

RESOLUTION OF THE NYACK VILLAGE BOARD

A regular meeting of the Nyack Village Board was convened on May 12, 2016, at 7:30 p.m.

The following resolution was duly offered and seconded, to wit:

Resolution No. 2016-26

**IN THE MATTER OF A LOCAL LAW TO CONSIDER AMENDMENTS TO THE WATERFRONT
WF ZONING TEXT CONTAINED IN THE VILLAGE OF NYACK ZONING CODE**

**RESOLUTION OF THE NYACK VILLAGE BOARD
TO ISSUE A NEGATIVE DECLARATION UNDER SEQRA AND A
DETERMINATION OF CONSISTENCY WITH THE VILLAGE OF NYACK LWRP**

WHEREAS, the Village Board is entertaining the adoption of a Local Law pertaining to the Waterfront WF Zoning District regulations in Chapter 360, Zoning, of the Nyack Village Code (the “Proposed Action” or the “proposed local law”); and

WHEREAS, the proposed local law is intended to amend the Waterfront WF Zoning regulations without changing any of the permitted uses in the regulations, to include, for the first time, design guidelines applicable to proposed developments in the Waterfront WF district (affecting, but not limited to, building design, facades and massing, setbacks, materials, landscaping, and the preservation of true view corridors by requiring underground parking), and to further amend the current special permit mechanism in the current Waterfront WF regulations to provide for additional public benefits on the Village’s waterfront in the event of a proposed development, including meaningful public access, as well as mandating the inclusion of commercial and water-dependant uses into any proposed development in the WF Zoning District; and

WHEREAS, in accordance with the requirements of the New York State Environmental Quality Review Act (SEQRA), the Village Board is the only Involved Agency with respect to the Proposed Action and is therefore the Lead Agency; and

WHEREAS, the Village Board has had a Full Environmental Assessment Form prepared in

connection with the Proposed Action; and

WHEREAS, the Village Board sought comments on the proposed legislation from the Village of Nyack Planning Board as required by Village Board 360-5.6(B)(3)(a), and received comments as reflected in the February 1, 2016 minutes of the Planning Board (the Planning Board's 2/1/16 comments referenced an earlier Planning Board review and comments pertaining to a private owner's Petition for text amendment in the Waterfront WF zoning district, said earlier comments being dated June 11, 2015, and which were incorporated in the subject text amendment generated by the Nyack Village Board); and

WHEREAS, the Village Board referred the proposed local law to the Rockland County Planning Board in accordance with the Village Code and Sections 239-l and m of New York State General Municipal Law, and the Rockland County Planning Board responded to the above mentioned referral by means of its letter dated February 19, 2016 (the Rockland County Planning Board's 2/19/16 comments referenced an earlier County Planning Board review and comments pertaining to a private owner's Petition for text amendment in the Waterfront WF zoning district, said earlier comments being dated August 19, 2015); and

WHEREAS, in addition to the mandated comment referrals set forth above, the Nyack Village Board also solicited comments and an environmental assessment and analysis on the proposed Waterfront WF text amendments from the Village of Nyack Planning Consultant, Robert Galvin, and a private planning consulting firm, BFJ Planning (who provided an analysis and narrative for an Expanded Part 3 EAF), and Scenic Hudson, Inc. (a nationally renowned environmental group focused on the Hudson River Valley which specializes in land acquisition, support for agriculture, citizen-based advocacy and sophisticated planning tools to create environmentally healthy communities, smart economic growth, and promoting opening up riverfronts to the public); and

WHEREAS, the Village Board held Public Hearings on the proposed Waterfront WF zoning text amendments on February 25, 2016, and March 10, 2016 (with a 10 day written public comment

submission window through March 20th after the March 10th Public Hearing); and

WHEREAS, on March 10, 2016 (the date of the second public hearing on the proposed text amendment), the law firm Zarin & Steinmetz, “retained by area residents”, submitted correspondence expressing “serious concerns” about the proposed text amendments, some of which relate to the SEQRA review undertaken by the Board, which were:

- I. An opinion that the SEQRA review should entail a “conceptual review” of a “reasonable worst case” of development under the proposed amendments.
- II. An opinion that the potential environmental impacts revealed by a “conceptual review” of potential development under the proposed text amendments would surpass the “low threshold” triggering the preparation of an Environmental Impact Statement (EIS).
- III. An opinion that the proposed text amendments “appear” to constitute improper “spot zoning” since the text amendments were, in the opinion of the retained lawyer, inconsistent with the Village Comprehensive Master Plan; and

WHEREAS, additional written public comments on the proposed local law were submitted to the Village Clerk on or before March 20, 2016, and

WHEREAS, at its regularly scheduled Village Board meeting held on March 24, 2016, the Village Board received a report from the Village Planner recommending revisions/clarifications to the text of the proposed Waterfront WF zoning amendments, which the Planner developed based upon comments received at the public hearings, and based upon input from the referring agencies referenced in this Resolution, and which were incorporated into the final draft of the proposed text amendments; and

WHEREAS, at its regularly scheduled Village Board meeting held on March 24, 2016, the Village Board received an update on the progress of an Environmental Assessment of the Proposed

