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April 2, 2012

*Via email (individually) and hand delivery (to Village offices)*

Board of Trustees
Village of Croton on Hudson
1 Van Wyck Street
Croton on Hudson, NY 10520

Re: Harmon Rezoning

Dear Board of Trustees:

On behalf of my clients Thomas Simone and Holly Crosbie-Foote, and others who may join the pending Article 78 proceeding challenging Local Law No. 4 of 2009 ("original version of Harmon Rezoning"), and/or Local Law No. 3 of 2010 (October 2011 version) ("Harmon Rezoning" or "proposed rezoning") as petitioners ("Petitioners"), below are points of contention regarding the July 15, 2010 Environmental Assessment Form Report (including the EAF Parts 1 and 2 contained therein)("EAF"), the October 12, 2011 "Addendum to Environmental Assessment Form Part 3 Report" ("Addendum" ), and the proposed Negative Declaration dated April __, 2012, prepared in part or in whole by the Village's consultant (Saccardi & Schiff, later merged into VHB)(the "Consultant"), and all attachments and exhibits to these documents, .

The EAF and Addendum appear to have been "issued" by the Village of Croton-on-Hudson Board of Trustees ("Village Board" or "Board of Trustees") and referred to various agencies but not adopted or even reviewed by the Village Board. To the extent there has been no Village Board deliberation over and/or adoption of the EAF (including Parts 1, 2 and 3) and Addendum before the Village Board makes its determination of environmental significance, Petitioners object to that as a violation of SEQRA.

In addition, on October 29, 2010, the Village Board denied me access requested under the Freedom of Information Law to communications between the Village and the Consultant based on a claim of attorney-client privilege. The Village Board had previously claimed on October 5, 2010, in response to another FOIL request seeking the agreement under which the Consultant would prepare the EAF Parts 1, 2 and 3 for the Village, that the Consultant was

"retained by our attorneys for litigation defense purposes." Petitioners object to the preparation of the EAF and Addendum by a consultant retained for "litigation defense purposes." Petitioners also object to the denial of access to all communications between the Village and the Consultant.

For ease of review, I have gone through the EAF, Addendum and Exhibits and Attachments thereto, and presented objections in the order they arise in the documents. Thus, each item below begins with a quote or reference from the materials, followed by Petitioners' response. Many of the points below were raised in Petitioners' Article 78 petition and brief filed in 2010 ("Petitioners' petition and brief") and reference can be made to them for further elaboration. All points made in Petitioners' petition and accompanying brief regarding SEQRA, inconsistency with the Village's comprehensive plan and the Village's LWRP are incorporated herein by reference, and are not waived by their noninclusion in this letter.

## I. EAF Part 3 Report (7/15/2010)

A. p. 5: "As compared to the zoning code provisions in place prior to the enactment of Local Law No. 4-2009, this Action would make certain revisions to the zoning code to expand the Harmon/South Riverside Gateway Overlay District, and to modify the previously existing gateway and related regulations in this area *to encourage commercial development by facilitating market rate mixed use of properties*." (emphasis added).

Response: There is no "Harmon/South Riverside Gateway Overlay District." "Harmon/South Riverside" is one of three "areas" comprising the "Gateway Overlay District." This error is repeated multiple times and each instance of it will not be noted. Petitioners object to the lack of uniformity of regulations, including but not limited to regulations on bulk, usage and parking within the Gateway Overlay District that Harmon Rezoning creates.

The word "commercial" should be deleted, because, as discussed infra at I-L and II-D-7, the effect of the proposed action, under the EAF's "most likely scenario," is to reduce the amount of commercial space presently existing in the proposed rezoned area and increase the amount of residential space.

B. p. 8 "Several mixed use buildings (mix of commercial and apartments) are currently in use in the Harmon/South Riverside area."

Response: It's unclear what "Harmon/South Riverside area" means – does this include the expanded area? (If not, Table 2 shows only one mixed use building currently in use in what is now the Harmon/South Riverside area within the Gateway District (the vetinary office/apartment).

C. p. 10 (Table 1)

Response: Table should be updated to reflect current status of properties – current use of Parcels 12 and 19 are inaccurately described.

D. p. 11 (Table 2)

Response: Table should be updated to reflect current status of properties – current use of Parcel 28, 30, 31 and 38 are inaccurately described. Commercial use on Parcel 29 should also be noted.

E. p. 12 "Regarding residential development in the village, detached, single family owner-occupied homes are the dominant housing type… "

Response: This paragraph should note that there are already close to 700 rental units in the Village, constituting approximately 24% of the available housing units. *See* "Housing Type and Vacancy Status, Westchester County, 2000 and 2005-2009," prepared by Westchester County Department of Planning. (*See* attached.)

F. pp. 12-13. (discussing Comprehensive Plan)

Response: The extraction of certain excerpts from the Comprehensive Plan that appear to be consistent with Harmon Rezoning, without including excerpts from the Plan that are inconsistent, is misleading. Petitioners' position on the inconsistency of Harmon Rezoning with the Village's Comprehensive Plan is discussed further herein and in Petitioners' petition and brief.

G. p. 20. "Calculations for redevelopment potential for redevelopment parcels were taken from Tables 1 and 2 of the July 2008 "Property Utilization Study" prepared by Saccardi & Schiff, Inc."

Response: The Property Utilization Study is not an appropriate basis for the July 2010 EAF because the 2008 Property Utilization Study was based on different parking assumptions. The 2008 Property Utilization Study assumed each residential dwelling would require two parking spots, while the July 2010 EAF is based on a proposed law that requires only one parking spot for at least 50% of the apartments (because the law prohibits more than 50% two bedrooms). An example of what a dramatic difference this can make to the maximum potential build out can be seen in the "Harmon Zoning Recommendations" document. *See* II-D-11, *infra.*

**Impact projections (including but not limited to projections for amount of square footage to be built, # of apartments, # of schoolchildren, tax revenues and traffic generated) for all modeled scenarios are erroneous because of reliance on the 2008 Property Utilization Study.**

H. p. 20. "It was assumed that the gross average size of the residential units would be 1,000 square feet each. This area gives room to deduct for common spaces (e.g., hallways, stairwells), as well as account for a potential mix of one and two bedroom units. "

Response: One thousand square feet is inconsistent with apartment size in the Harmon area, and there is especially no reasonable basis for assuming one bedroom apartments would be that large. By using an artificially large apartment size, and projecting school population

solely based on number of apartments, the EAF manipulates/underestimates the potential number of school age children, as well as other impacts, including but not limited to financial, traffic and parking impacts. Petitioners note that the most recent mixed dwelling unit to be proposed in Harmon, at 383 S. Riverside Avenue, will have three apartments of approximately 600 square feet each (gross square footage). *See also* II-D-18, *infra.*

I. pp. 20-21 ("Scenario #1: Likely Anticipated Level of Development")

Response:

1. This scenario is limited to redevelopment "in the near term." ("Near term" is defined in a footnote 6 as approximately 1-5 years.") Petitioners object to the absence of an analysis of anticipated development beyond five years.

2. While Petitioners do not object to the inclusion in Scenario 1 of vacant properties as likely to be redeveloped, there are no stated criteria for the remaining properties chosen as likely to be redeveloped, other than that they are "underutilized" or "significantly underutilized." However, "utilized" and/or "significantly underutilized" are not defined, and no criteria are readily apparent based on the particular properties involved. For example, Parcel 28 (currently operating Citgo station) is identified as likely to be redeveloped, but the two other operating gas stations in the proposed rezoned area, which appear to have similar FAR's to the Citgo property, are not so identified. Parcels 30-31 (383 S. Riverside) is identified as likely to be redeveloped, even though the building there is undergoing reconstruction in a manner totally inconsistent with what is projected in the EAF. Parcels 8-9 (Croton Dodge property) is identified as likely to be redeveloped, but the adjoining Harmon Sales Building (Parcel 10) is not – even though the Village's very own documents show that combining these three properties results in the best utilization of the property and they are owned by the same person. *See* Harmon Zoning Change Recommendations (attached to EAF), pp. 14-16. Parcel 12 (Green Growler) is no longer vacant, and no reason has ever been given as to why rezoning would have filled the apartment vacancies, which I believe are now filled.

There is no stated reason as to why other properties are not included. In the October 2009 EAF, the property housing Umami (Parcel 2) was deemed likely to be redeveloped. No explanation is given as to why it is not included now, nor why the parcels housing such one story buildings as Sonny Abbot's (Parcel 33), the Croton Professional Building (Parcel 37) and Kiko's (Parcel 322) are not included. There is also no stated reason as to why another building on Parcel 37 (currently housing a 3-story apartment building on Croton Point Avenue) is not contemplated, as raised in the Attorney Affirmation in Support of Verified Petition, filed with Petitioners' petition and brief (referring to 2009 Village correspondence indicating site plan approval for second building had been obtained and expired, but owner was still interested in building on it.) Petitioners maintain that the selection of properties deemed likely to be redeveloped is irrational, arbitrary and capricious.

3. Such a relatively small amount of projected development (only on 9 of the 39 properties in the area to be rezoned) creates at least three other issues: Is this amount of

development relative to the total rezoned area so small as to constitute spot zoning? Petitioners maintain that it is. Further, because the area has an average property utilization of less than .2 FAR, (*see* II-D-9 *infra*), the EAF is deficient in its failure to analyze the impacts of having a handful of buildings, a significant number of which are not adjacent to each other, at FAR's considerably bulkier than the majority of the neighborhood.[1] Moreover, projected positive impacts, such as reduced curb cuts and unified rear parking – are unlikely if most of the projected likely development is not going to be adjacent to another building being redeveloped, or, if it is so adjacent, not developed at the same time as the property it is adjacent to. If Scenario #1 is the only likely scenario, the purpose of the Rezoning cannot be accomplished. Petitioners maintain that if the purpose of the rezoning has no rational relation to its likely outcome, the rezoning is irrational, arbitrary and capricious.

4. Petitioners object to the absence of any projected conversion of first floor commercial space into 50% residential space, *without redevelopment,* and the resulting potential impacts. For example, a building such as Parcel 32 (currently housing Kiko's and which is not included as likely to be redeveloped under Scenario #1), would be allowed, under Harmon Rezoning, to convert up to 50% of the rear of its building to an apartment, which it cannot do now. This type of conversion would generate additional costs to the school district in terms of schoolchildren, without generating any significant additional revenue (from additional taxable square footage) to the district.

J. p 24 ("Scenario #2 – Theoretical Maximum")

"The chance of Scenario #2 (or #3) occurring, even over a long period of time (5-20 years), is highly unlikely. This is because these scenarios envision redevelopment of the entire gateway as mixed use; with new construction (including demolition/replacement/upgrade of all existing structures); at the maximum possible level of development."

Response: No explanation is given as to why Scenarios #2 and # 3 are unlikely. No explanation is given as to why demolition/upgrade to the maximum level of development for all but one of the parcels identified in Scenario #1 presently housing buildings (Parcels 8-9, 29, 30-31, 28, and 19) is likely but not likely for the rest of the parcels being rezoned. Note that Harmon Zoning Change Recommendations (attached to EAF) contradicts this position; it states that a full build out *is* likely, over time, particularly if some lots are combined. *See* II-D-17, *infra.*

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[1] The following Scenario #1 parcels are not adjacent to other parcels identified as likely to be redeveloped: Parcel 19 (Feed the Birds), and Parcels 8 and 9 (Dodge). Parcel 29 (Nappy's) is adjacent to Parcels 30-31 (383 S. Riverside), but given that Parcels 30-31 have just undergone demolition and is now being reconstructed under the current zoning, petitioners maintain it is unlikely that it will be redeveloped at least in the near term. Similarly, although Parcels 26-27 (vacant lot next to Citgo) and Parcel 28 (Citgo) are adjacent to each other, given that Citgo opened only approximately one year ago, it seems unlikely that it will be redeveloped in the near term.

K. p. 27 ("Scenario 3 – Theoretical Maximum (100% build-out with some combined parcels")

Response: Same Response as directly above (I-J.) No explanation is given as to why Scenario #3 is unlikely.

**Note: Petitioners deem this entire method of analysis, i.e.:**

**1) creation of a scenario of likely development (including identification of parcels likely to be redeveloped) for only the next 1-5 years;**

**2) no rational explanation for selection of parcels deemed likely to be redeveloped in next five years and no readily identifiable criteria for same;**

**3) creation of two unlikely scenarios with no rational explanation as to why they are unlikely; and**

**4) no projection for extent of development beyond five years,**

**an insufficient basis on which to take a hard look at the potential environmental impacts of Harmon Rezoning.**

L. p. 31 "The extension of the Harmon/South Riverside Gateway overlay district and proposed amendments includes design parameters that are intended to improve the "walkability" of the area and *encourage commercial activity on the first floor level.*"

Response: Petitioners challenge the contention that the rezoning will encourage commercial activity on the first floor level. In addition to previous comments regarding the limited development projected and the lack of adjacency of likely-to-be-developed buildings, the plan *reduces* the total amount of commercial space available[2], provides no additional municipal parking, and reduces requirements for residential parking while incentivizing a large increase in residential dwellings. The resulting parking shortage will discourage commercial activity. The incentivization of rear parking, coupled with the incentivization of the rear of the first floor with a residential apartment, further discourages commercial activity. Restaurants in particular will be disincentivized, as they require many more parking spaces under the Village Code than the parking minimums for other types of allowed commercial developments. While walkability within the area conceivably might be intended, most people who would avail themselves of the commercial space would have to drive to it but will have fewer spaces to park. The EAF fails to account for this. There is also no explanation as to how the loss of commercial space "encourages" commercial activity. *See also* II-D-7, II-D-13, *infra.*

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[2] The Rezoning reduces the amount of commercial space available because, under each Scenario, it assumes replacement of the existing commercial space with a smaller amount. For example, in Scenario 1, the existing space in Dodge, Citgo, 383 S. Riverside, Feed the Birds and Nappy's (approximately 17,000 square feet) is to be replaced by approximately 10,000 new square feet of commercial space; the remaining projected 46,000 square feet is all residential.

M. p. 31 "One of the primary intents of the gateway overlay ordinance (approved in 2004) was to encourage development that is appropriate to the small-scale character of the village. This intent is still valid for the proposed amendments to the Harmon/South Riverside Gateway District since it encourages a *village scale character of development*." (emphasis added)

Response: A "village scale character of development" is undefined. The Gateway legislation, which *reduced* permitted FAR in the C-2 district within the Gateway Overlay District from .5 to either .4 or .35, depending on whether mixed use was involved, was justified by the following language in the Village's SEQRA findings:

> The proposed FARs will restrict the development potential in the gateway areas, thereby encouraging smaller-scale development *more appropriate to the scale and historic character of the village*. (emphasis added)

Appropriateness to some undefined "village scale character of development" is irrelevant. The key question is, if a reduction in FAR from .5 to .35 or .4 was "more appropriate to the scale and historic character of the village" back in 2004 when the Gateway legislation was passed, how can doubling that FAR (from .4 to .8) be consistent with the "scale and historic character of the Village?" Petitioners maintain it cannot be. *See also* Petitioners' petition and brief for further elaboration on how increasing the FAR is inconsistent with the Comprehensive Plan.

N. p. 33 "Design guidelines specific to Harmon/South Riverside (Section 230-20.6) will also be extended to the expanded H/SRGD area. These guidelines are specific to the Harmon area, and are intended to enhance the small-scale character of the district and improve connections between the train station and the Harmon/South Riverside shopping area."

Response: There are four design guidelines specific to Harmon/South Riverside.

The first guideline involves pedestrian and bicycle networks. The bicycle guideline is directed towards the installation of sidewalks and bikeways along the south side of Croton Point Avenue. The sidewalk guideline requires new sidewalks in the gateway to look like the ones on South Riverside between Benedict and Oneida, i.e., the very area being added to the Gateway District.

The second guideline provides for additional landscaping and open space requirements.

The third guideline requires lighting similar to that used in the North Riverside and Upper Village commercial areas.

The fourth guideline states that signage shall be required to conform to the Zoning Code and a special gateway feature (such as a clock near the corner of Croton Point Avenue and South Riverside Avenue) shall be "encouraged."

The first and fourth guidelines have no impact on the expanded area to be rezoned; only the second and third guidelines have any potential applicability. The second guideline can be waived by the Planning Board under the proposed rezoning. (*See* I-O immediately below.) The third guideline has nothing to do with "small scale", especially since both North Riverside and the Upper Village are higher density than the Harmon/South Riverside area. Neither the second or third guidelines have anything to do with improving connections between the train station and the shopping district. Therefore, the sentences quoted above regarding the design guidelines for Harmon and their purpose make no sense here.

O. p. 33 "Land uses adjacent to the study area (primarily residential to the east and west) will still be adjacent to a C-2 district, but with the gateway overlay extended, the specific gateway regulations will apply to the [sic] all of the parcels described in the draft law (see Tables 1 and 2). This means that the more stringent landscape, buffer and screening requirements with the gateway overlay would be required of any new mixed use development, and this should be a beneficial impact to adjacent residences."

Response: Most of the residences abutting the area proposed to be rezoned (with the exception of the side-abutting properties on Oneida Avenue, Wayne Street, Clinton Street and Benedict Boulevard) have the *rear* of their properties abutting the rear of the properties to be rezoned. The "more stringent landscape, buffer and screening requirements with the gateway" are primarily restrictions affecting the *front and sides* of those Gateway District properties, *not the rears*. Therefore, any benefit from these "more stringent landscape, buffer and screening requirements" is minimal to *rear-abutting* residents of Young Avenue and Wayne Street.

In contrast, all Village residents (and not just those who live in or adjacent to Gateway District areas) whose residential property abuts a parking lot, gain some benefit from the buffer/screening requirements contained in Village Code § 230-52C, which is not part of the Gateway Law but part of the overall Zoning Code. But *all* property owners in or adjacent to the Harmon/South Riverside Gateway area may lose both the Gateway and §230-52C screening protections under the proposed Unified Parking Lot Design provision of Harmon Rezoning (giving the Planning Board the power to waive open space, design guideline and parking lot buffer, screening and landscaping requirements as it deems advisable to encourage and foster the joint use of, and common access to, parking lots located on adjoining properties). Thus, all residential property owners adjacent to the Harmon/South Riverside Gateway area are in a worse position than they were before with respect to the buffer requirements of 230-52, and for those who *presently* live adjacent to a Gateway area, they are going to lose some of the gateway's protections because of the new Unified Parking Lot Design provision. This impact is not addressed in the EAF.

