

January 29, 2024

*Via email rdionisio@harrison-ny.gov*  
Hon. Richard Dionisio, Mayor/Supervisor  
Town of Harrison  
1 Heineman Place  
Harrison, NY 10528

Re: West Street Subdivision (Final Approval) – John Capocci  
Premises: 530 West Street, ID: Block 301, Lot 7, Town of Harrison, NY

Dear Mayor Dionisio:

As a follow-up to our correspondence dated January 2, 2024, and in preparation for the Town Board meeting scheduled for February 1<sup>st</sup>, we respectfully submit this letter and additional information to provide the Town Board with some background and context in connection with our client's application.

#### HISTORY OF PROJECT APPLICATION

In or around September 2002, our client John Capocci through his construction company JCC Construction Company LLC (collectively "Capocci") filed applications for preliminary subdivision plat approval and wetland permit approval with The Town of Harrison Planning Board of the Town/Village of Harrison ("Planning Board") to permit the subdivision of the property located at 530 West Street, Harrison, New York identified as Tax Lot No. 0301-.7 on the Tax Map of the Town/Village of Harrison ("Property") into 5 lots, of which 3 lots would be for new homes, 1 lot would be for an existing home which was to remain on the Property, and the 5<sup>th</sup> lot to remain open space.

Sometime in November 2003, the Planning Board, acting as Lead Agency for review of the applications under the State Environmental Quality Review Act ("SEQRA"), issued a positive declaration of environmental significance, and directed Capocci to prepare a draft environmental impact statement ("DEIS") for the five (5) lot subdivision. The DEIS was accepted by the Planning Board as complete in or around April 2006.

The DEIS identified and discussed a "cluster" subdivision of the Property as an alternative

to the proposed conventional subdivision.

In June and July 2006, a public hearing was held on the DEIS, at which the DEIS and cluster subdivision were discussed, and at which all interested parties were invited to be heard. On or about July 18, 2006, the public hearing on the DEIS was closed, and Capocci was directed to prepare a Final Environmental Impact Statement ("FEIS").

The FEIS was prepared by Capocci and accepted by the Planning Board as adequate and complete in or around June 2007.

On or about November 15, 2007, the Planning Board acting as lead agency under SEQRA, adopted a written findings statement, thereby concluding its review under SEQRA of the cluster subdivision and all related actions. ***On February 21, 2008, the Town Board of the Town/Village of Harrison (the "Town Board") authorized Capocci to consider the cluster subdivision for approval. (emphasis added).*** On December 15, 2009, the Planning Board held a duly noticed public hearing for preliminary plat approval of the cluster subdivision, at which all interested parties were invited and heard.

Sometime in October 2010, the Planning Board directed Capocci to work with the neighboring property owner at 550 West St., Harrison, NY, namely Rossman, to design a supplemental landscaping plan to the satisfaction of that neighbor which would screen the neighbor's property from the new *cul-de-sac* roadway (the "Roadway") providing access to the 3 new homes in the subdivision. In response to the Planning Board's requirement, Capocci at his cost and expense developed a landscape plan which satisfied the neighbor's concerns and was acceptable to them, and that plan was submitted to the Planning Board in or around February 2011.

The Planning Board denied Capocci's application for preliminary plat approval of the cluster subdivision. Appealing the denial, Capocci commenced an Article 78 Proceeding captioned, "In the Matter of JCC Construction Company, LLC vs. Planning Board of the Town-Village of Harrison," Index Number 16805/11 ("Original Article 78 Proceeding").

The Original Article 78 Proceeding was settled on or about March 19, 2013 by Stipulation of Settlement and Order signed by counsel for Capocci and the Town. The Stipulation of Settlement and order were the result of extensive negotiations and further concessions made by Capocci. The agreement by Capocci to a further condition regarding the Roadway demonstrates that the negotiations included the participation of the adjacent property owner to the north of the, namely Rossman. The fact that Capocci made an additional concession when he agreed to locate the roadway three (3) feet to the south farther away from Rossman's property is evidence of this fact.

Capocci and the Planning Board followed all of the directives of the Original Article 78 Proceeding Court Order by revising the original preliminary subdivision plat to show the relocation of the Roadway, obtaining all necessary approvals from the Westchester County Department of Health, and submitting for approval to the Planning Board a proposed final subdivision plat (the

“Final Plat”) of the cluster subdivision in substantial agreement with the Preliminary Plat.

Seven (7) years later in 2020 neighbors of surrounding properties commenced a second Article 78 Proceeding, Matthew Benson, Sara Benson, Anthony Scottino, Gabriella Scottino, David Tebidor and Ann Gow, Petitioners, vs. Planning Board of Town/Village of Harrison, Giovanni Capocci and JCC Construction Company, LLC, Index Number 65179/2020 (“Second Article 78 Proceeding”).

The Second Article 78 Proceeding was dismissed. The Court found that since the Town Board had not granted final subdivision approval pursuant to Town Law of the Town of Harrison §235.10.1, the matter was not ripe for judicial review.

§235.10.1 requires the Planning Board to, “request permission from the Town Board to consider clustering as soon in the process as the Planning Board determines that clustering would be beneficial to the town.” This process was followed by the planning Board and was authorized by the Town Board on February 21, 2008. §235.10.1, however, only authorizes use of cluster development in residential zoning districts, “subject to the approval of the final plat by the Town Board.”

Based on information and belief, the 2-step process required by Town Law §235.10.1, was never followed or required with respect to any other cluster subdivision approved in the Town of Harrison.

#### CURRENT REQUEST

Based upon the foregoing, the submission now before the Town Board is to obtain final subdivision approval.

#### ADDITIONAL SUBMISSIONS

We are submitting herewith:

1. A copy of the original Preliminary Approved Subdivision Plan of Ralph G. Mastromonaco, PE, PC dated January 6, 2006. (Exhibit A).
2. An updated Wetland Delineation dated June 7, 2022, prepared by Steve Marino, PWS, Principal/Senior Wetland Scientist, Tim Miller Associates, Inc. (Exhibit B).
3. Copy of Final Planning Board Subdivision Plat Approval Resolution dated September 29, 2019. (Exhibit C).
4. Copy of Planning Board Resolution Granting Freshwater Wetland Permit dated September 29, 2019. (Exhibit D).

5. Copy of Planning Board Resolution Granting Steep Slope Protection Permit dated September 29, 2019. (Exhibit E).
6. Copy of Decision, Order & Judgment of Hon. A. Minihan, J.S.C. dated September 29, 2021. (Exhibit F).

Very truly yours,

A handwritten signature in black ink, appearing to read "Daniel D. Tartaglia", with a long horizontal flourish extending to the right.

Daniel D. Tartaglia

cc: John Capocci: [john0653@aol.com](mailto:john0653@aol.com)  
Patrick Cleary via email: [cleary@optonline.net](mailto:cleary@optonline.net)  
Jackie Greer, Town Clerk: [jGreer@harrison-ny.gov](mailto:jGreer@harrison-ny.gov)