Action by Simon Kates from BFJ Planning, prepared at the request of the Village Board, to support the EAF Part 3 that the Village Planner was producing in connection with SEQRA review of the Waterfront WF zoning text amendment, and which included an update of the status of a “gap analysis” being conducted by BFJ Planning to compare reasonable worst case development scenarios scenario between conceptual developments built under the current Waterfront WF zoning regulations as compared to a development built under the proposed Waterfront WF text amendments (this analysis was stated to be mandated in the Zarin & Steinmetz letter of March 10, 2016); and

WHEREAS, BFJ Planning subsequently produced a more detailed Environmental Analysis for the Nyack Village Board to support the EAF Part 3 prepared in connection with the Proposed Action, which was presented to the Village Board at its regularly scheduled meeting held on April 14, 2016 by Frank Fish, a principal of the BFJ firm, and which analysis focused on the incremental increase in the potential environmental impact under a “worst case” scenario between a development built under the current Waterfront WF zoning regulations as compared to a development built under the proposed Waterfront WF text amendments, specifically as pertains to:

- Views
- Shadows
- Traffic
- School Children
- Community/Neighborhood character
- Open Space
- Municipal services

WHEREAS, on April 14, 2016 (during the public comment portion of a regularly scheduled Village Board meeting), Zarin & Steinmetz, still “retained by area residents”, submitted additional correspondence and made a presentation to the Village Board stating:

- I. That the Nyack Village Board should provide his clients with “adequate” time to become more involved in the SEQRA process prior to the Village Board making a Determination of Environmental Significance under SEQRA.
- II. Pointing out what are characterized as perceived “major gaps” in the EAF.
- III. Restating its opinion that an Environmental Impact Statement (EIS) should be prepared.
- IV. Stating an opinion that the Village Board had not adequately addressed its Local Waterfront Revitalization Program (“LWRP”) consistency standards.
- V. Restating the opinion that the proposed text amendments are inconsistent with the Village Comprehensive Master Plan.

WHEREAS, on April 14, 2016, subsequent to the Zarin & Steinmetz presentation, additional public comment was accepted both in support of and in opposition to the proposed Resolution to make a Determination of Significance under SEQRA relative to the adoption of the proposed local law (including but not limited to comments from the public, and from a “representative” of Riverkeeper, John Lipscomb, who resides in a location adjacent to the WF Zoning District); and

WHEREAS, on April 14, 2016, Nyack Village Board moved to table the proposed Resolution containing a Determination of Significance to provide the public with additional opportunity to submit comments on the SEQRA process, which motion included a request that any further public comment on the proposed Resolution to make a Determination of Significance relative to the proposed local law be submitted by April 22, 2016; and

WHEREAS, on April 20, 2016, the Village’s Planning Consultants, BFJ Planning, submitted correspondence to the Village Board addressing the opinions submitted by the law firm Zarin & Steinmetz in its letter dated April 14, 2016, specifically as pertains to the Village Board’s SEQRA review process, the Determination of Significance being undertaken by the Village Board with respect to the local law at issue, and as to the consistency of the proposed local law with the Nyack

Comprehensive Master Plan; and

WHEREAS, on April 22, 2016, the Village’s Planner Robert Galvin submitted an additional Memorandum specifically pertaining to the LWRP consistency determination under consideration by the Board of Trustees; and

WHEREAS, on April 22, 2016, pursuant to the Village Board’s motion to allow further public comment on the proposed Resolution to made a Determination of Significance under SEQRA on the proposed local law, the law firm Zarin & Steinmetz, still “retained by area residents”, submitted additional correspondence which contained a Memorandum prepared by Vincent Ferrandino, AICP, the principal of Ferrandino & Associates Inc. Planning and Development Consultants of Elmsford, New York (Mr. Ferrandino identifies himself in the Memorandum as “a licensed environmental and land use planner”); and,

WHEREAS, on or about April 23, 2016 (the document is undated), again pursuant to the Village Board’s motion to allow further public comment on the proposed Resolution to made a Determination of Significance under SEQRA on the proposed local law, James Bacon, Esq., an attorney for Riverkeeper, Inc., a “member supported watchdog organization dedicated to defending the Hudson River”, submitted correspondence designated as “written Riverkeeper comments [to] supplement those of Riverkeeper Patrol Boat Captain John Lipscomb” (who spoke as a “representative” of Riverkeeper at the April 14, 2016 Village Board meeting), in which Mr. Bacon expresses legal opinions that, inter alia, the proposed local law under consideration by the Nyack Village Board:

- (a) Constitutes a “Type I Action” under SEQRA.
- (b) Constitutes an improperly segmented Action under SEQRA.
- (c) Addresses what he characterizes as insufficient sanitary sewer capacity in Nyack.

WHEREAS, on May 5, 2016, the Village’s Planning Consultants, BFJ Planning, submitted

correspondence to the Village Board addressing the opinions submitted in the April 22, 2016 letter by Zarin & Steinmetz and Memorandum of Vincent Ferrandino of Ferrandino & Associates Inc., as well as the opinions expressed in the letter of James Bacon, Esq. of Riverkeeper; and

WHEREAS, Nyack Village Code Chapter 342-5 (c), the Nyack Waterfront Consistency Review process, vests jurisdiction in the Village Board of Trustees to determine consistency with the Village’s LWRP on Unlisted actions covering three or more acres; and

WHEREAS, as noted above, the Village Planner has provided the Village Board with a Coastal Assessment Form (CAF), an Addendum to the CAF, and a specific memorandum on LWRP consistency with respect to the proposed local law, all for assisting the Village Board in undertaking the LWRP Consistency Review process.

