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June 12, 2025

Via Email

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***Re: A. Colarusso & Son, Inc.
Application for Conditional Use Permit
Response to Reopening of Public Hearing***

Dear Chair Joyner and Members of the Planning Board:

As you are aware, this firm represents A. Colarusso & Son, Inc. ("Colarusso" or the "Applicant") in connection with its application (the "Application") before the City of Hudson (the "City") Planning Board (the "Planning Board") for a conditional use permit for the bulkhead repair performed in 2016 at Colarusso's commercial dock located at 175 South Front Street in the City of Hudson (the "Dock").

In May of 2017, Colarusso submitted the Application to the Planning Board. On June 8, 2017, the Planning Board accepted the application as complete and scheduled a public hearing. The Planning Board subsequently closed the public hearing. Despite the fact that the Application has not changed or been modified in any way since it was first submitted to the Planning Board, on February 11, 2025, the Planning Board voted hold an additional public hearing on the Application. On May 6, 2025, the Planning Board voted to close the in-person public hearing but stated that it would accept written comments on the Application until May 30, 2025.

On May 30, 2025, the Applicant received an email from the City Mayor's Office requesting a meeting with the Mayor, members of the Planning Board, and other various other parties (presumably members of the public).

On June 11, 2025, Planning Board member Gabrielle Hoffman made a motion to reopen the public hearing on the Application. The Planning Board voted in favor of the motion.

As set forth below, the vote to reopen the public hearing must be annulled, the public comment period should remain closed, and the Planning Board must move forward with its review of the public comments and deliberation on the Application.

I. Mayor's Request for Meeting

As noted, the Applicant is in receipt of an email from the City Mayor's Office requesting a meeting between the Planning Board, the Applicant, and members of the public. The email states,

[a]fter speaking with various groups with concerns about Colarusso's Conditional Use Permit application, Mayor Johnson would like to bring together two people from each concerned party to meet with Paul Colarusso, members of the Planning Board, the Mayor's Office, and attorneys to discuss those concerns and hopefully come up with solutions.

Under New York State law, the Planning Board has sole jurisdiction and obligation to review, deliberate, and render a decision on the Application. This jurisdiction and obligation cannot be delegated to any other party, group, or body (governmental or otherwise). *See Spinosa v. Ackerman*, 415 N.Y.S.2d 358, 362 (Sup. Ct. 1979); *see also Vanderveer v. Vanrouwendaal*, 392 N.Y.S.2d 216, 218. Furthermore, there is no authority or mechanism under New York State law or the City of Hudson Code for the establishment of a "task force" to review and deliberate or provide recommendations on an application before the Planning Board. In addition, to the extent the purpose of the meeting is to substantively discuss, deliberate, or act on the Application, the meeting would run afoul of New York General City Law, New York Public Officers Law (Article 7, the "Open Meetings Law"), and the City of Hudson Code.

In light of the foregoing, the Applicant has respectfully declined to participate in the meeting with the Mayor's Office to "negotiate" or discuss permit conditions. Colarusso also does not agree that this meeting should delay or impact the Planning Board's review, deliberation, and determination on the Application. Nor, as discussed in the next section, is this meeting appropriate grounds to reopen the public hearing.

II. Planning Board's Vote to Reopen the Public Hearing Must be Annulled

a. Planning Board Member Gabrielle Hoffman Must be Recused and the Vote to Reopen the Public Hearing Annulled

We understand that Gabrielle Hoffman has been recently appointed to the Planning Board. We are in receipt of public comments submitted by Ms. Hoffman on the Application, which are

enclosed here as **Attachment A**. Ms. Hoffman's comments on the Application clearly demonstrate impermissible bias toward the Applicant and the Application. As a result, Ms. Hoffman's recusal from participating in the review, consideration, deliberation, or approval on the Application is both warranted and required by law. In addition, Ms. Hoffman's motion at the June 11, 2025 Planning Board meeting to reopen the public hearing must be annulled as a matter of law.

This is not the first time Colarusso has had to request that certain Planning Board members be recused for conflict of interest or bias. Enclosed as **Attachment B** is our letter to the Planning Board dated September 25, 2020.

It is well established that public officials should avoid circumstances which compromise their ability to make impartial judgments solely in the public interest. *See* 1990 N.Y. Op. Att'y. Gen. (Inf.) 1068 at 1*; *see also*, 1984 N.Y. Op. Att'y Gen. (Inf.) 86, 160. Even the appearance of impropriety should be avoided in order to maintain public confidence in government. *Id.* To that end, New York Courts have held, and the New York Attorney General has acknowledged and opined, that the existence of bias concerning a planning board member is strictly prohibited and requires recusal of that board member from any proceedings related to the bias. The test to be applied "is not whether there is a conflict, but whether there might be." *Tuxedo Conservation and Taxpayers Association v. Town Board of the Town of Tuxedo*, 69 A.D.2d 320, 325 (2d Dep't 1979).

