of that email, together with Mr. Hewitt's response, is annexed hereto as Exhibit "I."

14. By letter dated March 27, 2014, Greentree requested a court conference to discuss outstanding discovery, which was scheduled for May 12, 2014. A copy of Greentree's letter to the Court is annexed hereto as Exhibit "J."

15. By letter dated April 3, 2014, Court Attorney-Referee, Albert J. Degatano, Esq., responded to Greentree's request and scheduled a conference for May 12, 2014. A copy of this letter is annexed hereto as Exhibit "K." Mr. Degatano noted that it appeared that the Village had not yet filed with the Court its answering papers or a certified transcript of the record with respect to the portion of Greentree's petition made pursuant to CPLR Article 78. Exhibit K at 2. Mr. Degatano directed the Village's counsel to file its answer and certified transcript by April 28, 2014. *Id.* To date, Greentree has not been served a copy of the certified transcript of the record.

16. On April 29, 2014, this office called Mr. Hewitt to inquire when the Village intended on serving its supplemental interrogatories. Mr. Hewitt apologized and stated that he had thought that the interrogatories had already been served on Greentree. He stated that they would be served later that week.

17. On the morning of May 12, 2014, the date of the scheduled court conference, Mr. Hewitt requested that the conference be adjourned because of an emergency family issue that he needed to attend to. Greentree consented to an adjournment of the conference, which was rescheduled for May 19, 2014.

18. At the May 19, 2014 conference, this court ordered the Village to serve amended interrogatories on Greentree within two weeks of the conference, by June 2, 2014; and to produce documents in response to Greentree's Notice for Discovery and Inspection dated January 14, 2014, within thirty (30) days of the conference, by June 20, 2014. A copy of the transcript of the conference is annexed hereto as Exhibit "L." At the conference, this Court denied the Village's request for forty-five (45) days to respond. Exhibit L at 3:21-24. The Village has failed to comply with either part of this Court's order.

19. To date, the Village has not served Greentree with supplemental interrogatories and has not produced any documents in response to Greentree's Notice for Discovery and Inspection.

20. The Village has given no excuse for failure to comply with this Court's order and Greentree's discovery demands, thereby necessitating the granting of the relief sought herein.

Argument

21. “If a party elects to ignore a notice for discovery and inspection, he does so at his own peril.” *Coffey v. Orbachs, Inc.*, 22 A.D.2d 317, 319 (1st Dep’t 1964). Here, the Village has completely ignored and disregarded Greentree’s Notice for Discovery and Inspection for over five months, and even after this Court ordered it to respond. Therefore, this Court should issue an order striking the Village’s answer.

22. CPLR § 3126 provides that:

If any party, or a person who at the time a deposition is taken or an examination or inspection is made, is an officer, director, member, employee or agent of a party or otherwise under a party’s control, refuses to obey an order for disclosure or willfully fails to disclose information which the court finds ought to have been disclosed, pursuant to this article, the court may make such orders with regard to the failure or refusal as are just, among them:

...

2. an order prohibiting the disobedient party from supporting or opposing designated claims or defenses, from producing in evidence designated things or items of testimony, or from introducing any evidence of the physical, mental or blood condition sought to be determined, or from using certain witnesses; or

3. an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or any part thereof, or rendering a judgment by default against the disobedient party.

23. A defendant’s lengthy noncompliance with discovery together with inadequate excuses for its delay and default by failure to produce discovery gives rise to an inference of willful and contumacious refusal to disclose. *Vatel v. City of New York*, 208 A.D.2d 524, 525 (2d Dep’t 1994); *see also, Austin v. Coin Devices Corp.*, 234 A.D.2d 155, 155 (1st Dep’t 1996)(A defendant’s “failure to proffer any excuse for its failure to comply with court-ordered

discovery, indicates willful, contumacious and evasive conduct with respect to [a plaintiff's] discovery rights.).

24. A court may strike the pleading of a party that willfully disregards its discovery obligations. See *Estaba v. Quow*, 101 A.D.3d 940, 940-941 (2d Dep't 2012); *Harris v. City of New York*, 2014 N.Y. App. Div. LEXIS 3427 at *2-3 (2d Dep't, May 14, 2014); *Stanfill Plumbing and Heating Corp. v Dravo Constructors, Inc.*, 216 A.D.2d 101 (1st Dep't 1995).

25. In the alternative to striking a defendant's answer, a court has discretion to preclude a defendant from offering evidence at trial when that defendant's willful and contumacious conduct, its repeated failure to comply with discovery, was intended to thwart a plaintiff's right to pretrial discovery. See *Dolny v. Dolny*, 32 A.D.3d 818, 818-19 (2d Dep't 2006); *Precise Court Reporting, Inc. v. Karten*, 6 A.D.2d 412, 414-415 (2d Dep't 2004); *Caccioppoli v. Long Island Jewish Medical Center*, 271 A.D.2d 565, 566 (2d Dep't 2000).

26. Here, Greentree served is Notice for Discovery and Inspection on the Village, together with a Notice to Admit, on or around January 15, 2014. Exhibit D. Counsel for the Village requested an extension of its time to answer the Notice to Admit, but not the Notice for Discovery and Inspection, because pursuant to CPLR 3123(c) the contents of the Notice to Admit would be deemed admitted by the Village if it failed to respond within twenty (20) days of service of the notice. Thus, the stipulation dated January 31, 2014, drafted by counsel for the Village, reflects only an extension of the Village's time to respond to Greentree's Notice to Admit. Exhibit F. Since then, the Village has continued to willfully disregard its obligation to respond to Greentree's discovery demands.

27. At the May 19, 2014 conference held by this Court, Greentree requested that this Court compel the Village to produce documents in response to Greentree's Notice for Discovery

and Inspection. *See* Exhibit L at 2:16-3:3. This Court ordered the Village to produce documents within thirty (30) days of the conference, on or before June 20, 2014. *Id.* at 3:21-4:7. This Court denied the Village's request for forty-five (45) days. *Id.* at 3:21-24. This Court also ordered the Village to serve on Greentree supplemental interrogatories within two (2) weeks of the conference, on or before June 2, 2014. *Id.* at 5:2-12. Since the Village has failed to comply with either branch of this Court's order, this motion seeking an order striking the Village's answer is entirely appropriate.

28. The Village's conduct herein represents nothing short of a willful and utter disregard for the rules of this Court. It is respectfully submitted that this Court should not countenance the Village's behavior since the same leads to otherwise unnecessary motion practice, delay to litigants, the expenditure of significant legal time and efforts on the part of Greentree, and additional work for the justice system which is already overloaded. Therefore, this Court should sanction the Village by striking its answer, relief that is entirely justified under the circumstances. In the alternative, if this Court should decide not to strike the Village's answer, it is respectfully requested that this Court preclude the Village from offering evidence at the time of trial.

29. No previous application has been made for the discovery relief requested herein against the Village.

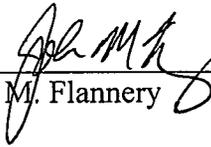
30. My Affirmation of Good Faith is separately attached.

WHEREFORE, Greentree respectfully requests that this Court issue an order as follows:

- a) Pursuant to CPLR § 3126, striking the answer of the Village for its blatant failure to provide routine discovery demanded by Greentree; or in the alternative,
- b) Pursuant to CPLR § 3126, precluding the Village from offering evidence at the time of trial; and,

- c) Granting such other and further relief as this Court deems just and equitable in the circumstances.

Dated: White Plains, New York
June 26, 2014



John M. Flannery

A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

----- X
GREENTREE REALTY, LLC,

Petitioner/Plaintiff,

- against -

THE VILLAGE OF CROTON-ON-HUDSON, THE
VILLAGE BOARD OF TRUSTEES OF THE VILLAGE
OF CROTON-ON-HUDSON, THE VILLAGE OF
CROTON-ON-HUDSON ZONING BOARD OF
APPEALS, and DANIEL O'CONNOR, in his official
capacity, as the VILLAGE BUILDING INSPECTOR,

Respondents/Defendants.
----- X

Index No. 05-11872

Assigned Judge:
Hon. Francis A. Nicolai

**AMENDED VERIFIED
PETITION
AND COMPLAINT**

Petitioner/Plaintiff Greentree Realty, LLC ("Greentree" or "Petitioner"), by its attorneys Zarin & Steinmetz, as and for its Verified Petition and Complaint herein, respectfully alleges, as follows:

SUMMARY OF ACTION

1. Petitioner brings this action pursuant to New York Civil Practice Laws and Rules ("CPLR") Section 3001 against the Village of Croton-on-Hudson (the "Village" or "Croton") and the Village Board of the Trustees (the "Village Board") for a declaratory judgment that the operation of a construction and demolition ("C&D") debris transfer station and processing facility (the "Facility") in the Village on Greentree's property (as defined below) is a pre-existing, legal nonconforming use.

2. Prohibiting the use of the Property for any period of time for its pre-existing, legal nonconforming use without just compensation would amount to a taking of Petitioner's property interests without just compensation in violation of the Fifth and Fourteenth

Amendments to the United States Constitution and Article I, Section 7 of the New York State Constitution, as well as a deprivation of Petitioner's substantive and procedural due process rights under the Fourteenth Amendment to the United States Constitution and Article I, Section 6 of the New York State Constitution.

3. Accordingly, the Resolution dated July 18, 2005, issued by the Village requiring the Facility to cease accepting waste on July 23, 2005, and to begin the 90 day closure process set forth in the Facility's Operations and Maintenance Manual (the "Closure Order") was improperly issued, and infringes upon Petitioner's constitutionally vested rights. (A copy of the Closure Order is annexed as Exhibit "A".)

4. This Court has determined that Petitioner need not first exhaust its administrative remedies with the Respondent/Defendant Daniel O'Connor in his capacity as the Village of Croton-on-Hudson Building Inspector (the "Building Inspector") and/or Respondent/Defendant the Village of Croton-on-Hudson Zoning Board of Appeals (the "ZBA," collectively with the Village, the Village Board, and the Building Inspector, "Respondents") , before this Court can consider the merits of this matter. (See August 26, 2005 Decision (the "August 26 Decision") at 4, annexed as Exhibit "B"). This Court held that, in this case, it would be futile for Petitioner to attempt to seek relief through the administrative process.

5. Prior to that Decision, in an exercise of caution, Petitioner, together with Metro Enviro Transfer, LLC ("Metro Enviro"), a prior party to this litigation, had made an application for a determination from the Building Inspector that the Facility is a legal, pre-existing nonconforming use. (See Letter to Daniel O'Connor, dated July 20, 2005, Exhibit "C".) Not surprisingly, and consistent with this Court's "futility" determination, three (3) months later the application was denied. (See Letter from Daniel O'Connor, dated October 28, 2005, Exhibit

"D"). In a continuing effort to act with extreme caution to protect its interests, Petitioner intends to appeal the determination, even though Petitioner agrees with this Court that the appeal, much like the application, will be an exercise in futility.

THE PARTIES

6. Petitioner Greentree is a limited liability company organized and existing under the laws of the State of New York, with its principal place of business at 1A Croton Point Avenue, Croton-on-Hudson, New York.

7. Respondent Village is a duly organized municipality existing by and under the laws of the State of New York, with offices at 1 Van Wyck Street, Croton-on-Hudson, New York.

8. Respondent Village Board is a legislative body formed pursuant to New York State law, with offices at 1 Van Wyck Street, Croton-on-Hudson, New York. The Village Board issued the Closure Order being challenged herein.

9. Respondent Building Inspector, with offices at 1 Van Wyck Street, Croton-on-Hudson, New York, is empowered to make a determination with regard to Petitioner's claim of a legal right to use the Property for solid waste management purposes.

10. Respondent ZBA is a municipal body, with offices at 1 Van Wyck Street, Croton-on-Hudson, New York. Pursuant to Village Code Section 230-162, the ZBA is the administrative body to which an appeal of an unfavorable determination from the Building Inspector would be made.

JURISDICTION

11. The Court has subject matter jurisdiction, and may exercise personal jurisdiction over the Respondents in this matter.

12. Pursuant to CPLR Section 504(2), venue is proper in this Court as the Village is located in Westchester County.

13. No prior application for this or any similar relief has been made to this or any Court, except for the related action Metro Enviro Transfer, LLC v. Village of Croton-On-Hudson, 7 A.D.3d 625, 777 N.Y.S.2d 170 (2d Dep't 2004), aff'd 5 N.Y.3d 236, 800 N.Y.S.2d 535 (2005).

FACTUAL BACKGROUND

The Property

14. Greentree is the owner of a ten (10) acre parcel of property, located at 1A Croton Point Avenue, Croton-on-Hudson, New York, in the Light Industrial ("LI") District, also known and designated on the Village Tax Map as Section 78.16, Block 2, Lots 1 and 2 (the "Property").

15. Greentree purchased the Property in or about April 1997.

16. It is hard to imagine a more ideal location for a solid waste transfer station anywhere in Westchester County. The Property is located in the largest, most industrially developed section of the Village. New York State Route 9, a four lane divided highway, which is the main North/South artery through the Village and for the western portion of Westchester County, is immediately to the East of the Property, and the Property appears to host the only such Facility in Westchester County with a rail connection.¹

¹ The New York State Department of Environmental Conservation (the "DEC") has, in fact, stated that it favors locations "with ready access to highways and/or rail lines, as such a location can reasonably be expected to reduce the potential for land-use disputes and facilitate the efficient movement of material to and from the facility." DEC recognized the Property's unique suitability for such operations because of its "ready access to highways and/or rail lines." (Letter from Marc Moran, Regional Director, DEC to David S. Steinmetz, Esq., dated August 2, 2005 (the "Moran Letter") at 2, Exhibit "E".)

17. As illustrated in the aerial photograph annexed hereto as Exhibit "F", the Metro North commuter railroad parking lot for Croton is located to the South of the Property, a massive rail equipment maintenance facility is located to the Southwest, and a commercial warehouse building currently storing tires, is located to the North. (See Exhibit "F".) To the West of the Property is the Croton-Harmon Rail Yard, which is a large industrial complex containing no fewer than nine sets of tracks and switches for both commuter and freight trains. (Id.)

18. The Property had been utilized for solid waste management operations of one form or another since the 1960s.

19. Greentree purchased the Property with the clear and distinct investment-backed expectation that the Property would continue to be used to host a solid waste processing facility, including processing, recycling, and the transfer of certain waste.

20. Greentree was keenly aware when it purchased the Property of the bundle of property rights and the attendant inherent value that it was acquiring.

21. Metro Enviro is the lessee of the Property, on which it operated the Facility as a DEC approved C&D processing facility from March 2000 until September 1, 2005.²

22. Metro Enviro entered into the lease on the Property with the expectation that it would be able to operate a solid waste management operation, namely, the Facility.

23. The existing use of the Property to host sophisticated solid waste management operations like the Facility is critical to the local and regional economy. Since Westchester County has no more active landfills, materials must be transported out of the

² Metro Enviro had initially been a Plaintiff/Petitioner in this litigation, but following a Cross-Motion to Dismiss brought by Respondents, this Court dismissed Metro Enviro from the action on the grounds of collateral estoppel. (See August 26 Decision at 6, Exhibit "B".) Metro Enviro has decided not to appeal that determination.

County. Materials – like C&D – can either be transported by rail or by truck. Due to the distance of the landfills, rail cars are often the most economically feasible transportation alternative.

The Use Of The Property For Processing Waste Was Expressly Permitted Under The Zoning Code

24. The Facility is a continuation of a use on the Property in existence since the 1960's, and which was previously expressly permitted under the Village Code. Until 2001, in the LI District in which the Property is located, the Village Code expressly permitted uses such as the Facility:

- B. No building or premises shall be used and no building or part of a building shall be erected which is arranged, intended or designed to be used, in whole or in part, for any use, except the following:

* * *

- (2) Light manufacturing, assembling, converting, altering, finishing, cleaning or any other processing of products.

(Village Code (old) § 230-18(B)(2), Exhibit "G".) Both the DEC and the Village have repeatedly recognized that the use of the Property for the Facility's operations constituted the "processing" of C&D debris.

22. Petitioner has never waived its right to assert that the use of the Property for solid waste management was expressly permitted under this earlier version of the Village Code.

The Village Treats The Use Of The Property For Solid Waste Management As A Pre-Existing, Legal Use

23. The Village has sanctioned the Property as a pre-existing, legal nonconforming use.

24. With the exception of certain uses not at issue in this case, the Village Code expressly allows nonconforming uses to be "continued indefinitely" with the only limitations being that a nonconforming use:

- (1) Shall not be enlarged, extended, reconstructed or placed on a different portion of the lot or parcel of land occupied by such uses on the effective date of this chapter, nor shall any external evidence of such use be increased by any means whatsoever;
- (2) Shall not be changed to another nonconforming use without a special permit from the Village Board of Trustees and then only to a use which, in the opinion of said Board, is of the same or a more restricted nature; [and]
- (3) Shall not be reestablished if such use has been discontinued for any reason for a period of one year or more or has been changed to or replaced by a conforming use. Intent to resume a nonconforming use shall not confer the right to do so.

(Village Code § 230-53(A), Exhibit "H".)

25. In or around 1984, Robert V. Liguori purchased the Property for use as a wood processing, material storage and recycling facility.

26. The Village Code requires a Special Permit from the Village Board to change from one nonconforming use to another. (Village Code § 230-53(A)(2), Exhibit "H".) The Board can only grant such a Special Permit where it finds that the "new" nonconforming use would be "of the same or a more restricted nature" as the prior nonconforming use at a property.

27. In 1988, the Village issued a Special Permit to Liguori's company, Industrial Recycling Systems, Inc. ("IRS"), authorizing it to change the use at the Property to operate a wood processing and recycling transfer station.

28. The DEC issued a Solid Waste Management Permit (the "DEC Permit") for these operations at the Property as well.

Metro Enviro, LLC Submits Applications To
Continue And Upgrade The Use Of The Property

29. In early 1997, Metro Enviro, LLC ("Metro," an entity distinct from Metro Enviro), agreed to purchase the Facility, remedy existing violations, bring the Facility into compliance with applicable solid waste management regulations, and apply for a DEC Permit.