I. Comprehensive Master Plan Consistency Determination

THEREFORE BE IT RESOLVED,

That the Village Board hereby adopts and incorporates the recitations and statements set forth above as if fully set forth and resolved herein.

AND BE IT FURTHER RESOLVED,

That the Nyack Village Board finds that the proposed Waterfront WF zoning text amendments are consistent with the recommendations, goals, and objectives of the Comprehensive Master Plan (CMP), in that:

- **On page #50 of the CMP**, the CMP specifically recommends creating “a Riverwalk along the entire length of the waterfront in the Village”. The Village Board finds that this goal is not truly achieved in the current WF zoning district regulations since the only requirement for a walkway under current zoning is an easement at least 12 feet wide for 75% of its length, with a required 6

feet of the easement being paved to be “suitable for pedestrian use”. Furthermore, under current zoning the required building setback from the Hudson River is an “average of 50 feet”, and a building is permitted to be located a mere 15 feet from the Hudson River as long as that 50’ average setback is achieved. Under the proposed text amendment, no building can be located within 50 feet of the Hudson River (not an “average” of 50’), and if a developer wants to avail itself of the development incentives contained in the proposed text it must provide a mandated 30 feet of public space dedicated to the Village as parkland, running the entire length of a parcel, 15 feet of which being required to be a continuous walkway. The Board finds that the language of the proposed text amendment is consistent with this particular goal of the CMP, and clearly promotes the CMP’s goals and objectives as to this important aspect this key objective of the CMP – true public waterfront access.

- **On page #43 the CMP** states that the Village should “improve connections between the waterfront and the rest of the Village”, and on **page 48 the CMP** states that the Village should “support cultural and commercial amenities that bring people to the waterfront”. The proposed text amendment requires siting of a restaurant or café at the site of any potential development in the WF district seeking development incentives, mandates access to the “riverwalk” every 200 feet of a potential development, and mandates the inclusion of a water dependent amenity on the developed parcel. The Village Board finds these requirements further the stated goals of the CMP by drawing people to the waterfront, and providing them a means of getting there once they get down to Gedney Street.
- **On page #47 of the CMP**, the CMP specifically recommends preserving and enhancing views of the Hudson River from throughout the Village, “In particular, protecting waterfront views from and down cross streets”. If a developer implements the design guidelines and development incentives in the proposed text amendment, views will be improved from those permitted under current zoning by maximizing required view corridors and by putting parking underground.

- **On pp. #51-52 the CMP** there is a single qualified reference which suggests that the Village should “promote the acquisition” of certain parcels of land in the WF zoning district (this portion of the CMP is more fully described below); however, the CMP very clearly qualifies this objective by recognizing that the Village does not have the financial resources to purchase privately held waterfront real estate. The proposed local law has been drafted to achieve the CMP’s goals set forth in this particular portion of the CMP by (1) requiring a portion of these particular parcels of land to in fact be dedicated as Village parkland in the event of a development which seeks to avail itself of development incentives, (2) introducing and incorporating design guidelines applicable to developments in the WF zone, (3) requiring true waterfront access that is publically accessible, and (4) achieving these objectives while maintaining the WF zone’s boundaries and basic zoning regulations. Specifically, the **CMP states (on page #51)** that the Village should “promote [the] acquisition” of the Clermont Phase III and Presidential Life parcels as parks, but also states the reality that “the Village does not have the financial wherewithal itself” to do so. The Village Board finds that this statement in the CMP still holds true. The parcels are privately owned, and even if they were for sale, in a community where \$30,000 is approximately 1% of the tax levy, the Village simply cannot afford to spend millions, hundreds of thousands, or even tens of thousands of dollars on the acquisition of the properties. Furthermore, Memorial Park and the Village Marina (including the former Riverclub restaurant) are Village parks within the WF Zoning district, the Village Board simply does not believe it is fiscally responsible or beneficial to the taxpayers to acquire for a price more property in the WF zoning district.

The same paragraph of the **CMP (on p. 52)** states that if the parcels are not purchased or donated, “the existing zoning regulations should remain in place for these lots with additional design guidelines that promote extension of a riverside walkway” and the creation of “architecture comparable to the upland historic context”. As noted above, the text amendment requires any developer seeking design and development incentives to create a true publically accessible riverfront walkway to be dedicated as Village parkland (thereby creating a park as envisioned in the CMP), the current zoning regulations are to remain in place for developers not seeking design and development incentives, and for the first time design guidelines are being added in an effort to mandate that a development be more architecturally in keeping with Nyack general character. Therefore, on balance, the proposed text amendments are consistent with and further this particular goal and objective of the CMP.