The Attorney General has opined that opposition to a proposed project should disqualify that individual from acting as a member of a planning board with respect to that project. *See* N.Y. Op. (Inf.) Atty. Gen. 88-115 at 116-117 (1988); *see also*, 1988 N.Y. Op. Att'y Gen. (Inf.) 115 (1988); *see also*, N.Y. Op. (Inf.) Atty. Gen. 93-6 (1993). Similarly, New York Courts have held that opposition to a project by board members, outside their duties as board members, constitutes bias and requires annulment of the planning board's decision on the project. *Schweichler v. Vil. of Caledonia*, 45 AD3d 1281, 1283-84 [4th Dept 2007].

With regard to recusal, even the presence of a recused board member during any board consideration is problematic and may render the board's subsequent action invalid. *Titan Concrete, Inc. v. Town of Kent*, 94 N.Y.S.3d 817 (N.Y. Sup. Ct. 2019) (holding that a recused town board member's participation in a public hearing rendered the board's action invalid). Recusal demands complete abstention from the matter from the moment the conflict arises so as not to taint decision making. *See also* 1995 N.Y. Op. Att'y Gen (Inf.) 2 (1995) ("the mere presence of the [conflicted planning] board member holds the potential of influencing fellow board members"); 1988 N.Y. Op. Att'y Gen. (Inf.) 115 (1988) (a planning board member may not vote on building project after appearing before local ZBA or county planning board as a citizen in opposition to that same project).

In sum, once a board member is found to be biased in a particular matter before the board, that board member should recuse him or herself from any deliberations or voting with respect to that matter by absenting himself [or herself] from the board during the time the matter is before it." 1995 N.Y. Op. Att'y Gen. (Inf.) Opns. St. Comp., 1988 No. 88-68 (N.Y.St.Cptr.), 1988 WL 169040.

During the public comment period, Planning Board member Hoffman submitted public comments that stated “[b]ig dangerous trucks, gravel dust and loud noises butting up against the only public waterfront access is hardly ideal...” See Attachment A. Ms. Hoffman’s characterization of Colarusso’s operations as “big” and “dangerous” as well as identifying several alleged impacts from such operations as “hardly ideal” demonstrate clear opposition and impermissible bias toward the applicant and the Application.

Based on the foregoing, as stated above, Ms. Hoffman must be recused from the participating in the review, consideration, deliberation, or approval of the Application. In addition, Ms. Hoffman’s motion at the June 11, 2025 meeting of the Planning Board to reopen the public hearing must be annulled as a matter of law.

b. The Vote to Reopen the Public Hearing Violates City Code

Notwithstanding Ms. Hoffman’s bias, the vote to reopen the public hearing violates City Code.

On June 11, 2025, Planning Board member Gabrielle Hoffman made a motion to reopen the public hearing on the Application. Under the City Code, the Planning Board may have a public hearing only “for the purpose of accepting public comment on the proposed [project].” City Code § 325-35(3)(a).

According to the video recording of the June 11, 2025 meeting¹, the purpose of the motion to reopen the public hearing was to delay the Planning Board’s deliberation on the Application because of the Mayor’s meeting request and the potential public backlash in response to the meeting being held. Thus, the public hearing was not reopened to for the purpose of accepting public comment on the Application but rather to delay the Planning Board’s deliberation and decision on the Application.

Based on the foregoing, the motion to reopen the public hearing and the subsequent vote were also in violation of City Code and on this additional and independent ground must be annulled.

Sincerely,

/s/ *T.J. Ruane*

T.J. Ruane, Esq.

Enclosures

¹ Available here: https://www.youtube.com/watch?v=HMB_jwVQGLQ

Attachment A

To the member of the planning board:

I am a resident of Hudson, on lower union, and have two small kids I am raising here with my husband. One of the reasons we bought our house here, ten years ago, was because of its proximity to the waterfront park and the hope that our kids would treat the park and waterfront as their own backyard. I hope with all my heart that as you contemplate the usage of our precious waterfront you keep in mind all the young and old citizens of Hudson who want their waterfront access to be safe, both physically and environmentally, and also as pleasant and user friendly as can be. Big dangerous trucks, gravel dust and loud noises butting up against the only public waterfront access is hardly ideal... we are hoping that steps can be taken to secure as much protection to this important resource as possible.