30. Implicitly recognizing that the existing operations at the Property were legally allowed, the Village encouraged Metro to engage in expensive cleanup at the Property.

31. Thereafter, during 1997, Metro spent between approximately \$1.0 and \$1.5 Million cleaning up and remediating the Property, and spent approximately \$2.0 Million on new site improvements. This investment was made in good faith with the expectation that, upon its rehabilitation, the Facility would be allowed to continue the use of the Property, but now as a wholly modernized, environmentally sound transfer station.³

DEC Grants Metro Enviro, LLC A Permit To
Operate A C&D Processing Facility At The Property

32. The DEC Permit issued in connection with the Facility, effective from November 6, 1997 to November 5, 2002, specifically authorized the operation of "a recyclables handling and construction and demolition debris processing facility." (DEC Permit, Exhibit "I"); see also 6 N.Y.C.R.R. 360-1.2(a)(39) ("Construction and demolition debris processing facility means a processing facility that receives and processes construction and demolition debris by

³ As illustrated in Exhibit "J", the Facility is comprised of two scales (inbound and outbound), a scale house, a C&D processing building, a leachate collection system, and a stormwater management system. (See Site Plan, Exhibit "J".)

any means.” (emphasis added)).⁴ As noted below, this DEC Permit has since been renewed, and DEC has never suggested that solid waste management operations at the Property should end.

33. The use of the Property for the Facility fits squarely within DEC’s definition of “processing.” See 6 N.Y.C.R.R. 360-1.2(a)(120) (“Processing facility means a combination of structures, machinery or devices, other than collection and transfer vehicles, utilized to reduce or alter the volume or the chemical or physical characteristics of solid waste through processes such as, but not limited to, separating, crushing, screening, baling or shredding before its delivery to any solid waste management facility.”).

The Village Recognizes That The Facility Is A “Processing Facility” In Granting A Special Permit Allowing Operations At The Property Again To Change Between Nonconforming Uses

34. In August 1997, Metro also requested from the Village a renewal and transfer of the pre-existing Special Permit held by IRS. The purpose of Metro’s application for a “renewal and transfer of Special Use Permit” was, again, because the Village was treating the proposed new operation as a change of a nonconforming use at the Property – necessitating a Special Permit to ensure that the new nonconforming use of the Property was “of the same or a more restricted nature” as the then existing nonconforming use. (See Village Code § 230-53(A)(2), Exhibit “H”.)

35. Although pursuant to the Village Code the use of the Property to host the Facility was an as-of-right or principally permitted use, the Village treated the upgraded operation as a change of a nonconforming use, for which the Village Code requires a Special Permit.

⁴ The DEC permit set capacity limitations for the Facility and required, inter alia, the comprehensive monitoring of the Facility by trained DEC personnel at the operator’s expense. (DEC Permit, Exhibit “I”.)

36. Metro, expressly preserving its position that the Facility was an as-of-right use, and without prejudice, agreed to continue processing the Application before the Board as a Special Permit in early 1998. (See, e.g., Excerpt of May 4, 1998 Transcript of Public Hearing Before the Village Board at 184-85, Exhibit "K".) This was part of Metro's attempt to cooperate fully with the Village throughout the administrative process.

37. At no time during the period of 1997 and into 1998, did the Village attempt to terminate the pre-existing use of the property as a solid waste management facility or claim it was unlawful from a local land use standpoint.

Substantial Investments Are Made In The
Property To Upgrade And Improve The Facility

38. After an exhaustive Public Hearing, the Board adopted a Negative Declaration pursuant to the New York State Environmental Quality Review Act ("SEQRA"), determining that there were no adverse environmental impacts associated with the use of the Property for the Facility that had not been adequately identified, studied, and mitigated.

39. Accordingly, the Board issued a Special Permit sanctioning the use of the Property for the Facility. (See Special Permit, Exhibit "L".) The Special Permit specifically recognized that the Property was being used for "a solid waste recyclables and processing Facility."

40. The Special Permit set forth 42 conditions addressing a wide range of issues concerning the day-to-day operation of the Facility. The Special Permit set capacity limitations designed to control the potential amount of truck traffic, and together with the controlling Operations and Maintenance Manual (the "O&M Manual"), identified "non-acceptable materials" that could not be brought onto the site.

41. Under the Village Code, the grant of a Special Permit allowing the change of nonconforming uses at a property is, rightfully, a one time finding that the "new" nonconforming use is "of the same or a more restricted nature" as the previous nonconforming use. (See Village Code § 230-53(A)(2), Exhibit "H".) Nevertheless, the Special Permit the Village issued was valid only for a three-year period:

Metro Enviro Applies To Transfer Ownership Of The Nonconforming Use From Metro And More Costly Improvements Are Made To The Property

42. In March 2000, Metro Enviro, a wholly-owned subsidiary of Allied Waste Industries, Inc. ("Allied"), acquired the assets of Metro, including the Facility, and the equipment, contracts, permits, and goodwill for in excess of \$10,000,000.

43. Metro Enviro acquired the Facility with the reasonable expectation that it would be permitted to continue the use of the Property as and for an existing solid waste management facility.

44. Metro Enviro made important and costly improvements to the Facility, including installing fast-sealing doors on the truck entrance to and exit from the processing area, and repairing the highly-engineered, concrete reinforced tipping floor in the processing area. The Property now hosts a Facility, which is a state-of-the-art transfer station with, *inter alia*, paved driveways providing access to the processing area, a scale house with computerized scales, a camera that focuses on the trucks entering the facility, a radiation detection device, and a stormwater drainage and management system.

45. Metro Enviro requested a transfer of the DEC Permit from Metro, and, as set forth below, requested that the Village transfer the Special Permit, allowing the continuing use of the Property for the Facility.

The Board Issues Numerous Extensions Of The Special Permit, Allowing
The Continued Use Of The Property For Solid Waste Management

46. As noted above, the Board's authority under the Village Code to grant a Special Permit to change the nonconforming use of a property is, rightfully, a one-time bridging mechanism, reflecting a finding that the "new" nonconforming use is "of the same or a more restricted nature" as the previous nonconforming use. (See Village Code § 230-53(A)(2), Exhibit "H".) As such, it is not of unlimited duration. Nevertheless, the Special Permit the Village granted in 1998 sanctioning the continued use of the Property for the Facility was valid for only a three-year period.

47. Accordingly, on March 23, 2001, Metro Enviro filed a timely written request with the Board asking that the Special Permit, which was purportedly due to expire on May 5, 2001, be renewed. The Board was advised that the renewal Application was deemed a Type II Action under SEQRA requiring no further environmental studies. The Board and its counsel agreed with that assessment and, to date, there has been no deviation from that position.

48. After filing the Renewal Application, Metro Enviro secured more than ten temporary extensions of the Special Permit, each effectively sanctioning the continuing use of the Property for the Facility. Metro Enviro – as the operator of the facility – appeared at numerous Board meetings to answer questions and provide information to the Board.

49. At no time did the Board suggest that the use of the Property for the Facility was not legally allowed.

The Village Amends The Zoning Of The Property, But Recognizes
The Facility Is A Pre-Existing, Legal Nonconforming Use

50. In 2001, the Village Board specifically amended the Village Code to prohibit operations such as the Facility in the LI zone. The continued use of the Property for the Facility

since that date constitutes implicit recognition that the Facility is a pre-existing, legal nonconforming use.

51. On or about June 18, 2001, the Board enacted an amendment to Section 230-18 of the Village Code concerning uses in the LI District (the "2001 Amendment"):

E. Prohibited uses. Solid and liquid waste transfer and storage stations and landfills (including construction and demolition materials) are prohibited. For the purposes of this section, solid and liquid wastes are defined as follows: all putrescible and nonputrescible materials or substances that are discarded or rejected as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection, including but not limited to liquids, garbage refuse, industrial, commercial and household waste, sludges from air or water treatment facilities, rubbish, tires, ashes, contained gaseous material, incinerator ash and residue and construction and demolition debris.

(Village Code § 230-18(E) (emphasis added), Exhibit "H".)

52. As a result of the 2001 Amendment, for the first time in the Village, transfer stations and processing facilities such as Metro Enviro's became "expressly prohibited" throughout the entire Village, including the LI District

53. The Board was well aware that the Property was being used for solid waste management and that the Facility was legally operating at that time pursuant to a Special Permit in the LI District. As of the adoption date of the 2001 Amendment, the Village effectively recognized the Property's constitutionally protected vested rights to continue the operation of what at that time undeniably became a nonconforming solid waste management Facility.

54. In fact, the Village Manager and the Village Attorney specifically advised Metro Enviro's counsel that the Facility would continue to be a pre-existing, legal nonconforming use; indeed, the Facility at that time had a valid Special Permit on extension from the Board.

55. Again, at no time during this period did the Village attempt to terminate the pre-existing use of the Property or claim it was unlawful from a local land use standpoint.

The Village Refuses To Renew Metro Enviro's Special Permit

56. Less than two months before fiercely contested Village elections, on January 27, 2003, the Board voted to deny Metro Enviro's application to renew the Special Permit. In support of its denial, the Board issued a Statement of Findings, which cited as the purported basis for its decision violations of the Special Permit, including mishandling of unauthorized waste, exceedances of the maximum permitted tonnage, failure to collect leachate on one occasion, receipt of two refrigerators, and failure of certain training, reporting and record-keeping requirements.

57. At no time did the Village Board maintain that the Property's "use" for solid waste management was unlawful or unprotected.

58. Notably, on February 7, 2003, DEC, the state agency with regulatory expertise, control and jurisdiction over the Facility and all solid waste management facilities, renewed Metro Enviro's DEC Permit with increased capacity limits.⁵

Metro Enviro Commences Litigation In Connection With The Denial Of The Special Permit

59. To avoid closure of its business, in which it had just recently invested millions of dollars based on the understanding that the Property could be used for the Facility, Metro Enviro filed a Verified Article 78 Petition, dated January 31, 2003, and a Motion for a Stay, dated February 3, 2003, by Order to Show Cause. Greentree was not a party to that action, nor was it required to be a party to that action.

⁵ The DEC Permit originally permitted a 700 ton daily capacity, which was increased upon renewal to 1,000 tons. (Exhibit "I".)

60. Chief Administrative Judge Francis A. Nicolai granted the Stay on February 4, 2003, allowing the Facility to continue operation until a decision on the merits of the Petition was issued. Prior to the determination of the Article 78 Petition, the Village submitted a 15 volume record upon which the Court's decision was predicated.

61. Following its grant of injunctive relief allowing the continuing use of the Property for the Facility until a decision on the merits of the Petition was issued, Judge Nicolai granted Metro Enviro's Petition to annul Respondents' determination and remitted the matter "for the purpose of issuing a permit in accordance herewith, upon such reasonable conditions as it may deem appropriate." (See February 20, 2003 Decision, Exhibit "M".)

62. The Village appealed the lower Court's Decision to the Second Department, which in a Decision and Order dated May 10, 2004, reversed the lower Court, and reinstated the Village's denial of the Special Permit. See Metro Enviro Transfer, LLC v. Vill. of Croton-On-Hudson, 7 A.D.3d 625, 777 N.Y.S.2d 170 (2d Dep't 2004). Metro Enviro subsequently requested leave to appeal to the Court of Appeals, as well as a stay of the Second Department's Decision and Order pending a decision.

63. On July 12, 2004, after hearing oral argument, Court of Appeals Judge Robert S. Smith granted Metro Enviro's Motion for a Stay pending that Court's determination on the Motion for Leave to Appeal.

64. Metro Enviro's Motion for Leave to Appeal was granted on December 16, 2004. See Metro Enviro Transfer, LLC v. Vill. of Croton-On-Hudson, 4 N.Y.3d 731, 790 N.Y.S.2d 633 (2004). On July 6, 2005, the Court of Appeals affirmed the Second Department's May 10, 2004 Decision and Order. See Metro Enviro Transfer, LLC v. Vill. of Croton-On-Hudson, 5 N.Y.3d 236, 800 N.Y.S.2d 535 (2005).

No Harm Has Resulted While The Property Was Used For The Facility
During The Litigation Pursuant To Court Ordered Injunctive Relief

65. During the time that the Facility was permitted to operate as a result of the stays issued by the Supreme Court and the Court of Appeals, no harm has resulted to the public health, safety, or general welfare, nor has the Village alleged any such harm. Likewise, at no time during the litigation over the past two-and-a-half years has the DEC, the Westchester County Solid Waste Commission, or the Westchester County Department of Health sought to prohibit the use of the Property for solid waste management or to close the Facility.

66. As a result of the Court of Appeals decision, however, by Resolution dated July 18, 2005, the Village ordered Metro Enviro to cease accepting waste as of July 23, 2005, and to commence the 90-day closure procedures set forth in Metro Enviro's O&M Manual. (See Exhibit "A".)

The Pre-Existing Nonconforming Use Of The Property

67. Throughout the Article 78 litigation with regard to the Special Permit renewal (i.e., Metro Enviro Transfer, LLC v. Village of Croton-On-Hudson, 7 A.D.3d 625, 777 N.Y.S.2d 170 (2d Dep't 2004), aff'd 5 N.Y.3d 236, 800 N.Y.S.2d 535 (2005)), the Facility continued to be utilized as its pre-existing nonconforming use as a transfer station.

68. Metro Enviro consistently raised the Property's pre-existing nonconforming use status at each stage of the litigation, and expressly maintained that it did not, and, indeed, could not abandon the fact that a pre-existing, legal nonconforming status attached to the Property, which allows for the operation of a transfer station thereon.

69. Again, the Property is owned by Greentree, which was not a party to the prior litigation. Greentree likewise asserts the right to continue the nonconforming use of the Property, and to protect its inherent value.

70. Of utmost relevance, at no time did any Court reach a determination with regard to the constitutionally vested rights obtained by the Facility's nonconforming status. In fact, not once was the status even addressed by the Courts.

Filing Of Request For Administrative Relief

71. Cognizant of the fact that the Court might find that Petitioners must first exhaust any administrative remedies, simultaneous with the commencement of the instant litigation, Petitioners requested a determination from the Building Inspector that the Facility is a legal, pre-existing nonconforming use. (See Letter to Daniel O'Connor, dated July 20, 2005, Exhibit "C".)

72. This Court subsequently held that Petitioner need not exhaust its administrative remedies because it would be futile to do so. (See August 26 Decision at 4, Exhibit "B".)

73. On October 28, 2005, consistent with this Court's futility determination, the Building Inspector issued an unfavorable determination, stating that since Metro Enviro's special permit was "not renewed, the non-conforming use terminated." (Letter from Daniel O'Connor, dated October 28, 2005, at 3, Exhibit "D"). In light of the fact that Respondents have appealed the August 26 Decision, to preserve its rights, Petitioner intends to file an appeal of the Building Inspector's determination with the ZBA pursuant to Village Code Section 230-162. (See Village Code § 230-162, Exhibit "H".) Petitioner would, of course, withdraw its Petition/Complaint in the unlikely event a favorable determination is rendered by the ZBA, and no appeal is taken from that determination.

Greentree And Metro Enviro Request Injunctive Relief

74. In light of the Village's order the Metro Enviro cease accepting waste on July 23, 2005, Greentree and Metro Enviro requested temporary and preliminary injunctive relief from this Court in order to maintain the status quo until such time as they were able to exercise their due process rights with the administrative process.

75. In its August 26 Decision, this Court denied Metro Enviro's application for a preliminary injunction and dismissed the instant action as to Metro Enviro. (August 26 Decision at 4, 6, Exhibit "B".) The Court, however, held that Greentree demonstrated a likelihood of success on the merits, and granted a preliminary injunction to Greentree, enjoining Respondents "from prohibiting or interfering with Greentree's ability to lease and or operate [the Property] for purposes of solid waste management." (Id. at 4.)

76. On September 1, 2005, Metro Enviro ceased its operations on the Property and commenced the 90 day closure process.

77. Now that the constitutionally vested pre-existing, legal nonconforming Facility was forced to cease operations, it will be difficult to reinstate the use within a year, especially in light of the Village's past actions to thwart the use. Greentree is thus subject to potential forfeiture of the land use pursuant to Section 230-53(A) of the Village of Croton-on-Hudson Code, which establishes that if a nonconforming use is "discontinued for any reason for a period of one year or more," it cannot be continued.

78. The closure of the Facility has cast doubts on the Property's ability to legally host a solid waste management operation. Any prospective lessee would be right to suspect the propriety of using the Property for a solid waste transfer station.

79. Moreover, the Property has considerable value as a solid waste transfer station or processing facility. Even if the pre-existing nonconforming use were able to be reestablished within the requisite one (1) year, the present prohibition of solid waste operations on the Property will discourage haulers from entering into short or long term business relations with the Facility, as the status of the Property is uncertain.

COUNT I

(Declaratory Judgment/Pre-Existing, Legal Nonconforming Use)

80. Petitioner repeats and realleges paragraphs 1 through 79 of this Petition as if fully stated herein.

81. The Property was lawfully used prior to the Village Board's re-zoning in 2001 of the Village LI District for solid waste management activities, including the operation of the Facility.

82. Pursuant to the Village Board's 2001 re-zoning, uses such as the Facility, including the operation of a solid waste transfer station and processing facility, are expressly prohibited in the LI District.

83. With the exception of certain uses and limitations not at issue in this case, the Village Code expressly allows nonconforming uses to be "continued indefinitely."

84. Wherefore, Petitioner respectfully seeks a declaration that the Property's use for solid waste management activities, including the operation of the Facility, is a pre-existing, legal nonconforming use.

COUNT II

(Declaratory Judgment/Pre-Existing, Legal Nonconforming Use)

85. Petitioner repeats and realleges paragraphs 1 through 84 of this Petition as if fully stated herein.

86. The Court may determine that Petitioner must first exhaust its administrative remedies with the ZBA before this Court can consider the merits of this matter.