In addition, other potential impacts on adjacent property owners are not addressed at all, such as the visual impairment, including but not limited to the loss of light that a three story building, as opposed to a two-story building might create, increased noise and glare from rear parking, increased noise and loss of privacy from denser and taller housing, encroaching parking from visitors to higher density residences, etc.

P. p.33 "It is noted that, since Scenarios 2 and 3 represent full build out to a maximum level, the amount of existing development including retail, commercial, restaurant, service uses and residential uses would need to be factored out of that total to arrive at an amount of *new* development."

Response: **Agreed! It is also true of Scenario 1. Failure to factor out old development – including the tax revenues generated by it – is one of the most glaring errors in the EAF.**

Q. p. 33 "According to the study prepared by Danth, Inc. (July 2008), the Harmon area could market up to 16,000 sf of commercial space, but only 2,000 sf of the current space meets the quality standards that attract tenants."

Response: The Danth study is now outdated. Its reliability must also be questioned: Since it was written, over 10,000 sf of the then "current space" available attracted tenants such as Anton's, Feed the Birds, Green Growler, Elena's, new occupant of Jean Jacques, Citgo, and Kiko's.

R. p. 34 "With Scenarios #2 and #3 (the 100% build out scenarios), the level of commercial development would be higher than what the Danth study estimated could be absorbed by the market, therefore, these scenarios could create land use impacts and would very likely draw demand from other commercial areas in the village, counter to the objectives of this Proposed Action."

Response: Because the assumption that Scenarios 2 and 3 are very unlikely is not rationally based and is contradicted by the Harmon Rezoning Recommendations, see I-J, *supra*, the impacts from the build outs projected in these scenarios need to be considered, disclosed and evaluated in an Environmental Impact Statement ("EIS"), with all the required procedures an EIS entails.

S. p. 34 "The intent of the Proposed Action is to encourage and expand upon recommendations and improvements for the Harmon/South Riverside Gateway Overlay District that are presented in the Comprehensive Plan."

Response: As pointed out elsewhere, including Petitioners' petition and brief, Petitioners maintain the Proposed Action is antithetical the original intent of the Comprehensive Plan and the Gateway Overlay legislation. "Expanding upon recommendations" is different from expanding the Harmon/South Riverside Gateway area and doubling the permissible FAR in one of three Gateway areas far in excess of what was permitted under the original Gateway Overlay District legislation and the previous C-2 zoning.

T. p. 34 "In addition, new mixed use structures that include residential apartments would encourage lower cost, smaller sized, multi-family dwellings as described and recommended in the Comprehensive Plan."

Response: This is misleading. In the context of a discussion of *present conditions* in the Village, including how the Village has worked with the Croton Housing Network to create subsidized affordable housing, the Comprehensive Plan states:

"The Village should *examine ways* to encourage lower cost, smaller-sized single or multi-family dwellings in order to maintain the demographic diversity of the Village." Comprehensive Plan, p. 46. (emphasis added)

This concept is fleshed out in the "Recommendations" section of the Comprehensive Plan:

> Ensuring that housing is available for a range of income groups helps preserve the economic diversity and social fabric of the community…[further describes work with Croton Housing Network]…The population and income groups whose needs are not currently being met *should be identified through the evaluation of currently available information and the independent acquisition of data by the Village…Studies should be designed to identify the economic groups now living in the Village as well as their living conditions. This should include an inventory of existing rental stock, both legal and illegal under current rules, with a determination of the rents being charged and the income of the occupants*…future planning for affordable housing in the Village should include exploration of opportunities to create choices allowing senior citizens to "age in place" and remain in the community as well as for *new families* to enter the community." *See* Comprehensive Plan, pp. 109-110. (emphasis added)

There have been no demographic studies as recommended in the Comprehensive Plan. There has been no inventory of rental stock, with a determination of rents being charged. Instead, as discussed further at II-D-18 *infra*, the Village has based its analysis on assumptions consistent with high-end apartments that will appeal to high income residents. This is the antithesis of the economic diversity envisioned in the Comprehensive Plan. Moreover, the failure to conduct proper supply and demand studies on housing and population nullifies any claim that the proposed housing will satisfy a need, whether contemplated or not by the Comprehensive Plan.

U. p. 34 "Therefore, the Proposed Action is considered to be consistent with the Comprehensive Plan as described within this EAF Report."

Response: For all of the reasons described above, as well as in Petitioners' petition and brief, the dissenting letter of Planning Board member Mark Aarons dated October 10, 2010, the letter written by me to the Planning Board dated September 23, 2010 (*see* attached), and additional points made *infra*, Petitioners disagree with this statement.

V. p. 34 "In terms of the Proposed Action's impacts on existing land uses, it is noted that this level of assumed development includes several parcels that are adjacent to the existing single family homes on Young Avenue, as well as some adjacent residential structures on Wayne Street. Since new development in the expanded area would now carry with it the restrictions and guidelines of the Gateway Overlay District, these adjacent land uses will have more protections than currently with the C-2 zone alone…"

Response: *See* Section I-O, *supra.*

Also, there has been no consideration of impact on businesses presently located in the area to be rezoned. For example, certain uses are prohibited under the Gateway Overlay District

Law, most notably automotive storage and parking lots. Certain businesses currently in the expanded Harmon/S. Riverside area have automotive related uses and/or use parts of their property for automotive storage and/or parking lots. There is no analysis of the impact of prohibiting these uses.

In a related matter, at least one business in the proposed rezoned area (Umami's) currently rents parking space from two nearby property's – Feed the Birds and the Croton Professional Building. Although it seems to be contemplated under Harmon Rezoning that property owners will enter into shared parking arrangements, the actual wording of the law seems to conflict with that concept.

Moreover, it is a near certainty that if Harmon Rezoning works, i.e., it incentivizes property owners to build out to the maximum permitted under the FAR, parking and open space restrictions of Harmon Rezoning, then there will be no more "shared parking," because each parcel will have parking available only for its own tenants. For example, Parcel 19 (Feed the Birds) is identified as likely to be redeveloped if Harmon Rezoning is enacted, which would eliminate the available parking spaces now used by Umami. What impact will the resulting parking shortage at Umami, which presumably is renting space at Feed the Birds because it needs it, have on the surrounding neighborhood and Umami? This, i.e., the inevitable elimination of shared parking, is not addressed in the EAF.

There is no discussion in the EAF's of what is going to happen to various businesses if the properties where they currently reside are redeveloped. This is a potential significant impact even under the EAF's Scenario 1. For example, Feed the Birds now occupies over 1000 square feet of space, which, according to the EAF, is likely to be replaced by a building that will provide only 600 square feet of commercial space. The EAF also projects that the Citgo gas station is likely to be redeveloped into a 3-story mixed use building. What is the impact on neighborhood character and available amenities of displacing these two businesses? There is no discussion of same in the EAF's. Similarly, if most parcels are redeveloped into mixed-use properties in the long-term, as the Harmon Economic Development Committee projected, where is everyone in the Village going to get their gas? If it is at Dom's, Petitioners believe the impacts of transforming it into the sole gas station in the Village need to be considered. And if not at Dom's, the impacts of wherever the gas stations are going to end up need to be considered.

Finally, the EAF does not consider the larger change to the neighborhood character that will necessarily result from incentivizing maximum build out within the FAR, parking and open space parameters. The cafes and restaurants envisioned by websites like "Harmonize" (which Petitioners note that the Mayor "likes" and Trustee Gallelli actively participates in) are de-incentivized, because of their relatively exorbitant parking requirements (1 space for every 4 restaurant seats). No rational developer would choose to use his limited amount of land for all the parking that a restaurant requires, when a more profitable alternative (a larger building requiring much less parking) is available. For the same reason, the parcel housing Umami may be put to much more profitable use by its owner (which leases it to Umami) by developing a 3-story building on it with no restaurant (which was deemed likely in the 2009

EAF but is now inexplicably not included in Scenario 1 in the July 2010 EAF). Moreover, office space provides a better option for a developer than retail space, as office requires only 1 parking space per 300 feet while retail requires 1 space per 250 feet. Transforming the area, over time, from a service-oriented retail center with a small amount of mixed use, to what could become primarily a residential area with a small amount of office space, has impacts that have not been analyzed at all by the EAF.

W. p. 35 "Although generally one and two story, some three-story buildings are found in the block of South Riverside Avenue between Benedict Boulevard and Clinton Street."

Response: There is only one three-story building on South Riverside Avenue between Benedict Boulevard and Clinton Street (364 S. Riverside Avenue).

X. p. 35 "The gateway area is higher in elevation than the lands closer to the river and Route 9, however, direct views to the river and adjacent shores from South Riverside Avenue or Croton Point Avenue are blocked in most locations by existing buildings, structures and trees."

Response: As argued in Petitioners' petition and brief, there are many views of the Hudson and adjacent shores from Croton Point Avenue and South Riverside. Trustee Ann Gallelli, in her role as then-chair of the Planning Board, went to Court to protect such views, which she argued would be impeded if the then Exxon (now Gulf) gas station put up a proposed canopy. Mayor Wiegman stated at a work session on Harmon Rezoning that he would love an apartment at 383 S. Riverside Avenue "because of the views." A fuller discussion of available views is available in Petitioners' petition and brief, including photos showing some of the Hudson River views.

Y. p. 35 "The photographs in the following exhibits document the specific conditions in the field today along South Riverside Avenue (as of May 2010). Even though these photographs were taken when trees are in leaf, these photographs indicate that some seasonal views to the Hudson River maybe potentially available in only a few places to a pedestrian along South Riverside Avenue, but open views to the river are primarily blocked by existing buildings and vegetation. One can potentially see partial, seasonal (winter) views of the river if looking west from South Riverside Avenue down Croton Point Avenue. Photographs of potential views from this portion of South Riverside, as well as from Croton Point Avenue are included in Exhibit 10, Photograph Key and Exhibit 11, photographs of Views toward the River."

Response: Exhibit 10 should show where the Hudson River is! It would then be clearer that many of the photographs contained in Exhibit 11 are positioned so that they are directly pointed at buildings, rather than the open spaces between the buildings, where the Hudson River and Palisades views are available. (As can be seen on Exhibit 10, the following photographs in Exhibit 11 are excellent examples of this: 2, 4, 7, 8, 9, 11 and 12.) Further, photographs 5, 6, 13, 18 and 15, and possibly 10, contain views that are seasonal – had these pictures been taken when the trees were not in leaf, one would have dramatically different results. In fact, there are many available views of the Hudson River , Palisades and the Hudson Highlands from the proposed rezoned area, especially when the trees are not in leaf.

The issue the Village Board should be considering is whether available views are likely to be obstructed under the rezoning. Instead, what seems to have been done is selective picture-taking of 18 vantage points in Harmon that do not have Hudson views when trees are in leaf and the camera is pointed at an obstruction, presumably to support the claim that no views exist. Petitioners object to this. This is not a "hard look" at potential impacts to views.

Z. pp. 36-37 "Although windows in upper floors of existing buildings on the west side of South Riverside Avenue may afford some views of the River, this analysis focuses on views from publically [sic] available vantage points (i.e., streets), recognizing that both the existing and proposed zoning allows buildings of 35 feet in height."

Response: This ignores the fact that present zoning only allows two stories, which is discussed in Petitioners' petition and brief. Also, it is not only views of the River that are significant but views of the shores beyond them and the Hudson Highlands in general. Petitioners object to the EAF's focus only on "publically available vantage points," i.e., streets. Petitioners object to the failure to consider the impact on scenic views from inside of buildings and from outside areas that are not publicly owned.

AA. p. 37 "According to the Village Local Waterfront Revitalization Program (LWRP) report from 1992, *'Along South Riverside Avenue from Shop-Rite Plaza at the south end to its intersection with Route 129 to the north, the proliferation of commercial establishments has taken on a negative visual appearance. The great variety of buildings in this area have become, in many cases, shabby and dilapidated*...(LWRP, page II-25). This description includes the areas of South Riverside Avenue outside the gateway on either end, but also includes the Harmon/SR area. These statements were made in 1992, however, and some conditions have changed, and the photographs of the views from South Riverside Avenue included in this report represent current conditions (Exhibit 11, Photographs 1-15)."

Response: The inclusion of this quote from the LWRP is puzzling if "conditions have changed." Petitioners object to the failure to include the following quote from the LWRP "South Riverside Drive and the Route 9 corridor is also considered of local and regional significance because it allows unparalleled views of western shorelands from major thoroughfares." (LWRP, III-37.)

BB. p. 37 "Since there are several large commercial establishments on parcels between the Croton Point end of the gateway district and the gated entrance to this historic site (retail stores, gym, supermarket, equipment rental, etc.), [Van Cortlandt Manor] is not considered to be contiguous."

Response: Back in 2004, the Village claimed Van Cortlandt Manor was "substantially contiguous" [the relevant legal standard] and "proximate" to the Harmon Gateway District. *See* 2004 Gateway Overlay District Legislation EAF at p. 10 (question 6) and p. 14. On the east side of S. Riverside Avenue, there is only one commercial building (now housing ET Equipment) between the Harmon/South Riverside Gateway area and Van Cortlandt Manor property. Petitioners object to the EAF's position that Van Cortlandt Manor is not contiguous to the Harmon/South Riverside Gateway District area.

CC. p. 38 "The permitted building height is not changed from that in the previously existing code (maximum 35 feet), therefore that aspect of the streetscape will not be impacted beyond what could be constructed today."

Response: Because the proposed rezoning changes the maximum amount of stories from two to three, it is more likely that more buildings will be three- story, rather than two, which will obviously affect the height of the buildings and that aspect of the streetscape. The increase to permissible FAR under Harmon Rezoning also increases the potential bulk of the building and likelihood of a 3-story building being erected. Note that the two tallest buildings in the area to be rezoned are the two that are three stories (364 S. Riverside and a residential property on Croton Point Avenue). The residential property is situated on a slope that makes its height blend into the back of the landscape, an aesthetic advantage not available for most other properties in the proposed rezoned area.

DD. p. 38 "Residential development is permitted within the roofline of a three story building (maximum 35' height). There is precedent for this in some existing buildings in the area now."

Response: The two buildings in question are prior nonconforming and therefore should not be considered.

EE. p. 39 "The original gateway overlay design regulations...and the current proposed amendments are estimated to create a positive impact on the neighborhood and entrance to the historic site in the vicinity."

Response: Since not a single property on Croton Point Avenue or the portion of South Riverside that one would see on route to Van Cortlandt Manor from Route 9 are projected to be redeveloped under the rezoning, it is irrational to conclude that the design regulations will have a positive impact on the entrance to Van Cortlandt Manor.

FF. p. 39 "Although the extension of the Harmon/SR gateway district is in relatively close proximity of the Hudson River ...given the fact that most of the expansion of the gateway area is built up, or where vacant, the river not visible due to existing trees, blocking existing views toward the river is not anticipated to be a significant impact."

Response: *See* Sections X and Y, *supra.* Also, relevant significant views are not limited to the Hudson River but to view of the shores beyond it and the Hudson Highlands.

GG. p. 39 "The impact of the proposed amendments to the character of area relative to Van Cortlandt manor/gateway entry is not anticipated to be significant. The intent of the proposed amendments is the same as that of the original gateway zoning – to enhance the aesthetic character of the gateway, making it more attractive for visitors to the Manor and the Village."

Response: Impact of increased traffic and parking shortages resulting from Harmon Rezoning on the Manor is not addressed anywhere.

HH. p. 39 Impact on Harmon Sales Building…"the [building] is privately owned, and technically it could be demolished or redeveloped now, outside the gateway area, since it has no protected status. The proper method to address potential impacts of demolition or redevelopment of this building would be to protect this structure by designating it as historic."

Response: The issue the Village Board is required to address as lead agency is what potential impact the proposed action may have on the Harmon Sales Building. *Then* the lead agency addresses potential mitigation of that impact. All of the buildings in the rezoned area could be demolished now – the Rezoning is actually trying to *incentivize* that, since *it is not happening without the rezoning*, according to the Board. The probability of demolition of the Harmon Sales Building is therefore greatly increased under Harmon Rezoning because, by allowing for a higher FAR and three stories, the Village is incentivizing the tear-down of buildings that would not be being put to their most efficient/economical use, in the Village's opinion. In the Harmon Zoning Recommendations, the Committee shows that under Harmon Rezoning, the best utilization of the property is the demolition of the Harmon Sales building and the adjacent Dodge building (which are owned by the same person), to be replaced by one single three-story building covering both properties. *See* Harmon Zoning Recommendations (attached to EAF), pp. 14-16. This impact needs to be addressed in the EAF.

Incentivizing the demolition of the Harmon Sales Building, as well as other older structures in the proposed rezoned area, runs completely counter to the Comprehensive Plan's stated goal of preserving, village-wide, the small scale and historic character of the Village. Specifically, the Comprehensive Plan states:

> The history and small town character of Croton-on-Hudson was viewed as central to its distinctive charm. *Building upon Croton-on-Hudson's historic assets and character throughout the Village is a central objective, to be realized through historic preservation efforts including the sensitive renovation of older structures*, and the creation of architectural review standards and preservation ordinances in commercial zones where appropriate. 2003 Comprehensive Plan, at 78. (emphasis added).

The Croton Historical Society is on record with the Village Board that it views the Harmon Sales Building as a historic asset. Croton Friends of History has supported that view in the Village's official newspaper, the Gazette. (*See* attached.) Petitioners object to the EAF's failure to address the impacts of Harmon Rezoning on the Harmon Sales Building, including but not limited to the incentivization of its demolition and the loss of a historic resource, in conflict with the Comprehensive Plan.

II. p. 44-45. (providing school district information)

Response: This information is now stale – it needs to be updated.