Thank you so much,
Gaby Hoffmann

Attachment B

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September 25, 2020

Via E-mail and U.S. Mail

Ms. Betsy Gramkow, Chairperson
City of Hudson Planning Board
City Hall
520 Warren Street
Hudson, New York, 12534

Re: A. Colarusso & Son, Inc. – Conditional Use Permit Applications

Dear Ms. Gramkow:

Our firm represents A. Colarusso & Son, Inc. ("Colarusso") related to its applications to the City of Hudson Planning Board (the "Board") for Conditional Use Permits for 175 South Front Street and the adjacent haul road (collectively, the "Application"). The purpose of this letter is to notify the Board of conflicts of interest and bias that exist concerning Board members Clark Wieman and Larry Bowne and respectfully demand that both board members be recused and prohibited from any further participation in any Board proceedings related to the Application.

Inappropriate and Illegal Request for Payment of Legal Services

This letter demand was triggered by the City of Hudson's (the "City") record of Invoice No. 86646 (the "Invoice") from Ms. Victoria Polidoro to the City for her legal work in connection with her advice to Board. The Invoice was sent to Colarusso for review and payment. The Invoice includes over two (2) hours of counsel by Ms. Polidoro to the Board concerning "conflict issues" presumed to be borne by them.

Colarusso objected to payment of the Invoice from the escrowed funds provided by Colarusso in support of the Application, because the work does not relate to the Application and, furthermore, does not even relate to work for the City. Rather, Ms. Polidoro's advice to individual Board members concerning their personal conflicts is beyond the scope of her representation of the City. Individual employees and Board members of the City must seek their own counsel regarding their obligations to comply with the personal ethics demanded

of them as public servants. Payment to Ms. Polidoro from the escrowed funds for this personal advice is not permitted under New York law.

In the face of the legal time entries concerning conflicts of interest and bias on the Board, Colarusso was compelled to conduct an investigation in this matter.

Conflicts of Interest and Bias Concerning Board Member Wieman

As set forth in more detail below, Mr. Wieman's personal and business relationship with an outspoken and documented opponent of the Application creates an impermissible bias toward the project and a conflict of interest. As a result, Mr. Wieman must be recused from all Board proceedings related to the Application.

Conflicts of Interest and Bias are Prohibited and Require Recusal and Annulment

It is well established that public officials should avoid circumstances which compromise their ability to make impartial judgments solely in the public interest. *See* 1990 N.Y. Op. Att'y. Gen. (Inf.) 1068 at 1*; *See also*, 1984 N.Y. Op. Att'y Gen. (Inf.) 86, 160. Even the appearance of impropriety should be avoided in order to maintain public confidence in government. *Id.* To that end, New York Courts have held, and the New York Attorney General has acknowledged and opined, that the existence of a conflict of interest or bias concerning a planning board member is strictly prohibited and requires recusal of that board member from any proceedings related to the conflict or bias. The test to be applied "is not whether there is a conflict, but whether there might be." *Tuxedo Conservation and Taxpayers Association v. Town Board of the Town of Tuxedo*, 69 A.D.2d 320, 325 (2d Dep't 1979).

According to the New York State Comptroller (the "Comptroller"), one form of impermissible conflict of interest exists where the spouse of a board member either favors or opposes a particular project or application. *See* 1979 N.Y. Op. St. Comp. 79-81. The Comptroller has acknowledged the difficulty a spouse would have to objectively consider and pass upon a matter that their spouse either favors or opposes. 1979 N.Y. Op. St. Comp. 79-81 ("[i]n such instances, [their] effectiveness as a planning board member might well be impaired"). In such circumstances, the Comptroller has opined that "to avoid even any appearance of impropriety, [the spouse-board member] should refrain from participating in board functions relating to any such matters." *Id.*

With regard to recusal, even the presence of a recused board member during any board consideration is problematic and may render the board's subsequent action invalid. *Titan Concrete, Inc. v. Town of Kent*, 94 N.Y.S.3d 817 (N.Y. Sup. Ct. 2019) (holding that a recused town board member's participation in a public hearing rendered the board's action invalid). Recusal demands complete abstention from the matter from the moment the conflict arises so as not to taint decision making. *See also* 1995 N.Y. Op. Att'y Gen. (Inf.) 2 (1995) ("the mere presence of the [conflicted planning] board member holds the potential of influencing fellow board members"); 1988 N.Y. Op. Att'y Gen. (Inf.) 115

(1988) (a planning board member may not vote on a building project after appearing before local ZBA or county planning board as a citizen in opposition to that same project).