87. The Building Inspector has rendered an unfavorable determination and does not recognize the Property as a pre-existing, legal nonconforming use. Petitioner will accordingly appeal such determination to the ZBA pursuant to the applicable provisions of the Village Code.

88. To the extent that the ZBA also does not recognize that the Property is a pre-existing, legal nonconforming use, and does not overrule the determination of the Building Inspector, Petitioner will timely amend the instant Petition as necessary to challenge said ZBA determination pursuant to Article 78 of the New York Civil Practice Laws and Rules.

89. Any determination by the ZBA that does not recognize that the Property is a pre-existing, legal nonconforming use would be in violation of the ZBA's duties delegated to it by law, in violation of lawful procedure, affected by error in law, arbitrary and capricious, an abuse of discretion, and/or lacking substantial evidence.

90. Wherefore, under these circumstances, the Petitioner seeks a declaration invalidating the determination by the Building Inspector and/or ZBA.

COUNT III

(Declaratory Relief/Damages/Regulatory Taking)

91. Petitioner repeats and realleges paragraphs 1 through 90 as if stated in full herein.

92. The Fifth Amendment of the United States Constitution establishes that "private property [shall not] be taken for public use without just compensation." U.S. Const. Amend. V.

93. American jurisprudence distinguishes between physical takings, which involve the physical appropriation of real property, and regulatory takings. See Tahoe Sierra Preservation Council, Inc. v. Tahoe Reg'l Planning Agency, 122 S. Ct. 1465, 1477-78, 1485 (2002).

94. Regulatory takings are “characterized by ‘essentially ad hoc, factual inquiries,’ designed to allow ‘careful examination and weighing of all the relevant circumstances.’” Tahoe-Sierra, 122 S. Ct at 1478, quoting, Penn Cent. Transp. Co. et al v. City of New York, 438 U.S. 104, 124, 98 S. Ct. 2646 (1978) and Palazzolo v. Rhode Island, 533 U.S. 606, 636, 121 S. Ct. 2448 (2001).

95. Determining whether a regulatory taking has occurred “necessarily entails complex factual assessments of the purposes and economic effects of government action.” Tahoe-Sierra, 122 S. Ct at 1479, quoting Yee v. Escondido, 503 U.S. 519, 523, 112 S. Ct. 1522 (1992).

96. Prohibiting the use of the Property for any period of time in accordance with its pre-existing, legal nonconforming status without just compensation constitutes a taking of Petitioner’s property interests without just compensation in violation of the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 7 of the New York State Constitution.

97. Any prohibition for any period of time by the Village on the use of the Property for its pre-existing, legal nonconforming use triggers a constitutional obligation to compensate Petitioner for the value of its property interests.

98. The Village's actions permanently and unfairly deprive Petitioner of its legitimate economically beneficial or productive use of the Property, thus the Village is liable for the permanent regulatory taking of Petitioner's property interests.

99. Respondents are liable to compensate Petitioner for any period of time in which the Village prevents or prohibits the use of the Property for its pre-existing, legal nonconforming use for the regulatory taking of the Property in an amount to be determined at trial, but no less than a combined amount of Twenty-Five Million Dollars (\$25,000,000), plus pre-judgment interest.

COUNT IV

(Declaratory Relief/Damages/Denial of Substantive Due Process)

100. Petitioner repeats and realleges paragraphs 1 through 99 of this Petition, as if fully stated herein.

101. Petitioner has protectable property interests in the use of the Property for its pre-existing, legal nonconforming use.

102. Respondents' actions, including any action that prohibits or prevents the use of the Property for its pre-existing, legal nonconforming use, deprives Petitioner of its property interests.

103. Respondents' actions, including any action that prohibits or prevents the use of the Property in accordance with its pre-existing, legal nonconforming use, are arbitrary and capricious, not reasonably related to a legitimate public purpose and for purposes extraneous to legitimate land use considerations.

104. Respondents' actions, including any action that prohibits or prevents the use of the Property for its pre-existing, legal nonconforming use, results in a deprivation of

112. Petitioner has been denied an opportunity to be heard before Respondents deprive them of its property interests.

113. Respondents' actions result in a deprivation of Petitioner's procedural due process rights under the Fourteenth Amendment to the United States Constitution and Article I, Section 6 of the New York State Constitution.

114. Respondents knew or should have known that they were violating Petitioner's procedural due process rights under the Fourteenth Amendment to the United States Constitution and Article I, Section 6 of the New York State Constitution.

115. Under 42 U.S.C. Section 1983, Respondents are liable to Petitioner for damages caused by the violation of its constitutional and civil rights, plus pre-judgment interest.

116. Under 42 U.S.C. Section 1988, Respondents are liable to Petitioner for its attorneys' fees.

117. Respondents are liable to Petitioner for the deprivation of its respective procedural due process rights in an amount to be determined at trial, but no less than a combined amount of Twenty-Five Million Dollars (\$25,000,000), plus pre-judgment interest.

COUNT VI
(Declaratory Relief/Damages/Exclusionary Zoning)

118. Petitioner repeats and realleges paragraphs 1 through 116 of this Petition as if fully stated herein.

119. Until 2001, in the LI District in which the Property is located, the Village Code, consistent with its land use development plan, expressly permitted waste transfer station uses such as the Facility. (See Village Code (old) § 230-18(B)(2), Exhibit "G").

120. Without providing a reasonable explanation as to how the circumstances in the Village changed such that the Village's plan for community development could no longer

accommodate uses such as the Facility, on or about June 18, 2001, the Board enacted an amendment to Section 230-18 of the Village Code to prohibit operations such as the Facility in the LI zone. (See Village Code § 230-18(E), Exhibit "H".)

121. As a result of this amendment, solid waste transfer stations are now completely prohibited as a permitted use in each and every zoning district with the territory of the Village.

122. A municipality's duly delegated zoning authority allows it to separate incompatible uses by assigning them to different districts, not by prohibiting them entirely.

123. The Village's total exclusion of the useful and lawful solid waste transfer station use is invalid, irrational, arbitrary and ultra vires, and is an unlawful attempt by the Village to shift the burden of such uses to neighboring municipalities.

COUNT VII

(Declaratory Relief/Violation Of The Commerce Clause Of The United States Constitution)

124. Petitioner repeats and realleges paragraphs 1 through 123 of this Petition as if fully stated herein.

125. Upon information and belief, based upon prior actions of the Respondents, Respondents improperly and unlawfully discriminate against interstate commerce, and as such, violate the Commerce Clause of the United States Constitution. U.S. Const. art. I, § 8, cl. 3.

126. Upon information and belief, Respondent Village is providing "differential treatment of in-state and out-of-state economic interest that benefits the former and burdens the latter."

127. Upon information and belief, Respondent Village is restricting articles of commerce from coming into the state without any reason, apart from their origin, to treat them differently.

128. Upon information and belief, Respondents, for no reason, treat out-of-state waste, such as, but not limited to, waste from the State of Connecticut, differently than waste coming from New York.

129. Respondents have, for example, issued a violation to Metro Enviro for allegedly violating DEC regulations pertaining to waste accepted from a facility in Connecticut, even though the DEC expressly advised the Village that "Metro Enviro's acceptance of C&D waste from the Connecticut facility is allowed under New York State Regulations." (See Letter from Marc Moran, Regional Director, DEC to Michael B. Gerrard, dated May 2, 2005, annexed to the Moran Letter, Exhibit "E".)

130. Despite the fact that Metro Enviro had been accepting the same type of waste from Connecticut as it had been accepting from New York, Respondents, exhibiting an irrational lack of deference to both the Connecticut regulations and the DEC, and in direct contravention of the Commerce Clause of the United States Constitution, insisted upon classifying the acceptance of certain waste from Connecticut as a violation.

131. Accordingly, Petitioner respectfully seeks a declaration that Respondents' unconstitutional discrimination of out-of-state waste violates the Commerce Clause of the United States Constitution.

WHEREFORE, Petitioner respectfully requests judgment against Respondents jointly and severally, as follows:

- i. Declaring that the Property's use for solid waste management activities, including the operation of the Facility, is a pre-existing, legal nonconforming use, which may be continued indefinitely pursuant to the express parameters in place over the use at the time of the Village's rezoning of the LI District in 2001;
- ii. In the event that this Court determines that Petitioner must first exhaust its administrative remedies, and it becomes necessary for this Court to hear

Petitioner's Article 78 challenge to a determination made by the ZBA, declaring such determination null and void;

- iii. Awarding compensation to Petitioner for the regulatory taking of its property interests in an amount to be determined at trial, but no less than Twenty-Five Million Dollars (\$25,000,000), plus pre-judgment interest;
- iv. Awarding compensation to Petitioner for the violation of its substantive and procedural Due Process rights in an amount to be determined at trial, but no less than Twenty-Five Million Dollars (\$25,000,000), plus pre-judgment interest;
- v. Declaring the Village's exclusion of transfer stations anywhere within the municipality to be invalid, irrational, arbitrary and ultra vires;
- vi. Declaring the Village's differential treatment of out-of-state waste to be a violation of the Commerce Clause of the United States Constitution; and
- vii. Granting such other and further relief as the Court may deem just and equitable.

Dated: November 11, 2005
White Plains, New York

Respectfully submitted,

ZARIN & STEINMETZ

By: _____

David S. Steinmetz, Esq.
Attorneys for Petitioner/Plaintiff
81 Main Street, Suite 415
White Plains, New York 10601
(914) 682-7800

VERIFICATION

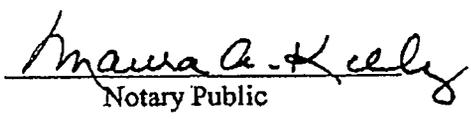
STATE OF NEW YORK)
)
COUNTY OF WESTCHESTER) s.s.:

CHARLES V. MARTABANO, being duly sworn, hereby deposes and says that he is the co-executor of the Estate of James Hickey, which is co-manager of Petitioner/Plaintiff GREENTREE REALITY, LLC in the above-referenced proceeding, that he has read the foregoing Amended Verified Petition and Complaint and that the foregoing Amended Verified Petition and Complaint is true to his own knowledge, except as to those matters therein stated to be alleged on information and belief and as to those matters he believes them to be true.



CHARLES V. MARTABANO

Sworn to before me this
10th day of November, 2005


Notary Public

MAURA A. KELLY
Notary Public, State of New York
No. 03 2080250
Qualified in Bronx County
Certificate Filed in Westchester County
Commission Expires August 31, 2009

B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

----- x
GREENTREE REALTY, LLC,

Petitioner/Plaintiff,

Index No. 05-11872

- against -

Assigned Judge:
Hon. Francis A. Nicolai

THE VILLAGE OF CROTON-ON-HUDSON, THE
VILLAGE BOARD OF TRUSTEES OF THE VILLAGE
OF CROTON-ON-HUDSON, THE VILLAGE OF
CROTON-ON-HUDSON ZONING BOARD OF
APPEALS, and DANIEL O'CONNOR, in his official
capacity, as the VILLAGE BUILDING INSPECTOR,

SUPPLEMENTAL
SUMMONS

Defendants/Respondents.
----- x

RECEIVED

NOV 19 2013

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the second amended verified petition and complaint in this action and to serve a copy of your answer on the plaintiff's attorney within 20 days after service of this summons, exclusive of the day of service, or, if service of this summons is made by any means other than by personal delivery to you within the state, within 30 days after such service is complete. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue designated is CPLR 504(2).

Dated: White Plains, New York
November 18, 2013

Yours, etc.

Wilson Elser Moskowitz Edelman & Dicker, LLP
Attorneys for Plaintiffs

By: John M. Flannery
John M. Flannery
A Member of the Firm
1133 Westchester Avenue
White Plains, NY 10604
(914) 323-7000

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

----- x

GREENTREE REALTY, LLC,

Petitioner/Plaintiff,

- against -

THE VILLAGE OF CROTON-ON-HUDSON, THE
VILLAGE BOARD OF TRUSTEES OF THE VILLAGE
OF CROTON-ON-HUDSON, THE VILLAGE OF
CROTON-ON-HUDSON ZONING BOARD OF
APPEALS, and DANIEL O'CONNOR, in his official
capacity, as the VILLAGE BUILDING INSPECTOR,

Defendants/Respondents.

----- x

Index No. 05-11872

Assigned Judge:
Hon. Francis A. Nicolai

SECOND AMENDED
VERIFIED PETITION
ANTI-COMPLAINT

RECEIVED

NOV 19 2013

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

Petitioner/Plaintiff Greentree Realty, LLC, by its attorneys, Wilson Elser Moskowitz Edelman & Dicker, LLP, as and for its Second Amended Verified Complaint herein, respectfully alleges as follows:

Summary of Action

1. This is (a) an action for a judgment declaring, pursuant to CPLR 3001, (i) that the operation of a construction and demolition debris processing facility and transfer station (the "Facility") in the Village of Croton-on-Hudson (the "Village") on property owned by plaintiff/petitioner Greentree Realty, LLC ("Greentree") is a pre-existing, legal nonconforming use that is unaffected by the Village's adoption, in 2001, of a local law prohibiting such uses throughout the Village, and (ii) that section 230-18(E) of the Village Code, which purports to prohibit such uses within the Village, is void and of no effect because it is pre-empted by state law; (b) an action for money damages resulting from the Village's taking of the property in

derogation of Greentree's rights under Fifth and Fourteenth Amendments to the United States Constitution and Article I, Sections 6 and 7 of the New York State Constitution; and (c) a proceeding pursuant to CPLR article 78 to vacate and set aside the determination of the respondent Building Inspector that the Facility is not a prior lawful non-conforming use of the subject property.

2. Greentree is entitled to the relief it requests because: (1) the subject property has been in continuous lawful use as a construction and demolition debris processing facility and transfer station since at least 1980; (2) prohibiting the continuation of a prior, lawful, non-conforming use without just compensation is a taking in violation of the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 7 of the New York State Constitution, as well as a deprivation of Greentree's substantive and procedural due process rights under the Fourteenth Amendment to the United States Constitution and Article I, Section 6 of the New York State Constitution; and (3) section 230-18(E) of the Village Code, which purports to prohibit such uses is inconsistent with article 27 of the New York State Environmental Conservation Law and the regulations adopted by the New York State Department of Environmental Conservation (DEC) pursuant thereto.

The Parties

3. Greentree is a limited liability company organized and existing under the laws of the State of New York, with its principal place of business at 1A Croton Point Avenue, Croton-on-Hudson, New York.

4. The Village is a duly organized municipality existing by and under the laws of the State of New York, with offices at 1 Van Wyck Street, Croton-on-Hudson, New York.

5. Respondent Village Board of Trustees of the Village of Croton-on-Hudson (the "Board") is a legislative body formed pursuant to New York State law, with offices at 1 Van Wyck Street, Croton-on-Hudson, New York.

6. Respondent Daniel O'Connor, as Building Inspector, with offices at 1 Van Wyck Street, Croton-on-Hudson, New York, is the official of the Village empowered to make a determination with regard to Greentree's claim of a legal right to use the Property for a construction and demolition debris processing facility and transfer station.

7. Respondent Village of Croton-on-Hudson Zoning Board of Appeals (the "ZBA") is a municipal body, with offices at 1 Van Wyck Street, Croton-on-Hudson, New York. Pursuant to Village Code Section 230-162, the ZBA is the administrative body to which an appeal of an unfavorable determination from the Building Inspector would be made.

Jurisdiction

8. The Court has subject matter jurisdiction, and may exercise personal jurisdiction over the Respondents in this matter.

9. Pursuant to CPLR Section 504(2), venue is proper in this Court as the Village is located in Westchester County.

Factual Background

10. Greentree is the owner of a ten acre parcel of real property located at 1A Croton Point Avenue, Croton-on-Hudson, New York, in the Light Industrial ("LI") District, which is known and designated on the Village Tax Map as Section 78.16, Block 2, Lots 1 and 2 (the "Property").

11. The Property is bounded by a Metro North commuter railroad parking lot on the south, a massive rail equipment maintenance facility to the southwest, a commercial warehouse

building currently storing tires to the north and the Croton-Harmon Rail Yard, a large industrial complex containing no fewer than nine sets of tracks and switches for both commuter and freight trains, to the west.

12. The Property is ideally situated for a construction and demolition debris processing facility and transfer station. It is located in the largest, most industrially developed section of the Village. New York State Route 9, a four lane divided highway, which is the main north/south artery through the Village and for the western portion of Westchester County, is immediately to the east of the Property. The Property appears to be the only such facility in Westchester County with a rail connection.

13. The use of the Property for a sophisticated construction and demolition debris processing facility and transfer station is critical to the local and regional economy and to the environment. Since Westchester County has no more active landfills, materials must be transported out of the County. Materials such as construction and demolition debris can be transported either by rail or by truck. Due to the distance of the landfills, rail cars are often the most economically feasible transportation alternative. They are also the most environmentally friendly means of transporting construction and demolition debris, since one rail car can carry as much debris as four trucks, reducing the carbon footprint of the waste handling operation substantially.

14. The Property has been utilized continuously for processing and transferring construction and demolition debris since the 1960's.

15. Until 2001, a construction and demolition debris processing facility and transfer station was a permitted use as of right on the Property.

16. Both the DEC and the Village have repeatedly recognized that the use of the Property for the Facility's operations constituted the lawful "processing" of construction and demolition debris.

17. Greentree has never waived its right to assert that its use of the Property as a construction and demolition debris processing facility and transfer station is permitted.

18. In or around 1984, Robert V. Liguori purchased the Property and used it as a wood processing, material storage and recycling facility.

19. In 1988, the Village issued a special permit allowing Liguori's company, Industrial Recycling Systems, Inc. ("IRS"), to use the Property for a wood processing and recycling transfer station.