- The Expanded EAF Part 3 and the BFJ Memorandum of April 20, 2016 contain discussion, comments and analysis of the consistency of the proposed text amendments with the existing CMP. The reasoning and conclusions contained in the Expanded EAF Part 3 are hereby credited and adopted by the Village Board, and incorporated by reference into this finding by the Village Board that the proposed text amendments are consistent with the existing CMP.
- On March 10, 2016, Scenic Hudson, Inc., provided comments on the proposed text amendments, and found in its review and analysis that the proposed text amendments were consistent with the existing CMP. The analysis, reasoning and conclusions of Scenic Hudson, Inc. set forth in its March 10th letter are adopted and incorporated by reference by the Village Board into its finding that the proposed text amendments are consistent with the existing CMP.
- On February 19, 2016, the Rockland County Department of Planning provided a favorable GML review of the proposed text amendment, raising no issue with consistency with the CMP.
- The Village Planner prepared an EAF Part 3 setting forth his determination that the proposed text amendments were consistent with the existing CMP.

The Village Board discussed the proposed text amendments in the context of their consistency with the CMP in detail at the March 10, 2016 regularly scheduled meeting of the Board, and finds and resolves now, based on that discussion, on the Board's analysis set forth in this Resolution, and on professional expert analysis of the Village Planner and the Village's Planning Consultants BFJ Planning set forth hereinabove and incorporated by reference into these findings, that the proposed text amendments are consistent with the CMP.

The Village Board notes that there were public comments and written submissions made to the Village Board, both during and after the public hearings held on the proposed text amendments, wherein it was argued that the proposed text amendments were not consistent with the current CMP. Specifically, the

Zarin and Steinmetz letter of April 14, 2016, and the Ferrandino & Associates Memorandum of April 22, 2016 both postulate that the proposed text amendments are not consistent with the current CMP. The Village Board notes and finds that each of the written submissions contain absolutely no reference to any other provision of the CMP other than the qualified objective in the CMP which states that the Village should “promote the acquisition” of certain parcels of land as parks (discussed above). Again, as noted above, the Village Board has analyzed this particular goal of the CMP, and has found that on balance the proposed text amendments are consistent with this goal since the proposed text amendments would in fact (1) require a portion of the particular parcels of land referenced in the CMP to in fact be dedicated as Village parkland in the event of a development which seeks to avail itself of development incentives set forth in the proposed local law, (2) introduce and incorporate design guidelines applicable to developments in the WF zone as specifically mentioned in the CMP, (3) require a much greater degree of waterfront access that is publically accessible than required under existing zoning (a CMP goal that the Village Board believes, when considering the Waterfront section of the CMP, is clearly the most important goal and objective contained in the Waterfront portion of the CMP) , and (4) achieve these objectives while maintaining the WF zone’s boundaries and basic zoning regulations. The Village’s Planning consultants BFJ Planning specifically addressed the submissions (and effectively the oral public comments made at the public hearings) in their memorandums dated April 20, 2016 and May 5, 2016, and reasoning and conclusions of BFJ Planning are hereby credited and adopted by the Village Board, and incorporated by reference into the finding by the Village Board that the proposed text amendments are consistent with the existing CMP. Therefore, the Village Board rejects the arguments of Zarin and Steinmetz in its letter of April 14, 2016, and those raised by Ferrandino & Associates, as they relate to alleged inconsistency with the CMP.

II. Determination of Significance under SEQRA

THEREFORE BE IT RESOLVED,

That the Village Board hereby adopts and incorporates the recitations and statements set forth above as if fully set forth and resolved herein into the following Determination of Significance made under New York State Environmental Quality Review Act (SEQRA), with respect to the proposed WF Waterfront zoning text amendments; and

BE IT FURTHER RESOLVED,

That with regarding to the Village Board undertaking to make a Determination of Significance under SEQRA with respect to the proposed Waterfront WF text amendments, in accordance with the requirements of the SEQRA regulatory scheme, the Village Board as Lead Agency classified the Action as an “Unlisted Action”, and the Village Board reviewed and discussed the Full EAF prepared by the Village Planner, the Expanded EAF Part 3 prepared by the Village’s Planning Consultants BFJ Planning, the CAF, and the addendum to the CAF prepared by the Village Planner, and all of the other documents referenced to as “additional support information” in Part 3 of the EAF at the Board’s regularly scheduled meetings held on March 10, 2016, March 24, 2016, and April 14, 2016; and

AND BE IT FURTHER RESOLVED,

That certain documents supplementing the EAF and Expanded Part 3 were also reviewed and considered by the Village Board in its deliberations prior to making a Determination of Significance, including numerous public comments made at the two public hearings held on the proposed text amendments (on February 25, 2016 and March 10, 2016), the Zarin & Steinmetz and Nyack Boat Club letters of March 10, 2016, additional written submission made prior to March 20, 2016, as well as submissions made to the Village Board in the Public Comment portion of regularly scheduled meetings of the Village Board held on April 14, 2016 (including but not limited to Zarin & Steinmetz letters of April 14, 2016 and April 22, 2016 (with the attached Memorandum of Ferrandino & Associates, Inc.), and the Riverkeeper, Inc. letter of on or about April 23, 2016; and

AND BE IT FURTHER RESOLVED,

That the Village Board finds, supplementing and supporting the EAF, that the gross area of land contained within the WF zoning district is 20.73 acres, with a net area of 14.66 acres excluding submerged land; and

