

Via Email

March 31, 2021

Town of Hudson Planning Board
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RE: Hudson Logistics Center: Site Plan SP# 04-20, Conditional Use Permit CU# 02-20, Lot Line Relocation SB# 01-21

Dear Chair Malley and Members of the Planning Board,

On behalf of my clients, I submit the following with respect to the applications for Site Plan, Conditional Use Permit, and Lot Line Relocation (“Applications”) submitted by Hillwood Enterprises, L.P. (“Applicant”) to redevelop the golf course, property identified as Town Tax Map 234, Lot 5 and Tax Map 239, Lot 1 (“Property”), into the proposed Hudson Logistics Center (“Proposed Project”). Please make this letter and its enclosure a part of your record in these matters.

First, as the Planning Board is aware, I have raised numerous concerns with respect to due process. In that category is the current procedural posture, which may be headed in an unlawful direction. The Town of Hudson Planning Board Rules of Procedure do not call for any further testimony after the public hearing is closed. Town of Hudson Planning Board Rules of Procedure Section IV(4) (“When the public hearing portion of the meeting is closed and the Planning Board enters its deliberations ...”). That comports with state law and general practice of planning boards statewide.

Towards the end of the Planning Board’s meeting on 3/24/21, the Chair closed the public hearing on the Site Plan and Conditional Use Permit applications while also saying that written submissions may be made until noon today. In addition, the Applicant indicated it wishes to respond to new information from the public and the public’s representatives. This would indicate the public hearing is actually not and/or should not have been closed.

Also, the Planning Board prevented members of the public who do not reside in Hudson from testifying at the same time as those that do, but then never invited testimony from non-residents after Hudson residents were done. While non-residents are not conferred abutter status by virtue of this being a development of regional impact, lack of abutter status is not a justifiable reason to exclude such testimony. Indeed, many members of the public who reside out of Hudson may actually reside closer to the Proposed Project than some Hudson residents.

To prevent all of this from becoming reversible legal error, the Planning Board should clarify that the public hearing on the Site Plan and Conditional Use Permit applications is not closed, that it remains open limited to the purposes of: (1) non-resident members of the public verbal and/or written testimony at the Planning Board’s next meeting (anticipated to be on 4/7/21); and (2) for the written submissions by the Applicant and Hudson residents and their representatives by noon today.

Second, another due process issue relates to the time and technology limits on public comment. Given the magnitude of these Applications, the large number of hours the Applicants have had to present, the constraints on public participation presented by the pandemic, and more, it was wrong for the Planning Board to limit each speaker so strictly to three minutes, including disallowing me to speak by muting my audio so I could no longer be heard. Muting me disallowed me from making legal arguments I had prepared to justify my request for an additional ninety seconds. I acknowledge that Mr. Crowley was allowed more than three minutes, but that was at the expense of several members of the public having to forfeit their right to testify. Additionally, the Planning Board refused to make audio-visual presentation available to the public, though it has been freely available to the Applicant.

Third, I have previously raised possible conflicts of interest with respect to Planning Board members Selectboard Representative Coutu, Representative Ulery, and others. While I recognize and appreciate the Planning Board taking up these issues, the Planning Board has not adequately addressed them. As the Planning Board knows (because it has had to do both of these already in the proceedings on these very Applications) the Planning Board has two powers that apply here and that the Planning Board did not use, though it should have. First, the Planning Board can vote to advise any member in question, in a non-binding way, whether the member should be disqualified. RSA 673:14, III. Second, the Planning Board can vote to refer the matter to the Selectboard for the Selectboard to consider whether the member should be removed from office. RSA 673:13. Both of these powers can involve fact-finding and investigation.

I close by encouraging the Planning Board that your record of these Applications is sufficient to defend denials and is not sufficient to defend approvals. The legal standards that the Applicants must satisfy with sufficient, credible evidence are not a majority test. Approval cannot be granted if the Applicants have satisfied most of the requirements or even if they have mostly satisfied all of the requirements. The Applicants have to completely satisfy all of the requirements. Your record demonstrates the Applicants have not done that.

Thank you.

Very truly yours,



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Cc: Clients