20. DEC issued a Solid Waste Management Permit (the "DEC Permit") for these operations at the Property.

21. In 1997, Metro Enviro, LLC, with the encouragement of the Village, spent between approximately \$1.0 and \$1.5 Million cleaning up and remediating the Property, and spent approximately \$2.0 Million on new site improvements. This investment was made in good faith with the expectation that, upon its rehabilitation, the Facility would be allowed to continue the use of the Property, but now as a wholly modernized, environmentally sound construction and demolition debris processing facility and transfer station.

22. The DEC Permit issued to Metro Enviro, LLC, in connection with the Facility, effective from November 6, 1997 to November 5, 2002, specifically authorized the operation of "a recyclables handling and construction and demolition debris processing facility." Pursuant to 6 N.Y.C.R.R. 360-1.2(a)(39), a "[c]onstruction and demolition debris processing facility means a

processing facility that receives and processes construction and demolition debris by any means.”

23. The use of the Property for the Facility fits squarely within DEC’s definition of “processing.” The applicable regulation, 6 NYCRR 360-1.2(a)(120), defines a “processing facility” as “a combination of structures, machinery or devices, other than collection and transfer vehicles, utilized to reduce or alter the volume or the chemical or physical characteristics of solid waste through processes such as, but not limited to, separating, crushing, screening, baling or shredding before its delivery to any solid waste management facility.”

24. In August 1997, Metro Enviro, LLC, requested from the Village a renewal and transfer of the pre-existing special permit held by IRS. Metro Enviro, LLC, made that application even though the Facility was an as-of-right use because the Village was treating the proposed new operation as a change of a nonconforming use – necessitating a special permit to ensure that the new nonconforming use of the Property was “of the same or a more restricted nature” as the then existing nonconforming use. See Village Code § 230-53(A)(2). Metro Enviro, LLC, expressly preserved its position that the Facility was an as-of-right use, agreeing in early 1998 to continue processing the application before the Board as a special permit without prejudice. This was part of Metro’s attempt to cooperate fully with the Village throughout the administrative process.

25. At no time during the period of 1997 and into 1998, did the Village attempt to terminate the pre-existing use of the property as construction and demolition debris processing facility and transfer station or claim it was unlawful from a local land use standpoint.

26. After an exhaustive public hearing, the Board adopted a negative declaration pursuant to the New York State Environmental Quality Review Act (“SEQRA”), determining

that there were no adverse environmental impacts associated with the use of the Property for the Facility that had not been adequately identified, studied, and mitigated.

27. Accordingly, the Board granted a special permit sanctioning the use of the Property for the Facility. The special permit specifically recognized that the Property was being used for “a solid waste recyclables and processing Facility.”

28. In March 2000, Metro Enviro (“Metro Enviro”), a wholly-owned subsidiary of Allied Waste Industries, Inc. (“Allied”), and an entity different than Metro Enviro, LLC, acquired the assets of Metro Enviro, LLC.¹

29. Metro Enviro made important and costly improvements to the Facility, including installing fast-sealing doors on the truck entrance to and exit from the processing area, and repairing the highly-engineered, concrete reinforced tipping floor in the processing area. As a result, the Property now consists of a state-of-the-art transfer station with, among other things, paved driveways providing access to the processing area, a scale house with computerized scales, a camera that focuses on the trucks entering the facility, a radiation detection device, and a storm water drainage and management system.

30. Metro Enviro requested a transfer of the DEC Permit that had been granted to Metro Enviro, LLC, with respect to the Property.

31. Metro Enviro, as a lessee of the Property, operated the Facility as a DEC-approved construction and demolition debris processing facility and transfer station from March 2000 until September 1, 2005.

32. On March 23, 2001, Metro Enviro filed a timely written request with the Board asking that the special permit, which was purportedly due to expire on May 5, 2001, be renewed.

¹ Metro Enviro was a plaintiff in this litigation until the Court granted the respondents’ motion to dismiss as to Metro Enviro on the ground of collateral estoppel.

The Board was advised that the renewal application was deemed a Type II Action under SEQRA requiring no further environmental studies. The Board and its counsel agreed with that assessment and, to date, there has been no deviation from that position.

33. After filing the renewal application, Metro Enviro secured more than ten temporary extensions of the special permit, each effectively sanctioning the continuing use of the Property for the Facility. Metro Enviro – as the operator of the facility – appeared at numerous Board meetings to answer questions and provide information to the Board.

34. At no time did the Board suggest that the use of the Property as a construction and demolition debris processing facility and transfer station was not legally allowed.

35. Nevertheless, on or about June 18, 2001, the Board enacted an amendment to Section 230-18 of the Village Code concerning uses in the LI District (the “2001 Amendment”):

E. Prohibited uses. Solid and liquid waste transfer and storage stations and landfills (including construction and demolition materials) are prohibited. For the purposes of this section, solid and liquid wastes are defined as follows: all putrescible and nonputrescible materials or substances that are discarded or rejected as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection, including but not limited to liquids, garbage refuse, industrial, commercial and household waste, sludges from air or water treatment facilities, rubbish, tires, ashes, contained gaseous material, incinerator ash and residue and construction and demolition debris.

Village Code § 230-18(E).

36. As a result of the 2001 Amendment, for the first time in the Village, transfer stations and processing facilities such as Metro Enviro’s became “expressly prohibited” throughout the entire Village, including the LI District.

37. At the time it adopted the 2001 Amendment, the Board was well aware that the Property was being used as a construction and demolition debris processing facility and transfer station and that the Facility was legally operating at that time pursuant to a special permit in the LI District. The Village thus effectively recognized the Property’s constitutionally protected

vested rights to continue the operation of what at that time undeniably became a nonconforming construction and demolition debris processing facility and transfer station.

38. In fact, the Village Manager and the Village Attorney specifically advised Metro Enviro's counsel that the Facility would continue to be a pre-existing, legal nonconforming use; indeed, the Facility at that time had a valid special permit on extension from the Board. The continued use of the Property for the Facility constitutes implicit recognition that the Facility is a pre-existing, legal nonconforming use.

39. On January 27, 2003, the Board voted to deny Metro Enviro's application to renew the special permit. In support of its denial, the Board issued a Statement of Findings, which cited as the purported basis for its decision violations of the special permit, including mishandling of unauthorized waste, exceedances of the maximum permitted tonnage, failure to collect leachate on one occasion, receipt of two refrigerators, and failure of certain training, reporting and record-keeping requirements. The Village Board did not find that the Property's use for solid waste management was unlawful or unprotected.

40. Metro Enviro commenced a proceeding pursuant to CPLR article 78 seeking to vacate and annul the Board's denial of its application to renew the special permit. Greentree was not a party to that action, nor was it required to be a party to that action.

41. On February 4, 2003, the Supreme Court, Westchester County (Frank A. Nicolai, J.), granted an injunction allowing the Facility to continue to operate until the merits of the proceeding were determined.

42. The Supreme Court subsequently granted Metro Enviro's petition and remitted the matter "for the purpose of issuing a permit in accordance herewith, upon such reasonable conditions as it may deem appropriate."

43. On February 7, 2003, DEC renewed Metro Enviro's DEC permit, increasing the permit capacity of the Facility from 700 tons per day to 1,000 tons per day.

44. The Village appealed the Supreme Court's order to the Appellate Division, Second Department, which, by decision and order dated May 10, 2004, reversed the Supreme Court, and reinstated the Village's denial of the special permit. See *Metro Enviro Transfer, LLC v. Village of Croton-on-Hudson*, 7 A.D.3d 625 (2d Dep't 2004). The Court of Appeals granted leave to appeal from the Appellate Division order and, on July 6, 2005, affirmed. See *Metro Enviro Transfer, LLC v. Village of Croton-on-Hudson*, 5 N.Y.3d 236 (2005).

45. Throughout Metro Enviro's litigation with regard to the special permit renewal, the Facility continued to be lawfully utilized for its pre-existing nonconforming use.

46. By resolution dated July 18, 2005, the Village ordered Metro Enviro to cease accepting waste as of July 23, 2005, and to commence the 90-day closure procedures set forth in Metro Enviro's O&M Manual.

47. By letter dated July 20, 2005, Greentree requested a determination from the Building Inspector that the Facility is a lawful, pre-existing nonconforming construction and demolition debris processing facility and transfer station.

48. On that same date, Greentree commenced this action requesting a judgment declaring that the operation of the Facility on the Property is a prior, lawful nonconforming use and that no special permit is required for such use. In light of the Village's order that Metro Enviro cease accepting waste on July 23, 2005, Greentree and Metro Enviro requested temporary and preliminary injunctive relief from this Court in order to maintain the status quo until such time as they were able to exercise their due process rights with the administrative process.

49. By decision and order dated August 26, 2005, this Court granted Greentree's motion for a preliminary injunction enjoining Respondents "from prohibiting or interfering with Greentree's ability to lease and or operate [the Property] for purposes of solid waste management."

50. By that same decision and order, this Court determined that Greentree was not required to exhaust its administrative remedies because it would be futile to do so.

51. On September 1, 2005, Metro Enviro ceased its operations on the Property and commenced the 90 day closure process.

52. On October 28, 2005, consistent with this Court's futility determination, the Building Inspector issued an unfavorable determination, stating that since Metro Enviro's special permit was "not renewed, the non-conforming use terminated."

53. In December 2005, the Village commenced an action against Greentree seeking an injunction against the operation of the Facility without a special permit.

54. By decision and order dated April 25, 2006, this Court granted the Village's motion for a preliminary injunction prohibiting the use of the property without first obtaining a special use permit. In making that decision, the Court held that "the non-renewal of Metro Enviro's nonconforming use special permit did not eviscerate the protected property rights at issue."

55. On July 5, 2006, Greentree and its then contract vendee, Northeast Interchange Railway, LLC, applied to the Village for re-issuance of the 1998 special permit for the Facility, expressly reserving in doing so Greentree's claim that no such permit was required.

56. By decision and order dated July 31, 2006, this Court granted Greentree's motion to toll the one-year discontinuance period prohibiting the re-establishment of pre-existing, non-

conforming uses, as set forth in Village Code § 230-53(A)(3), until a final determination had been made with respect to the application for a special permit.

57. By decision and order dated December 4, 2007, the Appellate Division, Second Department, modified this Court's order to provide that the one-year discontinuance period be tolled "for the period of time during which the injunction [obtained by the Village] is in effect."

58. The injunction obtained by the Village remains in effect.

**As and for Greentree's First Cause of Action
(Pre-Existing, Legal Nonconforming Use)**

59. Greentree repeats and reasserts the allegations contained in paragraphs 1 through 58 of this petition/complaint with the same force and effect as if fully set forth herein.

60. The 2001 zoning amendment prohibits the operation of a construction and demolition debris processing facility and transfer station anywhere in the Village.

61. With the exception of certain uses not at issue in this case, the Village Code expressly allows nonconforming uses to be "continued indefinitely," subject only to limitations that do not apply here. See Village Code § 230-53(A). The Village Code defines a nonconforming use as "A building or use lawfully existing at the effective date of this chapter or any amendment thereto which does not conform to the regulations prescribed for the district in which it is situated."

62. The use of the Property for a construction and demolition debris processing facility and transfer station is a nonconforming use that is permitted to continue because the Property was lawfully used as a construction and demolition debris processing facility and transfer station on the effective date of the 2001 zoning amendment.

63. Greentree is thus entitled to a declaration that the Property's use as a construction and demolition debris processing facility and transfer station is a pre-existing, legal nonconforming use and may continue indefinitely

**As and for Greentree's Second Cause of Action
(Declaratory Judgment/Pre-Existing, Legal Nonconforming Use)**

64. Greentree repeats and reasserts the allegations contained in paragraphs 1 through 63 of this petition/complaint with the same force and effect as if fully set forth herein.

65. The determination of the Building Inspector that the use of the property as a construction and demolition debris processing facility and transfer station is not a prior, lawful non-conforming use is arbitrary and capricious and incorrect as a matter of law.

66. This Court has already determined, in its August 26, 2005 decision and order, that Greentree need not first exhaust its administrative remedies with respect to the Building Inspector's determination because it would be futile for Greentree to attempt to seek relief through the administrative process.

67. Greentree is entitled to an order pursuant to CPLR article 78 vacating and annulling the determination of the Building Inspector that the use of the property as a construction and demolition debris transfer station and processing facility is not a prior, lawful non-conforming use entitled to continue indefinitely.

**As and for Greentree's Third Cause of Action
(Declaratory Relief/Damages/Regulatory Taking)**

68. Greentree repeats and reasserts the allegations contained in paragraphs 1 through 67 of this petition/complaint with the same force and effect as if fully set forth herein.

69. Greentree purchased the Property in 1997 with the clear and distinct investment-backed expectation that the Property would continue to be used as a construction and demolition debris processing facility and transfer station.

70. Greentree was keenly aware when it purchased the Property of the bundle of property rights and the attendant inherent value that it was acquiring.

71. The Fifth Amendment of the United States Constitution, as applied to the states through the Fourteenth Amendment, and Article I, Section 7 of the New York State Constitution, provide that “private property [shall not] be taken for public use without just compensation.”

72. Prohibiting the use of the Property for any period of time in accordance with its pre-existing, legal nonconforming status without just compensation constitutes a violation of the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 7 of the New York State Constitution.

73. The Village’s actions permanently and unfairly deprive Greentree of its legitimate economically beneficial or productive use of the Property, thus the Village is liable for the permanent regulatory taking of Greentree’s property interests.

74. Respondents are liable to compensate Greentree for any period of time in which the Village prevents or prohibits the use of the Property for its pre-existing, legal nonconforming use for the regulatory taking of the Property in an amount to be determined at trial, but no less than a combined amount of Twenty-Five Million Dollars (\$25,000,000), plus pre-judgment interest.

**As and for Greentree’s Fourth Cause of Action
(Declaratory Relief/Damages/Denial of Substantive Due Process)**

75. Greentree repeats and reasserts the allegations contained in paragraphs 1 through 74 of this petition/complaint with the same force and effect as if fully set forth herein.

76. Greentree has protectable property interests in the use of the Property for its pre-existing, legal nonconforming use.

77. Respondents' actions, including any action that prohibits or prevents the use of the Property for its pre-existing, legal nonconforming use, deprives Greentree of its property interests.

78. Respondents' actions, including any action that prohibits or prevents the use of the Property in accordance with its pre-existing, legal nonconforming use, are arbitrary and capricious, not reasonably related to a legitimate public purpose and for purposes extraneous to legitimate land use considerations.

79. Respondents' actions, including any action that prohibits or prevents the use of the Property for its pre-existing, legal nonconforming use, results in a deprivation of Greentree's substantive due process rights under the Fourteenth Amendment to the United States Constitution and Article I, Section 6 of the New York State Constitution.

80. Respondents knew or should have known that they were violating Greentree's substantive due process rights under the Fourteenth Amendment to the United States Constitution and Article I, Section 6 of the New York State Constitution.

81. Pursuant to 42 U.S.C. § 1983, Respondents are liable to Greentree for damages caused by the violation of its constitutional and civil rights, plus pre-judgment interest.

82. Pursuant to 42 U.S.C. § 1988, Respondents are liable to Greentree for its attorneys' fees.

83. Respondents are liable to Greentree for the deprivation of its substantive due process rights in an amount to be determined at trial, but no less than a combined amount of Twenty-Five Million Dollars (\$25,000,000), plus pre-judgment interest.

**As and for Greentree's Fifth Cause of Action
(Declaratory Relief/Damages/Denial of Procedural Due Process)**

84. Greentree repeats and reasserts the allegations contained in paragraphs 1 through 83 of this petition/complaint with the same force and effect as if fully set forth herein.

85. Respondents' actions, including any action that prohibits or prevents the use of the Property for its pre-existing, legal nonconforming use, deprives Greentree of its property interests by, among other things, (i) preventing it from using the Property as permitted by law; (ii) depriving it of its vested interest in the pre-existing, legal nonconforming use; and (iii) preventing it from making reasonable economic use of its property interests.

86. Respondents are acting to eviscerate the pre-existing, legal nonconforming use of the Property without any due process, formal or informal notice or warning to Greentree.

87. Greentree has been denied an opportunity to be heard before Respondents deprive them of its property interests.

88. Respondents' actions result in a deprivation of Greentree's procedural due process rights under the Fourteenth Amendment to the United States Constitution and Article I, Section 6 of the New York State Constitution.

89. Respondents knew or should have known that they were violating Greentree's procedural due process rights under the Fourteenth Amendment to the United States Constitution and Article I, Section 6 of the New York State Constitution.

90. Under 42 U.S.C. § 1983, Respondents are liable to Greentree for damages caused by the violation of its constitutional and civil rights, plus pre-judgment interest.

91. Under 42 U.S.C. § 1988, Respondents are liable to Greentree for its attorneys' fees.

92. Respondents are liable to Greentree for the deprivation of its respective procedural due process rights in an amount to be determined at trial, but no less than a combined amount of Twenty-Five Million Dollars (\$25,000,000), plus pre-judgment interest.

**As and for Greentree's Sixth Cause of Action
(Preemption)**

93. Greentree repeats and reasserts the allegations contained in paragraphs 1 through 92 of this petition/complaint with the same force and effect as if fully set forth herein.

94. Pursuant to Environmental Conservation Law article 27, the construction and operation of construction and demolition debris processing facilities and transfer stations are completely regulated by the New York State Department of Environmental Conservation (the "DEC").

95. The statute and the regulations adopted by DEC pursuant thereto permit the establishment of construction and demolition debris processing facilities and transfer stations in such locations as DEC determines in accordance with its regulations.

96. Village Code § 230-18(E) prohibits construction and demolition debris processing facilities and transfer stations within the Village.

97. Since the Village code prohibits what state law permits, it conflicts with State law and is preempted.

98. Greentree is entitled to a declaration that the local law prohibiting construction and demolition debris processing facilities and transfer stations within the Village is void and of no effect because it is preempted by the state law.