In sum, once a board member is found to have a conflict of interest in a particular matter before the board, that board member must recuse from any deliberations or voting with respect to that matter by absenting himself [or herself] from the board during the time the matter is before it.” 1995 N.Y. Op. Att’y Gen. (Inf.) 2; 1988 Opns. St. Comp., No. 88-68.

Mr. Wieman’s Conflict of Interest and Bias

We have learned that, Mr. Wieman and Ms. Julie Metz are established domestic partners, cohabitating on Warren Street in the City of Hudson. Moreover, they are business partners and own property together on Allen Street in the City of Hudson.

Ms. Metz has been an active opposition leader against the Application throughout all of the public hearings, and is part of the outspoken leadership, with Mr. Bowne, of Our Hudson Waterfront. Specifically, Ms. Metz has taken the position that the permitted use of the private Colarusso dock represent a loss of waterfront that should be part of the City of Hudson’s public green space. Ms. Metz and Our Hudson Waterfront further assert that the Colarusso property at the waterfront has the potential to be a public town square rather than its permitted use as a private commercial dock for goods and raw materials. These positions were stated by Ms. Metz and Our Hudson Waterfront at the first public hearing on July 9, 2019.

In addition, at the August 13, 2019 public hearing on the Application, Ms. Metz accused Colarusso of acting in bad faith, with no basis in the record. Ms. Metz also stated at that time that she worked against the City of Hudson’s Downtown Revitalization Initiative Grant Application, notwithstanding its success, because the document speaks favorably about the importance of the Colarusso commercial dock upon the City’s economy.

At the September 10, 2019 public hearing, Ms. Metz incorrectly maintained that the dock is inconsistent with the Local Waterfront Revitalization Plan (“LWRP”), notwithstanding the fact that the zoning for the dock followed the LWRP and its completely consistent with its findings and the formation of the Core Riverfront Zoning District. In her handwritten markup of the application for site plan review at that time, Ms. Metz described the Colarusso dock as an “eyesore”. She also incorrectly stated on September 10, 2019, in a written submission on behalf of Our Hudson Waterfront, that the City’s zoning law does not permit the operation of the dock.¹

Mr. Wieman’s opposition, and impermissible pre-judgment, to the Application is also well documented. For example, on January 12, 2017, Mr. Wieman stated, in his official

¹ Clearly, Ms. Metz has a constitutional right to speak truthfully at all public hearings and this letter has nothing to do with her rights in this regard.

capacity, that the Planning Board should look at options other than conditional use approval of the Colarusso dock, notwithstanding Colarusso's right to permit approval.

In addition, at the March 9, 2017 Board meeting, Mr. Wieman persisted that Colarusso should be pursuing the "highest and best use" of the dock and the Haul Road, notwithstanding its permitted use. At the following Board meeting on April 13, 2017, Mr. Wieman stated that the Haul Road should be abandoned, and that public roads should be used. On April 9, 2019, Mr. Wieman proclaimed a right of the Planning Board, without support from counsel, to regulate the Colarusso business.

At the next Board meeting, on May 14, 2019, Mr. Wieman explained his opposition to Colarusso even further, expressing a desire to "cap" the amount of Colarusso business. At the Planning Board meeting on June 11, 2019, Mr. Wieman maintained, without support from counsel, that the Haul Road needed a variance from the Zoning Board of Appeals in order to comply with local law, which is clearly not the case. At that same meeting, Mr. Wieman also voted against the majority of the Board, and maintained that the Colarusso application was incomplete. Specifically, the majority of the Board found that the Colarusso applications were complete, yet Mr. Wieman dissented. Remarkably, at the first public hearing on the complete application, on July 9, 2019, Ms. Metz also stated that the application was incomplete.

Mr. Wieman has also continued to disagree with the Planning Board's counsel. Indeed, as recently as December 10, 2019, Mr. Wieman publicly maintained that the Planning Board could regulate the amount of Colarusso business.

Based on the record and the foregoing, Ms. Metz has asserted her opposition to the Application without question. It is also clear from the record that Mr. Wieman has impermissibly prejudged the Application from the outset of the proceedings. Indeed, no reasonable person can serve the public interest in a disinterested and objective manner if the person is under the slightest domestic or business influence.

Mr. Wieman's Recusal is Both Warranted and Required by Law

It is clear Mr. Wieman's personal and business relationship with an outspoken and documented opponent to the Application has created both bias toward the project and a conflict of interest. Regardless, even the possibility that Mr. Wieman could be influenced by his personal and business relationship with Ms. Metz creates an impermissible conflict of interest and bias. As a result, Mr. Wieman's recusal from the participation in the review, consideration, deliberation, or decision on the Application is both warranted and required by law.