AND BE IT FURTHER RESOLVED,

That after conducting a “hard look” at the Full Environmental Assessment Form and other materials related to the Proposed Action, including but not limited to the Full EAF and Expanded EAF Part 3 prepared by the Village Planner and BFJ Planning consultants, the Village Board hereby adopts the attached Negative Declaration reflected in the Part 3 “Evaluation of the Magnitude and Importance of Project Impacts and Determination of Significance” prepared by the Village Planner Robert Galvin, thereby finding that the Proposed Action will have no significant adverse impact upon the environment and ending the SEQRA process based upon the following:

(1) For the reasons stated in the EAF Part 3;

(2) For the reasons and analysis supporting the conclusion that the proposed Action “will not result in significant adverse environmental impacts” as determined in a reasonable worst case scenario of development under the proposed text amendment versus the existing zoning, set forth in the Expanded EAF Part 3, and in the April 20th and May 5th letters submitted by BFJ Planning, incorporated by reference into this Resolution; and

(3) Based upon the following reasoning and findings of the Village Board, supplementing the Board’s adoption of the Village Planner and Village Planning consultant’s findings and conclusions as to the Determination of Significance and Negative Declaration:

(i). The Village Board finds that its compliance with the SEQRA review process relative to its consideration of the proposed Waterfront WF text amendments assisted the Village Board in eliciting significant public participation and public outreach during the development of the text amendment and review of the EAF. The **WHEREAS** clauses set forth above, and the “Public Participation and Stakeholder Outreach” contained in the April 20, 2016 letter of the Village’s Planning Consultants BFJ Planning delineate the Village Board’s efforts to engage the public and stakeholders in the environmental review process, and the dates, meetings, and public hearings referenced in BFJ’s April 20th letter are incorporated by reference into this finding. The Village Board also notes that on January 5, 2016, it held an additional stakeholder meeting with property owners and residents from the area near the WF zoning district (attendees at that meeting included, among others, two Village Board members, the Village’s Planning consultant from BFJ Planning, Eric Fang, the urban designer who

developed the Design Incentives in the proposed text amendments, the Village Attorney, Mr. John Gromada (who later retained Zarin & Steinmetz), Ms. Ellen Hillberg, and Mr. John Lipscomb (who later appeared at a Village Board meeting on April 14, 2106 in opposition to the text amendment as a “representative” of Riverkeeper, Inc).

(ii). The Village Board finds that the proposed Action consists of proposed text amendments to the existing Waterfront WF zoning regulations intended to improve the impact of future waterfront development on public access to the waterfront and neighborhood access by amending the existing special permit provisions in the existing text to add design guidelines and promote public access.

(iii). The Village Board finds that the proposed text amendments do not add or modify the permitted uses in the WF zoning district, do not remap any parcels, or involve any change to the boundaries of the existing zoning district.

(iv). That the Village Board finds that it analyzed and discussed in depth the possible environmental impacts associated with the proposed Action at its regularly scheduled Village Board meetings held on March 10, 2016, March 24, 2016 and April 14, 2016. The Village Planner and BFJ Planning consultants presented its findings in the Expanded Part 3 to the Village Board, including the analysis of the incremental increase in the potential environmental impacts under a “worst case” scenario between a development built under the current Waterfront WF zoning regulations as compared to a conceptual development built under the proposed Waterfront WF text amendments at those public meetings. The analysis and evaluation of the “reasonable worst case scenario” of reasonably foreseeable conceptual developments under the proposed amendments to the WF zoning text are set forth in the Expanded EAF Part 3 prepared by BFJ Planning, and supplemented and supported in correspondence submitted to the Village Board by BFJ Planning dated April 20, 2016 and May 5, 2016; the data, analysis, and conclusions of the Village’s Planning consultants are adopted and incorporated into this finding by reference, and constitute a “hard look” and the potential environmental impacts of the proposed text amendment resulting in the Village Board’s finding that the Proposed Action will have no significant adverse impact upon the environment.

(v). The Village Board notes that an attorney retained by “area residents” submitted correspondence to the Village Board disputing the adequacy of the SEQRA review undertaken by the Village Board and its professionals (including a Memorandum from Vince Ferrandino, a “licensed environmental and land use planner”). Additionally, the undated Riverkeeper letter also addressed perceived shortcomings in

the SEQA review undertaken by the Village Board.

The Village's Planning consultant responded to each of the issues raised by Zarin & Steinmetz, Ferrandino & Associates, and the Riverkeeper in BFJ's letters of April 20, 2016 and May 5, 2016. BFJ Planning's responses are hereby credited and adopted by the Village Board, and incorporated by reference into this finding by the Village Board that the proposed Action will have no significant adverse impact upon the environment, thereby ending the SEQRA process, for the following reasons:

(v)(a) The Village Board, in a good faith effort to decide the weight given to the various expert opinions set forth in the numerous submissions that the Village Board considered in making a Determination of Significance, has examined (1) the background and qualifications of the Village Planner, BFJ Planning, and Ferrandino & Associates Inc., and (2) the content of the various submissions addressing the EAF and SEQRA review (from the public, Zarin & Steinmetz, Ferrandino, Riverkeeper, BFJ Planning, and the Village Planner), including the factual assumptions underlying conclusions espoused in the submissions, and in the incremental analysis undertaken by the Village's Planning consultant BFJ Planning.