WHEREFORE, Greentree respectfully requests judgment against respondents jointly and severally, as follows:

i. Declaring that the use of the Property as a construction and demolition debris processing facility and transfer station is a pre-existing, legal nonconforming use, which may be continued indefinitely;

ii. Vacating and annulling the determination of the Building Inspector that the use of the Property as a construction and demolition debris processing facility and transfer station is not a prior, lawful non-conforming use;

iii. Awarding compensation to Greentree for the regulatory taking of its property interests in an amount to be determined at trial, but no less than Twenty-Five Million Dollars (\$25,000,000), plus pre-judgment interest;

iv. Awarding compensation to Greentree for the violation of its substantive and procedural Due Process rights in an amount to be determined at trial, but no less than Twenty-Five Million Dollars (\$25,000,000), plus pre-judgment interest;

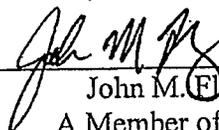
v. Vacating and annulling Village Code § 230-18(E), and declaring it to be void and of no effect, because it is pre-empted by state law; and

vi. Granting such other and further relief as the Court may deem just and equitable.

Yours, etc.

Wilson Elser Moskowitz Edelman & Dicker, LLP
Attorneys for Petitioner/Plaintiff

By: _____



John M. Flannery
A Member of the Firm
1133 Westchester Avenue
White Plains, NY 10604
(914) 323-7000

Dated: White Plains, New York
November 18, 2013

AFFIDAVIT OF SERVICE BY MAIL

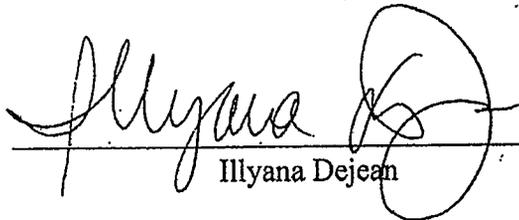
STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

Illyana Dejean, being duly sworn, deposes and says: that deponent is not a party to this action, is over 18 years of age and resides in Rockland County;

That on the 18th day of November, 2013, deponent served the within document(s) entitled **SUPPLEMENTAL SUMMONS AND SECOND AMENDED PETITION AND COMPLAINT** upon:

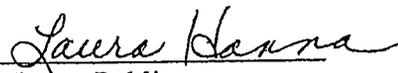
MIRANDA SAMBURSKY SLONE
SKLARIN VERVENIOTIS, LLP
Attn: Michael A. Miranda, Esq.
240 Mineola Boulevard
Mineola, NY 11501

at the address(es) designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid, properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Post Office within the State of New York.



Illyana Dejean

Sworn to before me this
18th day of November, 2013



Notary Public

LAURA HANNA
Notary Public, State of New York
No. 01HA6035322
Qualified in Westchester County
Commission Expires Dec 27 2017

C

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X

GREENTREE REALTY, LLC,

Petitioner/Plaintiff,

Index No. 05-11872

- against -

NOTICE TO ADMIT

THE VILLAGE OF CROTON-ON-HUDSON, THE
VILLAGE BOARD OF TRUSTEES OF THE VILLAGE
OF CROTON-ON-HUDSON, THE VILLAGE OF
CROTON-ON-HUDSON ZONING BOARD OF
APPEALS, and DANIEL O'CONNOR, in his official
capacity, as the VILLAGE BUILDING INSPECTOR,

Respondents/Defendants.

-----X

PLEASE TAKE NOTICE that, pursuant to CPLR 3123(a), petitioner/plaintiff Greentree Realty, LLC ("Greentree") by its undersigned attorneys, hereby demands that the respondents/defendants, the Village of Croton-on-Hudson, the Village Board of Trustees of the Village of Croton-on-Hudson (the "Village Board"), the Village of Croton-on-Hudson Zoning Board of Appeals (the "ZBA"), and Daniel O'Connor, as Village Building Inspector (collectively, the "Village defendants") admit the truth of the following matters:

1. That from 1960 through 2005, the premises located in Westchester County, New York, known as 1A Croton Point Avenue, Croton-on-Hudson, New York. (Westchester County, Village Tax Map as Section 78.16, Blocks 2, Lots 1 and 2)(the "Property") was used as a construction and demolition debris processing facility and transfer station.

2. That Louis Milano, Angelo Milano, Milano Brothers, Inc., and/or A. Milano & Sons used the Property as a construction and demolition debris processing facility and transfer station.

3. That Robert V. Liguori used the Property as a construction and demolition debris processing facility and transfer station.

4. That Industrial Recycling Systems, Inc. used the Property as a construction and demolition debris processing facility and transfer station.

5. That Harmon Recycle & Rail, Inc. (or Harmon & Rail, Inc.) used the Property as a construction and demolition debris processing facility and transfer station.

6. That Greentree Realty, LLC used the Property as a construction and demolition debris processing facility and transfer station.

7. That Metro Enviro, LLC used the Property as a construction and demolition debris processing facility and transfer station.

8. That Allied Waste Industries, Inc. used the Property as a construction and demolition debris processing facility and transfer station.

9. That Metro Enviro Transfer, LLC used the Property as a construction and demolition debris processing facility and transfer station.

10. That, as of April 30, 1999, the Property was in full compliance with the then-current Village Code, including but not limited to §§ 230-18(B)(2); 230-18(B)(4); 230-18(G)(1); 230-37; 230-47; and 230-54 of the Code.

PLEASE TAKE FURTHER NOTICE that each of the matters set forth above, to which an admission is requested shall be deemed admitted unless within twenty (20) days after service hereof the Village defendants serve upon counsel for Greentree a sworn

statement either denying specifically the matters of which these admissions are requested or setting forth in detail the reasons why the Village defendants cannot truthfully admit or deny these matters.

PLEASE TAKE FURTHER NOTICE that Greentree hereby demands that, with respect to each and every matter set forth above for which the Village defendants deny the truth of, the Village defendants produce any and all documents that substantiate the Village defendants' denial of the truth of the matter.

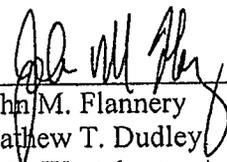
PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR 3123(c), if the Village defendants do not admit the truth and/or stipulate to the admissibility of the foregoing matters and documents within twenty (20) days, and Greentree is forced to prove and does prove the truth thereof at trial, in addition to such other liability as may be established, the Village defendants will be liable to Greentree for the reasonable expenses incurred in making such proof, including reasonable attorney's fees.

Dated: White Plains, New York
January 15, 2014

Yours, etc.

WILSON, ELSER, MOSKOWITZ
EDELMAN & DICKER LLP
Attorneys for Petitioner/Plaintiff

By: _____


John M. Flannery
Matthew T. Dudley
1133 Westchester Avenue
White Plains, NY 10604
(914) 323-7000
Our File No. 03123.00002

TO: MIRANDA SOKOLOFF SAMBURSKY SLONE VERVENIOTIS LLP
Attorneys for Respondents/Defendants
MICHAEL A. MIRANDA
ROBERT HEWITT
240 Mineola Blvd.
Mineola, NY 11501
(516) 741-7676

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

----- x
GREENTREE REALTY, LLC,

Petitioner/Plaintiff,

Index No. 05-11872

- against -

:
:
:
**NOTICE FOR DISCOVERY
AND INSPECTION**

THE VILLAGE OF CROTON-ON-HUDSON, THE
VILLAGE BOARD OF TRUSTEES OF THE VILLAGE :
OF CROTON-ON-HUDSON, THE VILLAGE OF :
CROTON-ON-HUDSON ZONING BOARD OF :
APPEALS, and DANIEL O'CONNOR, in his official :
capacity, as the VILLAGE BUILDING INSPECTOR, :

:
Respondents/Defendants.
:

----- x
PLEASE TAKE NOTICE that, pursuant to CPLR §3101, Rule 3120, and all other applicable rules, petitioner/plaintiff Greentree Realty, LLC ("Greentree"), hereby demands that, pursuant to the definitions and instructions set forth herein, respondents/defendants, the Village of Croton-on-Hudson, the Village Board of Trustees of the Village of Croton-on-Hudson (the "Village Board"), the Village of Croton-on-Hudson Zoning Board of Appeals (the "ZBA"), and Daniel O'Connor, as Village Building Inspector (collectively, the "Village defendants"), produce documents responsive to the demands set forth below within twenty (20) days of the date hereof. Responsive documents must be produced at the offices of **Wilson, Elser, Moskowitz, Edelman & Dicker LLP, Attn: John M. Flannery, at 1133 Westchester Avenue, White Plains, New York 10604.**

Definitions and Instructions

A. The term "Document" means any written, printed, typed or other graphic matter of any kind or nature, however produced or reproduced, whether sent or received or neither, including, but not limited to, originals and non-identical copies and all drafts or correspondence, e-mail, instant messages, letters, memoranda, notes, messages, working papers, meeting minutes, resolutions, abstracts, records, reports, studies, test results, analyses, books, articles, desk calendars, appointment books, diaries, lists, invoices, bills, receipts, contracts, agreements, proposals, and instruments of assignment, transfer or conveyance, reports, checks, check stubs, check registers, transcripts, envelopes, telecopy messages, messages, interoffice communications or writings, by whatever name called, including reports, notes, notations and memoranda of or relating to telephone conversations and conferences, and other written material of any kind including drafts and copies bearing notations or marks not found in the original; photographs, slides, drawings, plans, blueprints, graphs, maps or other graphic matter of any kind, however such document is produced, or reproduced, including drafts and copies bearing notations or marks not found in the original; tapes, videos, motion pictures, or other recordings; data compilations and any other means by which data is stored or preserved electronically, magnetically, or mechanically, and the applicable program, computer printouts or other output.

The term "Document" shall also refer to all Electronically Stored Information (ESI), including e-mails and other documents accessible from computer or computerized storage, backup disks, CDs and DVDs in the Village defendants' possession, custody or control.

B. "Relating to" or "concerning" means constituting, identifying, reflecting, referring to, responding to, indicating, commenting on, regarding, discussing, showing, describing, implying and/or analyzing.

C. The term "Person" shall include any natural person, corporation, partnership, public corporation, municipal corporation, association, governmental body, or other form of legal entity.

D. The term "Village" shall mean the Village of Croton-on-Hudson, and all departments, offices and/or agencies thereof.

E. The term "Property" shall mean the premises located in Westchester County, New York, known as 1A Croton Point Avenue, Croton-on-Hudson, New York. (Westchester County, Village Tax Map as Section 78.16, Blocks 2, Lots 1 and 2).

F. The term "and" and "or" shall be construed disjunctively or conjunctively, as necessary, to bring within the scope of the request all documents or responses which might otherwise be construed to be outside the scope.

G. Whenever a singular form appears, it shall be construed as a plural, and vice versa, as necessary, to bring within the scope of the request all documents or responses which might otherwise be construed to be outside the scope.

H. Whenever a document is not produced in full, state with particularity the reason it is not being produced in full, and describe as specifically as possible the portions of the documents which are not produced.

I. If you object to the production of any document requested herein on the grounds of attorney-client privilege, work-product or otherwise, identify each such document specifically by its nature (*e.g.*, letter, memorandum, etc.), date, number of

pages, author, recipients (if any), subject matter, name and address of the present custodian, the title or description of the file in which the document may be found and the location of such file, and the specific grounds for withholding the document from production.

J. Where an objection is made to any document request, or any sub-part thereof, the objection shall state with specificity all grounds. Any ground not stated in an objection within the time provided by the Civil Practice Law Rules, or any extension thereof, shall be waived.

K. This request shall be deemed to be continuing, and any documents requested herein that are unavailable to the Village defendants as of the date hereof that are subsequently created or discovered by Village defendants or any of their attorneys, agents, or representatives, up to and including the time of trial, shall be produced at the time of their discovery or creation.

L. If any document was, but is no longer in the possession or subject to the control of the Village defendants, (i) state the present location of the document and identify its custodian; and (ii) state all other information necessary or helpful to enable Greentree to locate the document and to procure its production pursuant to CPLR 3120 or by subpoena *duces tecum*.

Document Demands

1. Produce any and all documents relating to or concerning the use of the Property from 1960 through the present, including but not limited to the use of the Property by Louis Milano, Angelo Milano, Milano Brothers, Inc., and/or A. Milano & Sons (the "Milanos").
2. Produce any and all documents relating to or concerning any and all special permit applications submitted by the Milanos to the Village defendants with respect to the Property.
3. Produce any and all documents relating to or concerning any and all special permits issued by the Village defendants to the Milanos with respect to the Property.
4. Produce any and all documents relating to or concerning any and all applications for site plan approval submitted by the Milanos to the Village defendants with respect to the Property.
5. Produce any and all documents relating to or concerning any and all grants of site plan approval by the Village defendants to the Milanos with respect to the Property.
6. Produce any and all documents relating to or concerning any and all applications for building permits submitted by the Milanos to the Village defendants with respect to the Property.
7. Produce any and all documents relating to or concerning any and all certificates of occupancy issued by the Village defendants to the Milanos for any and all buildings on the Property.

8. Produce any and all documents relating to or concerning any and all public meetings held before the Village Board with respect to the property during the time period that the Milanos owned and/or operated a business on the Property.

9. Produce any and all documents relating to or concerning any and all public meetings held before the Village Planning Board with respect to the property during the time period that the Milanos owned and/or operated a business on the Property.

10. Produce any and all documents relating to or concerning any and all public meetings held before the ZBA with respect to the property during the time period that the Milanos owned and/or operated a business on the Property.

11. Produce any and all documents relating to or concerning any and all inspections of the Property by the Village's Building Inspector during the time period that the Milanos owned and/or operated a business on the Property.

12. Produce any and all documents relating to or concerning the use of the Property by the Milanos as a dump site for construction debris from the Village, the Town of Ossining, or anywhere else.

13. Produce any and all documents relating to or concerning the use of the Property by the Milanos to transship construction debris.

14. Produce any and all documents relating to or concerning the use of the Property by the Milanos to sort waste materials.

15. Produce any and all documents relating to or concerning the use of the Property by the Milanos to bury automobiles.

16. Produce any and all documents relating to or concerning the use of the Property by the Milanos as a construction yard.

17. Produce any and all documents relating to or concerning the use of the Property by Milanos to provide sand and soil cover for the Croton Point landfill pursuant to a contract with Westchester County.

18. Produce any and all documents relating to or concerning the use of the Property by the Milanos to handle railroad ties and other debris.

19. Produce any and all documents relating to or concerning the use of the Property by the Milanos as a vehicle repair shop.

20. Produce any and all documents relating to or concerning any contract by and between the Milanos and Penn Central to transship and cart from the Property industrial refuse, including but not limited to railroad ties, metal waste and newspapers.

21. Produce any and all documents relating to or concerning a letter from the Village defendants to the Milanos, dated February 15, 1977, stating that the uses of the Property, including the sorting of metals and other materials, were continuous, uninterrupted and approved by the Village defendants.

22. Produce any and all documents relating to or concerning an affidavit of Mr. Angelo Milano, dated October 2, 1986, submitted to the Village defendants and detailing his uses of the Property from 1963 to the time that the Property was sold to Mr. Robert V. Liguori ("Liguori") in or around 1984.

23. Produce any and all documents relating to or concerning Liguori's use of the property, as a tenant of the Milanos, from 1976 to 1984.

24. Produce any and all documents relating to or concerning Liguori's purchase of the property in or around 1984.

25. Produce any and all documents relating to or concerning the use of the Property by Liguori.

26. Produce any and all documents relating to or concerning any and all special permit applications submitted by Liguori to the Village defendants with respect to the Property.

27. Produce any and all documents relating to or concerning any and all special permits issued by the Village defendants to Liguori with respect to the Property.

28. Produce any and all documents relating to or concerning any and all special permit modifications issued by the Village defendants to Liguori with respect to the Property.

29. Produce any and all documents relating to or concerning any and all applications for site plan approval submitted by Liguori to the Village defendants with respect to the Property.

30. Produce any and all documents relating to or concerning any and all grants of site plan approval by the Village defendants to Liguori with respect to the Property.

31. Produce any and all documents relating to or concerning any and all certificates of occupancy issued by the Village defendants to Liguori for any and all buildings on the Property.

32. Produce any and all documents relating to or concerning any and all public meetings held before the Village Board with respect to the Property during the time period that Liguori owned and/or operated a business on the Property.

33. Produce any and all documents relating to or concerning any and all public meetings held before the Village Planning Board with respect to the Property during the time period that Liguori owned and/or operated a business on the Property.

34. Produce any and all documents relating to or concerning any and all public meetings held before the ZBA with respect to the Property during the time period that Liguori owned and/or operated a business on the Property.

35. Produce any and all documents relating to or concerning any and all inspections of the Property by the Village's Building Inspector during the time period that Liguori owned and/or operated a business on the Property.

36. Produce any and all documents relating to or concerning the use of the Property by Harmon Recycle & Rail, Inc. or Harmon & Rail, Inc. ("Harmon").

37. Produce any and all documents relating to or concerning any and all special permit applications submitted by Harmon to the Village defendants with respect to the Property.

38. Produce any and all documents relating to or concerning any and all special permits issued by the Village defendants to Harmon with respect to the Property.

39. Produce any and all documents relating to or concerning any and all special permit modifications issued by the Village defendants to Harmon with respect to the Property.

40. Produce any and all documents relating to or concerning any and all applications for site plan approval submitted by Harmon to the Village defendants with respect to the Property.

41. Produce any and all documents relating to or concerning any and all grants of site plan approval by the Village defendants to Harmon with respect to the property.

42. Produce any and all documents relating to or concerning any and all applications for building permits submitted by Harmon to the Village defendants with respect to the Property.

43. Produce any and all documents relating to or concerning any and all certificates of occupancy issued by the Village defendants to Harmon for any and all buildings on the Property.

44. Produce any and all documents relating to or concerning any and all public meetings held before the Village Board with respect to the Property during the time period that Harmon owned and/or operated a business on the Property.

45. Produce any and all documents relating to or concerning any and all public meetings held before the Village Planning Board with respect to the Property during the time period that Harmon owned and/or operated a business on the Property.