Conflicts of Interest and Bias Concerning Board Member Bowne

As set forth in more detail below, Mr. Bowne's documented history as an outspoken opponent to the Application, and actual participation in the proceedings upon which he is now tasked with overseeing, create an impermissible bias. As a result, Mr. Bowne's recusal

from the participation in the review, consideration, deliberation, or approval of the Application is both warranted and required by law. In addition, any decision which Mr. Bowne participates in making, should be annulled.

Conflicts of Interest and Bias are Prohibited and Require Recusal and Annulment

The Attorney General has opined that opposition to a proposed project disqualifies that individual from acting as a member of a planning board with respect to that project. *See* N.Y. Op. (Inf.) Atty. Gen. 88-60(1988); *see also*, 1988 N.Y. Op. Att'y Gen. (Inf.) 88-59 (1988); *see also*, 1993 N.Y. Op. (Inf.) Atty. Gen. 93-6. Similarly, New York Courts have held that opposition to a project by board members, outside their duties as board members, constitutes bias and requires annulment of the planning board's decision on the project. *Schweichler v Vil. of Caledonia*, 45 A.D.3d 1281, 1283-84 (4th Dept 2007).

Mr. Bowne's Bias

It is clear from the public record on this matter that Mr. Bowne publicly proclaimed his "engagement with Our Hudson Waterfront" when he was appointed to the Board. In addition, it is also equally as clear, that Mr. Bowne spoke out against the Applications on a number of occasions prior to accepting the position on the Board.

For example, Mr. Bowne spoke against the Application at the first public meeting, after the Application was deemed complete, which occurred on July 9, 2019. At that time, Mr. Bowne impugned the integrity of Colarusso, stating that the company had a "casual disregard of the ability of government to act in the public good." A statement which has no basis in the public record. Mr. Bowne also spoke out against Colarusso at the second public hearing on August 13, 2019.

In addition, on September 11, 2019, Mr. Bowne signed a letter to the Board, as one of a handful of leaders of Our Hudson Waterfront, concerning its efforts to oppose the Application. Mr. Bowne spoke out a third time at a public hearing against the Colarusso project as recently as November 12, 2019, asking the Planning Board why the current permitted use by Colarusso of the dock for the transport and shipment of goods and raw materials, including loading and unloading facilities and storage of such goods and raw materials and associated private roads, should not be abandoned so that the Colarusso property could be transformed from a private industrial use to a public "community asset".

Mr. Bownes' membership in and leadership of the primary advocacy organization opposing Colarusso, Our Hudson Waterfront, along with his specific remarks in opposition to the Application, clearly disqualify him from serving in an unbiased manner, in the public interest, in consideration of any aspect of the Colarusso applications. He simply cannot function in a disinterested and objective manner as to any Colarusso matter before the Board. Mr. Bownes' participation in Board proceedings throughout this year has been improper. Public servants are obliged to avoid even the appearance of impropriety. Mr. Bownes' embrace of Our Hudson Waterfront brings his ownership of its advocacy against

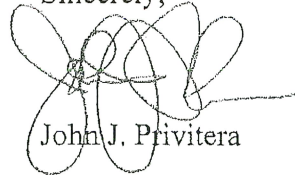
the Application. Thus, Mr. Bowne was obliged to recuse himself from consideration of the Application upon his appointment to the Board and certainly must do so going forward.

Mr. Bowne's Recusal is Both Warranted and Required by Law

Based on the foregoing, Mr. Bowne's documented history as an outspoken opponent to the Application, and actual participation in the proceedings upon which he is now tasked with overseeing, create an impermissible bias. Mr. Bowne simply cannot function in a disinterested and objective manner as to any Colarusso matter before the Board. His participation in Board proceedings throughout this year has been improper. As a result, Mr. Bowne's recusal from the participation in the review, consideration, deliberation, or decision on the Application is both warranted and required by law. In addition, any decision which Mr. Bowne participates in making should be annulled.

In addition to our demand for prompt recusal of Mr. Wieman and Mr. Bowne, we are compelled to reserve all of our rights to a fair hearing. Mr. Wieman and Mr. Bowne should not have sat with fellow board members during the deliberations and action regarding the matter. The mere presence of these board members holds the potential of influencing fellow board members and it carries an appearance of impropriety in the eyes of the public.

Sincerely,

A handwritten signature in dark ink, appearing to be "John J. Privitera", with a stylized, cursive flourish.

John J. Privitera

JJP/mac