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TO:
Theresa Joyner, Chair
City of Hudson Planning Board
520 Warren Street
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(Submitted via email)

ON: 5 SEPTEMBER 2023

CC: John Cody, Benjamin Forman, Valerie Wray, Bettina Young, and T. Randall Martin, *Members of the Planning Board*

SUBMISSION #15

RE: Colarusso Myths

TO THE MEMBERS OF THE HUDSON PLANNING BOARD:

When a lawyer for Colarusso was asked for truck data at your most recent meeting, this was his reply:

"Would you ask Stewart's how many ice cream cones they sell?"

This sarcastic reply conveniently ignored recent local history: In fact, from 2017-2019 Hudson agencies including the Planning Board conducted a detailed review of a Stewart's project at Green and Fairview.

Stewart's was asked a ton of questions about its operations. Board members quizzed the company in detail about the volume of activity generated by its reconfigured lot and new building. In the end, Board questions led to the project being altered in many ways. Moreover, the City made Stewart's post a $200,000 Community Host Agreement to offset road maintenance.

Unlike Stewart's, Colarusso's representatives have displayed a constant unwillingness to provide basic answers to simple questions—the type always asked of all applicants. This disrespect for Hudson requirements, along with other efforts to deflect questions and muddy issues, extends to the company's repeated lawsuits against your agency.

We mention this episode by way of an introduction to written comments we promised to provide, giving a partial inventory of how this applicant and its representatives keep trying to mislead your Board about both the project and the process. We hope this will be more than a routine exercise in that it touches upon many of the core issues central to your review.

MYTH #1: "Years of delays"

At the recent meeting, Colarusso grandstanded about the length of the review process. If the applicant truly wants an end to the process, their lawyers should stop trying to block the process. All of the "delays" have been caused entirely by Colarusso's own lawsuits, which have sought to block the Planning Board from finishing the process.

These legal actions make one wonder why Colarusso is so afraid of going through a normal review like all other applicants do. It would seem the applicant doesn't think it can pass if the Board gets the chance to apply the Hudson code.

Every time your review starts to get somewhere, if Colarusso is unhappy with the results they try to block your Board from completing your work in a timely fashion. Even today, there is another lawsuit pending from Colarusso. Through their own legal action, Colarusso has stopped the Board from moving on with review of the dock—whose appropriateness was already the subject of a court case in the City's favor. If at first your lawsuit doesn't succeed, try try again?

MYTH #2: "The Planning Board lost"

Colarusso has so far brought two lawsuits against the City. Their first suit was an utter disaster for the applicant. Acting Justice Melkonian completely rejected the company's claim that its project was exempt from review by Hudson. A second lawsuit brought by Colarusso is still pending in court, and has only been partially adjudicated.

In addition, a very poorly-reasoned interim decision by a substitute judge (with little experience in SEQRA) only addressed half of the suit, and was correctly appealed by your Board. A key portion of Zwack's ruling was changed in an important way, restoring much of your powers of review. The other half of that suit is yet to be decided. So at worst, the Board is batting .750 on the decisions which have been issued so far, with the rest still awaiting rulings. Our question is why Colarusso's attorney feels the need to mischaracterize the record.

The Board's own lawyers at Hinman Straub appear to have taken note of how the applicant's attorneys like to play loose with the facts. For example, in an August filing on your behalf with Justice McGinty, your lawyers calmly dismantled Colarusso's "mischaracterization of the nature of the Third Department's decision." Colarusso had been trying to falsely argue that all issues have been settled.

We appreciate your counsel's decision to use far calmer and more temperate language than those of Colarusso's bombastic advisors. But we might more plainly call Colarusso's claim an attempt to bamboozle the court. We don't imagine that such obvious falsehoods will fool the judge.

MYTH #3: "Force Majeure"

Force majeure is when you have to cancel plans because your home and neighborhood have been destroyed by a hurricane. *Force majeure* is <u>not</u> when a gravel company has to wait a few hours before running another truck to a dock. This applicant seems to have confused minor obstacles to maximizing profit with Acts of God.

There's an old saying: *"Your lack of planning is not an emergency for everyone else."*

Colarusso reaps millions yearly from public construction projects, and has plenty of resources to plan for and weather rare interruptions. Yet when asked to consider even one small concession—to not run trucks downtown during the times of flooding, or during blasting—Colarusso's lawyer expressed no concern for residents. The only consideration seems to be keeping gravel flowing no matter what.