46. Produce any and all documents relating to or concerning any and all public meetings held before the ZBA with respect to the Property during the time period that Harmon owned and/or operated a business on the Property.

47. Produce any and all documents relating to or concerning any and all inspections of the Property by the Village's Building Inspector during the time period that Harmon owned and/or operated a business on the Property.

48. Produce any and all documents relating to or concerning the use of the Property by Industrial Recycling Systems, Inc. ("IRS").

49. Produce any and all documents relating to or concerning any and all special permit applications submitted by IRS to the Village defendants with respect to the Property.

50. Produce any and all documents relating to or concerning any and all special permits issued by the Village defendants to IRS with respect to the Property.

51. Produce any and all documents relating to or concerning any and all special permit modifications issued by the Village defendants to IRS with respect to the Property.

52. Produce any and all documents relating to or concerning any and all applications for site plan approval submitted by IRS to the Village defendants with respect to the Property.

53. Produce any and all documents relating to or concerning any and all grants of site plan approval by the Village defendants to IRS with respect to the Property.

54. Produce any and all documents relating to or concerning any and all applications for building permits submitted by IRS to the Village defendants with respect to the Property.

55. Produce any and all documents relating to or concerning any and all certificates of occupancy issued by the Village defendants to IRS for any and all buildings located on the Property.

56. Produce any and all documents relating to or concerning any and all public meetings held before the Village Board with respect to the Property during the time period that IRS owned and/or operated a business on the Property.

57. Produce any and all documents relating to or concerning any and all public meetings held before the Village Planning Board with respect to the Property during the time period that IRS owned and/or operated a business on the Property.

58. Produce any and all documents relating to or concerning any and all public meetings held before the ZBA with respect to the Property during the time period that IRS owned and/or operated a business on the Property.

59. Produce any and all documents relating to or concerning any and all inspections of the Property by the Village's Building Inspector during the time period that IRS owned and/or operated a business on the Property.

60. Produce any and all documents relating to or concerning Liguori's request that the ZBA recognize that his use of the Property was consistent with the use of the Property by the Milanos so as to confirm that his use would not require a special permit.

61. Produce any and all documents relating to or concerning the Village Engineer's determination that Liguori's and/or IRS's use of the Property constituted a change from one nonconforming use to another.

62. Produce any and all document relating to or concerning the ZBA public meeting held on November 12, 1986.

63. Produce any and all documents relating to or concerning the Village Zoning Board of Appeals' confirmation, made on or around December 23, 1986, of the Village Engineer's determination that Liguori's and/or IRS's use of the Property constituted a change from one nonconforming use to another nonconforming use.

64. Produce any and all documents relating to or concerning Liguori's appeal to the Village Engineer for a variance to change the use of the Property from one nonconforming use to another.

65. Produce any and all documents relating to or concerning Liguori's and/or IRS's use of the Property as a wood processing, material storage and recycling facility.

66. Produce any and all documents relating to or concerning any contracts by and between Liguori, and/or IRS, and Penn Central to transship and cart industrial refuse, including but not limited to railroad ties, metal waste and newspapers.

67. Produce any and all documents relating to or concerning any contracts by and between Liguori, and/or IRS, and Metro North Railroad.

68. Produce any and all documents relating to or concerning any contracts by and between Liguori, and/or IRS, and Reader's Digest.

69. Produce any and all documents relating to or concerning any applications submitted by Liguori, and/or IRS, and/or Harmon, to the Village Planning Board seeking to install a rail spur on the Property.

70. Produce any and all documents relating to or concerning the consent order entered into by and between the New York State Department of Environmental Conservation and Liguori and/or IRS and/or Harmon with respect to the Property.

71. Produce any and all documents relating to or concerning Harmon's application to the Village defendants, in or around 1995, to modify the site plan for the Property.

72. Produce any and all documents relating to or concerning the Village defendants' recognition that the use of the Property by Liguori, and/or IRS, and/or Harmon, was a legal preexisting nonconforming use subject to a special permit.

73. Produce any and all documents relating to or concerning Greentree's purchase and ownership of the Property.

74. Produce any and all documents relating to or concerning the use of the Property by Greentree.

75. Produce any and all documents relating to or concerning any and all special permit applications submitted by Greentree to the Village defendants with respect to the Property.

76. Produce any and all documents relating to or concerning any and all special permits issued by the Village defendants to Greentree with respect to the Property.

77. Produce any and all documents relating to or concerning any and all special permit modifications issued by the Village defendants to Greentree with respect to the Property.

78. Produce any and all documents relating to or concerning any and all applications for site plan approval submitted by Greentree to the Village defendants with respect to the Property.

79. Produce any and all documents relating to or concerning any and all grants of site plan approval by the Village defendants to Greentree with respect to the property.

80. Produce any and all documents relating to or concerning any and all applications for building permits submitted by Greentree to the Village defendants with respect to the Property.

81. Produce any and all documents relating to or concerning any and all certificates of occupancy issued by the Village defendants to Greentree for any and all buildings on the Property.

82. Produce any and all documents relating to or concerning any and all public meetings held before the Village Board with respect to the Property during the time period that Greentree has owned and/or operated a business on the Property.

83. Produce any and all documents relating to or concerning any and all public meetings held before the Village Planning Board with respect to the Property during the time period that Greentree has owned and/or operated a business on the Property.

84. Produce any and all documents relating to or concerning any and all public meetings held before the ZBA with respect to the Property during the time period that Greentree has owned and/or operated a business on the Property.

85. Produce any and all documents relating to or concerning any and all inspections of the Property by the Village's Building Inspector during the time period that Greentree has owned and/or operated a business on the Property.

86. Produce any and all documents relating to or concerning the use of the Property by Metro Enviro, LLC ("Metro").

87. Produce any and all documents relating to or concerning any and all special permit applications submitted by Metro to the Village defendants with respect to the Property.

88. Produce any and all documents relating to or concerning any and all special permits issued by the Village defendants to Metro with respect to the Property.

89. Produce any and all documents relating to or concerning any and all special permit modifications issued by Village defendants to Metro with respect to the Property.

90. Produce any and all documents relating to or concerning any and all applications for site plan approval submitted by Metro to the Village defendants with respect to the Property.

91. Produce any and all documents relating to or concerning any and all grants of site plan approval by the Village defendants to Metro with respect to the property.

92. Produce any and all documents relating to or concerning any and all applications for building permits submitted by Metro to the Village defendants with respect to the Property.

93. Produce any and all documents relating to or concerning any and all certificates of occupancy issued by the Village defendants to Metro for any and all buildings on the Property.

94. Produce any and all documents relating to or concerning any and all public meetings held before the Village Board with respect to the Property during the time period that Metro owned and/or operated a business on the Property.

95. Produce any and all documents relating to or concerning any and all public meetings held before the Village Planning Board with respect to the Property during the time period that Metro owned and/or operated a business on the Property.

96. Produce any and all documents relating to or concerning any and all public meetings held before the ZBA with respect to the Property during the time period that Metro owned and/or operated a business on the Property.

97. Produce any and all documents relating to or concerning any and all inspections of the Property by the Village's Building Inspector during the time period that Metro owned and/or operated a business on the Property.

98. Produce any and all documents relating to or concerning any and all meetings held at DEC's Region III offices in New Paltz in or around December 1996 between representatives of the DEC, the Village, Liguori, and Metro and/or Greentree.

99. Produce any and all documents relating to or concerning Metro's and/or Greentree's remediation of the Property in or around July 1997.

100. Produce any and all documents relating to or concerning the request Metro made to the Village Board, in or around August 1997, that the special permit for the Property be renewed and transferred from Liguori and/or IRS and/or Harmon to itself.

101. Produce any and all documents relating to or concerning the Village Board's referral to the Village Planning Board of Metro's August 1997 request that the special permit for the Property be renewed and transferred for review.

102. Produce any and all documents relating to or concerning the Village Planning Board's recommendation to the Village Board, on or around November 25, 1997, that Metro be granted a special use permit for the Property.

103. Produce any and all documents relating to or concerning the Village defendants' issuance of a special permit to Greentree and/or Metro to conduct outdoor operations on the Property.

104. Produce any and all documents relating to or concerning Greentree's and/or Metro's application to the ZBA for an area variance in or around October 1998.

105. Produce any and all documents relating to or concerning the ZBA's grant of an area variance to Greentree and/or Metro for the Property.

106. Produce any and all documents relating to or concerning any and all submissions by Greentree and/or Metro to the Village defendants for site plan approval to construct any building on the Property in or around 1998.

107. Produce any and all documents relating to or concerning any and all submissions by Greentree and/or Metro to the Village defendants for building permits to construct a processing building on the Property in or around 1998.

108. Produce any and all documents relating to or concerning Metro Enviro Transfer, LLC's ("Metro Enviro") and/or Allied Waste Industries, Inc.'s lease and operation of the facility situated on the Property.

109. Produce any and all documents relating to or concerning the use of the Property by Metro Enviro.

110. Produce any and all documents relating to or concerning any and all special permit applications submitted by Metro Enviro to the Village defendants with respect to the Property.

111. Produce any and all documents relating to or concerning any and all special permits issued by the Village defendants to Metro Enviro with respect to the Property, including but not limited to temporary special permits.

112. Produce any and all documents relating to or concerning any and all special permit modifications issued by the Village defendants to Metro Enviro with respect to the Property.

113. Produce any and all documents relating to or concerning any and all applications for site plan approval submitted by Metro Enviro to the Village defendants with respect to the Property.

114. Produce any and all documents relating to or concerning any and all grants of site plan approval by the Village defendants to Metro Enviro with respect to the property.

115. Produce any and all documents relating to or concerning any and all applications for building permits submitted by Metro Enviro to the Village defendants with respect to the Property.

116. Produce any and all documents relating to or concerning any and all certificates of occupancy issued by the Village defendants to Metro Enviro for any and all buildings on the Property.

117. Produce any and all documents relating to or concerning any and all public meetings held before the Village Board with respect to the Property during the time period that Metro Enviro owned and/or operated a business on the Property.

118. Produce any and all documents relating to or concerning any and all public meetings held before the Village Planning Board with respect to the Property during the time period that Metro Enviro owned and/or operated a business on the Property.

119. Produce any and all documents relating to or concerning any and all public meetings held before the ZBA with respect to the Property during the time period that Metro Enviro owned and/or operated a business on the Property.

120. Produce any and all documents relating to or concerning any and all inspections of the Property by the Village's Building Inspector during the time period that Metro Enviro owned and/or operated a business on the Property.

121. Produce any and all documents relating to or concerning the Village's defendants' denial of Metro Enviro's application to renew Liguori's and/or IRS's and/or Harmon's special permit for the Property.

122. Produce any and all documents relating to or concerning the Village defendants' request that Metro Enviro apply for a new special permit in or around 1997 to operate a solid waste recyclables handling and processing facility for construction and demolition debris on the Property.

123. Produce any and all documents relating to or concerning any and all notice of violations issued by the Village defendants to Metro Enviro for violation of any special permits issued to Metro Enviro with respect to the Property.

124. Produce any and all documents relating to or concerning any and all fines imposed upon Metro Enviro by the Village defendants for special permit violations with respect to the Property.

125. Produce any and all documents relating to or concerning any hearings held by the Village Board with respect to Metro Enviro's operations of the facility situated on the Property.

126. Produce any and all documents relating to or concerning the Village defendants' decision, made on or around January 27, 2003, not to renew Metro Enviro's special permit for the Property and order that the facility be closed.

127. Produce any and all documents relating to or concerning Greentree's November 15, 2004 letter to the Village defendants stating that the use of the Property as a transfer station was consistent with "the decades-long nonconforming use" of the Property.

128. Produce any and all documents relating to or concerning the use of the Property by Regus Industries, LLC ("Regus").

129. Produce any and all documents relating to or concerning any and all special permit applications submitted by Regus to the Village defendants with respect to the Property.

130. Produce any and all documents relating to or concerning any and all special permits issued by the Village defendants to Regus with respect to the Property, including but not limited to temporary special permits.

131. Produce any and all documents relating to or concerning any and all special permit modifications issued by the Village defendants to Regus with respect to the Property.

132. Produce any and all documents relating to or concerning any and all applications for site plan approval submitted by Regus to the Village defendants with respect to the Property.

133. Produce any and all documents relating to or concerning any and all grants of site plan approval by the Village defendants to Regus with respect to the property.

134. Produce any and all documents relating to or concerning any and all applications for building permits submitted by Regus to the Village defendants with respect to the Property.

135. Produce any and all documents relating to or concerning any and all certificates of occupancy issued by the Village defendants to Regus for any and all buildings on the Property.

136. Produce any and all documents relating to or concerning any and all public meetings held before the Village Board with respect to the Property during the time period that Regus owned and/or operated a business on the Property.

137. Produce any and all documents relating to or concerning any and all public meetings held before the Village Planning Board with respect to the Property during the time period that Regus owned and/or operated a business on the Property.

138. Produce any and all documents relating to or concerning any and all public meetings held before the ZBA with respect to the Property during the time period that Regus owned and/or operated a business on the Property.

139. Produce any and all documents relating to or concerning any and all inspections of the Property by the Village's Building Inspector during the time period that Regus owned and/or operated a business on the Property.

140. Produce any and all documents relating to or concerning the use of the Property by Northeast Interchange Railway, LLC ("NIR").

141. Produce any and all documents relating to or concerning any and all special permit applications submitted by NIR to the Village defendants with respect to the Property.

142. Produce any and all documents relating to or concerning any and all special permits issued by the Village defendants to NIR with respect to the Property, including but not limited to temporary special permits.

143. Produce any and all documents relating to or concerning any and all special permit modifications issued by the Village defendants to NIR with respect to the Property.

144. Produce any and all documents relating to or concerning any and all applications for site plan approval submitted by NIR to the Village defendants with respect to the Property.

145. Produce any and all documents relating to or concerning any and all grants of site plan approval by the Village defendants to NIR with respect to the property.

146. Produce any and all documents relating to or concerning any and all applications for building permits submitted by NIR to the Village defendants with respect to the Property.

147. Produce any and all documents relating to or concerning any and all certificates of occupancy issued by the Village defendants to NIR for any and all buildings on the Property.

148. Produce any and all documents relating to or concerning any and all public meetings held before the Village Board with respect to the Property during the time period that NIR owned and/or operated a business on the Property.

149. Produce any and all documents relating to or concerning any and all public meetings held before the Village Planning Board with respect to the Property during the time period that NIR owned and/or operated a business on the Property.

150. Produce any and all documents relating to or concerning any and all public meetings held before the ZBA with respect to the Property during the time period that NIR owned and/or operated a business on the Property.

151. Produce any and all documents relating to or concerning any and all inspections of the Property by the Village's Building Inspector during the time period that NIR owned and/or operated a business on the Property.

152. Produce any and all documents relating to or concerning the use of the Property by Buffalo Southern Railroad ("BSR").

153. Produce any and all documents relating to or concerning any and all special permit applications submitted by BSR to the Village defendants with respect to the Property.

154. Produce any and all documents relating to or concerning any and all special permits issued by the Village defendants to BSR with respect to the Property, including but not limited to temporary special permits.

155. Produce any and all documents relating to or concerning any and all special permit modifications issued by the Village defendants to BSR with respect to the Property.

156. Produce any and all documents relating to or concerning any and all applications for site plan approval submitted by BSR to the Village defendants with respect to the Property.

157. Produce any and all documents relating to or concerning any and all grants of site plan approval by the Village defendants to BSR with respect to the property.

158. Produce any and all documents relating to or concerning any and all applications for building permits submitted by BSR to the Village defendants with respect to the Property.

159. Produce any and all documents relating to or concerning any and all certificates of occupancy issued by the Village defendants to BSR for any and all buildings on the Property.

160. Produce any and all documents relating to or concerning any and all public meetings held before the Village Board with respect to the Property during the time period that BSR owned and/or operated a business on the Property.

161. Produce any and all documents relating to or concerning any and all public meetings held before the Village Planning Board with respect to the Property during the time period that BSR owned and/or operated a business on the Property.

162. Produce any and all documents relating to or concerning any and all public meetings held before the ZBA with respect to the Property during the time period that BSR owned and/or operated a business on the Property.

163. Produce any and all documents relating to or concerning any and all inspections of the Property by the Village's Building Inspector during the time period that BSR owned and/or operated a business on the Property.

164. Produce any and all documents relating to or concerning the use of the Property by RS Acquisition Co., LLC ("RSA").

165. Produce any and all documents relating to or concerning any and all special permit applications submitted by RSA to the Village defendants with respect to the Property.

166. Produce any and all documents relating to or concerning any and all special permits issued by the Village defendants to RSA with respect to the Property, including but not limited to temporary special permits.

167. Produce any and all documents relating to or concerning any and all special permit modifications issued by the Village defendants to RSA with respect to the Property.

168. Produce any and all documents relating to or concerning any and all applications for site plan approval submitted by RSA to the Village defendants with respect to the Property.

169. Produce any and all documents relating to or concerning any and all grants of site plan approval by the Village defendants to RSA with respect to the property.

170. Produce any and all documents relating to or concerning any and all applications for building permits submitted by RSA to the Village defendants with respect to the Property.

171. Produce any and all documents relating to or concerning any and all certificates of occupancy issued by the Village defendants to RSA for any and all buildings on the Property.

172. Produce any and all documents relating to or concerning any and all public meetings held before the Village Board with respect to the Property during the time period that RSA owned and/or operated a business on the Property.

173. Produce any and all documents relating to or concerning any and all public meetings held before the Village Planning Board with respect to the Property during the time period that RSA owned and/or operated a business on the Property.

174. Produce any and all documents relating to or concerning any and all public meetings held before the ZBA with respect to the Property during the time period that RSA owned and/or operated a business on the Property.

175. Produce any and all documents relating to or concerning any and all inspections of the Property by the Village's Building Inspector during the time period that RSA owned and/or operated a business on the Property.