JJ. p. 46 "The Harmon/South Riverside area contains some apartments now, and as of fall 2009, there are 9 school age children living there now (at four separate addresses), ranging from kindergarten to 8th grade."

Response: This information needs to be updated, and though the source of this information is identified as "communication with Ross Haber Associates, 10/6/2009" (*see* FN 18 on p. 46 of EAF), it is not clear how old the information Ross Haber was relying on was. *See also* Section III-L, *infra*. The EAF should also note that there are 30 apartments presently in the Harmon/South Riverside area, *see* FAQ Harmon Zoning Recommendations, p. 4, and give the configurations (i.e., # of bedrooms, average square footage).

KK. p. 46 "The school district also provided actual numbers of students that reside in Bari Manor, for reference."

Response: Bari Manor is not analogous to what is proposed for Harmon – Bari Manor is a garden apartment complex, not a mixed use development. It is also not clear whether the EAF captures all of the school-aged children at Bari Manor. (*See* III-L, *infra*.) The present conditions in Harmon are the best predictor of what new development in Harmon will produce in terms of population generation, according to John Saccardi, a principal of the Consultant (who acknowledged this at the November 22, 2011 Village Planning Board meeting). If additional analogous information is wanted, the best place to find it is in other mixed use development in the Village: along Grand Street and Old Post Road South in the Upper Village commercial area, and along North Riverside and Brook Street.

LL. p. 46. "In order to estimate the number of potential public school children that would be added to the district with Scenario #1 (46 residential units), standard planning multipliers were used."

Response: Petitioners maintain it is unreasonable to rely *solely* on the selected multipliers provided by the Rutgers University Center for Urban Policy Research ("the Rutgers Multipliers"). First, there is analogous housing (i.e., mixed use) already existing in the proposed rezoned area, as well as other pockets of the Village (Grand Street/Upper Village; North Riverside Avenue, Brook Street). As noted above (in I-KK), the Consultant believes this is the best indicator of future demographics. Second, the Rutgers multipliers are dated (compiled in 2006 and based on 2000 census), and are-state wide, which makes them not as useful as more recent and localized data. The Rutgers data does not even supply projections for some of the types of buildings contemplated (less than 5 apartments in a rental building). Third, other local studies have used higher multipliers. For example, the Croton-Harmon School District, in its recent demographic study (performed by Ross Haber & Associates and referred to in the EAF), used a multiplier of approximately .3 for all housing units, regardless of type. Westchester County used a Rutgers multiplier of .49 for multi-family units, apparently without regard to rental rates or bedroom configuration. (*See* Westchester County Planning Department "Town of Cortlandt Draft Buildout Results" attached.) Use of other multipliers (i.e., a multiplier based on the current population of the proposed rezoned area and/or analogous areas, the multiplier used by the school district, and the multiplier used by

the County) all would have produced a much higher projection of potential public school children. Failure to use such multipliers is irrational, arbitrary and capricious.

MM. p. 46 "According to [Rutgers multipliers], approximately 4 new students (K-12) would be generated by 46 one-bedroom apartments with rents over $1,000/month…If an equal mix of 1 and 2 bedroom units were used, the Rutgers multipliers indicate that the 46 apartments in Scenario #1 could generate approximately 8 new students, which would be added to the 9 school age children living there now."

Response: There are presently at least 9 children in the area to be rezoned living in 9716 square feet of residential space. The EAF projects that Scenario 1 will produce 46,000 square feet of living space, and yet produce fewer children. This is irrational. Also, Petitioners object to assuming no more than half of the apartments will be two-bedrooms. The restriction included in the new law (that only half of the apartments may be two-bedrooms and three bedrooms are prohibited), on a record that clearly demonstrates that the purpose of the restriction is to exclude families, violates the Fair Housing Act, *inter alia,* as has been previously pointed out to the Village Board by local attorney Roseann Schuyler. *See also Brisben Co. Inc. v. Village of Brown Deer*, 3003 WL 2845078 (E.D. Wis. 2003)((violation of Fair Housing Act for Village to deny conditional permit to developer who wanted to include three-bedroom apartments in building on basis of restrictive covenant prohibiting three-bedrooms for the purpose of reducing number of children).[3] It is therefore irrational to use the restriction on bedrooms as a basis for projecting future bedroom configurations.

Petitioners maintain, other than the discriminatory restriction, there is no rational basis for assuming that only 50% of the residences will be two-bedrooms. By way of comparison, the only three-story mixed use building in the proposed rezoned area has six apartments: 1 studio apartment and five two-bedroom apartments. (per conversation with Mark Franzoso, owner of the building, on 3/6/2012). Because the Addendum addresses a possible 10% affordable housing component and adjusts the numbers accordingly, the absence of such a computation in the EAF will not be addressed here. However, the highest number of students projected even in the Addendum, using a 10% affordable housing component and a 50-50 split of one and two bedrooms, results in a maximum projection of 10 students, which is at odds with present population patterns in the area, as well as with the numbers that would be projected if the EAF employed the multipliers used by the School District and the County. Therefore, Petitioners object to a conclusion that a maximum of ten students are likely under Scenario #1 as irrational, arbitrary and capricious.

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[3] Petitioners also point out that the Village Board just recently (March 19, 2012) had on its meeting agenda a letter from George Oros, Chief of Staff to County Executive Robert Astorino, asking the Village to confirm data it had received from the Village regarding six housing/zoning practices. According to Trustee Ann Gallelli, the County was looking for information on "restrictive practices." Included in these practices was a limitation on bedrooms, such as is proposed under Harmon Rezoning.

The projection of 8 new students also fails to take into account potential students generated solely from the potential conversion of rear space of first floors from commercial to residential, without further development. *See* I-I(4), *supra.*

NN. pp. 46-47 "Any new school children generated by private development in the Harmon area would not be generated all at once…"

Response: There is no stated basis for this assumption. It also appears to conflict somewhat with the statement that Scenario 1 is based only on near-term (1 to 5 year) development projections.

OO. pp. 48 "The tax revenue for Scenario #1 indicates only the new mixed use development. Since Scenario #1 assumes redevelopment on 9 parcels, therefore the numbers in this column of the table were only partial revenues, so they were added to existing revenues to come up with a total to compare with full build-out scenarios 2 and 3." (and accompanying Table 10)

Response: **The tax revenues for new development should not be added to tax revenues for "existing condition" to project the total amount of taxes that will be generated.** The amount of taxes being received currently on parcels that are going to be redeveloped must be subtracted out, or identified as a separate impact. This is discussed at length in Petitioners' petition and brief. Another way of looking at it is this: If the Village were going to recommend knocking down a solely commercial building that was generating $1 million in Village taxes, and replacing it with a building that would produce $100,000 in Village taxes, is that a positive impact to the Village of $100,000 a year or a negative impact of $900,000 in lost tax revenue? Using the methodology employed by the EAF, the answer is a positive impact of $100,000. Petitioners maintain that the only rational answer is that this would produce a net loss of $900,000.

PP. p. 48 "The estimated cost figure of 14,837 per new student was used, utilizing *The Croton-Harmon Union Free School District Official Budget Document, Appropriations and Revenues for the 2010-2011 school year."*

Response: This needs to be updated using the budget for the 2011-12 school year, if the 2012-13 budget is not yet available. The cost per student under the Saccardi & Schiff analysis has risen significantly just from 2009 to 2010 (from $14,300 to $14, 837). The EAF should use the most recent budget available, unless there is a justifiable reason not to do so.

QQ. p. 48-49. "It is anticipated that the school tax revenue in all redevelopment scenarios would offset the cost of potential new students to the district, especially considering the gradual increase in the school population…Using these figures, the cost of the new students would range from $59,492 to $118,984 for Scenario 1 (from 4 to 8 children) compared to school taxes of $219,600 generated…Even if state aid and other revenues were not included, using the cost per student of $17,706 x 8 students, costs would total $141,648, still well below the tax revenues generated."

Response: **Harmon Rezoning under Scenario 1would not generate $219,006 in school tax revenue, as indicated in Table 10, but $219,006 MINUS whatever the properties redeveloped are generating presently in school tax revenue.** *See* I-OO, *supra.* This incremental or net amount is what is going to be available to the school district to pay for the new students, *not the gross amount of $219,006.* Petitioners maintain the present analysis, using only the gross figure, is irrational. The same defect infects the analysis for Scenarios 2 and 3.

RR. pp. 49 "There is one area of the overlay district that is on a dead-end water line (properties on South Riverside from Benedict Avenue south toward the Shop Rite). Plans have been prepared to address this by providing a loop that would connect this area to the dead end line on Wayne Avenue, providing a looped water main for this area as well."

Response: Petitioners' counsel believes that the plans prepared by the Village to provide a loop require an easement from a private property owner that the Village has tried to obtain from both the current and prior owners, yet so far has failed to obtain. If correct, that fact should be disclosed, and the impact of not being able to provide a looped water main must be disclosed and analyzed.

SS. pp. 50 "In the longer term, new mixed use development permitted with an increase in FAR in this area could bring some incremental level of impact, gradually over a period of time, if maximum theoretical build-out were achieved. The village water supply and county sanitary sewer system is adequate to serve the existing and likely future potential development (Scenario #1)."

Response: As previously noted, evaluating potential impacts of only near-term development, which is what Scenario 1 represents, is inadequate under SEQRA. The Village's water supply and County sewer system's capacity to serve a full build out and/or the build out possible after five years must be disclosed and analyzed.

TT. p. 50 (population projections)

Response: Petitioners have same objections as made in I-LL, *supra.* The projected population should be compared with the present population and/or analogous population patterns on Grand Street.

UU. p. 52 "Parking spaces were not metered, but were signed for 2-hour parking."

Response: The parking spots on the west side of S. Riverside between Clinton and Benedict are signed for 30 minute parking, not 2 hours.

VV. p. 53 "Trip generation was calculated for the weekday AM and PM and Saturday peak hours of the adjacent street network, and a 15% reduction in residential trips due to the proximity of the study area to the transit station was also applied."

Response: If the 15% reduction were applied on Saturday, Petitioners object to that as irrational, arbitrary and capricious.

WW. Table 13.

Response: Something seems very wrong with this Table. For example, under Scenario 1, approximately 10,000 square feet of new commercial space is projected, and the trip generation analysis allocates 30% of that to restaurants, 34% to office, and 36% to general commercial space. That would mean 3000 square feet of restaurants, 3400 square feet to office, and 3600 to general retail space. According to this table, the 3000 square feet of restaurant space ), ON A SATURDAY, would generate only 33 trips (so say 16 trips in and 17 trips out), including the trips of the restaurant employees, and assuming no deliveries. No 3000 square foot of restaurant space (one big restaurant or several small ones) in the Village could survive on that volume of traffic. For office space of 3400 feet, only 12 trips (say 6 in, 6 out) are projected on a weekday. Yet 11 parking spaces are required for the same space. This is inconsistent. As far as residential is concerned, Scenario 1 projects 46 1000 square foot apartments, and assigns a minimum of 46 parking spaces. Yet, on a Saturday, only 31 trips are predicted to be generated (let's say 15 in and 16 out). It is simply not consistent with reality to project that only one-third of households in the rezoned area will make the equivalent of just one round-trip excursion on a Saturday. Petitioners maintain the traffic generation projections are irrational on their face.

Again, Petitioners object to any impact analysis that does not include a projected scenario beyond 5 years.

XX. p. 54 "A comparison of the No Build and Build analysis results indicates that there would be little impact to traffic conditions on the study area roadways due to the proposed zoning amendments."

Response: The underlying data to make a comparison of the No Build and Build analysis is not provided. The attached traffic study makes the same conclusory statement, without providing the underlying data.

Petitioners further object to the continued failure to consider the impact of potential increased traffic following the improvements underway at Croton Point Avenue and the contemplated creation of more parking at the train station, the impact of creating bike lanes, and potential traffic from school buses necessary from the additional housing to be created under Harmon Rezoning, all of which are discussed at length in Petitioners' brief. Impacts considered should not be limited to trip generation but to safety and other issues related to the interplay of increased bike and pedestrian traffic, increased traffic to the train station, and increased school bus traffic. The impact of and to the Harmon Firehouse traffic must also be considered. Unknown at the time of filing of Petitioners' petition and brief was the Mayor's active efforts to assist the owner(s) of 1A Croton Point Avenue to reopen their property for business, with the hopes of relocating the DPW facility there. The impacts of any such reopening, such as adding yet another type of traffic to the mix – trucks -- along with the re-siting of the DPW facility, must also be considered when evaluating traffic impacts.

YY. p. 54 "During the weekday AM peak hour, for Scenarios #2 and #3, traffic operations for the southbound movement at the intersection of South Riverside Avenue and Benedict

Boulevard would deteriorate slightly. None of these scenarios is considered realistic or likely to occur. However, should a specific site plan in the future present a need, conditions could be addressed by adding a second southbound approach lane (i.e., implementing a southbound left-turn/through lane and a southbound through/right-turn lane) at the intersection. This would require the removal of 6 on-street parking spaces, but should be compensated for by a *surplus of parking spaces created by the redevelopment.*" (emphasis added)

Response: Once it is conceded that a potential significant impact can be mitigated by a change such as "removing six parking spaces," it is no longer possible to say the rezoning has no significant impacts, and an EIS must be done. Because Petitioners maintain that there is no rational basis for assuming Scenarios 2 and 3 are unlikely, the impact of the increased traffic during the morning peak hours on South Riverside must be addressed through the EIS process.

Further, Petitioners assume the addition of a possible lane being described above is on the west side of South Riverside, between Clinton and Benedict. The potential removal of six parking spaces here, even if limited to the morning peak hours, could have serious impacts on Carmen's and LaMonica Salumeria, both of which open at 7 a.m. Presently, the proprietors have problems in the a.m. peak hours parking behind their establishments because the residents of the apartments have not yet left their homes for work and thus the proprietors' permitted parking spots (which are being used by the residential tenants) are not available. In addition, both establishments have busy early morning business (starting at 7:00 a.m.) whose customers park in front and across the street. Impact on Dairy Mart should also be considered, as it also opens early (but has accessible side parking).

There is no "surplus" of parking created by the redevelopment. As noted below, and in Petitioners' petition and brief, the parking is insufficient according to the traffic consultant.

ZZ. p. 54 Parking Generation section. (Entire section)

Response: As pointed out in Petitioners' petition and brief, the parking recommendations made by the Village's traffic and parking consultant ("RBA Group") exceed what is required by the proposed Harmon Rezoning. The Harmon Economic Development Committee, in its Harmon Zoning Recommendations, also recommended that two parking spots be required for each dwelling unit, which is more than Harmon Rezoning requires. Petitioners object to a law that reduces required parking to a level below what is recommended by RBA Group, and to the EAF's failure to address the impacts of doing so. Petitioners' objections are further discussed in their brief, including the failure to consider the needs of the Harmon Fire Department, which is adjacent to the proposed rezoned area.

Petitioners also object to the failure to consider loss of on-street parking due to Croton Point Avenue improvements, new enforcement of state mandates and potential street widening in assessing parking needs.

Petitioners also maintain that reducing the parking requirement to only one parking space for a one-bedroom dwelling unit or less was done to disincentivize two-bedroom apartments and

discriminate against families, not based on a rational determination of what parking requirements would lead to optimal parking impacts. Petitioners object to this. Petitioners also object to the EAF's failure to consider a likely consequence of this parking scheme: developers will build "one bedroom" apartments (to take advantage of the parking incentive), that easily can be partitioned into two-bedroom apartments.

Also, in this section of the EAF, this phrase suddenly appears: "Since Scenarios #2 and #3 *are not anticipated to be achievable in their entirety.*" (emphasis added) Again, Petitioners maintain that the EAF must address to what extent is it expected that development will exceed Scenario 1 after five years, and what are the impacts of such development.

AAA. P. 55-56 Residential Market Factors Section.

Response: Petitioners object to the Village Board's failure to conduct a comprehensive and robust study of the residential housing market in the Village to support its assumptions, as contemplated by the Comprehensive Plan, before embarking on the incentivization of many more apartments. With regard to the inadequate study done, all information needs to be updated – some of it is at least six years old. Inquiries should be made of landlords in the rezoned area for what rents they get for their apartments, as they are not comparable to Bari Manor apartments or apartments in two family homes in quieter sections of the Village.

Also, according to the Westchester County Planning Department's "Housing Type and Vacancy Status, Westchester County, 2000 and 2005-2009," (attached) vacant units in the Village have increased from 61 in 2000 to 138 in 2005-2009.

BBB. P. 56 "The Harmon Zoning Change Recommendations report (HDBC, 2008) indicated that local real estate agents had reported a strong market for good one-bedroom units within a 5 minute walk to the train station."

Response: This information is not relevant or probative of anything. It is old, the number of apartments that exist within a five minute walk of the train station is not provided, and the definitions of "good" and "strong" are not provided. Therefore it is unknowable whether the market is "strong" enough to absorb the 23-46 new 1 bedroom apartments projected even under Scenario 1, and if the type anticipated to be built are to be deemed "good."

Also, there is no discussion of the market for two-bedroom apartments, much less three-bedrooms. Without an analysis of the market for such, there is no basis on which to evaluate a likely distribution/allocation of one and two-bedroom apartments, other than the illegal discriminatory restrictions discussed *supra.*

CCC. p. 56 "It is anticipated, based on the location on a primarily commercial street (close to conveniences and shopping), but also within walking distance to Metro-North Rail Station and Route 9, that residential units would appeal primarily to commuters, singles and young professionals, and perhaps empty nesters. Given the location, it would be less likely to attract families who tend to prefer quieter areas with more open space around the units."

Response: If this were true, the EAF needs to explain why there are at least 9 school-age children living in the 9,000+ square feet of residences that presently exist in the proposed rezoned area. Also, the EAF should consider whether professionals, commuters, singles and perhaps empty nesters live in the proposed rezoned area now, and if not, why not. Many families may prefer the amenities described in the EAF, but obviously some families make different choices, and a significant number of them presently live in the proposed rezoned area. The conclusion that the area "would be less likely to attract families" is irrational and not based on facts but groundless speculation.

DDD. P. 56 Conclusions Regarding Potential Marketability Section.