MYTH #4: "We already have those permits"

Another thick wool blanket that Colarusso tried to pull over your eyes at the last meeting was the suggestion that permits from other agencies can substitute for Hudson's permitting process. This is like claiming that you don't need a driver's license if you already got your car inspected. Or that you don't need a liquor license if you already got a certificate of occupancy for your restaurant.

Fact: Applications to the Planning Board are separate and distinct from other agencies. They have to be decided on Hudson's terms, not those of other agencies such as DEC, Army Corps or DOT. Hudson's code has different requirements and standards than other agencies. All applicants must conform with the City's code, regardless of whether pieces of the project were approved by other agencies.

If the approval of other agencies were enough, there would be no need for the Planning Board to exist. Review under the City code requires that the full extent of impacts and compliance from the total operation be considered in relation to *Hudson's* regulations, not those of other agencies.

Secondly, no other agencies were ever presented with the full scope of the project now under review. They only reviewed smaller pieces of it. The Planning Board, by contrast, is empowered under the LWRP to assess the entire project and its cumulative impacts on the City, since the whole operation (the road *and* the dock) have been rendered non-conforming and ungrandfathered.

This key principle has been upheld in court, which wholly denied Colarusso's attempt to nullify it. The LWRP's legislative intent was also clearly stated at the time that its code revisions were passed, though no one imagined that Colarusso would make the mistake of triggering it so soon by doing unpermitted work on the site.

Thirdly, other agencies were presented with far different data and expectations than have been presented to you. For example, the Colarusso application to DOT in 2016 was based on drastically lower truck data provided by engineers at Creighton Manning, as has been carefully detailed by the group Our Hudson Waterfront. The truck numbers presented more recently by the applicant far surpass the volume contemplated by Greenport and the DOT.

Likewise, your Board unanimously approved a November 2021 findings statement which stated that:

> *"Although the Town of Greenport determined that the expansion of the haul road (including paving and stormwater improvements) would not result in a significant impact on flooding on July 25, 2017, the Town's review did not include an analysis of the impacts of stormwater pollutants entering the wetlands and surface waters from flooding in the current, unpaved surface of the road."*

Incredibly enough, Hudson has never issued actual permits governing these dock and road operations.

Despite the presence of trucks and gravel operations onsite for years, these have never before been the subject of Hudson Planning Board review. Instead, this activity was begun recklessly by a prior owner without submitting any applications, and only retroactively (if foolishly) allowed on a temporary basis as a nonconforming use under the LWRP. Colarusso through its own later actions lost that temporary grandfathering by performing illegal work on the dock, triggering these reviews. It has no one to blame but itself for that.

Even more remarkably, though the Hudson code enforcement officer has had the right to issue a Stop Work Order from the moment he issued the Order to Remedy, Colarusso has been allowed to keep running more and more trucks, even as it has been suing the City to stop your review.

We can think of no other major project in town which has enjoyed such astonishing indulgence. Yet Colarusso keeps complaining of "bias" and "unfairness."

MYTH #5: "The environmental review is over"

This claim by Colarusso only works if they pretend that your Board is unaware of the applications before it. There are effectively six different reviews to conduct, each of which must take environmental considerations into account:

1. *Haul road conditional use permit (Hudson, unfinished)*
2. *Haul road site plan review (Hudson, unfinished)*
3. *Haul road SEQRA review of the haul road (Greenport, finished)*
4. *Dock conditional use permit(Hudson, unfinished)*
5. *Dock site plan review for the dock (Hudson, unfinished)*
6. *Dock SEQRA review (unfinished)*

Of the six above only one (#3) may be considered "over"—the one that was completed by Greenport instead of Hudson, without no consideration for the specifics of the Hudson code. We note here that SEQRA is not the only environmental review that a project must undergo; it is simply a State add-on to the local requirements, which does not eliminate or supersede the need for local code compliance.

As we noted above, Greenport's SEQRA review does not substitute for any of the other five reviews. It does not override your powers and duties to apply the Hudson code for each. Indeed, the DEC commissioner specifically noted that Greenport's status as lead agency for the haul road

> *"in no way limits the jurisdiction or responsibilities of the other involved and interested agencies - particularly the City Planning Board."*

For example, the City code at 325-17.1 (D)(1) requires careful review of all applications to protect the health, safety and welfare of neighbors and also the general public while recreating and using public facilities adjacent to them. The effects of the project from traffic, fugitive dust, diesel emissions, maritime hazards, riverine habitats, noise, visual blight and others impacting the South Bay and Henry Hudson Waterfront Park are of particular concern and relevance to this review under the City code. We have detailed many of those in past submissions, and will resubmit details on each of those in a future submission.