176. Produce any and all documents relating to or concerning the use of the Property by Earthline Intermodal LLC ("Earthline").

177. Produce any and all documents relating to or concerning any and all special permit applications submitted by Earthline to the Village defendants with respect to the Property.

178. Produce any and all documents relating to or concerning any and all special permits issued by the Village defendants to Earthline with respect to the Property, including but not limited to temporary special permits.

179. Produce any and all documents relating to or concerning any and all special permit modifications issued by the Village defendants to Earthline with respect to the Property.

180. Produce any and all documents relating to or concerning any and all applications for site plan approval submitted by Earthline to the Village defendants with respect to the Property.

181. Produce any and all documents relating to or concerning any and all grants of site plan approval by the Village defendants to Earthline with respect to the property.

182. Produce any and all documents relating to or concerning any and all applications for building permits submitted by Earthline to the Village defendants with respect to the Property.

183. Produce any and all documents relating to or concerning any and all certificates of occupancy issued by the Village defendants to Earthline for any and all buildings on the Property.

184. Produce any and all documents relating to or concerning any and all public meetings held before the Village Board with respect to the Property during the time period that Earthline owned and/or operated a business on the Property.

185. Produce any and all documents relating to or concerning any and all public meetings held before the Village Planning Board with respect to the Property during the time period that Earthline owned and/or operated a business on the Property.

186. Produce any and all documents relating to or concerning any and all public meetings held before the ZBA with respect to the Property during the time period that Earthline owned and/or operated a business on the Property.

187. Produce any and all documents relating to or concerning any and all inspections of the Property by the Village's Building Inspector during the time period that Earthline owned and/or operated a business on the Property.

188. Produce any and all documents relating to or concerning the Village defendants' legislative intent to amend the 1961 Zoning Code to change the zoning district in which the Property is located from the "Manufacturing M District" to the "Light Industrial LI District."

189. Produce any and all documents relating to or concerning the Village defendants' legislative intent, when enacting the 1979 Zoning Code, to amend Section 230-18B(2) of the code to include "light" manufacturing and to strike the words "or materials."

190. Produce any and all documents relating to or concerning the Village defendants' legislative intent when drafting the permitted uses for the LI District within the relevant section of the 1979 Zoning Code.

191. Produce any and all documents relating to or concerning the Village defendants' legislative intent when drafting Section 230-18(B) of the Village's 1990 Zoning Code.

192. Produce any and all documents relating to or concerning the Village defendants' legislative intent to include "processing of product" as a permitted use in the Light Industrial LI District in the Village's 1979 and 1990 Zoning Codes.

193. Produce any and all documents relating to or concerning the Village defendants' legislative intent when drafting the definition of "manufacturing" as is defined in Section 230-4 of the 1990 Zoning Code.

194. Produce any and all documents relating to or concerning the Village defendants' legislative intent to amend the Village Zoning Code to expressly prohibit "[s]olid and liquid waste transfer and storage stations and landfills (including construction and demolition materials)" in the 2001 Zoning Code. *See*, § 230-18(E) of the 2001 Zoning Code.

195. Produce any and all documents relating to or concerning the Village Manager's or Village's Attorney's communication with Mr. David S. Steinmetz that the

use of the Property as a construction and demolition debris processing facility and transfer station would continue to be a legal preexisting nonconforming use of the Property despite the Village defendants' 2001 amendment to Section 230-18 of the Zoning Code.

196. Produce any and all documents relating to or concerning the Village defendants' consideration of whether or not the use of the Property as a construction and demolition debris processing facility and transfer station and/or solid waste transfer station is a legal preexisting nonconforming use of the Property.

197. Produce any and all documents relating to or concerning the Village Building Inspector's October 28, 2005 determination that the use of the Property as a construction and demolition debris transfer station is not a legal preexisting nonconforming use of the Property.

198. Produce any and all documents relating to or concerning any appeals made by Greentree to the ZBA with respect to the Village Building Inspector's October 28, 2005 determination that the use of the Property as a construction and demolition debris transfer station is not a legal preexisting nonconforming use of the Property.

199. Produce any and all documents relating to or concerning the ZBA's affirmance of the Village Building Inspector's October 28, 2005 determination that the use of the Property as a construction and demolition debris transfer station is not a legal preexisting nonconforming use of the Property.

200. Produce any and all documents relating to or concerning the Planning Board's retention of AKRF, Inc. in or around 2006 with respect to any special permit applications for the Property.

201. Produce any and all documents relating to or concerning the Village Board's retention of Malcolm Pirnie, Inc. in or around 2006 with respect any special permit applications for the Property.

202. Produce any and all documents relating to or concerning the Village Attorney's recognition that, under the Decision of Hon. Francis A. Nicolai, dated August 25, 2005, a construction and demolition debris transfer station is a prior nonconforming use on the Property.

203. Produce any and all documents relating to or concerning the Village defendants' recognition that any activities on the Property are subject to and regulated by the Village's 1979 Zoning Code.

204. Produce any and all documents relating to or concerning any owners of the Property, other than the abovementioned owners, from 1960 to the present.

205. Produce any and all documents relating to or concerning any and all land use analyses undertaken by the Village defendants with respect to the Property.

206. Produce any and all documents relating to or concerning any applications to the Department of Environmental Conservation ("DEC") for any use of the Property between 1960 and the present.

207. Produce any and all documents relating to or concerning any communication between the Village defendants and the DEC regarding the Property.

208. Produce any and all documents relating to or concerning any and all SEQRA review and/or analyses undertaken by the Village defendants with respect to the Property.

209. Produce any and all documents relating to or concerning any and all SEQRA determinations made by the Village defendants with respect to the Property.

210. Produce any and all documents relating to or concerning any and all public meetings held by the Village planning board with respect to the Property, including but not limited to public meetings held on July 25, 1989; December 20, 1994; January 20, 1995; February 15, 1995; and February 28, 1995.

211. Produce any and all documents relating to or concerning any and all public meetings held before the ZBA with respect to the Property.

212. Produce any and all documents relating to or concerning any and all public meetings held before the Village Board with respect to the property, including but not limited to the meetings held on May 4, 1998 and July 10, 2006.

213. Produce any and all documents relating to or concerning any and all efforts made by the Village defendants to acquire the Property by eminent domain.

214. Produce any and all documents relating to or concerning any negotiations or proposal by and between the Village and the Metropolitan Transit Authority with respect to purchasing the Property.

215. Produce any and all documents relating to or concerning any and all proposals by the Village defendants to construct a Department of Public Works on the Property.

216. Produce any and all documents relating to or concerning any and all inspections of the Property by the Village's fire inspector or any other member or employee of the Village's Bureau of Fire Prevention from 1960 to the present.

217. Produce any and all documents relating to or concerning any and all orders issued by the Villages Bureau of Fire Prevention to remedy alleged violations on the Property from 1960 to the present.

218. Produce any and all documents relating to or concerning any actions taken by the Village Fire Department with respect to the property, including but not limited to inspections of the Property from 1960 to the present.

219. Produce any and all documents relating to or concerning any and all actions taken by the Visual Environment Board with respect to the property, including but not limited to any reports prepared about the Property.

220. Produce any and all documents relating to or concerning any and all complaints filed by the Village defendants with the Surface Transportation Board with respect to the Property.

221. Produce any and all documents relating to or concerning any petitions signed by Village residents in opposition to operation of a construction and demolition debris processing facility and transfer station and/or solid waste transfer station on the Property.

222. Produce any and all documents relating to or concerning the characterization of the facility on the Property as a "dump."

PLEASE TAKE FURTHER NOTICE, that the foregoing are continuing demands, creating an ongoing obligation to furnish the above demanded documentation until conclusion of the litigation.

PLEASE TAKE FURTHER NOTICE, that Greentree expressly reserves the right to supplement this demand based upon the results of future discovery.

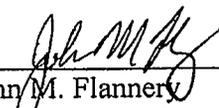
PLEASE TAKE FURTHER NOTICE, that upon failure to comply with this Demand, the Village defendants shall be precluded upon the trial of this action from offering evidence or testifying as to any of the items demanded.

Dated: White Plains, New York
January 15, 2014

Yours, etc.

WILSON, ELSER, MOSKOWITZ
EDELMAN & DICKER LLP
Attorneys for Plaintiff

By: _____


John M. Flannery
Matthew T. Dudley
1133 Westchester Avenue
White Plains, NY 10604
(914) 323-7000
Our File No. 03123.00002

TO: MIRANDA SOKOLOFF SAMBURSKY SLONE VERVENIOTIS LLP
Attorneys for Respondents/Defendants
MICHAEL A. MIRANDA
ROBERT HEWITT
240 Mineola Blvd.
Mineola, NY 11501
(516) 741-7676

E

Dudley, Mathew T.

From: Dudley, Mathew T.
Sent: Friday, January 31, 2014 8:49 AM
To: 'rhewitt@MSSSV.com'
Cc: Flannery, John M
Subject: Greentree v. Village of Croton

Dear Mr. Hewitt:

We will agree to a 30-day adjournment of the Village's time to respond to Greentree's notice to admit and notice for discovery and inspection. However, we will not consent to a further extension if one is requested after that.

Regards,

Mat

Mathew T. Dudley
Attorney at Law
Wilson Elser Moskowitz Edelman & Dicker LLP
1133 Westchester Avenue
White Plains, NY 10604
914.872.7553 (Direct)
914.323.7000 (Main)
914.323.7001 (Fax)
mathew.dudley@wilsonelser.com

F

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
~~GREENTREE REALTY, LLC, and METRO ENVIRO~~
~~TRANSFER, LLC,~~

Index No.: 11872/2005

STIPULATION

Petitioners/Plaintiffs,

-against-

THE VILLAGE OF CROTON-ON-HUDSON, THE
VILLAGE BOARD OF TRUSTEES OF THE VILLAGE OF
CROTON-ON-HUDSON, THE VILLAGE OF CROTON-
ON-HUDSON ZONING BOARD OF APPEALS, and
DANIEL O'CONNOR, in his official capacity, as the
VILLAGE BUILDING INSPECTOR,

Respondents/Defendants.
-----X

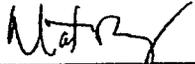
IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for
the respective parties herein, that the time for Defendants to respond to Plaintiff's Notice to
Admit is extended up to and including March 10, 2014.

IT IS FURTHER STIPULATED AND AGREED that for the purposes of execution
hereof, facsimile signatures shall have the same force and effect as original signatures, and that
this stipulation may be signed in counterparts.

Dated: Mineola, New York
January 31, 2014

WILSON ELSER MOSKOWITZ
EDELMAN & DICKER LLP
Attorneys for Petitioners/Plaintiff
~~3 Gannet Drive~~ 1133 Westchester Ave
White Plains, New York 10604

MIRANDA SAMBURSKY SLONE
SKLARIN VERVENIOTIS, LLP
Attorneys for Respondents/Defendants
240 Mineola Boulevard
Mineola, New York 11501
(516) 741-7676

By: 

Mathew T. Dudley, Esq.
John M. Flannery, Esq.

By: 

Robert E.B. Hewitt, Esq.

G

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER – ENVIRONMENTAL
CLAIMS PART

-----X
GREENTREE REALTY, LLC, and METRO ENVIRO
TRANSFER, LLC.,

Petitioners/Plaintiffs,

-against-

THE VILLAGE OF CROTON-ON-HUDSON, THE
VILLAGE BOARD OF TRUSTEES OF THE VILLAGE
OF CROTON-ON-HUDSON, THE VILLAGE OF
CROTON-ON-HUDSON ZONING BOARD OF
APPEALS, and DANIEL O'CONNOR, in his official
capacity, as the VILLAGE BUILDING INSPECTOR,

Respondents/Defendants.
-----X

Index No.: 11872/05

**DEFENDANT'S FIRST
SET OF
INTERROGATORIES
TO PLAINTIFF**

PLEASE TAKE NOTICE, that pursuant to the applicable rules of the Civil Practice Law and Rules, including CPLR Section 3130 and Section 3120(a), defendants, THE VILLAGE OF CROTON-ON-HUDSON, THE VILLAGE BOARD OF TRUSTEES OF THE VILLAGE OF CROTON-ON-HUDSON, THE VILLAGE OF CROTON-ON-HUDSON ZONING BOARD OF APPEALS, and DANIEL O'CONNOR, in his official capacity, as the VILLAGE BUILDING INSPECTOR, by their attorneys, Miranda Sambursky Slone Sklarin Verveniotis, LLP, hereby demand that, within twenty (20) days from the date hereof, plaintiff answer the following interrogatories **under oath**:

INSTRUCTIONS & DEFINITIONS

a) These interrogatories are directed toward the plaintiff, her agents, representatives, employees, attorneys, and any other person(s) subject to her control.

b) If you cannot answer any of the following interrogatories or requests for production in full after exercising due diligence in attempting to secure the information available to you at the date of your response to these interrogatories or requests for production, explain why you cannot answer the remainder and state the nature of the information or knowledge that you cannot furnish.

c) The term "person", as used herein, shall be deemed to include, in the plural as well as singular, any natural person, firm, association, partnership, joint venture, corporation, or other entity, unless the context otherwise indicates.

d) The word "identify" or "identity" when used herein with reference to a person, means that you are to give the person's full name, all known business addresses, all known residence addresses and all known occupations.

e) The term "documents" as used herein, shall mean originals and all copies, unless identical, of all forms of tangible expression, including, without limitation, any written, printed, recorded, pictorial, graphic or photographic material, however produced or reproduced, formal or informal, whether for internal or external use, including without limitation, e-mails, correspondence, letters, memoranda, drafts, corporate minutes, diary or employment book entries, telephone logs, telegrams, telexes, notes (including stenography notes), minutes, reports, contracts, agreements, directives, instructions, court papers, graphic representations, lists of persons or things, books, pamphlets, manuscripts, canceled checks, mechanical and electric sound recordings, charts, tapes, videotapes, microfilm, microfiche, indices, data sheets, data processing cards and tapes, statistical tables, memorandum made of any telephone communications and diagrams.

f) The term "communication" as used herein, shall mean any oral, written or matter of transmission or transfer of information.

g) If you are asked to identify a document as defined in paragraph "e" above, for each document please state the following:

- (1) a specific description of the document and the sum and substance of the content thereof;
- (2) the date the document was prepared;
- (3) the identity of each person signing or executing the document;
- (4) the date on which such person signed or executed the document;
- (5) the identity of the person who prepared the document or who aided or assisted in the preparation of said document.

h) With respect to any communications referred to herein you are requested to state:

- (1) the identity of each person who made each communication;
- (2) the identity of each person to whom each communication was made;
- (3) the identity of each person who was present during each communication or who received a copy of each communication;
- (4) a complete description of the substance and content of the communication.

The information requested in paragraphs "g" and "h" above need not be supplied if the document or a copy of the communication (or an accurate transcription or recording thereof) accompanies the service of your responses to these interrogatories or requests for production. When such document or copy, transcription or recording of a communication is supplied in response to these interrogatories or requests for production, please identify by number each interrogatory or request for production to which the document is responsive. These

interrogatories and requests for production are deemed continuing so as to require reasonable supplemental answers if you obtain further information between the time your answers are served and the time of trial.

INTERROGATORIES

1. Identify, by name and title, all principals, directors, and officers of Greentree Realty, LLC.
2. Identify all investors in Greentree Realty, LLC.
3. Identify any parent companies or subsidiaries of Greentree Realty, LLC.
4. Identify all individuals or entities with an ownership interest in Greentree Realty, LLC.
5. Identify all property owned by Greentree Realty, LLC; and all investments made to that property.
6. Identify all individuals or entities who hold a mortgage, possess a lien, or otherwise have an ownership or property interest in the subject property identified in the complaint as 1A Croton Point Avenue.
7. Identify any other waste facilities owned or operated by Greentree Realty, LLC.
8. Identify the present operator of the waste facility located on the subject property.
9. Identify the manner in which Metro Enviro, LLC came to be a lessee of the subject property.

10. Identify the manner in which Metro Enviro Transfer, LLC came to be a lessee of the subject property.
11. Identify any entity which has at any point been considered by Greentree Realty, LLC or sought consideration from Greentree Realty, LLC to enter into a lease of the subject property.
12. Identify the date that Greentree Realty, LLC retained the services of the law firm of Zarin & Steinmetz, and/or any other counsel in connection with this litigation or the prior 2003 litigation
13. Identify the date that Greentree Realty, LLC retained the services of the law firm of Wilson Elser, and/or any other counsel in connection with this litigation or the prior 2003 litigation
14. Identify, with evidentiary detail, all information learned by Greentree or its principals regarding the Village's denial of Metro's special use permit renewal.
15. State whether Greentree Realty, LLC incurred any legal fees and/or expenses in connection with the prior 2003 litigation ("2003 Litigation") between Metro Enviro Transfer, LLC and the Village of Croton-on-Hudson relative to challenging the Village's denial of Metro's special use permit renewal.
16. Identify, with evidentiary detail, when Greentree and/or its principals/agents first learned of the 2003 Litigation.
 - a. Please identify how Greentree learned of the 2003 Litigation;

- b. Please identify what Greentree learned of the 2003 Litigation, including but not limited to knowledge of the denial of Metro's renewal application for its special use permit; Metro's retention of counsel to challenge said denial; Metro's actual commencement of litigation of 2003 regarding that challenge; and/or any of the legal rulings leading to the ultimate upholding of the Village's denial by the Court of Appeals in July of 2005.
17. Identify all efforts of Greentree Realty, LLC to lease the subject premises since the commencement of this action in July 2005, and/or Metro's inability to comply with its lease.
18. Identify the nature of Greentree Realty, LLC's involvement in and/or knowledge of the acquisition by Metro Enviro Transfer, LLC of the assets of Metro Enviro, LLC, as alleged in paragraph 42 of the complaint.
19. Identify, with evidentiary detail, when Greentree learned of the acquisition of Metro Enviro, LLC by Metro Enviro Transfer.
20. Identify, with evidentiary detail, whether Greentree had any financial involvement in the aforesaid acquisition of Metro Enviro, LLC by Metro Enviro Transfer. a) If so, identify with evidentiary detail, the specific nature of the funding and/or financial involvement; b) State when such involvement and/or funding began; c) State whether it is continuing.
21. Identify each instance in which Greentree learned that Metro Enviro, LLC or Metro Enviro Transfer, LLC breached or violated a term of the special permit and/or lease. For each such instance, provide the a) date; b) nature of the breach or violation; c) the

response of Greentree Realty, LLC.; and d) reporting by Greentree to local, state and/or Federal Regulators.