Response: Recent news articles suggest that older people prefer 2 bedrooms to house their years of material accumulation. Families would probably prefer them as well. Anecdotal evidence from local landlords suggests 2-bedroom apartments are easier to rent than 1 bedroom apartments, whether the tenants have children or not. Without the parking incentive provided in Harmon Rezoning (i.e., a one-bedroom requires only one parking space while a two-bedroom requires two parking spaces), it is not clear that a developer would favor one bedrooms over two bedrooms, and no basis for that assumption is given in the EAF. The parking incentive was created to reduce likely schoolchildren and incentivize one bedroom apartments, which is illegal for the same reason that limiting two bedroom apartments and prohibiting three bedroom apartments is. (i.e., violation of Fair Housing Act to discriminate against families through zoning)

If the apartments are likely to rent from $850 to $1400/month, then the student projection numbers need to be revised, as they are based on the Rutgers multipliers applicable to apartments that rent for at least $1000/month. The Rutgers multipliers for lower rent apartments are up to four times higher for one-bedroom apartments that rent for less than $1,000 a month and two-bedroom apartments that rent for less than $1100 per month. This will have dramatic impacts on student projects and financial impact to the school district.

## II. Attachments to EAF Part 3 (7/15/2010)

A. Environmental Assessment Form Part 1.

Response:

Part A: Question 7: Site is substantially contiguous to Van Cortlandt Manor, a National Historic Landmark, as already conceded in previous Gateway Legislation SEQRA materials. Question 14: The site includes scenic views known to be important to the community. Question 19: Site is substantially contiguous to CEA's (see Petitioners' petition and brief).

Part B: Petitioners disagree that these questions cannot be answered due to this being a zoning amendment only.

Part C: Petitioners disagree with answers to 6 and 8.

B. Environmental Assessment Form Part 2.

Response: Question 5: The proposed action will allow residential uses in areas without sewer services. Question 11: Should have checked off Potential Large Impact on the first three examples given. Question 12: The answer should be yes. Applicable examples are first and third (entire area will occur in an area designated as sensitive for archeological sites the NYS inventory). Question 15: Petitioners disagree with degree of impact – should be potential large impact, especially on parking. Question 18. Lukoil is used for the disposal of oil. The property next to it (housing Feed the Birds) is identified as a property likely to be redeveloped. Citgo and Gulf may raise same issue, as the vacant lot between them is also identified as likely to be redeveloped. Activities at Atro Collision Center may raise similar issues (located next to Feed the Birds). Question 19: Proposed Action will conflict with officially adopted plan and goals: Potential large impact should be checked off. Proposed Action will cause a change in the density of land use: Potential large impact should be checked off. Proposed Action will replace or eliminate existing facilities, structures or areas of historic importance to the community: Potential large impact should be checked off. Proposed Action will set an important precedent for future projects – this should be checked off. [4]

C. Coastal Assessment Form.

Response: (Analysis omitted due to new CAF done in 2011)

D. Harmon Zoning Change Recommendations, August 26, 2008

1. p. 7 "For residential units, the current code requires two parking spaces per unit. This reflects the reality of two-car households in the region."

Response: Petitioners object to this "reality" being ignored by only requiring one parking space per dwelling unit unless the unit exceeds one bedroom in the proposed rezoned area.

2. p. 8 "Indeed, the largest mixed use building in this district is a three-story 35 feet tall structure in which the second and third floors are residential and the ground floor is commercial/office space."

Response: If the EAF is referring to Parcel 13 (364 S. Riverside, housing Carmen's and Allstate), this building is not even 30 feet high. Compare with nearby telephone poles, which are 30 feet high. This building is also a prior nonconforming use.

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[4] See Petitioners' petition and brief for additional discussion of Harmon Rezoning's role as just a piece of a larger package to revitalize the commercial areas of the Village. See also 2010-2011 Capital Fund Appropriation Schedule. The explanation for the $30,000 appropriation in the 2010-2011 Capital Fund Appropriation Schedule states as follows: "Planning Studies: the Village intends to continue the work which began in the Harmon area and explore zoning options for the other commercial areas in the Village as well as feasibility plans for Village owned property." (*See* attached.) Other statements by the Mayor and Trustee Gallelli also support the contention that Harmon Rezoning is just the first step in a larger commercial rezoning process.

3. p. 11 "Having established that building floor area could be expanded without harmful parking impacts to the neighboring residential streets..."

Response: The Committee established no such thing. The Committee relied on the assumption that the commercial parking requirements in the Village code are adequate. The parking report attached to the EAF indicates they are not, particularly for restaurants. Also, the parking requirements the Committee was working with (2 units per dwelling unit) are not what the latest version of the proposed law provides.

4. p. 11-13 "Return on Investment Modeling Results"

Response: The model provided does not account for the significant tax benefits available to a real estate developer, such as depreciation and 1031 exchanges. These increase the after-tax rate of return on investment. The model also projects rent for the commercial space at triple net, but the associated expenses appear to be for the entire building, not just the residential space. A 15% vacancy rate is inconsistent with the residential market analysis done in the EAF. A vacancy rate consistent with what is projected in the EAF would also raise the ROI. These adjustments alone raise the ROI to as much as 10%, depending on the tax bracket of the developer, and may explain why 383 S. Riverside is in fact being developed under the present Zoning Code. Also, the projected apartment rents in the investment model are significantly lower than the rents used to project student population – the student population numbers quadruple in some cases under the Rutgers multipliers at this level of rents. Note that the gross apartment sizes in Figure 3A are less than 800 feet. Note also that the calculated return in Figure 3B is based on project costs that are being 80% financed over 30 years; therefore it is irrational to calculate the rate of return on the present value of the total project cost.

5. p. 14 "The larger commercial buildings in the district (defined as S. Riverside between Croton Point Avenue and Oneida) that are currently available have not yet attracted new investors, while others have been vacant or underused for some time."

Response: This may have appeared accurate when written, but it is no longer the case. There are only two currently vacant commercial buildings: Dodge and Nappy's. (Anton's is under reconstruction due to fire it should not be considered vacant.) Petitioners agree there is no business currently using the Dodge building, although the owner made a significant investment of time and money from 2009-2011 to obtain a special permit, which was obtained on or about the summer of 2011. Since then, the owner appears to be moving slowly towards reopening. Without knowing how much the Village pays Nappy to operate his property as a car impoundment lot, it is impossible to gauge whether he would be incentivized to do anything with his building other than what he is doing now, since it would be hard to run a business when all available parking is taken up by impounded and wrecked cars. The Nappy's property also attracted a bank some years back, but, at least according to Trustee Schmidt, the deal did not go through due to the seller's asking price. That is not a function of zoning but a disagreement on market value between buyer and seller.

6. p. 14 "The apartment vacancy rate in Croton is very low, 2% according to the Westchester County Databook 2005, while the rents for 1-bedroom units is higher in Croton (c. $1,100/month) than in neighboring units is higher in Croton (c. $1,100/month) than in neighboring communities."

Response: These numbers should have been used in the financial modeling. Note also the vacancy rate in Croton has increased. *See* I-AAA, *supra.*

7. p. 14 "hence, it is reasonable to assume that small, attractive residential units would fill quickly, even while ground floor commercial space may not."

Response: If the ground floor commercial vacancies are not going to fill quickly, Harmon Rezoning does not solve a perceived commercial vacancy problem or encourage commercial activity.

8. p. 14 "Stores or offices that are open in the daytime would have peak parking demand for clients during business hours. Residential units would have peak parking demand at night, after normal business hours."

Response: This concept seems to ignore weekends, which are further complicated in the area by Good Shepherd Church's Sunday a.m. service. The concept also seems to ignore most restaurants, which have peak parking demand at night.

9. p. 15 "It is important to note that the current average floor to area ratio for all the 36 Harmon study area parcels is only 0.19, well below the maximum FAR of 0.4 or 0.5 that is allowed now."

Response: This contradicts Trustee Gallelli's recent statement at a Village Board meeting to the effect that increasing the FAR to .8 is consistent with the Comprehensive Plan because a substantial number of buildings in the proposed have high FAR's. In any event, prior nonconforming uses are an impermissible criteria in establishing the propriety of a zoning change.

10. p. 16 "Assuming the fixed cost of a foundation and a roof, adding a third floor is the [sic] very cost-effective way to increase revenue potential."

Response: This statement does not take into account potential costs of an elevator and fire requirements in three story buildings.

11. p. 15-16 Reducing Building Footprint: an illustration.

Response: The illustrations contained in this section are a good example of how changing the parking requirements from two spaces per dwelling unit to one for dwelling units less than two bedrooms increases the potential footprint of the building. *See* I-G *supra.* For example, Figure 4d shows that if the Former Dodge Lot (including the Harmon Sales Building) were built out to a three-story building at .8 FAR, 47 parking spots would be available for a 24,800 square foot building. At 8,266 square feet per floor, using the 1000 square foot bedroom assumption used in the EAF and a maximum of 50% 2 bedrooms, 30 parking spots would be

required for the dwelling units and 15 for the commercial space. Thus, there would be enough parking to permit the maximum build out. Under the parking requirements applied when the Harmon Zoning Recommendations were made, " note a full build out at 0.8 FAR yielding a c. 24,800 + square foot building here would likely require 9 more parking spaces than these 47...For that reason, the natural "on site" specific limit attainable by balancing parking spaces needed and building size for the 3 Dodge parcels lot yields a site specific FAR of 0.66. " (see p. 17). **This is exactly why the Property Utilization Study needs to be re-run using the new parking requirements.**[5]

12. p. 19 "Rear Parking Improves Streetscape by Replacing Parked Cars with Landscaping and Green Space" (and accompanying text).

Response: This section ignores that the west side of South Riverside between Oneida and Benedict are not adjacent to single family residences.

13. p. 21 "One change the committee did make as a direct result of the two studies was to relax the amount of the first floor that must be commercial from 75% in the initial recommendations down to 50% in the final recommendations. The residential market is stronger than the commercial market."

Response: Allowing 50% of the first floor to be residential, and requiring the commercial to be in front, creates potential commercial delivery/loading problems that are not addressed. Trucks will deliver to the entry of a commercial establishment, whether in back and/or front. If there is no entry in the back, the delivery will have to be in front, creating traffic and parking issues that have not been addressed. Rear parking accompanied by lack of rear entry is also inconvenient to shoppers. The lack of rear entry will decrease the desirability of the commercial space. This impact is not addressed in the EAF.

14. p. 22 "Geographic Scope Represents a Gateway Expansion."

Response: This section acknowledges that any changes to a C-2 district would have to "thread their way back to all the parcels anywhere in the village that were designated C-2. As previously noted, for the same reason, any changes to the Gateway Overlay District need to "thread their way back to all parcels anywhere in the village that are designated "Gateway Overlay District." *See* I-A, *supra.* There cannot be one set of regulations for parcels in the Harmon area of the Gateway Overlay District and another set of regulations for the parcels in the other areas within the Gateway Overlay District.

15. p. 23 "It is telling that the *only* parcel that has sold recently was one that had no existing structures at all, and, thus, would be a blank slate for redevelopment without any cost for demolishing old structures." (emphasis added)

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[5] Petitioners note that Trustee Gallelli has stated more than once at televised Village Board meetings that the public is unaware that most properties cannot be built out to the maximum .8 FAR under Harmon Rezoning. Unless the numbers are run again using the parking requirements under the proposed zoning, neither she nor the public can ascertain what the maximum build outs are for the properties in the proposed rezoned area.

Response: This is no longer true: Since this was written, the following parcels have sold: Parcel 12 (housing Green Growler), Parcels 3-4 (housing Anton's), Parcel 28 (housing Citgo Gas Station), Parcel 19 (housing Feed the Birds), Parcel 37 (housing the multi-family home on Croton Point Avenue), and Parcel 30-31 (383 S. Riverside – now under construction), all with varying size structures on them. That points to the marketability of properties in the rezoned area without rezoning. New businesses have also opened: Citgo, Anton's (now closed due to fire), Green Growler, Elena's Boutique, Feed the Birds, and Kitson & Schuyler, which points to the attractiveness of the area to new businesses without the rezoning.

16. p. 28 "The 2004 Gateway front, side and rear screening requirements are stronger than those currently in place under the C-2 code."

Response: As previously noted, and as shown in the cited portions of the Gateway Law that appear on page 28 of the Zoning Recommendations, the screening protection provided by the Gateway Law applies primarily to sidewalks and streets, not neighbors whose backyards are adjacent to the rear of a rezoned building. *See* Section I-O, *supra.*

17. p. 32 "In [Committee's, not EAF's] Scenario 1, the committee assumed that each parcel would have to contain its own parking, which limits the floor to area ratio achievable on each parcel…In this site specific self-contained parking scenario, the better situated lots with sufficient width and rear access built out to higher FAR values and the poorly situated lots to lower FAR values for an average FAR value of .51…*The committee feels that Scenario #1 is possible over time,* and more likely if adjoining parcels come under single ownership, which would facilitate the placement of parking and remove the disadvantages that some smaller parcels have as stand-alone building lots." (emphasis added)

Response: This scenario, which is similar to the EAF's Scenarios 2 and 3, is deemed "likely over time" by the Committee. This is why Petitioners' object to the EAF's claim, without explanation, that the full built outs contemplated in Scenarios 2 and 3 are unlikely, and why Petitioners object to any determination of environmental significance that is based on their unlikelihood.

18. p. 33 "While 1000 square feet may sound generous, the consultant informed us it is a common yardstick for upscale, market rate 1-bedroom apartments and condos in Westchester..."

Response: There is no stated basis for assuming the apartments in the rezoned area are going to be "upscale." That might be a reasonable assumption if a developer were coming in with a proposal to rebuild the entire area that included upscale apartments (similar to Half Moon Bay, for instance) , but, given that the present existing housing stock in the area is decidedly not "upscale," and given that only 9 out of 39 parcels are identified as likely to be developed, it is arbitrary, irrational and capricious to assume the new apartments will be "upscale." Rather than arbitrarily use the 1000-square foot "common yardstick" for upscale apartments, the EAF should use a common yardstick for the more moderately priced apartments it claims Harmon Rezoning is trying to promote, or a figure in line with current apartment size in the proposed rezoned area.

However, if there is some reasonable basis for assuming that the apartments are going to be "upscale," then this is at odds with stated purposes of the rezoning. For example, the EAF talks in terms of the rezoning promoting/creating [unsubsidized] "affordable housing" and justifies it with the need to maintain/foster economic diversity. That is inconsistent with the idea of creating "upscale" apartments.

The EAF cannot use one set of assumptions to create apartment size (e.g., that the apartments will be "upscale") and thus reduce the projected number of schoolchildren (which under the Rutgers multipliers are based on # of apartments created), and use another set of assumptions (that the apartments are designed to create "affordable housing" for empty nesters and young families) to claim that Harmon Rezoning is consistent with the Comprehensive Plan. That is irrational, arbitrary and capricious.

**III. Harmon/South Riverside Gateway Overlay District Proposed Zoning Amendments: Addendum to Environmental Assessment Form Part 3 Report (October 12, 2011)**

A. p. 1 "The proposed Local Law has been modified to provide that the Village Board shall have the authority to increase the parking requirements in certain cases based upon specific stated factors."

Response: Petitioners question the legality of this provision. If it is not legal, then it is irrational to assume that this will accomplish anything in terms of the parking impacts that the parking requirements, without modification, will have.

There are also problems with setting up the law this way even if such a provision is legal. Because retail use is no longer subject to a special permit in the Harmon/South Riverside area, a change of use from one retail use to another within a building that has already been permitted will not have to go through the special permit process again (though it may have to go through site plan approval). The authority to increase the parking requirements, however, is given to the Village Board through the special permit process.

B. p.2 Limitation on number of bedrooms.

Response: Petitioners believe the limitation on number of bedrooms, for the discriminatory reasons stated throughout the legislative history of Harmon Rezoning, is illegal under the Fair Housing Act, *inter alia. See* I-MM, *supra,* and citations included therein.

C. pp. 4-5 (Floor Area Ratio)(1st three paragraphs)

Response: Petitioners continue to challenge the notion that, because Harmon Rezoning *may* have some effects that are consistent with the Comprehensive Plan, then Harmon Rezoning is consistent with the Comprehensive Plan. *See* I-F, I-M, I-S, I-T, I-U, I-HH, *supra.*

D. p.4 "The concern is that the Comprehensive Plan contains several general statements regarding maintaining the existing mass and scale of development. Many of these references

are in fact contained in the sections of the Comprehensive Plan relating to the residential neighborhoods, not the commercial areas"

Response: First, it could not be clearer that the following statement from the Comprehensive Plan applies to *commercial,* not residential, areas: "If rezoning to *commercial* is done in the future, the scale and massing of the existing structures should be maintained." *See* Comprehensive Plan, p. 82. (emphasis added)

Second, much of the justification for *reducing* the FAR of C-2 areas in the original Gateway Overlay District rezoning, *which rezoned solely commercial areas,* was based on preserving and enhancing the small scale and historic nature of the Village. Many of the favorable impacts claimed in the Gateway environmental impact statements are attributed to reducing the FAR. There is no escaping that. That this theme of preserving the small scale of the Village is echoed in the sections of the Comprehensive Plan dealing with residential areas simply strengthens Petitioners' case that small scale considerations were an essential part of the *overall* Comprehensive Plan, as well as for the commercial sections of it. Moreover, since most of the new development is projected to be housing (over 83%), it certainly makes sense to consider comments made in the Comprehensive Plan with respect to housing and residential neighborhoods. Notably, the Comprehensive Plan's comments about affordable housing, which are relied on heavily in the EAF, are contained in sections of the Comprehensive Plan dealing with housing and residential areas, not the commercial areas.

E. p. 4 "It is noted that there are existing buildings on lots in the Gateway District that already have a FAR in excess of .4 to .5, with some even significantly greater than that."

Response: *See* Comment II-D-9, *supra.*

F. p. 4 "The maximum permitted building height is not being increased. Buildings can be 35 feet under current zoning and this will not change. This is a significant factor in considering scale of buildings"

Response: As discussed in Petitioners' petition and brief, this cannot be taken in isolation but must be considered along with the present two-story and FAR limitations.