As a result of this good faith effort, the Village Board finds that BFJ Planning is more qualified to assess the environmental impact of the proposed text amendments than Ferrandino & Associates, Inc.. This finding is based on the Village Board's conclusion that BFJ Planning is much more familiar with the Village of Nyack than Ferrandino & Associates, having completed a parking study for the Village in 2007, and being the firm leading the currently pending process to update the Village's Comprehensive Master Plan, which process requires BFJ Planning to delve into all aspects of planning aspect affecting the whole Village (including in the WF zoning district). Conversely, Vince Ferrandino, the principal of Ferrandino & Associates, Inc., while clearly presenting as a qualified planner¹, does not appear to be familiar with the Village of Nyack, based on the significant fact that he cites no prior work experience in the Village of Nyack, that he fails to list the Village Zoning Map as a document he reviewed in preparing his Memorandum to the Village Board of Trustees containing his comments on the proposed zoning text amendments (in fact, Mr. Ferrandino submitted an "Errata" sheet to the Village Clerk four days after he submitted his Memorandum, stating that "It was recently brought to our attention that the John Green House is not located in the WF District" despite his identifying that building as being

¹ The Village Board notes that Vince Ferrandino, the Principal of Ferrandino & Associates, identifies himself as a "licensed environmental and land use planner." There does not appear to be any New York State or national "license" in environmental or land use planning. The Village Board notes this questionable qualification cited by Mr. Ferrandino, but does not purport to find that it affects his competency to submit comment or testimony as a planner.

included in the WF zoning district in his Memorandum, revealing a clear unfamiliarity with the boundaries of the WF Zoning district), and (3) Mr. Ferrandino erroneously locates the Edward Hopper House, an important cultural resources in Nyack, as being located “one block north of Gedney Street” in his Memorandum, when the Hopper House is actually located 600 feet west of Gedney Street.

Furthermore, the Village Board finds that the superior breadth of experience of the BFJ Planning firm, and of Frank Fish, the Principal of BFJ Planning responsible for developing BFJ’s work on the proposed zoning text amendment, particularly with respect to environmental review, impacts of zoning amendments, and the firm’s use of an highly qualified urban design professional to assist in developing design guidelines for inclusion in the proposed text amendment, provides the Village Board with a firm basis to give great weight to the analyses and conclusions of BFJ Planning.

Additionally, The Village Board finds that Robert Galvin, the Village Planner, is also very familiar with the Village of Nyack, and his experience in dealing with all aspects of land use and planning as a Village employee similarly provides the Village Board with a basis to give great weight to his conclusions as set forth in the EAF.

(v)(b) Again, the Village Board credits and adopts the Village Planning consultant responses (in BFJ’s letters of April 20, 2016 and May 5, 2016) to each of the issues raised by Zarin & Steinmetz, Ferrandino & Associates, and the Riverkeeper, as those issues relate to the SEQRA process undertaken by the Village Board. The Village Board’s review of the issues raised in those submissions, as commented on by the Village Planning Consultant, leads the Village Board to conclude that the allegations of improper SEQRA review are often raised without reference to empirical data, or are based upon incorrect factual and/or legal assumptions. For example, both the Riverkeeper and Ferrandino & Associates state that issues exist with sanitary sewer capacity at the Spear Street pump station near the WF zoning district; yet neither submission contain any data whatsoever as to the current capacity of the Spear Street pump station, or any data as to the existing sewer system average daily flow to that pump station. Rather, both the Riverkeeper and Ferrandino and Associates rely on “testimony” such as the growth rate of tomatoes in the Village Marina, and upon data as to fecal contamination in the Hudson River supplied by John Lipscomb, a Nyack resident and Riverkeeper member who lives directly across the street from the WF zoning district. The Village Board takes no issue with the Riverkeeper data on fecal contamination, however, the BFJ Planning analysis of this issue addresses legitimate empirical data as to flow rates and capacity, as well as comments on inflow and infiltration issues that, in the opinion of the Village Board, are clearly are more impactful from an environmental standpoint than the small

incremental increase in the number of dwelling units permitted under the proposed text amendment.

Similarly, the Riverkeeper letter clearly states that the proposed text amendment should be a Type I action under SEQRA, based on a provision in the SEQRA regulations applicable to “the adoption of changes in the allowable uses within any zoning district”. Clearly, even a cursory reading of the proposed text amendments reveals that the Village Board is not considering any change to the allowable uses in the WF zoning district in the proposed text amendment, a key incorrect factual assumption made in the Riverkeeper letter. This erroneous factual assumption lead the Riverkeeper expert to rely on an incorrect legal standard relative to the classification of the Village Board’s Action. The Village Planning consultant addressed this issue fully in BFJ’s May 5, 2016 letter (at page 4); and the Village Board incorporates the findings and analysis of its Planning consultant when considering this conflicting “expert” submission in the context of the Board’s classifying the Action under SEQRA, and further in the Board’s making its Determination of Significance under SEQRA.