22. Please state what monitoring and/or review procedure Greentree had in place before and during the pendency of its lease with Metro Enviro Transfer and Metro Enviro regarding violations of its special permit and/or lease.
23. Please state, in evidentiary detail, the basis for the allegations made at paragraph "12" of the complaint.
24. Please state, in evidentiary detail, the basis for the allegations made at paragraph "13" of the complaint.
25. Please state, in evidentiary detail, the basis for the allegations made at paragraph "14" of the complaint.
26. Please state, in evidentiary detail, the basis for the allegations made at paragraph "16" of the complaint.
27. Please state, in evidentiary detail, the basis for the allegations made at paragraph "27" of the complaint.
28. Please state, in evidentiary detail, the basis for the allegations made at the second paragraph "31" of the complaint.
29. Please state, in evidentiary detail, the basis for the allegations made at paragraph "43" of the complaint.
30. Please state, in evidentiary detail, the basis for the allegations made at paragraph "59" of the complaint.
31. Please state, in evidentiary detail, the basis for the allegations made at paragraph "65" of the complaint.

32. Please state, in evidentiary detail, the basis for the allegations made at paragraph "67" of the complaint.
33. Please state, in evidentiary detail, the basis for the allegations made at paragraph "68" of the complaint.
34. Please state, in evidentiary detail, the basis for the allegations made at paragraph "68" of the complaint.
35. Please state, in evidentiary detail, the basis for the allegations made at paragraph "69" of the complaint.
36. Please state, in evidentiary detail, the basis for the allegations made at paragraph "71" of the complaint.
37. Please state, in evidentiary detail, the basis for the allegations made at paragraph "76" of the complaint.
38. Please state, in evidentiary detail, the basis for the allegations made at paragraph "77" of the complaint.
39. Identify each instance in which Greentree Realty, LLC, its representatives or agents were present at a meeting of the Village Board or Village Zoning Board of Appeals. For each such instance, identify the date and persons present.
40. Please state, with evidentiary detail, how plaintiff Greentree has been damaged to date; including but not limited to how its investments have been impacted; how its leasehold has been impacted; what compensatory damages it has sustained; and what

attorney fees and expense it has incurred that it seeks to recover at bar.

DATED: Mineola, New York
February 4, 2014

MIRANDA SAMBURSKY SLONE
SKLARIN VERVENIOTIS LLP
Attorneys for Defendants
**THE VILLAGE OF CROTON-ON-HUDSON,
THE VILLAGE BOARD OF TRUSTEES OF
THE VILLAGE OF CROTON-ON-HUDSON,
THE VILLAGE OF CROTON-ON-HUDSON
ZONING BOARD OF APPEALS, and DANIEL
O'CONNOR, in his official capacity, as the
VILLAGE BUILDING INSPECTOR**

By: 
Michael A. Miranda
Robert E.B. Hewitt
240 Mineola Blvd.
Mineola, NY 11501
(516) 741-7676
Our File No.: 05-280

TO: John M. Flannery, Esq.
WILSON ELSER MOSKOWITZ EDELMAN
& DICKER, LLP
Attorneys for Petitioner/Plaintiff
1133 Westchester Avenue
White Plains, New York 10604

H

Dudley, Mathew T.

From: Dudley, Mathew T.
Sent: Friday, February 21, 2014 8:22 AM
To: 'MMiranda@MSSSV.com'
Cc: Flannery, John M
Subject: Greentree Realty v. Village of Croton-on-Hudson (11872/05)

Dear Mr. Miranda:

We are in receipt of the Village's first set of interrogatories. Upon review of the same, we believe that you may have mistakenly referenced the first amended verified petition and complaint, and not the second amended verified petition and complaint, when drafting the interrogatories. We base this assumption on the paragraphs of the petition and complaint referenced within the interrogatories. For example, interrogatory 18 seems to reference paragraph 42 of the first amended petition/complaint. Also, see interrogatory 33, which references paragraph 68 of the complaint. Paragraph 68 of the second amended petition/complaint is a "repeat and reassert allegations" paragraph. Please inform us whether you intend to serve supplemental interrogatories.

Mat

Mathew T. Dudley
Attorney at Law
Wilson Elser Moskowitz Edelman & Dicker LLP
1133 Westchester Avenue
White Plains, NY 10604
914.872.7553 (Direct)
914.323.7000 (Main)
914.323.7001 (Fax)
mathew.dudley@wilsonelser.com

I

Dudley, Mathew T.

From: Dudley, Mathew T.
Sent: Wednesday, February 26, 2014 9:05 AM
To: 'Robert Hewitt'
Cc: Flannery, John M
Subject: RE: Greentree Realty v. Village of Croton-on-Hudson (11872/05)

We will deem the current interrogatories a nullity and respond to the supplemental version.

Mat

Mathew T. Dudley
Attorney at Law
Wilson Elser Moskowitz Edelman & Dicker LLP
1133 Westchester Avenue
White Plains, NY 10604
914.872.7553 (Direct)
914.323.7000 (Main)
914.323.7001 (Fax)
mathew.dudley@wilsonelser.com

From: Robert Hewitt [<mailto:rhewitt@msssv.com>]
Sent: Monday, February 24, 2014 11:38 AM
To: Dudley, Mathew T.
Subject: RE: Greentree Realty v. Village of Croton-on-Hudson (11872/05)

I'll serve a supplemental paper correcting some of the paragraph numbers this week.

Robert Hewitt

From: Dudley, Mathew T. [<mailto:Mathew.Dudley@wilsonelser.com>]
Sent: Monday, February 24, 2014 11:32 AM
To: Robert Hewitt
Subject: FW: Greentree Realty v. Village of Croton-on-Hudson (11872/05)

Dear Mr. Hewitt:

Please see below and let me know if you intend to serve supplemental interrogatories.

Regards,

Mat

Mathew T. Dudley
Attorney at Law
Wilson Elser Moskowitz Edelman & Dicker LLP
1133 Westchester Avenue
White Plains, NY 10604
914.872.7553 (Direct)
914.323.7000 (Main)

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mathew.dudley@wilsonelser.com

From: Dudley, Mathew T.
Sent: Friday, February 21, 2014 8:22 AM
To: 'MMiranda@MSSSV.com'
Cc: Flannery, John M
Subject: Greentree Realty v. Village of Croton-on-Hudson (11872/05)

Dear Mr. Miranda:

We are in receipt of the Village's first set of interrogatories. Upon review of the same, we believe that you may have mistakenly referenced the first amended verified petition and complaint, and not the second amended verified petition and complaint, when drafting the interrogatories. We base this assumption on the paragraphs of the petition and complaint referenced within the interrogatories. For example, interrogatory 18 seems to reference paragraph 42 of the first amended petition/complaint. Also, see interrogatory 33, which references paragraph 68 of the complaint. Paragraph 68 of the second amended petition/complaint is a "repeat and reassert allegations" paragraph. Please inform us whether you intend to serve supplemental interrogatories.

Mat

Mathew T. Dudley
Attorney at Law
Wilson Elser Moskowitz Edelman & Dicker LLP
1133 Westchester Avenue
White Plains, NY 10604
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914.323.7000 (Main)
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For further information about Wilson, Elser, Moskowitz, Edelman & Dicker LLP, please see our website at www.wilsonelser.com or refer to any of our offices.

Thank you.

J



March 27, 2014

John Flannery
914.872.7111 (direct)
914.391.2673 (mobile)
John.Flannery@wilsonelser.com

Via Regular Mail

Robert Arena
Clerk of the Environmental Claims Part, Westchester County
Daronco - Westchester County Courthouse
111 Dr. Martin Luther King, Jr. Boulevard, Room 1608
White Plains, New York 10601

Attn: Albert J. Degatano
Court Attorney Referee

Re: *Greentree Realty, LLC v. The Village of Croton-on-Hudson, et al.*
Index No.: 18872/05
File No.: 13123.00002

Dear Mr. Degatano:

As you know, we are the attorneys for the petitioner-plaintiff, Greentree Realty, LLC, in the above-referenced matter. We respectfully request that a conference with the Court be scheduled to discuss discovery in this matter.

Respectfully submitted,

Wilson Elser Moskowitz Edelman & Dicker LLP

A handwritten signature in black ink, appearing to read 'John Flannery', written over a printed name.

JMF/md

cc: Miranda Sambursky Slone Sklarin Verveniotis LLP
Michael A. Miranda
Robert E.B. Hewitt
240 Mineola Boulevard
Mineola, New York 11501
(516) 741-7676

1133 Westchester Avenue • White Plains, NY 10604 • p 914.323.7000 • f 914.323.7001

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STATE OF NEW YORK
UNIFIED COURT SYSTEM
NINTH JUDICIAL DISTRICT
ENVIRONMENTAL CLAIMS PART
DARONCO – WESTCHESTER COUNTY COURTHOUSE
111 DR. MARTIN LUTHER KING, JR., BOULEVARD
ROOM 1608
WHITE PLAINS, NEW YORK 10601
(914) 824-5350

HON. A. GAIL PRUDENTI
Chief Administrative Judge

HON. ALAN D. SCHEINKMAN
District Administrative Judge
Ninth Judicial District

HON. JOAN B. LEFKOWITZ
Environmental Claims Part

April 3, 2014

Wilson Elser Moskowitz Edelman & Dicker, LLP
1133 Westchester Avenue
White Plains, New York 10604
Attn: John M. Flannery, Esq.

Miranda Sambursky Slone Sklarin Verveniotis, LLP
240 Mineola Boulevard
Mineola, New York 11501
Attn: Robert E. B. Hewitt, Esq.

Re: *Matter of Greentree Realty, LLC v
Village of Croton-On-Hudson, et al*
Index No.: 11872/05

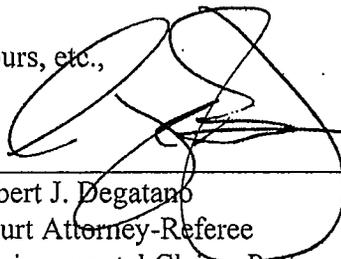
Counsel:

As you are aware, the above-referenced matter – a hybrid action seeking declaratory judgment and money damages, and relief pursuant to article 78 of the Civil Practice Law and Rules – had previously been assigned to Hon. Francis A. Nicolai in the Environmental Claims Part (“ECP”). As of December 17, 2013, this matter was re-assigned to Hon. Joan B. Lefkowitz in the ECP. I am the Court Attorney-Referee for the ECP.

By letter dated March 27, 2014, counsel for petitioner/plaintiff has requested “that a conference with the Court be scheduled to discuss discovery in this matter,” in response to which request Justice Lefkowitz has directed me to schedule a conference with me to discuss any and all issues relevant to this matter including, but not limited to, discovery, motion practice and potential settlement. Accordingly, counsel are directed to appear at the Daronco-Westchester County Courthouse, room 1803, on Monday, May 12, 2014, at 2:30 p.m.

The court file delivered to the ECP does not include a verified answer to the Second Amended Verified Petition And Complaint that was filed on November 19, 2013, or "a certified transcript of the record of the proceedings under consideration," both of which should have been filed with the court pursuant to CPLR 7803(e). If those items have not yet been filed, counsel for respondents/defendants are directed to do so on or before April 28, 2014. If those items have been filed or if it is contended that filing was not required, counsel for respondents/defendants are requested to provide the ECP with courtesy copies of the date-stamped originals and/or a letter explaining the reason filing was not required, by delivering same to Mr. Robert Arena, Clerk of the Environmental Claims Part, at the above address on or before April 28, 2014.

Yours, etc.,



Albert J. Degatano
Court Attorney-Referee
Environmental Claims Part

Poor
Quality

L

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----x
GREENTREE REALTY, LLC,

INDEX NO.
11872/05

Plaintiff,

-against-

THE VILLAGE OF CROTON-ON-HUDSON,
THE VILLAGE BOARD OF TRUSTEES OF
THE VILLAGE OF CROTON-ON-HUDSON,
THE VILLAGE OF CROTON-ON-HUDSON
ZONING BOARD OF APPEALS, and
DANIEL O'CONNOR, in his official
capacity as the VILLAGE BUILDING
INSPECTOR,

Respondents/Defendants.

-----x

Westchester County Courthouse
111 Dr. M.L.K. Blvd.
White Plains, New York 10601
May 19, 2014

BEFORE: HON. JOAN B. LEFKOWITZ
Justice of the Supreme Court

APPEARANCES:

WILSON ELSER MOSKOWITZ
EDELMAN & DICKER LLP
Attorneys for the Plaintiff
1133 Westchester Avenue
White Plains, New York 10604
BY: JOHN M. FLANNERY, ESQ.
MATHEW T. DUDLEY, ESQ.

MIRANDA SAMBURSKY SLONE
SKLARIN VERVENIOTIS LLP
Attorneys for the Defendants
240 Mineola Boulevard
Mineola, New York 11501
BY: ROBERT E. HEWITT, ESQ.

CAMI L. LANDAU
Senior Court Reporter

1 THE CLERK: Greentree v. Village of
2 Croton, 11872/2005.

3 THE COURT: Let's have the appearances,
4 please.

5 Okay, thank you, Law Department, you're
6 done. It's been a pleasure.

7 Go ahead.

8 MR. FLANNERY: John Flannery, Wilson
9 Elser, for Greentree.

10 MR. DUDLEY: Mathew Dudley,
11 M-A-T-H-E-W, from Wilson Elser for Greentree.

12 MR. HEWITT: Robert Hewitt for the
13 Village defendants.

14 THE COURT: All right, what kind of
15 conference are you here for?

16 MR. FLANNERY: We had written, after I
17 spoke to Mr. Degatano, requesting a
18 conference, because there is certain discovery
19 that's outstanding that I think has kind of
20 gotten off track, and we could use the Court's
21 assistance.

22 THE COURT: Okay, what discovery is it?

23 MR. FLANNERY: We served an extensive
24 document demand on the plaintiff back in
25 January.

1 THE COURT: January?

2 MR. FLANNERY: Yes, your Honor, and
3 received no response.

4 THE COURT: And what's the reason?

5 MR. HEWITT: I don't believe it was
6 served as early as January. We served our
7 answer in January. We served discovery
8 demands as well.

9 THE COURT: February is equally as bad.

10 MR. HEWITT: There were over 200
11 demands.

12 THE COURT: How much time do you need
13 to do what you have to do?

14 MR. HEWITT: I need 30 days.

15 THE COURT: And it's going to be done?

16 MR. HEWITT: Yes.

17 MR. FLANNERY: We have no objection to
18 that.

19 THE COURT: So today is what date? May
20 19.

21 MR. HEWITT: Could I ask for 45 days?

22 THE COURT: No. Don't push your luck
23 with me. You're lucky you're having a good
24 day here.

25 So, it's May 19, so we're going to have

1 it in by June 20, which is a Friday, okay?
2 June 20. And that's it. And I don't want to
3 hear any more excuses because in this part
4 that's not what happens. Let's turn it over
5 and let's get the case going, and then I'll be
6 able to settle it when it ends up before me,
7 so do what you have to do.

8 What's the next problem? Don't leave
9 so fast. Somebody else has an issue, yes?

10 MR. FLANNERY: We were served with
11 interrogatories, your Honor, which referred to
12 a prior -- the current petition is the second
13 amended petition. The interrogatories
14 referred to an earlier version of petition.
15 We've asked the defendant to provide us with
16 interrogatories that correlate with the
17 current second amended petition. We've been
18 waiting for them since February.

19 THE COURT: Can't you fix those
20 interrogatories to adapt to the second
21 petition?

22 MR. HEWITT: Yes, I can get them to
23 him.

24 THE COURT: The same dates. You can
25 get it to him within what, can you do it

1 before then?

2 MR. HEWITT: I can get them the
3 interrogatories by the end of next week.

4 THE COURT: Fine. By the end of next
5 week, what's that date? May 30. By May 30,
6 the interrogatories, okay?

7 Do I need an order to that effect or
8 I'm So Ordering the transcript -- split the
9 cost -- so we'll have it in our files. Give
10 her the cards, and we're done. And also give
11 her the title of the case because we don't
12 have that on this calendar.

13

14 * * * * *

15

16 Certified to be a true and
17 accurate transcription of the
18 within proceedings.

19

CAMI LANDAU
Senior Court Reporter

20

oOo

21

22 S O O R D E R E D:

23

24 HON. JOAN B. LEFKOWITZ
Justice of the Supreme Court

25

Journal 023-785

6/30/14 2:55 PM

Index No. 05-11872

Mathew T. Dudley
13123.00002

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

GREENTREE REALTY, LLC,

Petitioner/Plaintiff,

- against -

THE VILLAGE OF CROTON-ON-HUDSON,
THE VILLAGE BOARD OF TRUSTEES OF THE VILLAGE
OF CROTON-ON-HUDSON, THE VILLAGE OF
CROTON-ON-HUDSON ZONING BOARD OF
APPEALS, and DANIEL O'CONNOR, in his official capacity
as the VILLAGE BUILDING INSPECTOR,

Defendants/Respondents.

JSD

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\$45.00
AC

Order to Show Cause

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP

Attorneys For Petitioner/Plaintiff

1133 Westchester Avenue
White Plains, NY 10604-3407
914.323.7000

Fax 914-323-7001

ATTN
JOHN
Flannery

000547652 14:53:00 06/27/14 GENX GENX CHECKS
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JSD