G. p. 5 discussion of attic floors.

Response: The only two attic floors observed existing on the 39 parcels in Harmon are on : the Harmon Sales Building and possibly the building housing the Green Growler. Attics are very uncommon in commercial areas. Therefore, the Rezoning will not encourage the use of attic space but the creation of it, for use as habitable space.

H. p.5 "Also a significant factor in reviewing the impact of these changes is the required open space, landscaping, buffer and parking requirements. Each of these will significantly restrict the scale and massing of a building which will be permitted on a particular lot. In fact, in taking all of these requirements into consideration, it is likely that most properties will

not actually be able to be developed to an FAR even close to the 0.8 maximum...The design guidelines and zoning requirements of the gateway regulations are in fact specifically designed to encourage the small scale commercial development which makes up the character of the area while also satisfying other goals of the Comprehensive Plan and the gateway districts. By expanding these regulations into the existing C-2 zoned area, it will actually have the likely effect of reducing the apparent scale of the buildings. The increase in permitted FAR cannot be looked at alone, but must be considered in context of the other applicable restrictions.

Response:

1. The potential to waive the open space, landscaping and buffer requirements is discussed in section I-N, *supra.*

2. As discussed in I-G, *supra,* the maximum FAR build outs calculated in the 2008 Property Utilization Study were based on an assumption that two parking spots would be required per dwelling unit. In fact, there is no factual basis to assume that "most properties will not actually be able to be developed to an FAR even close to the 0.8 maximum."

3. The inapplicability/ineffectiveness of the design guidelines applicable to the expanded Harmon/South Riverside area are discussed in section I-N, *supra.*

4. The "zoning requirements of the gateway regulations" implemented a FAR reduction to .35 or .4. In fact, this was a core ingredient of the gateway regulations, and much of the accompanying SEQRA review focused on the beneficial impacts this would have. Petitioners agree that this "encourage[d] the small scale commercial development which makes up the character of the area..." To then say "expanding these regulations into the existing C-2 zoned area," as if "these regulations" are not something very different from what was originally enacted, is misleading.

5. There is no logical connection between increasing the permissible FAR, adding certain buffering, screening, curb cut, etc. requirements, and the claimed likely effect of "reducing the apparent scale."

6. Because there is still no acknowledgement in the EAF that increasing the allowable FAR will increase the scale of buildings, apparent and actual, the EAF improperly fails to address the impacts of that increased scale, including but not limited to impact on historic character, sight lines, streetscapes and light for parcels in and around the Harmon/South Riverside Gateway area.

I. p. 5 "As mentioned in the EAF Report, each proposed project in the Overlay District will be reviewed individually for site plan approval and SEQRA, and infrastructure will be part of that review."

Response: SEQRA review may not be necessary now on expansions under 4000 feet, due to the new Type II list recently enacted by the Village Board. Moreover, the *total* impact of the

action has to be evaluated *now* – not the impact only 1-5 years out, and not only on an incremental basis as specific projects are proposed.

J. p. 7 "As shown in the table, including 10% affordable units within every potential mixed use development in this scenario, there would be only 2 additional schoolchildren from the affordable units compared to all market rate units."

Given that the Village Manager has stated that the Village will have to enact the County's Model Zoning Ordinance to receive CBDG monies, it would be irrational for the Village to make projections without the 10% affordable housing component. The projections should be made for Scenarios 2 and 3 as well, given that the Harmon Business Development Committee deemed this scenario likely over time, and the consultants have given no reason as to why these scenarios are unlikely. The amount of tax revenue potentially lost needs to be quantified.

With a projected number of at least 10 school students, using the EAF's outdated numbers, the cost of educating such children is $148,730 (10 x $14,873) or $177,060 (10 x 17,706). The projected school tax revenue on new development is $219,600, according to the EAF, but the EAF fails to subtract out the tax revenue that will no longer be coming in on the demolished buildings (approximately 17,000 square footage – for the buildings on the Dodge, Citgo, Feed the Birds, Nappy's and 383 S. Riverside properties). If you subtract out those taxes (17,000 x $3.89, for a total of $66 130), the projected tax revenue is only $153,470. [6] If even $5,000 is deducted from potential tax revenue for the required affordable housing component of the buildings, or one extra child is generated, or state aid continues to decline, the costs of educating the children generated exceed the school tax revenue generated. This is based on using the EAF's projections of student population, apartment size and apartment configurations, which Petitioners have already stated are irrational. These impacts need to be disclosed.

Finally, the conclusion that subsidized affordable housing will be limited to the 10% requirement contained in the County's Model Zoning Code has no apparent rational basis. Already the Village is aware of an inquiry to the County regarding a site directly adjacent to the rezoned area for affordable housing. (*See* attached correspondence between Village Manager and Westchester County Planning Department regarding 483 S. Riverside Avenue.) While Petitioners are not suggesting that the Village is planning any such housing in the proposed rezoned area, the Village would have minimal ability to prevent it. The probability of development of at least one 100% affordable housing mixed use building should be considered in view of the regional needs for subsidized affordable housing and the history in this Village of developing small (1-20 unit) affordable housing projects. Thus, a scenario envisioning affordable housing in excess of 10% per building needs to be modeled and its impacts considered.

K. p. 8 Economic [Danth] Study.

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[6] The $3.89 figure is extracted from Table 10 in the EAF.

Response: *See* I-Q, *supra.*

L. p. 8 "As an example, the number of public school children in the overlay district was obtained from the school district transportation department, who provided the number of children that use public school buses."

Response: This appears to conflict with the footnote on p. 18 of the EAF, which says the information was based on a conversation with Ross Haber Associates. Which was it? And if the information is based on "children that use public school buses," the information may not capture some school age children living in the proposed rezoned area, as students past sixth grade, if they do not have special needs or attend private school, would not qualify for busing to PVC or the High School from most of the area to be rezoned. This begs the question of whether the number of students at Bari Manor was obtained in the same way, as no Bari Manor student would qualify for busing to PVC or the high school (which are almost across the street from Bari Manor).

M. p. 8 Update Due to Changes that Have Occurred in Existing Conditions..."These changes are noted as positive...However, none of the changes described above are significantly more intense or different than [sic] the previous uses on those parcels, so these changes do not change the conclusions of the EAF Report and Addendum, including the development of Scenario #1."

Response: *See* I-I, *supra.*

**IV. Coastal Assessment Form, 10/12/2011**

Response: Although this form is signed by the Village's consultant, it does not appear to have been adopted by the Village Board. Petitioners object to referral to the WAC prior to adoption by the Board.

Questions in Section C that should be answered "Yes" but are answered no: 1, 1b, 2b, 2i, 4d,.

V. **WAC Report 11/21/2011**

p. 2 (Comment on Policy 1A)

Response: The WAC seems to take the same approach as the EAF: if there is anything consistent in Harmon Rezoning with the Comprehensive Plan, then Harmon Rezoning is consistent with the Comprehensive Plan. Petitioners have already stated their objections to this approach.

p. 2 (Comment on Policy 5 and 5A).

Response: There appears to have been no consideration that several properties in the area are on septic. Also, the statement that Harmon Rezoning could "increase the productivity of existing public services" is irrational.

p. 2 (Comment on Policy 5C)

Response: The WAC appears to have read out of the Policy the words "such as" after "traffic impact" and "particularly along" after "restricted."

In addition, relevant LWRP Policies were not addressed, including Policies 23, 25A, and 25C.

VI. **Segmentation.**

None of the Village documents described above address Petitioners' concerns, as expressed in their petition and brief, that the review of Harmon Rezoning should not be segmented from the review of the Croton Point Avenue traffic project (including removal of street parking in part of the Harmon Rezoning area), creation of additional parking at the train station, redevelopment of the Katz property, and encouraging more bike riding through the Harmon Rezoning area through creation of a bike path. To the extent the Village is involved in the redevelopment or return to use of 1A Croton Point Avenue, its impact should be considered together with Harmon Rezoning as well.

VII. **Bias.**

Petitioners believe that the majority of the Board has already made up its mind to issue a negative declaration, without a rational review of the potential impacts of Harmon Rezoning. The evidence for such belief includes but is not limited to:

- Preparation of the EAF Parts 1, 2 and 3 by a "consultant hired for litigation defense purposes;"
- "Issuance" of the EAF Parts 1, 2 and 3 to reviewing agencies before the Board reviewed those EAF's, as a body;
- Voting to direct the drafting of findings that would support a negative declaration before the Board reviewed, as a body, the EAF Parts 1, 2 and 3;
- Portions of the EAF Part 3, which skew the facts (e.g., taking no pictures of the available river views in the proposed rezoned area; using unrealistic apartment size to reduce number of children generated) to support a negative declaration;
- Failing to address the very impact that was stated as the basis for a positive declaration in enacting the 2004 Gateway legislation (socioeconomic impact/change in neighborhood character);
- Comments made by the Board at the 2/6/2012 Village Board meeting during the evaluation of SEQRA's Section 617.7 (c) criteria, including comments to the effect that (a) the proposed rezoned area was not being converted from a "wild" use to a "human" use but rather that the use was just being "tweaked," (b) "we're not building anything," and (c) "I'm comfortable" with "the negative declaration route" because the area is already well developed. These comments reflect a misunderstanding of the lead agency's role in making a determination of significance.

VIII. **Negative Declaration**

Counsel for Petitioners received the proposed Negative Declaration, with a 22 page attachment titled "Reasons Supporting This Determination" (of Non-Significance) ("Reasons") on Friday, March 30, 2012 at 4:55 p.m. for a vote scheduled to be taken on the Negative Declaration on Monday, April 2, 2012. Petitioners' comments are therefore circumscribed by the limited amount of time given to provide them. For further ease of review, I will comment using the same Outline Format provided in the Reasons.

A. Introduction and Background.

1. 2003 Comprehensive Plan.

Response: The Comprehensive Plan concept of three gateways to the Village was implemented into law by creating *one* Gateway Overlay District, comprised of three separate *areas*. There is no "Harmon/South Riverside Gateway Overlay District," and references to such throughout the Reasons will be assumed to mean "Harmon/South Riverside area" of the "Gateway Overlay District."

2. 2007/2008 Harmon Business Development Committee study and recommendations.

Response: There is no authority/support for the statement that "the goals of the Comprehensive Plan were not being achieved." Nor is there any specification of what goals of the Comprehensive Plan were not being achieved, and support in the record for their lack of accomplishment.

Specific issues with the HBDC's findings and recommendations are noted in Section II-D, *supra* and are incorporated herein by reference.

B. Description of Proposed Action.

Response: As set forth in sections discussing this topic in I-IV, *supra*, Petitioners disagree that "the zoning amendments will address the need to improve the quality, function and appearance of both the existing and expanded [Harmon/South Riverside area].

C. The Review Process.

Response: To the extent that the Reasons suggest otherwise, Petitioners disagree that the Village Board "discussed" in any substantive way the EAF or the CAF on August 9, 2010. To date, the Board, as a body, has never "reviewed" the EAF, including Parts 1, 2 and 3, or identified the relevant areas of environmental concern, in violation of SEQRA. Further, Petitioners maintain a determination of significance without the lead agency's thorough review of the EAF and a thorough analysis of the identified areas of relevant concern is a violation of SEQRA.

The subsequent referrals to the County, WAC and Planning Board, as well as the reviews by these agencies, are all defective because of the failure of the Village Board to supply them with anything other than the Consultant's view of areas of potential impact and analysis of

same. Indeed, the WAC and the Planning Board repeatedly relied on the unreviewed EAF and EAF Addendum in making their findings.

Similarly, Petitioners disagree, to the extent that the Reasons suggest otherwise, that the Village Board, at its October 17, 2011 "considered and discussed " the EAF Addendum and updated CAF prepared by the Consultant, beyond agreeing to issue them and refer them to the Village Planning Board, the WAC and the County Planning Board. The failure of the Village Board to review the EAF Addendum rendered the referrals and any findings and/or determinations made by the referred agencies defective, and the failure of the Village Board to conduct such a review prior to making a determination of significance is a violation of SEQRA.

Potential development – Scenario #1

Response: Petitioners disagree with the Village's position as to what SEQRA requires the Lead Agency to consider in a zoning action. Petitioners maintain that the lead agency should have developed a reasonable worst-case scenario and made projections of impacts accordingly. Instead, the EAF contains a so-called "most likely" scenario that, as discussed in sections addressing this topic in I- IV above, has no rational basis. Indeed, within the less than one-year time period in which the EAF for the original Harmon Rezoning Law and the present EAF were issued, the parcels deemed "most likely to be redeveloped" changed for no discernible reason.

Nor, as discussed in the relevant sections of Sections I-IV *supra*, is there any rational explanation of why the full build-out scenarios are unrealistic, particularly in the "15 to 20 year horizon for most comprehensive planning studies" that appears, as a time period, for the very first time in the Reasons.

The Reasons state that a redevelopment of approximately 11 parcels is anticipated. Only 10 parcels are included in Scenario 1 in the EAF, and the time frame for their projected redevelopment is over the next 1 to 5 years. The claimed time frame for Scenario 1 in the Reasons is the "foreseeable future (near and long term)." To the extent that the Reasons are saying only 1 additional parcel would be redeveloped beyond year 5, without any stated basis, Petitioners maintain this is irrational, arbitrary and capricious.

There has been no analysis in the EAF of what development is likely beyond five years. There is thus no factual or analytical basis (or supporting documentation) for a long-term projection.

The statement that "A large redevelopment would require a developer to amass a significant number of these properties – a difficult and highly unlikely scenario" may be true if the Reasons merely mean by "a large redevelopment" a development that occurs by one developer. However, no reason is given, and no analysis has been done, as to why each property owner could not and would not eventually redevelop his own property to take advantage of the increased building capacity provided by the Rezoning. To the extent some of the smaller parcels are not redevelopable by themselves because of their small size, both

the Harmon Zoning Recommendations and the EAF note that they may be combined with other adjacent parcels to create more attractive developable sites. There has been no analysis of why this is not likely to happen over time, other than conclusory statements such as "the magnitude of the likely development, potentially on different lots than anticipated, remains modest and small scale, given the land uses, ownership patterns, parcel sizes and configurations, and the economic realities of redevelopment in the area.." (Petitioners note that there has been no analysis of ownership patterns, or "economic realities," at all, and no analysis of why land uses, parcel sizes and configurations would prevent any parcel from being redeveloped, especially on a parcel by parcel basis. Petitioners also remind the Village, as noted in Petitioners' petition and brief, that the Village took the position in its original Gateway legislation SEQRA materials that there was still plenty of potential development in the Harmon Gateway area because the properties had an average FAR of approximately .2 To now take the opposite position, without analysis, is irrational, arbitrary and capricious.)

To the extent the Village can no longer identify which parcels are likely to be redeveloped, there is no basis to assume any of the new development will be adjacent to another new development, which greatly diminishes the projected positive impacts of the plan.

For the first time, the phrase "marginal uses" appears in the Reasons. No definition is given of "marginal uses," but an example is given: "auto storage." The only lot in the proposed rezoned area being 100%% used for auto storage is Parcel 29, which the Village uses, over the protests of neighbors, for auto storage. Thus, other than vacancy, the criteria for inclusion of a parcel in Scenario 1 continue to be left to one's imagination.

In addition to the discussion of the use of Scenario 1 as unreasonable in sections I-IV above, and herein, Petitioners cite several other facts: 1) the Mayor has claimed that the litigation in this case has prevented "many" commercial property owners from redeveloping their properties (*see* attached Gazette letter); 2) at least two members of the Planning Board, including its Chair and another member who is former general counsel to a publicly traded REIT, agree that a full build-out was likely (*cf.* Memo from Mark Aarons, Planning Board Member to Village Board dated 10/28/2010 at p. 5)(referring to "statements of other planning board members who believe that build-out will be substantial over the long term"); 3) the Harmon Economic Development Committee foresaw a full build-out "over time," and 4) the EAF suggests that a level of build out beyond Scenario 1 is possible. *See* I-ZZ, *supra.*

For all of the reasons stated herein, and in I-IV supra, as well as Petitioners' petition and brief, Petitioners object to the use of Scenario #1 as a basis for the findings supporting the determination of significance, and maintain such reliance renders the findings and determination arbitrary, irrational and capricious.

D. Determination of Significance

Response: As previously noted, there is no indication that the Village Board reviewed the EAF or the EAF Addendum. Nor does it appear that the Board ever reviewed the CAF, the report from the WAC and the report from the County Planning Board. Most opponents of the rezoning would challenge the statement that the Board "listened carefully to members

of the public who expressed their opinions at public meetings." There is no record that the Village Board has ever discussed certain issues raised by members of the public, such as the impact of the rezoning on emergency services, the failure to take into account the loss of tax revenue on demolished properties, etc.

The statement that the Village Board reviewed the twelve criteria set forth in § 617.7(c) of the SEQRA regulations "in the context of the full record before it" suggests that the review was conducted with reference to the EAF, the EAF Addendum, the Planning Board reports, the WAC preliminary finding and the County Planning Board memo. In fact, the review took approximately 45 minutes, and the only document referred to by the Board was the EAF Part 2 instructions, not in the context of discussing particular impacts but in trying to better conceptually understand the difference between a large impact and a significant one. The review conducted by the Village Board was utterly remarkable in its lack of detail.

The statement that there are no changes in the permitted uses is incorrect, as several uses are newly prohibited in the proposed rezoned area that was not formerly part of the Gateway Overlay District.

C. [sic] The Twelve Criteria

Response: To the extent the Reasons suggest otherwise, Petitioners point out that the proposed "findings" on each of the § 617.7(c) criteria set forth in this section of the Reasons do not in any way summarize the discussion that was held by the Board on February 6, 2012. Instead, these "findings" appear to be extensively extracted from the EAF and EAF Addendum, and prepared by the Consultant or the Village Attorney to provide a basis for the conclusions reached by the Board at the February 6, 2012 meeting. Petitioners object to this procedure. Objections to the specific findings are set forth below.