(v)(c) The Village Board finds that the most significant aspect of the conflict between the various expert submissions in the context of the SERQA review relate to the Village Board’s consideration of a reasonable worst case scenario of development under the proposed text amendments as part of its SEQRA analysis (See Expanded EAF Part 3, BFJ letters of April 20, 2016 and May 5, 2016). Zarin & Steinmetz, Ferrandino, and the Riverkeeper, (the latter in the context of a segmentation argument), all argue that the Village Board is required to study potential site specific environmental impacts of developments to satisfy the SEQRA review standards. Both BFJ Planning and the Village Planner disagree, noting that for an area wide action such as a zone text amendment it is appropriate for the Village Board to conduct, as it did, an evaluation of the environmental impacts of a reasonable worst case scenario of the incremental increase between an existing condition (the current zoning text), and the proposed change (the proposed text amendments).

The Village Board finds that the only Action under consideration is the Village Board’s own text amendment, that there is no contingent action required as a result of the proposed text amendment, that the proposed text amendment is not contingent upon any private development application, and that the proposed text amendment does not mandate any development application. Therefore, based on the Expanded Part 3 Environmental Assessment Form, and taking into account the experience and expertise of the Village Planner and Planning Consultant in studying and producing an analysis of the reasonable worst case incremental development impacts between the current and proposed zoning text, and upon the advice of the Village Attorney, the Village Board finds that BFJ Planning’s reasoning and

conclusions as to the scope and adequacy of the of the Village Board’s SEQRA review constitute a “hard look” and the potential environmental impacts of the proposed text amendment which resulted in the Village Board’s finding that the Proposed Action will have no significant adverse impact upon the environment.

(vi) Finally, the Village Board of Trustees also finds that several other issues raised by Zarin & Steinmetz, Ferrandino, and the Riverkeeper (such as the stated necessity for the Village to produce a full EIS for the text amendment, the stated inadequate parking requirements in the text and inadequate traffic impact review in the EAF, the stated inadequacy of the Design Guidelines, and the stated timing issues with amendments to the text as well as with the adoption of the local law itself), have all been adequately addressed, refuted, and discounted by the Village Planner and Planning Consultant, as reflected in the EAF Part 3, the Expanded Part 3 Environmental Assessment Form, and the BFJ April 20th and May 5th letters, and that the Village Board finds no basis to modify its Determination of Significance based on those issues or based upon any other issues raised by entities referenced in this paragraph.

III. LWRP Consistency Determination

THEREFORE BE IT RESOLVED,

That the Village Board hereby adopts and incorporates the recitations and statements set forth above as if fully set forth and resolved herein into the following LWRP Consistency Determination made pursuant to the provisions of Chapter 342 of the Code of the Village of Nyack with respect to the proposed WF Waterfront zoning text amendments; and

AND BE IT FURTHER RESOLVED, that the Village Board of Trustees has also considered the scope of the Proposed Action, and Village Planner’s Consistency Review analysis (together with the documents referenced therein) in the context of evaluating the LWRP policy standards and conditions to make a Consistency Determination, and

AND BE IT FURTHER RESOLVED that upon a review of the Coastal Assessment Form (CAF), the Addendum to the CAF prepared by the Village Planner (which expands on the answers to the categories in Part III of the CAF and addresses the Village’s LWRP policies), a separate Memorandum from the Village Planner dated April 20, 2016 titled “LWRP Consistency Review”, the long form complete Environmental Assessment Form (EAF), and the Village’s LWRP policies; the Village Board hereby determines and finds, pursuant to the provisions of Chapter 342 of the Code of the Village of Nyack, that the Proposed Action is fully consistent with the policies of the LWRP and that the Proposed Action will not hinder the achievement of any of the policies set forth in the LWRP; and

AND BE IT FURTHER RESOLVED that based upon the above and the presentation and discussions between the Village Board of Trustees and the Village Planner at the regularly scheduled meetings of the Village Board held on March 24, 2016 and April 14, 2016, and upon the Village Board’s consideration and adoption of the analysis and reasoning set forth in the “Addendum to Coastal Assessment Form – Proposed WF District Zoning Amendments”, and the April 20th “LWRP Consistency Review” memorandum from the Village Planner, which both expand upon the answers of the categories in Part III of the Coastal Assessment Form as well as address LWRP policies; the Village Board finds that not only is the Proposed Action is fully consistent with the policies of the LWRP, that the Proposed Action will in fact advance the following LWRP policies:

- ***LWRP Policy Nos. 14 and 17. Use of non-structural measures and erosion protection measures to mitigate flood damage.*** The WF Zoning District is located in the 100 year and 500 year floodplain of the Hudson River, and the proposed text amendments include resiliency features, which do not exist in the current Code, and which will serve to provide increased protection/mitigation for flood prone areas. Some existing docks, bulkheads, and other various improvements installed along the Hudson River in other developments located in the WF zoning district have proved susceptible to flooding (for example, docks and residential buildings located immediately adjacent to the Hudson River in the Clermont development, and buildings and bulkheads in the Nyack Marina suffered extreme flood damage during Hurricane Sandy).