These all are "environmental" concerns which have yet to be addressed (in addition to community character, historic resource protection, etc.). Such standards apply to both CUPs and site plan reviews, as well as the as-yet completed SEQR for the dock..

Why haven't they been addressed yet? Again per above: *Because the company is still suing you to prevent them being discussed at all.*

There are many more provisions of the City code at §325-1, §327-17 and elsewhere which empower your Board to measure the environmental and other impacts of all projects, far beyond the very limited and shallow review done by Greenport on 1/6th of these reviews.

Meanwhile, there are still other reviews not yet begun, in addition to the six permits listed above. All local projects must be consistent overall with the Comprehensive Plan, LWRP, and the 2012 State designation of the South Bay Creek & Marsh as a Significant Coastal Fish and Wildlife Habitat. We also have contended that this project is subject to a Coastal Consistency Review by the State, given the

number of wetland acres that would be potentially disturbed in the Bay and in the Hudson River. Moreover, the matter of the City's ownership of a 4.4 acre parcel of land to the south of the dock, which also could be developed as riverfront parkland, still remains unaddressed.

Lastly, we note that in the context of the CUP for the dock, SEQRA requires that cumulative impacts be assessed—with no "segmentation" of review allowed by law. This means that even if a court has said that Greenport's SEQRA review of the haul road governs that application, the impacts of the activity on the road, South Bay and City streets still must be looked at cumulatively in the context of the dock review. To the clear extent that permitting the dock would immediately touch off local impacts from increased two-lane truck activity to reach the dock, that activity is a legitimate concern and required subject of the dock SEQR, since the haul road serves no purpose without the dock.

MYTH #6: "Questions from 2017 are not on the table"

On the contrary: All questions about the five extant reviews remain on the table— for the simple reason that the Planning Board continues to be blocked by lawsuits from deciding upon these applications. Once again, we note than those holdups are entirely due to Colarusso continually suing the City, not due to any foot-dragging by your Board.

MYTH #7: "The Comp Plan supports the project"

The Planning Board itself has extensively cited and adopted documents which provide detailed citations of the Comp Plan as a key reason why a full, extensive review of the Colarusso project must be conducted.

For example, in November 2021 the Board created (in consultation with your engineers at Barton & Loguidice and the law firm Rodenhausen Chale & Polidoro) a lengthy document entitled "Part 3 Supporting Information, Evaluation of the Magnitude and Importance of Project Impacts."

In that document, your Board found that

"The Hudson Vision Plan, Comprehensive Plan, the 2005 Secretary of State's Coastal Consistency determination on the St. Lawrence proposal, and Department of State guidance on the draft LWRP call for the City to enact a plan that zones out incompatible, industrial uses at the Waterfront."

The board noted in the same document:

Further, the Planning Board finds that the Proposed Action has the potential to impact open spaces, namely, the South Bay. The South Bay, as well as the Private Road which passes through it, have been identified by the City's 1996 Vision Plan and 2002 Comprehensive Plan as a potential future open space and recreation resource. The Applicant has not adequately considered and addressed impacts to the future use of these areas as part of the Project.

Furthermore, as noted during your recent meeting, one of our directors actually served on the core advisory committee of the Comp Plan. A large community survey was conducted by the Comp Plan's consultants, Saratoga Associates. The results of that survey appear on p. 4 the Appendix C to the Comp Plan, and include a section on the Hudson Waterfront.

Asked to "indicate whether the following uses would be good for Hudson's waterfront," the least popular survey option was Heavy Industry, with 70.0% stating that such use is "a bad way to use the waterfront," with only 8.8% rating it "one of the best ways to use the waterfront."

Meanwhile, the most popular option was Parks/Recreation/Open Space, with 76.3% rating this option as "One of the best ways to use the waterfront," with only 2.5% rating it one of the worst.

These results were consistent with the outcome of the Hudson Vision Plan's community outreach, and have been repeated with striking consistency in subsequent surveys, workshops, and public input provided by Hudson residents, such as the later Waterfront Advisory Steering Committee's survey, which saw almost identical results.

The final Comp Plan relied extensively on the results of this survey. Moreover, the Secretary of State in turn relied on language from the Comp Plan in drafting the April 2005 Coastal Consistency Determination which rejected St. Lawrence Cement's industrial proposal at this exact same location in the South Bay and Waterfront.

Once again, the facts starkly contradict the statements of Colarusso's representative at your meeting.