(i) *air quality...traffic, etc.*

Response: Petitioners' objections to the EAF's assessment of traffic and parking impacts are set forth in sections I-IV, *supra*, as well as in Petitioners' petition and brief. Much of the material in the Reasons are taken from the EAF, and Petitioners incorporate their objections to same herein. Reliance on site-specific SEQRA review is not appropriate, nor even accurate since projects of less than 4000 square feet will not be subject to SEQRA. The finding that the residential parking ratio is sufficient is contradicted by the RBA consultants, as discussed above and in Petitioners' petition and brief.

In addition, site-specific reviews do not take into account the cumulative effect of all parking and traffic generated by potential development. In addition, though a site specific plan may be reviewed for traffic and parking impacts at time of the building originally being proposed, the review for a simple change of use in a building already constructed would only be subject to minor site plan approval under the Village Code. Thus, if a building owner developed his property to house a retail store and had provided the necessary parking for it, but then wanted to lease the space to a restaurant, the owner would only have to go through minor site plan approval. The Planning Board would be able to waive parking requirements

under this process, which it has done on other occasions (e.g., Asiago). No public hearing, public notice, or Village Board review would be required. Therefore, there is a potential for parking impacts resulting from change of use that has not been considered by the Village Board.

Because Petitioners maintain the traffic impact will be higher than that projected in the EAF and Reasons, it correspondingly believes the impact on air quality has not been properly assessed. Moreover, there has been no assessment at all on the effect of moving parking to the rear on the air quality of rear-abutting residential properties. Similarly, the Board has not considered the impact on noise to the rear-abutting residential properties of moving parking to the rear.

For all of the reasons set forth in this letter, as well as Petitioners' petition and brief, Petitioners maintain that the Board's finding of no significant impact on traffic, noise and air quality is irrational, arbitrary and capricious.

(ii) *vegetation and fauna, etc.*

Response: In view of the fact that the EAF and Reasons claim that views of the Hudson, Palisades and Hudson Highlands are blocked by the vegetation in the area, it is surprising to read this paragraph. In fact there are many very tall trees near the western perimeter of the area to be rezoned, particularly noticeable in the rear of Parcel 19 (Feed the Birds). In the same location, one can also observe a wide variety of birds. There is no factual basis/supporting documentation for the statement "it does not serve a function in the movement of any resident or migratory fish or wildlife species." Therefore, for all of the reasons set forth in this letter, as well as Petitioners' petition and brief, the Village Board's conclusion that "the Proposed Action will not cause significant adverse impacts to vegetation or fauna, or other natural resources" is irrational, arbitrary and capricious.

(iv) *The creation of a material conflict with a community's current plans or goals as officially approved or adopted.*

Response: Petitioners have set forth their opposition to/disagreement with the first paragraph of this section in VIII-A-2, *supra*, and sections cited therein.

Petitioners have set forth their opposition to/disagreement with the second and third paragraphs of this section in I-IV, *supra*.

Petitioners have set fourth their opposition to/disagreement with the first five sentences of the fourth paragraph of this section in I-IV, *supra*. Petitioners disagree with the statement that "This expansion also makes the Gateway Overlay boundary generally consistent with the C-2 zoning district in this area." Immediate adjacent commercial properties to the proposed rezoned area remain C-2, including properties on Wayne Street (5 parcels rear adjacent to S. Riverside between Benedict Boulevard and Oneida Avenue); and properties on South Riverside (parcels housing ET, Shoprite, NY Sports Club) still remain C-2.

Petitioners do not understand the fifth paragraph. On the one hand, it says some conditions have changed in the subject area, without specifying what conditions they are. On the other, it says "current land use patterns in the area are largely unchanged." The EAF and Reasons maintain that the current land use pattern is not going to change under Harmon Rezoning, so the relevance of that statement is unclear. If the real estate economy is expected to rebound soon, it is unclear why "the need for revitalization is now more pressing."

Petitioners have set forth their opposition to/disagreement with the sixth, seventh, eighth and ninth of this section in I-IV, *supra.* Petitioners do not understand why reference is made to the 2.0 FAR permitted in the C-1 zone in the Upper Village in the sixth paragraph.

For all of the reasons set forth in this letter, as well as Petitioners' petition and brief, the Village Board's finding that the proposed zoning test and map amendments do not contain any material conflict with the Village Comprehensive Plan is irrational, arbitrary and capricious.

(v) *important historical, archeological, architectural, or aesthetic resources or of existing community or neighborhood character.*

Response: Petitioners' objections to/disagreement with the first paragraph are set forth in I-IV, *supra.*

Regarding the second paragraph, the fact that the State Historic Preservation Office stated that the structure is not eligible for listing on the State or National Register of Historic Places is an insufficient basis for concluding that the former Harmon Real Estate office at 73 Benedict Boulevard does not represent an important historic resource. A historic resource does not have to meet the criteria of State or National listing to be an important aesthetic resource. Historic resources of local importance must also be considered. The Village Board has sought no expert advice on this matter and is not qualified to render its own. In contrast, the Croton Historical Society, which is qualified to give such advice, has opined that the building is important historically, and seeks its exclusion from Harmon Rezoning. It also offered suggestions to the Village Board to improve its value as a historical resource. Petitioners object to the Board's finding that the building is not an important historic resource as irrational, arbitrary and capricious.

Petitioners' objections to/disagreement with the third, fourth and fifth paragraphs of this section are set forth in I-IV, *supra.* Petitioners objections to/disagreement with the sixth paragraph of this section are also set forth therein, but Petitioners further object to the characterization of the *doubling* of the permissible FAR and permitted use of the third floor as a "slight potential increase in building bulk." The Village Board has conducted no studies that would demonstrate that views would not be significantly impacted by the increased bulk.

Regarding the seventh paragraph, site-specific reviews of aesthetic resources will be prejudiced by the fact that, through this SEQRA process, the Village Board would be estopped from claiming there are significant views, aesthetic and historic resources. Moreover, projects less than 4000 feet will not have to undergo SEQRA review.

For all of the reasons set forth in this letter, as well as Petitioners' petition and brief, the Village Board's conclusion that the Proposed Action will not result in a significant adverse environmental impact relative to this criterion is irrational, arbitrary and capricious.

(viii) *substantial change in the use, or intensity of use...*

Response: The question required to be considered here is not whether a substantial change in the intensity of use of land will cause substantial impacts to agricultural, open space or recreational resources, (which is what the Village Board seems to have tried to answer in this section), but whether there will be a substantial change in the intensity of use of land. Because the proposed rezoning permits a doubling of the intensity of use of land through its FAR increase, the answer to this question is **yes.** As spelled out in § 617.7 (c)(1), "These criteria are considered indicators of significant adverse impacts on the environment."

The population projection contained in the EAF is erroneous because it is based on a 2008 Property Utilization Report that employs parking requirements different from what is contained in the proposed Harmon Rezoning.

For all of the reasons set forth in this letter, as well as Petitioners' petition and brief, the finding that "the proposed project will not result in a significant environmental impact on the use or intensity of use of agricultural, open space or recreational resources" is irrational, arbitrary and capricious.

Petitioners also object to the Board's failure to make a finding on whether there will be a substantial change in the use, or intensity of use, of land.

(xii) *Two or more related actions undertaken...*

Petitioners believe there are several related actions being undertaken by the Village Board that, when considered cumulatively, would meet one or more of the criteria in this subdivision. As pointed out in VI above and in Petitioners' petition and brief, these include: the improvements to Croton Point Avenue, improvements at the train station, reinstigation of activities at 1A Croton Point Avenue, rezoning of other commercial areas of the Village, and redevelopment of the Katz property. For all of the reasons set forth in this letter, as well as Petitioners' petition and brief, the Village Board's determination that there are no cumulative impacts that would meet or exceed the other criteria set forth in § 617(.c) is irrational, arbitrary and capricious.

E. Additional Criterion Considered by the Village Board

Petitioners note that Schools/Municipal Services and Affordable Housing were not discussed at all by the Village Board during its February 6, 2012 meeting.

*Schools/Municipal Services*

To the extent this section adopts the findings and analysis of the EAF with respect to number of students likely to be generated, Petitioners repeat the objections to/disagreements with the EAF on this topic discussed in I-IV , *supra.* To the extent the Village Board is making a

finding that only 4-8 children are likely to be generated (without consideration of affordable housing and apartments less expensive than provided in the Rutgers Multipliers used to calculate schoolchildren), Petitioners object to that as well. The Village Board's finding that the Proposed Action will not result in any significant adverse impacts to schools is irrational, arbitrary and capricious. The fact that a site-specific application may have to project specific impacts in accordance with SEQRA (if the project is over 4000 square feet only) provides little comfort, as impacts on schools are unlikely to result from one specific project but will be cumulative as each parcel is developed. The extent to which the Lead Agency can require project modifications or mitigation with respect to school impact is also challenged by Petitioners.

To the extent this section adopts the findings and analysis of the EAF with respect to school taxes likely to be generated, Petitioners repeat the objections to/disagreements with the EAF on this topic discussed in I-IV, *supra*. Specifically, the finding that the school taxes generated will cover the likely student population to be generated by the rezoning is irrational, arbitrary and capricious.

To the extent this section adopts the findings and analysis of the EAF with respect to infrastructure such as water, sewer, police, fire and waste disposal services, Petitioners repeat the objections to/disagreements with the EAF on this topic discussed in I-IV, *supra*. Site-specific review is of no comfort, as impacts on infrastructure are unlikely to result from one specific project but will be cumulative as each parcel is developed.

For all of the reasons set forth in this letter, as well as Petitioners' petition and brief, the finding that the Proposed Action will not result in any significant adverse impacts on municipal services is irrational, arbitrary and capricious.

*Affordable Housing*

Petitioners disagree with the following statement:

"Even if the new residential units are not 'affordable' by any County or Federal guideline or definition, they are still likely to serve the goal set forth in Section 3.5(b) of the Comprehensive Plan to encourage lower cost, smaller sized dwelling units in the Village, in particular for aging residents and young professionals, many without children. These units will provide a housing type which does not exist in any quantity in the Village today."

As stated in sections I-IV *supra*, the Village Board has no factual basis on which to make the statement that such housing does not exist in any quantity in the Village today, although the Comprehensive Plan did contemplate the Village conducting studies to gather such data. Section 3.5(b) of the Comprehensive Plan does not set forth "goals" but discusses then-current conditions. Petitioners' prior discussion of what the Comprehensive Plan actually says with respect to affordable housing in I-IV, *supra*, is fully applicable here and will not be further repeated. There is no factual basis on which to state that "This type of housing is likely to be "more affordable" or less costly than other housing existing in the Village."

For all of the reasons set forth in this letter, as well as Petitioners' petition and brief, the findings that "any increase in school children due to the more affordable rents will be minimal," "the designation of ten percent (10%) of the residential units as affordable housing would not significantly reduce the taxes generated by the potential redevelopment of the subject area under the proposed zoning," "the reduction in assessed value and thereby taxes generated from the properties with 10% of the residential units being designated as affordable housing units would be minimal," and "does not find that the provision of affordable housing at the level recommended by Westchester County would have a significant adverse impact on schools or tax revenues" are irrational, arbitrary and capricious.

Petitioners continue to object to the sole use of the Rutgers multipliers, for the reasons stated in I-IV, *supra.*

There is no factual basis for the finding that "this Village Board does not consider the Proposed Action (as described in Scenario #1) to have a significant adverse impact on affordable housing. There has been no study whatsoever of what impact the creation of the *new* housing will have on *existing* affordable housing, subsidized or otherwise. This finding is therefore arbitrary, irrational and capricious. Moreover, to the extent this finding relies solely on Scenario 1, Petitioners renew their objections to the sole use of Scenario 1 as a basis of making findings for the Proposed Action.

For the reasons stated in III-J, *supra,* Petitioners object to findings based solely on the County's recommended level of affordable housing.

*Segmentation*

Petitioners repeat their previous arguments contained in VI and VIII(C)(xii) *supra*, as well as in their brief and petition, with respect to segmentation. Petitioners dispute that there is no commitment to further action with respect to Croton Point Avenue. Regarding rezoning of other parts of the Village, the Village manager, at a publicly televised Village Board meeting in response to my inquiry as to why $30,000 was being bonded out for "planning studies," stated that there were zoning changes contemplated for later in the year. This is consistent with the prior year's commitment of $30,000 for planning studies for further commercial rezoning. Petitioners also dispute whether "commitment to further action" is the relevant criteria for segmentation. To the extent redevelopment of the Katz property is being tabled because of the instant litigation and resurfaces upon resolution of this matter, Petitioners would argue that segmentation occurred. Petitioners are presently unaware of the present status of plans to make improvements at the train station, including creation of more parking through, but not limited to, the re-siting of the DPW facilities. I am currently awaiting a response to a FOIL request seeking information on the Village's involvement with the use of 1A Croton Point Avenue. Therefore, Petitioners reserve their right to present further segmentation arguments on these issues pending receipt of information from the Village.

The repeated comments in the Reasons that each potential impact can be analyzed on a site-specific basis is a) factually wrong to the extent the projects are no longer subject to SEQRA

review because of the Village's revision of the Type II list; and b) a segmented approach that is unacceptable under SEQRA.

F. Conclusion

Petitioners maintain that the Village Board failed to consider a number of significant potential impacts, including but not limited to, the impact of allowing the first floor to be 50% commercial, the impact on existing businesses that are not currently within the Gateway Overlay District, the financial impact of the property taxes that will not be collected on demolished buildings (i.e., using only the gross amount of taxes to be generated from new development in calculating tax revenue impact), impact on the Harmon Sales Building, and impact on views of the Hudson River and other scenic views from anywhere but publicly accessible street level locations.

Petitioners further maintain that the analysis contained in the EAF and EAF Addendum, in many instances, was irrational, arbitrary and capricious, yet was used extensively as a basis for the findings presented in the Reasons.

Should a Negative Declaration issue on this record, Petitioners maintain that it would be irrational, arbitrary and capricious.

**

Thank you for your consideration of the above comments.

Very truly yours,

Patricia Moran

Patricia Moran

Cc: James Staudt, Esq., Village Attorney

Abe Zambrano, Village Manager

# Housing Type and Vacancy Status, Westchester County, 2000 and 2005-2009

| Municipality | Occupied Housing Units, 2005-2009 | Owner Occupied | Renter Occupied | Vacant 2005-2009 | Occupied Housing Units, 2000 | Owner Occupied | Renter Occupied | Vacant 2000 |
|---|---|---|---|---|---|---|---|---|
| **Cities** | | | | | | | | |
| Mount Vernon | 25,405 | 9,563 | 15,842 | 2,831 | 25,729 | 9,390 | 16,339 | 1,319 |
| New Rochelle | 26,006 | 13,748 | 12,258 | 2,108 | 26,189 | 13,176 | 13,013 | 806 |
| Peekskill | 9,051 | 5,023 | 4,028 | 812 | 8,696 | 4,044 | 4,652 | 357 |
| Rye | 5,359 | 3,968 | 1,391 | 341 | 5,377 | 4,027 | 1,350 | 182 |
| White Plains | 23,113 | 13,214 | 9,899 | 1,263 | 20,921 | 10,928 | 9,993 | 655 |
| Yonkers | 73,707 | 35,298 | 38,409 | 5,459 | 74,351 | 32,140 | 42,211 | 3,238 |
| **Towns** | | | | | | | | |
| Bedford | 5,987 | 4,555 | 1,432 | 398 | 5,731 | 4,287 | 1,444 | 289 |
| Cortlandt | 9,741 | 7,799 | 1,942 | 628 | 9,905 | 7,799 | 2,106 | 389 |
| Eastchester | 7,384 | 5,866 | 1,518 | 381 | 7,687 | 6,002 | 1,685 | 232 |
| Greenburgh | 15,974 | 13,327 | 2,647 | 641 | 16,001 | 12,434 | 3,567 | 466 |
| Harrison | 8,217 | 5,467 | 2,750 | 339 | 8,394 | 5,389 | 3,005 | 286 |
| Lewisboro | 4,191 | 3,890 | 301 | 304 | 4,218 | 3,848 | 370 | 247 |
| Mamaroneck | 4,231 | 3,339 | 892 | 215 | 4,151 | 3,189 | 962 | 98 |
| Mount Kisco | 3,996 | 2,314 | 1,682 | 226 | 3,993 | 2,205 | 1,788 | 110 |
| Mount Pleasant | 7,663 | 6,697 | 966 | 196 | 7,694 | 6,588 | 1,106 | 126 |
| New Castle | 5,729 | 5,326 | 403 | 164 | 5,732 | 5,256 | 476 | 111 |
| North Castle | 3,544 | 3,169 | 375 | 372 | 3,583 | 3,120 | 463 | 123 |
| North Salem | 1,613 | 1,504 | 109 | 332 | 1,764 | 1,520 | 244 | 215 |
| Ossining | 1,998 | 1,769 | 229 | 0 | 1,918 | 1,687 | 231 | 27 |
| Pound Ridge | 1,701 | 1,611 | 90 | 129 | 1,699 | 1,593 | 106 | 169 |
| Scarsdale | 5,469 | 4,989 | 480 | 158 | 5,662 | 5,152 | 510 | 133 |
| Somers | 7,197 | 6,741 | 456 | 193 | 6,802 | 6,362 | 440 | 296 |
| Yorktown | 13,128 | 11,233 | 1,895 | 366 | 12,556 | 10,787 | 1,769 | 296 |
| **Villages** | | | | | | | | |
| Ardsley | 1,607 | 1,280 | 327 | 73 | 1,432 | 1,313 | 119 | 24 |
| Briarcliff Manor | 2,516 | 2,150 | 366 | 56 | 2,435 | 2,130 | 305 | 66 |
| Bronxville | 2,315 | 1,811 | 504 | 182 | 2,312 | 1,775 | 537 | 75 |
| Buchanan | 826 | 629 | 197 | 113 | 814 | 584 | 230 | 98 |
| Croton-on-Hudson | 2,910 | 2,212 | 698 | 138 | 2,798 | 2,121 | 677 | 61 |
| Dobbs Ferry | 3,852 | 2,364 | 1,488 | 474 | 3,792 | 2,219 | 1,573 | 149 |
| Elmsford | 1,637 | 796 | 841 | 70 | 1,674 | 805 | 869 | 64 |
| Hastings-on-Hudson | 2,955 | 2,131 | 824 | 126 | 3,093 | 2,043 | 1,050 | 100 |
| Irvington | 2,444 | 1,895 | 549 | 35 | 2,518 | 1,880 | 638 | 83 |
| Larchmont | 2,275 | 1,762 | 513 | 60 | 2,418 | 1,730 | 688 | 52 |
| Mamaroneck | 6,495 | 4,241 | 2,254 | 528 | 7,096 | 4,189 | 2,907 | 257 |
| Ossining | 8,465 | 4,707 | 3,758 | 505 | 8,227 | 4,281 | 3,946 | 288 |
| Pelham | 2,212 | 1,495 | 717 | 110 | 2,287 | 1,491 | 796 | 50 |
| Pelham Manor | 1,710 | 1,588 | 122 | 71 | 1,862 | 1,678 | 184 | 47 |
| Pleasantville | 2,844 | 1,988 | 856 | 52 | 2,637 | 1,916 | 721 | 47 |
| Port Chester | 9,829 | 4,712 | 5,117 | 452 | 9,531 | 4,121 | 5,410 | 241 |
| Rye Brook | 3,310 | 2,789 | 521 | 193 | 3,122 | 2,690 | 432 | 102 |
| Sleepy Hollow | 3,552 | 1,276 | 2,276 | 106 | 3,181 | 1,174 | 2,007 | 72 |
| Tarrytown | 3,849 | 2,129 | 1,720 | 247 | 4,533 | 2,375 | 2,158 | 155 |
| Tuckahoe | 2,520 | 1,134 | 1,386 | 156 | 2,627 | 1,235 | 1,392 | 102 |
| **Westchester** | 338,527 | 213,499 | 125,028 | 21,603 | 337,142 | 202,673 | 134,469 | 12,303 |

Prepared by the Westchester County Department of Planning based on the U.S. Census Bureau American Community Survey data, 2005-2009. Data is based on a sample and contains a margin of error, which is available on the Census Bureau's American Community Survey website. Town figures refer to the unincorporated areas outside of villages.