Additionally, the requirement of a minimum 50 foot setback from the Hudson River in the text

amendment (as opposed to the “average” 50 foot setback in the current Code and a requirement that no building be located less than a mere 15 feet from the River), when taken together with the resiliency features, will promote the LWRP policies referenced in this finding.

- ***LWRP Policy Nos.25 and 25A. Protection of views and non-designated scenic resources.***

The proposed text amendments preserve the view corridors required under existing zoning, and can in fact enhance the view corridors by placing parking underground - as opposed to on grade parking with a minimal screening of plantings which are authorized under the current Code.

The existing on grade parking lots in other developments currently in place in the WF zoning district (particularly towards the north end of the WF district), obstruct views through existing view corridors. Additionally, the text amendments increase public access with a doubling of the width of the publicly accessible promenade along the entire length of the property. This enhances the scenic views for the public.

- ***LWRP Policy Nos. 2, 21 and 22. Development of the future or existing water-dependent uses.***

The proposed zoning text amendment will encourage increased public access to the riverfront. Any project using development incentives under the text amendment would increase the public access to 30’ from 12’ along the entire length of the property. Public access to the waterfront would be required every 200’ from the nearest east-west streets. The resulting public access would be dedicated as a park under the control of the Village of Nyack. Additionally, the text amendments require a water dependent use to be established in the event a development is proposed, as well as a restaurant/café, and potentially retail adjacent to the public walkway.

While there is limited language under the current Code requiring waterfront amenities subject to interpretation and negotiation with any potential developer, the specificity of the language in the text amendment will serve to mandate the establishment of water-dependent uses, thereby advancing these LWRP policies.

- ***LWRP Policy No. 24. Addressing siting and scale of new structures.*** As noted above, the proposed zoning text amendment will encourage increased public access to the riverfront, preservation and enhancement of view corridors, and increasing the required setback from the high water line of the Hudson River for new buildings. Furthermore, the Village Board finds that the specific design guidelines that ensure that landscape treatments, building façade

materials, and glazing areas are appropriate and consistent with the surrounding context and in keeping with the general character of Nyack. While there is language under the current Code requiring Architectural Review Board review of any potential development, the specificity of the language in the text amendment will form the basis for an objective set of design standards for any development, thereby advancing this LWRP policy by containing specific design standards developed to ensure compatibility with the surrounding area for the first time in the WF zoning district text.

- ***LWRP Policy No.2. Encouraging potential public recreation opportunities.*** The proposed zoning text amendment will encourage increased public access to the riverfront and provide resulting public access as parkland under the control of the Village. The requirement in the text amendment that the public access walkway along the waterfront be dedicated as parkland to the Village (as opposed to it being a developer controlled easement under the current Code language), and including specific language regarding a potential kayak or boat launch in the proposed new text, will advance the policy of expanding potential public recreation opportunities. The current pier at the Clermont development in the WF zoning district is under the control of a private property owner, and is underutilized by the public. The proposed text amendment will prevent this from happening with any new development.
- ***LWRP Policy No. 1 - Revitalization/redevelopment of deteriorated or underutilized waterfront site.*** As noted above, the proposed zoning text amendment will encourage increased public access to the riverfront. Much of the developed waterfront sites in the WF district are privately owned with no public access; and the potentially developable so called “TZ Vista” site (much of which is a brownfields site), is completely closed off from the public and surrounded by a chain link fence. The specifically delineated and increased public access provisions in the text amendment language will advance the policy of redeveloping the site and providing true public access to the waterfront where (1) none now exists, and (2) to a far greater extent than called for under current zoning.

- ***LWRP Policy Nos.19, 20 and 21. Discourage reduction of existing or potential public access to or along coastal waters.*** Again, as noted above, the proposed zoning text amendment will encourage increased public access to the riverfront. The specifically delineated and increased public access provisions in the text amendment language will also serve to advance the policy of preventing a reduction of potential public access along the Hudson River since potential developments under the current code would provide significantly less public access to the River.

IV. Conclusion

THEREFORE BE IT RESOLVED,

That based upon the reasoning, findings, and Resolved clauses set forth above, the Nyack Village Board of Trustees reaffirms and Resolves:

A. That the proposed Waterfront WF zoning text amendments, Local Law #1 of 2016, are consistent with the recommendations, goals, and objectives of the Comprehensive Master Plan.

B. That the Proposed Action being undertaken by the Village Board, the Waterfront WF zoning text amendments (Local Law #1 of 2016), if adopted, will have no significant adverse impact upon the environment; and the Village Board hereby adopts the Negative Declaration attached to this Resolution and referenced herein above, therefore ending the SEQRA process.

C. That pursuant to the provisions of Chapter 342 of the Code of the Village of Nyack, the Proposed Action, the Waterfront WF zoning text amendments (Local Law #1 of 2016), if adopted, are fully consistent with the policies of the LWRP, will not hinder the achievement of any of the policies set forth in the LWRP, and will in fact advance the LWRP policies referenced herein above.

The question of the adoption of the foregoing Resolution was duly put to a vote, which resulted as follows:

	<u>Yea</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
_____	[]	[]	[]	[]
_____	[]	[]	[]	[]
_____	[]	[]	[]	[]
_____	[]	[]	[]	[]
_____	[]	[]	[]	[]

Mary E. White, Village Clerk