MYTH #8: Colarusso seeks "environmental justice"

We've saved this for last only because it is, to our minds, the most egregious and offensive of all of Colarusso's misleading assertions. It's the one which leaves us most astonished, due to its shamelessly selective and self-serving nature.

Let's be clear here: The environmental justice problem on downtown streets is one for which Colarusso bears full responsibility.

The current deployment of the serious issue of environmental justice in our society, by an industrial power which never cared about such justice before, strikes us as entirely opportunistic, self-serving and cynical. Until it served their narrow interests, we never heard any mention of environmental justice from Colarusso before.

Now, some of us have been speaking out about environmental justice going back as far as a quarter century ago. For example, one of our co-directors was the only Hudson resident to participate in a roundtable discussion and speak at the first environmental justice hearing held by the State in Albany, in the year 2000.

We have argued across multiple decades now—long before Colarusso came into the downtown picture—that pitting downtown residents against the future of the South Bay and Waterfront is an offensively false choice.

Colarusso made a choice to buy this property. It knew its many limitations, and that it had been the subject of much controversy going back into the 1970s, if not before. But instead of taking the Waterfront in a more positive direction, turning their portion into a public benefit, and ending this longtime blight on the River, it chose to run more trucks through downtown than ever before. Since 2015, A.C.S. has not only continued the reckless practices of its predecessors. Worse, it has greatly increased and exacerbated the truck problem to levels far above the situation it inherited.

The way those impacts have been deployed as a weapon in Colarusso's public rhetoric forces us to conclude, that like Holcim during the LWRP process, the decision to increase trucking downtown was made not out of necessity, but as a cynical strategy for pressuring the City to approve their preferred "alternative."

That supposed "alternative" solution to the environmental justice problem they themselves are causing is not benign. It just takes a different set of prisoners. Any approval of the road and dock would be at the expense of the South Bay, the Waterfront, safety on 9 and 9G, safety at the Broad Street crossing, 1st Ward neighbors and businesses, and indeed the overall goals of the whole City.

It's not a comfortable thing to say, but someone must say it: Rewarding Colarusso with a two-way highway in exchange for taking their trucks off Columbia and Front streets is like an abuser who will only agree to stop if his spouse would just learn to "behave."

The company and its representatives should not be rewarded for subjecting downtown to years of such impacts, especially when this is used as a tactic for leveraging a public review.

Such offensive misuse of an important and sensitive issue compels us to also note once again that Colarusso reaps multimillion-dollar contracts for City, Town, County and State projects every year. Its core business has existed for 100 years before it bought this property, and can continue without access to the dock. Colarusso is a privileged actor in this drama. It has options, including selling or donating this property—which it obtained at a bargain-basement, fire sale price from an owner which was compelled to divest it by the Federal government.

The only win-win solution for Hudson is simple: Eliminate these gravel operations from both downtown and the South Bay/Waterfront area. A denial removes the problem from the City streets, the South Bay, *and* the Waterfront. Colarusso can easily absorb a denial at the Waterfront; the citizens of Hudson cannot.

Indeed, sunsetting heavy industrial uses was an explicit instruction to Hudson from Secretary of State Randy Daniels (the first African-American to hold that post, by the way) in his 2005 recommendations for the rezoning of the Waterfront in the wake of the cement plant decision. The Planning Board itself has cited Daniels' findings when it quoted him in 2021:

> *"Based on this review of Hudson's past planning and implementation activities, it is clear the City's waterfront has been and will continue to be transformed from a private industrial waterfront to a public waterfront for boating, tourism, commercial and other compatible uses."*

MORE MYTHS...

There are countless other instances of Colarusso and its representatives spinning, misstating, or muddying the facts of this case. That includes incorrect or false assertions about topics such as bottlenecks at the Broad Street rail crossing, trucking data, safety concerns, and many others.

But we will leave those for another day. Our concern is that the applicant and its representatives have, from the very start of this review, been so willing to play fast and loose with the facts, been so unwilling to provide necessary information, and generally not seeming to believe that the local regulations which all other residents and business have to comply with apply to them.

We believe this speaks volumes about what kind of Waterfront neighbor Colarusso would be if they are somehow given a green light. Even if this project were approved with strict conditions, what kind of compliance and enforcement headaches could the City expect from an operator which refuses to answer simple questions, takes liberties with the truth, and sues Hudson whenever it doesn't get 100% of its demands met?

Thank you as always for your attention to these comments and for your volunteer service to Hudson.

Thank you again for your service on the Board, and for considering these comments.

Sincerely,

/s

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