**Patricia Moran, Esq.**
**49 Penfield Avenue**
**Croton-on-Hudson, NY 10520**
**(914) 827-8278**

September 23, 2010

Planning Board
Village of Croton on Hudson
1 Van Wyck Street
Croton-on-Hudson, NY 10520

Re: Referral of proposed Harmon Zoning Amendment

Dear Chairman Kehoe, Mr. Aarons, Ms. Allen, Mr. Kauderer and Mr. Luntz:

I attended the Planning Board meeting on September 14, 2010, where the above subject was on the agenda. I had hoped to give a short statement but the floor was not opened to public comment (no doubt due to press of much business). I do hope it is acceptable to provide some comments in writing. In the interest of full disclosure, although I am a resident of Harmon, I also represent the Petitioners in the Article 78 proceeding brought to challenge the first Harmon Rezoning Law. By agreement of the Village and Petitioners, and as ordered by the Court, the Planning Board is no longer a party to that action.

Under Village Code § 230-180, the Planning Board is called upon to review, among other things, whether the Harmon zoning amendment is consistent with the aims of the Village's Comprehensive Plan and other zoning laws.

The Harmon zoning amendment is substantially inconsistent with the Comprehensive Plan and the Gateway Legislation that was a direct byproduct of it. There is no call in those documents for a dramatic increase in building density or residential capacity *anywhere*, much less in the Harmon commercial district. Instead, the Comprehensive Plan repeatedly calls for preservation of the historic and small scale nature of the Village, and specifically calls for maintaining present population development patterns.

The Village Board has claimed (in both the old and new EAF's) that the Harmon zoning amendment does aim to incentivize some goals of the Comprehensive Plan: namely, making this gateway district more pedestrian friendly and perhaps more aesthetically pleasing. Whether the Village can even fairly claim that is likely, given that the "most likely scenario" under the new EAF predicts 3-story development of six non-contiguous buildings in the near term, is questionable. But even assuming some arguable improvement in walkability or appearance, the price at which it comes is anathema to the Comprehensive Plan.

The carrot for incentizing these "improvements" is allowing increased building density, a third story, and a lot of residential development. But the Comprehensive Plan specifically calls for *discouraging* increased large-scale residential development "so that the existing development pattern in the Village can be preserved." (Comp Plan, p. 106). It also "strongly endorses" the following from the 1977 Master Plan:

> "The essential character of Croton on Hudson is a community of individual house-owners, residing in single-family dwellings on separate lots…this essential character should be preserved, with a modest increase in the number of town houses, attached dwellings and small apartments." (Comp Plan, p. 75).

Since that was written, we got Half Moon Bay, so we seem to be well past the "modest increase" threshold.

The Comprehensive Plan is also clear that the "scale and massing" of the commercial areas should be preserved: "If rezoning to commercial is done in the future, the scale and massing of the existing structures should be maintained." (Comp. Plan, p. 82). How then can doubling the permissible scale (permissible FAR increased from .4 to .8) be consistent with the Comprehensive Plan?

The original Gateway legislation actually slightly reduced the permitted "scale and massing" by lowering the permissible floor area ratio from .5 to .4 (in C-2 districts). The SEQRA analysis for the Gateway legislation claimed that *decreasing* the FAR would have many positive impacts – on issues such as traffic emissions, parking, infrastructure burdens, community services, etc. (*See* enclosed SEQRA "findings" for Gateway legislation, pp. 3-4.) The SEQRA analysis for the Harmon amendments is totally at odds with these sensible findings – the EAF for Harmon claims that *doubling* the FAR will have no impact whatsoever on these issues!

In addition to the beneficial environmental impacts that accompany a lower FAR, the SEQRA findings for the Gateway Legislation also stated: "The proposed FARs will restrict the development potential in the gateway areas, thereby encouraging smaller-scale development more appropriate to the scale and historic character of the Village." (Findings, p.6) So how can doubling those FAR's, well beyond what they were pre-Gateway Legislation, not be inappropriate to the scale and historic character of the Village? And why are we even considering it? The same findings also note that "since most of the already-improved properties are not fully built-out, property owners will still have room for expansion."(Findings, p. 3).

I note that in the new EAF, the Village Board attempts to shore up its claim that the Harmon zoning amendment is consistent with the Comprehensive Plan: "The Comprehensive Plan states that the Village should examine ways to encourage lower cost, smaller sized, single or multi-family dwellings in order to maintain the demographic diversity of the Village." (EAF, p. 12, citing "Existing Conditions" section of Comp. Plan, p. 46). This cited sentence is taken out of context; it occurs within a discussion of subsidized "affordable housing." In the "Plan Recommendations" section of the Comprehensive Plan, the need to study affordable

housing is expanded upon, and it is clear that the study of income-restricted (government subsidized) affordable housing is what is being recommended. *See* Comp. Plan, p. 109-110. However, "affordable housing" is not the *market-rate* housing on which all of the tax, revenue, and school population projections in the EAF are based.

Dramatically increasing the potential as-of-right residential development in the Harmon commercial district, as well as increasing the allowable building density and permitting a third story, is going to have great impacts to the neighbors on Young Avenue, and significant impacts to everyone who lives in the immediate Harmon area. As demonstrated above, none of this is contemplated by the Comprehensive Plan or the Gateway Legislation, and I hope this Board will have the courage and intellectual honesty to say so.

Sincerely,

Patricia Moran

Patricia Moran

Enclosure

To the editor:

Croton Friends of History would like to applaud and support the letter from our Croton Historical Society discussing the rezoning of Harmon.

The former Wood-Harmon Sales Office on the corner of Benedict Boulevard and South Riverside Avenue deserves to be preserved and used in the future. It would help keep our village a place to be proud of from an historical point of view. Our hope is that future rezoning by our village government will be sensitive to our local history.

Respectfully,

**Carl Oechsner, President,**
**Croton Friends of History**

# Town of Cortlandt Draft Buildout Results

### *Buildout Map Tables*

| | | |
|---|---|---|
| ***A. Vacant Buildout*** | Buildable Vacant Parcels | 600 |
| | Buildable Parcel Area (acres) | 2,310 |
| | Potential New Dwelling Units | 735 |
| | Potential Population Increase | 2,058 |
| | Potential Non-Residential Sq. Ft. | 1,517,448 |

| | | |
|---|---|---|
| ***B. Underdeveloped Buildout*** | Buildable Underdeveloped Parcels | 231 |
| | Buildable Parcel Area (acres) | 1,468 |
| | Potential New Dwelling Units | 716 |
| | Potential Population Increase | 2,005 |
| | Potential Non-Residential Sq. Ft. | 2,425,177 |

| | | |
|---|---|---|
| ***C. Composite Buildout*** | Buildable Vacant Parcels | 600 |
| | Buildable Underdeveloped Parcels | 231 |
| | Total Buildable Parcels | 831 |
| | Buildable Parcel Area (acres) | 3,778 |
| | Potential New Dwelling Units | 1,451 |
| | Potential Population Increase | 4,063 |
| | Potential Non-Residential Sq. Ft. | 3,942,625 |

### *Potential New Students*

| | | Dwelling Units | Students |
|---|---|---|---|
| ***Vacant Buildout*** | Single Family | 575 | 408 |
| | Multi-Family | 160 | 78 |
| | | *735* | *486* |

| | | Dwelling Units | Students |
|---|---|---|---|
| ***Underdeveloped Buildout*** | Single Family | 335 | 238 |
| | Multi-Family | 381 | 187 |
| | | *716* | *425* |

Student Multipliers: Single Family Unit = .71 students
Multi-Family Unit = .49 students

*Student Multipliers Source: Rutgers University Center for Urban Policy Research*

# Town of Cortlandt Draft Buildout Results

### *Buildout Map Tables*

| | | |
|---|---|---|
| ***A. Vacant Buildout*** | Buildable Vacant Parcels | 600 |
| | Buildable Parcel Area (acres) | 2,310 |
| | Potential New Dwelling Units | 735 |
| | Potential Population Increase | 2,058 |
| | Potential Non-Residential Sq. Ft. | 1,517,448 |

| | | |
|---|---|---|
| ***B. Underdeveloped Buildout*** | Buildable Underdeveloped Parcels | 231 |
| | Buildable Parcel Area (acres) | 1,468 |
| | Potential New Dwelling Units | 716 |
| | Potential Population Increase | 2,005 |
| | Potential Non-Residential Sq. Ft. | 2,425,177 |

| | | |
|---|---|---|
| ***C. Composite Buildout*** | Buildable Vacant Parcels | 600 |
| | Buildable Underdeveloped Parcels | 231 |
| | Total Buildable Parcels | 831 |
| | Buildable Parcel Area (acres) | 3,778 |
| | Potential New Dwelling Units | 1,451 |
| | Potential Population Increase | 4,063 |
| | Potential Non-Residential Sq. Ft. | 3,942,625 |

### *Potential New Students*

| | | Dwelling Units | Students |
|---|---|---|---|
| ***Vacant Buildout*** | Single Family | 575 | 408 |
| | Multi-Family | 160 | 78 |
| | | *735* | *486* |

| | | Dwelling Units | Students |
|---|---|---|---|
| ***Underdeveloped Buildout*** | Single Family | 335 | 238 |
| | Multi-Family | 381 | 187 |
| | | *716* | *425* |

Student Multipliers: Single Family Unit = .71 students
Multi-Family Unit = .49 students

*Student Multipliers Source: Rutgers University Center for Urban Policy Research*

**From:** Drummond, Norma
**Sent:** Thursday, December 08, 2011 2:38 PM
**To:** Abe Zambramo (azambrano@crotononhudson-ny.gov)
**Subject:** Affordable site in Croton

Abe – my apologies for it taking so long to get back to you with the address of the site in Croton that someone called us about, but I'm just reviewing the list for another purpose and remembered your request. The address is 485 South Riverside Ave. It sounds like the site we were talking about.

If any other sites come in, I'll give you a head's up. ~Norma

Norma V. Drummond
Deputy Commissioner
Westchester County Department of Planning
148 Martine Avenue, Room 414
White Plains, New York 10601
Tel: (914) 995-2427
Fax: (914) 995-9093
E-mail: nvv1@westchestergov.com

Westchester County wants to be able to contact you in an emergency. Sign up at www.westchestergov.com <http://www.westchestergov.com>

*o Save paper. Don't print this E mail unless you really need to!*

# Letters

An open letter to residents of the Croton-Harmon school district:

I wanted to take this opportunity to thank all of you who supported me in the recent school board election. I am looking forward to the next three years. I'll be working hard to insure that all of our children receive the high-quality, individualized education that they deserve, while always being mindful of the current economic conditions we are facing.

Thank you again.

**Lisa Wolland,**
**Croton-on-Hudson**

An open letter to Croton-on-Hudson residents:

On June 1, 2011, the new fiscal year began for the village. The bottom line of the recently adopted budget is that there will be a 4% increase to your village tax bill. On one hand, the tax increase will be difficult for many homeowners. On the other hand, I believe the adopted budget is the most responsible given the circumstances.

Here are the facts:

The village budget for fiscal 2011-2012 will increase spending by $514,887. Revenues from the property tax will increase by $404,517 or approximately 4%.

Non-property tax revenue growth (from parking lot, etc.) makes up the difference. All of the tax increase can be accounted for by line items the board does not control. State pension plan contributions increased 33% over last year by $323,000.

Worker's Compensation insurance increased 14% over last year by $26,000. Health insurance increased 6% over last year by $70,000. These three items alone added $419,000 to our budget in required spending.

About two-thirds of the village budget is made up of salary and wages for staff. 80% of the staff costs are governed by two multi-year contracts, which contain modest, scheduled increases for the new year of a few percent each.

The use of the general fund balance to keep taxes down is unchanged in the budget over last year; revenues may come in higher than expected or expenses come in lower. The appropriation from the fund balance is frequently not actually spent. Two years ago, the entire fund balance appropriation remained unspent at the end of the fiscal year, while an additional $200,000 was added to it due to mid-year cost containment. For the fiscal year just ending, we project that about $300,000 of the budgeted use of the fund balance for the current year will not be spent and will be returned to the fund.

The village board went through the budget very carefully this spring. We cut nearly every non-payroll line item. The board decided that two vacant positions would not be filled in the coming year: one on the police force and one in public works. Since these positions have been vacant for some time, leaving these unfilled will not result in a change in the current high quality of village services.

The board considered using more of the fund balance to lower the tax rate. After all, the fund balance is made up of money you paid in taxes during prior years. But relying too heavily on the fund balance can invite a downgrading of our excellent bond rating, which would increase our future interest expenses. I believe we have struck the balance we need for the future in using the fund balance to temper, but not eliminate the tax rate increase for 2012.

The long-term solution for keeping property taxes on our homes in check is to improve the commercial properties in the village. We did adopt zoning legislation to encourage commercial property owners in Harmon to improve their properties. Unfortunately for all of us, a very few residents have chosen to fight these changes in court, rather than at the ballot box.

The litigation is preventing many commercial property owners in the village from beginning renovations that would improve the commercial ratables, while costing the village thousands in litigation expenses.

I am determined to keep working on encouraging high quality commercial redevelopment in the village. With such improvements in the non-residential sector of our local economy, we can reduce the tax burden on homeowners. The only other alternative is to start cutting village services. We are trying hard to avoid that choice being forced upon the village.

Sincerely,

**Leo Wiegman, Mayor,**
**Village of Croton-on-Hudson**

# 2010-2011 CAPITAL FUND APPROPRIATION SCHEDULE

| I. | Comprehensive Infrastructure Maintenance | TOTAL COST | 2010-2011 | FUNDING SOURCE | 2011-2012 | 2012-2013 | 2013-2014 | 2014-2015 |
|---|---|---|---|---|---|---|---|---|
| a | **Streets, Sidewalks and Parking Lots** | | | | | | | |
| | 1.)General Road Repairs | $500,000 | 100,000 | Bond | 100,000 | 100,000 | 100,000 | 100,000 |
| | 2.)Sidewalks and Curbs | $400,000 | 100,000 | Bond | 100,000 | 100,000 | 100,000 | |
| | 3.)Bicycle Pedestrian Improvement Project-CPA & S. Riverside | $300,000 | 100,000 | Bond | 200,000 | | | |
| | 4.)Olcott Ave and Larkin Place Sidewalk Improvements | $300,000 | | | | 300,000 | | |
| b | **Stormwater Management Plan:** | | | | | | | |
| | 1.) Brook Street | $500,000 | | | | 500,000 | | |
| | 2.)Georgia Lane Stormwater Detention Pond | $100,000 | | Bond | 100,000 | | | |
| c | **Comprehensive Projects** | | | | | | | |
| | 1. Farrington Rd - Phase I - design - CDBG project | $550,000 | 50,000 | Bond | 350,000 | 150,000 | | |
| d | **Bridges** | | | | | | | |
| | 1.)Half Moon Bay Bridge Rehabilitation | $625,000 | 50,000 | Bond | 75,000 | 500,000 | | |
| **I.** | **Comprehensive Infrastructure Maintenance** | **$3,275,000** | **$400,000** | | **$925,000** | **$1,650,000** | **$200,000** | **$100,000** |

| II. | EQUIPMENT | TOTAL COST | 2010-2011 | FUNDING SOURCE | 2011-2012 | 2012-2013 | 2013-2014 | 2014-2015 |
|---|---|---|---|---|---|---|---|---|
| a | 4X4 Pickup | $175,000 | 33,000 | B.A.N. | 34,000 | 35,000 | 36,000 | 37,000 |
| b | Brush Chipper | $26,000 | 26,000 | B.A.N. | | | | |
| c | 2 salt spreaders | $19,000 | 19,000 | B.A.N. | | | | |
| d | Cart Flippers | $10,000 | 10,000 | B.A.N. | | | | |
| e | Police Cruiser | $24,000 | 24,000 | B.A.N. | | | | |
| f | 4x4 Lo-Boy | $105,000 | | | 50,000 | | 55,000 | |
| g | Pool Car | $25,000 | | | | | 25,000 | |
| **II.** | **EQUIPMENT TOTAL** | **$384,000** | **$112,000** | | **$84,000** | **$35,000** | **$116,000** | **$37,000** |

| III. | FIRE DEPARTMENT | TOTAL COST | 2010-2011 | FUNDING SOURCE | 2011-2012 | 2012-2013 | 2013-2014 | 2014-2015 |
|---|---|---|---|---|---|---|---|---|
| a | Chief's Car | $93,000 | 43,000 | B.A.N. | | 50,000 | | |
| b | Thermal Imaging Cameras (1) | $12,000 | | | 12,000 | | | |
| c | Sprinkler System for Harmon Fire House | $60,000 | 60,000 | Bond | | | | |
| d | Tanker 10 Replacement | $580,000 | 580,000 | Bond | | | | |
| e | Grand Street FH apron repair | $170,000 | | | 170,000 | | | |
| f | Rescue 18 Replacement | $650,000 | | | | 650,000 | | |
| **III.** | **FIRE DEPARTMENT EQUIPMENT TOTAL** | **$1,565,000** | **$683,000** | | **$182,000** | **$700,000** | **$0** | **$0** |

## 2010-2011 CAPITAL FUND APPROPRIATION SCHEDULE

| IV. | EMERGENCY MEDICAL SERVICE | TOTAL COST | 2010-2011 | FUNDING SOURCE | 2011-2012 | 2012-2013 | 2013-2014 | 2014-2015 |
|---|---|---|---|---|---|---|---|---|
| a | Generator for 44 Wayne Street | $10,000 | 10,000 | B.A.N. | | | | |
| b | Ambulance Headquarters | $1,000,000 | | | 1,000,000 | | | |
| c | Duty EMT Vehicle | $35,000 | | | | | 35,000 | |
| IV. | EMERGENCY MEDICAL TOTAL | $1,045,000 | $10,000 | | $1,000,000 | $0 | $35,000 | $0 |

| V. | MUNICIPAL GARAGE | TOTAL COST | 2010-2011 | FUNDING SOURCE | 2011-2012 | 2012-2013 | 2013-2014 | 2014-2015 |
|---|---|---|---|---|---|---|---|---|
| a | Purchase of 1A Croton Point Avenue | $2,500,000 | | | 2,500,000 | | | |
| b | New and relocated Municipal Garage & office | $2,500,000 | | | | 2,500,000 | | |
| V. | TOTAL MUNICIPAL GARAGE RENOVATIONS | $5,000,000 | $0 | | $2,500,000 | $2,500,000 | $0 | $0 |

| VI. | MUNICIPAL BUILDING RENOVATIONS and EQUIPMENT | TOTAL COST | 2010-2011 | FUNDING SOURCE | 2011-2012 | 2012-2013 | 2013-2014 | 2014-2015 |
|---|---|---|---|---|---|---|---|---|
| a | Police Headquarters Renovations/energy upgrade | $1,700,000 | 200,000 | Bond | 1,500,000 | | | |
| b | Window replacement | $30,000 | 30,000 | Bond | | | | |
| c | Replacement of police servers | $30,000 | 30,000 | B.A.N. | | | | |
| d | Brick Façade Pointing and recaulking | $400,000 | | | | 200,000 | 200,000 | |
| VI. | TOTAL MUNICIPAL BUILDING RENOVATIONS | $2,160,000 | $260,000 | | $1,500,000 | $200,000 | $200,000 | $0 |

| VII. | RECREATION | TOTAL COST | 2010-2011 | FUNDING SOURCE | 2011-2012 | 2012-2013 | 2013-2014 | 2014-2015 |
|---|---|---|---|---|---|---|---|---|
| a | Duck Pond park improvements | $200,000 | 25,000 | Bond | | 175,000 | | |
| b | Silver Lake Park Improvements | $80,000 | | | | 80,000 | | |
| c | Vassallo Park | $14,000 | | | 14,000 | | | |
| d | Dobbs Park Playground | $200,000 | | | | | 200,000 | |
| e | Black Rock improvements | $160,000 | | | | 100,000 | 60,000 | |
| VII. | RECREATION TOTALS | $654,000 | $25,000 | | $14,000 | $355,000 | $260,000 | $0 |

| | PROJECT: VIII. PLANNING INITIATIVES | TOTAL COST | 2009-2010 | FUNDING SOURCE | 2010-2011 | 2011-2012 | 2012-2013 | 2013-2014 |
|---|---|---|---|---|---|---|---|---|
| a | Planning Studies - economic development committee | $30,000 | 30,000 | Bond | | | | |
| VIII. | PLANNING - TOTAL | $30,000 | $30,000 | | $0 | $0 | $0 | $0 |

| | TOTAL COST | 2010-2011 | 2011-2012 | 2012-2013 | 2013-2014 | 2014-2015 |
|---|---|---|---|---|---|---|
| TOTAL GENERAL CAPITAL COSTS | $14,083,000 | $1,520,000 | $6,205,000 | $5,440,000 | $811,000 | $137,000 |

## 2010-2011 CAPITAL FUND APPROPRIATION SCHEDULE

### 2010-2011 CAPITAL FUND APPROPRIATION SCHEDULE - WATER FUND

| IX. | WATER SYSTEM IMPROVEMENTS | TOTAL COST | 2010-2011 | FUNDING SOURCE | 2011-2012 | 2012-2013 | 2013-2014 | 2013-2014 |
|---|---|---|---|---|---|---|---|---|
| a | **Water Source and Well Field Improvements** | **$4,060,000** | 60,000 | Water Fund | 4,000,000 | | | |
| b | **Water Distribution System Improvements** | | | | | | | |
| | 1.) Valve Replacement and Installation | **$200,000** | 100,000 | Water Fund | | 100,000 | | |
| | 2.) Water Main Upgrade (Van Cortlandt Place) | **$200,000** | | | | 200,000 | | |
| | 3.) Wolf and Cook | **$1,010,000** | $10,000 | Water Fund | | 1,000,000 | | |
| | 4.) Truesdale | **$1,000,000** | | | | 1,000,000 | | |
| | 5.) Water Main Replacement and Extension (Hunter) | **$300,000** | | | 300,000 | | | |
| | 6.) Water Main Replacement (Farrington) - CDBG | **$350,000** | | | 350,000 | | | |
| | 7.) Replacement of Galvanized Mains-Piney Pnt Arlington | **$750,000** | | | | | | 750,000 |
| IX. | **TOTAL WATER SYSTEM IMPROVEMENTS** | **$7,870,000** | **$170,000** | | **$4,650,000** | **$2,300,000** | **$0** | **$750,000** |

| X. | Sanitary Sewer System Improvements | TOTAL COST | 2010-2011 | FUNDING SOURCE | 2011-2012 | 2012-2013 | 2013-2014 | 2013-2014 |
|---|---|---|---|---|---|---|---|---|
| | 1.)Sanitary Sewer Collection System Rehabilitation | **$200,000** | | | | 200,000 | | |
| | 2.)Nordica Sewer Pump Station Phase 2: Pumps and Forcemain | **$450,000** | 50,000 | Sewer Fund | 400,000 | | | |
| | 3. Stevenson Place Manhole Installation | | | | 40,000 | | | |
| X. | **TOTAL SEWER SYSTEM IMPROVEMENTS** | $650,000 | $50,000 | | $440,000 | $200,000 | $0 | $0 |

**FUNDING SOURCE RECAP FOR 2010-2011**

| | |
|---|---|
| **$1,325,000** | **BOND** |
| **$195,000** | **B.A.N.** |
| **$170,000** | **Water Fund** |
| **$50,000** | **Sewer Fund** |

**CAPITAL IMPROVEMENT PLAN**
**2010-2011**

## I. Comprehensive Infrastructure Projects

a. **Streets, Sidewalks and Parking Lots**

1. **General Road Repairs** - It is recommended that $100,000 be expended during FY 2010-2011.
2. **Sidewalk and Curbs** - Continuation of the sidewalk improvement program. The curb replacement program is to replace deteriorated or low curbs that contribute to drainage run-off problems on the Village Streets that may affect private property. The curb replacement program is coordinated with the Sidewalk Program.
3. **Bicycle/Pedestrian Improvement Project** – We have been awarded $1,200,000 for bicycle and pedestrian enhancements along Croton Point Avenue and South Riverside Avenue. Under the terms of the grant the Village must match 20% of the total cost of $1,500,000 ($300,000). The $100,000 in the 2010-2011 fiscal year is for the preliminary and detailed engineering design and construction documents for the project and a portion of the Village's share of construction. $30,000 was earmarked for this project in 2009/2010.
4. **2012-2013 - Olcott Ave and Larkin Place Sidewalk Improvements** – The installation of sidewalks on Olcott Ave from Wells Ave to Glen Place and on Larkin Place from Olcott Ave to the PVC middle school.

b. **Stormwater Management Plan** The Dvirka & Bartilucci Stormwater study completed in 2003 recommended several improvements to the drainage basins. Other improvements have been recommended by DPW and Engineering

1. **2012-2013 - Brook Street** –Improvements to the Brook Street drainage system as per the Dvirka & Bartilucci Stormwater study are proposed for future years at an estimated additional cost of $500,000. $25,000 for the preliminary engineering field and design work to develop the next phase of the storm water improvements was borrowed in fiscal year 2008-09. .
2. **2011-2012 - Georgia Lane Stormwater Detention Pond Repairs** – Increase diameter of existing culvert and construct new outlet structure and other improvements

c. **Comprehensive Projects**

1. **Farrington Road**–The Village has been awarded CDBG funds of $200,000. The Village had asked for $350,000 to complete a project expected to total $700,000. The proposed project includes new sidewalks, curbs and street trees along with infrastructure replacements and upgrades. The $50,000 for this year will be for engineering design work.

d. **Bridges**

1. **2010-2011 - Half Moon Bay Bridge Rehabilitation** – Painting and other maintenance will be required. The $50,000 for this year will be for the initial portion of the engineering design work.

**CAPITAL IMPROVEMENT PLAN**
**2010-2011**

## II. EQUIPMENT other than Fire Dept

**2010-11**

a. Scheduled replacement of 4X4 pickup truck #4 1999 Ford F-350 49,704 miles.
b. Scheduled replacement of Brush Chipper #8 1997 Bandit wood chipper 1,948 hours.
c. 2 salt spreaders to replace 1989 Swenson EV-100 7 cubic yard – used in truck #27 and 1996 Fisher 3 cubic yard – used in truck #47
d. The purpose for the attachmentsis to allow the sanitation crews to pick up smaller container which businesses could use in lieu of the 1 ½ to 2 cubic yard dumpsters. Several businesses in the business districts do not have the space to properly store the larger type dumpsters. These smaller containers would allow the businesses to move and conceal the containers, and not create an eyesore like the larger dumpsters are now creating. Additionally, the smaller containers are easier and safer for our sanitation personnel to handle.
e. Replacement of 1 police cruiser. The Crown Victoria that the PD currently uses is being discontinued next year, purchasing 1 this year gives the PD the opportunity to continue to use all of the equipment associated with the vehicles which we already own for an extended period of time.

**2011-12**

Scheduled replacement of 4X4 pickup truck
Scheduled replacement of 4X4 Lo-Boy

**2012-13**

Scheduled replacement of 4X4 pickup truck.

**2013-14**

Scheduled replacement of 4X4 pickup truck
Scheduled replacement of 4X4 Lo-Boy
Scheduled replacement of pool car

**2014-2015**

Scheduled replacement of 4X4 pickup truck

**CAPITAL IMPROVEMENT PLAN**
**2010-2011**

## III. FIRE DEPARTMENT

a **2010-2011 Chief's car replacement** - This is a replacement vehicle for one of 2 vehicles purchased in 2001. **2012-2013** – this is a replacement for a vehicle purchased in 2004.

b **2011-2012 Thermal Imaging Cameras** - We currently operate with Thermal Imaging Cameras on Rescue 18 and Engine 119. Adding imagers on Engines 118 and 120 and Tower Ladder 44 would allow each Company to operate autonomously in the event of multiple incidents as often happens during major weather events.

c **2010-2011 Sprinkler System for Harmon Fire House** The New York State Department of Labor has instructed the Fire Dept that sprinklers must be installed in the Harmon Firehouse. This has been pending since April 2004.

d **2010-2011 – Tanker 10 Replacement** - This is a replacement for a vehicle purchased in Jan. of 1989 which is reaching a projected life expectancy of 20 yrs. It must also be mentioned that major work was performed on this apparatus as the result of an accident in 2003 & there has since been issues with the quality of the work provided at that time.

e **2011-2012 - Grand Street Apron Repair** – LynStaar has provided the Village with a conceptual cost estimate of $169,440 for the replacement and repair of the Grand Street Apron. The poor condition of the concrete apron in the front is causing the ladder truck to scrape on the concrete.

f **2012-2013 – Rescue 18 Replacement** - This is a replacement for a vehicle that had been purchased as a demonstration unit in 1993 and will be reaching its projected life expectancy.

## IV. Emergency Medical Service

a. **Generator for 44 Wayne Street** – In order to keep 44 Wayne Street operational 24/7 a generator in the case of a power outage is needed
b. **Ambulance Headquarters** – The EMS department has been temporarily located at 44 Wayne Street and will need a permanent location.

c. **2013-2014 - Duty EMT Vehicle -** We are requesting the purchase of an Officer's vehicle. The purpose of this vehicle is to be used by officers/supervisors for meetings, events, emergency calls.

## V. Municipal Garage

**a.** Purchase of 1A Croton Point Avenue. If the Village decides to purchase a portion of 1A Croton Point Avenue with Metro North it is estimated that the share owed by the Village will be $2,500,000. The cost of building a new Municipal Garage & Office is estimated to be approximately $2,500,000.

## VI. Municipal Building Renovations and Equipment

a **Police Headquarters renovations/energy upgrades**
The Village is seeking proposals from architects for the redesign of the Police Department along with energy upgrades which would improve the efficiency of the air conditioning and heating of the entire building.

b Replacement of municipal building windows which are under warranty – the cost would be for labor only. The thermal pane seal has failed in most of the windows.

c The police department servers are no longer functional and need to be replaced. WSG has provided a proposal for this.

## VII. RECREATION

a **Duck Pond Improvements 2010-2011** – $25,000 to fund a study for the aquatic restoration of the Duck Pond. **2012-2013 -**. New playground to replace existing playground. Signage, benches, plantings, path on south side.

b **2012-2013- Silver Lake Park Improvements -** Design and construct path from pavilion to park, currently unsafe and eroded

c **2011-2012 – Vassallo Park -** Add picnic tables, benches, waste containers, and plantings.

d **2013-2014 – Dobbs Park.** New playground to replace existing one

e **2012-2013 - Black Rock** - create picnic area with rest room and pavilion. **2013 – 2014 -** improve parking area with item 4.

**CAPITAL IMPROVEMENT PLAN**
**2010-2011**

## VIII. PLANNING INITIATIVES

a. **Planning Studies** – the Village intends to continue the work which began in the Harmon area and explore zoning options for the other commercial areas in the Village as well as feasibility plans for Village owned property.

## IX. WATER SYSTEM IMPROVEMENTS

a. **Water Source and Well Field Improvements**
Chazen is preparing a conceptual design to address the issues of capacity, chlorine contact time, corrosion control, and a new treatment facility above the flood elevation

b. **Water Distribution System Improvements**

1. **2010-2011 - Valve Replacement and Installation** – Old valves in the water distribution system need to be replaced with new valves. This will be an ongoing project.
2. **2012-2013 - Water Main Upgrade (Van Cortland Place)** - Currently there are two water mains that "dead end" on Van Cortland Place. This project would connect the two dead ends and create a loop in the water distribution system. This loop will greatly increase the quality and pressure of water service in that area, as well as have a positive incremental effect on the rest of the Village's water system.
3. **2010-2011 – Wolf and Cook** – Installation of a fire hydrant on the Cook Lane Dead End Water Main. **2012-2013** Water distribution system infrastructure improvement
4. **2012-2013 – Truesdale** - Water distribution system infrastructure improvement
5. **2011-2012 - Water Main Replacement (Hunter)** To address increasing brown water problems in this area this project will extend the existing dead end water main on Hunter Place to connect to the water mains on Old Post Road North creating a loop and providing better water quality and flow in this area. This work will be coordinated with any CDBG streetscape improvements.
6. **2011-2012 - Water Main Replacement (Farrington Road)** - The water mains on these streets are approaching 110 years of age and should be replaced. This work will be coordinated with any CDBG streetscape improvements.
7. **2013-2014 - Replacement of Old Galvanized Mains** – Sections of the Village's water system are made up of galvanized and pit cast mains. The purpose of this project is to replace the old lines with new cement lined ductile iron pipe. This phase would replace the water mains on Piney Point, Arlington Drive, Franklin Avenue and the southern portion of Cleveland Drive.

**CAPITAL IMPROVEMENT PLAN**
**2010-2011**

X <u>Sanitary Sewer System Improvements</u>

1. **2011-2012 - Sanitary Sewer Collection System Rehabilitation** - Sections of the Village's sanitary sewer system are over 70 years old. Rehabilitation of the sanitary system was begun a few years ago. The new trenchless technology affords the opportunity to rehabilitate the sewer lines without excavating. This state of the art method adds structural strength to the existing sewer mains and will extend the life of the sewer mains for many years. This project also includes rehabilitation of sanitary sewer manholes. Some of the streets where the sanitary sewer mains have been rehabilitated are Old Post Road North, Stevenson Place, Palmer Avenue and Grand Street. Future projects include completing Grand Street, Van Wyck Street, Old Post Road North & South. Closed circuit television inspection of the exiting sewer pipes will also be conducted.
2. **Nordica Sewer Pump Station Phase 2: Pumps and Forcemain** – Replacement of the existing sewage pumps with submersible dry well pumps, replacement of old valves and relocation of force main discharge location to lower system pumping head. The $50,000 for the current year is to obtain design plans for the project
3. **2010-2011 - Stevenson Place Manhole Installation** - Installation of a sanitary sewer system manhole on Stevenson Place at a pipe junction that currently has no sewer manhole.