

**TOWN OF NEW LEBANON
RESOLUTION #___, 2022
AUTHORIZING SETTLEMENT OF LITIGATION
DECEMBER 30, 2022**

At a duly called and noticed special meeting of the New Lebanon Town Board held on the 30th day of December, 2022, the following Resolution was proposed and seconded:

Resolution by _____
Seconded by _____

AUTHORIZING SETTLEMENT OF LITIGATION

WHEREAS, on February 28, 2022, Camp DD, LLC (“Camp DD”) applied for site plan approval for construction of a self-storage facility on property located at 14398 NYS Route 22 in the Town of New Lebanon (SBL: 19.4-1-22), which site plan application underwent various modifications during the review process by the Town of New Lebanon Planning Board; and

WHEREAS, a public hearing was held on the application on May 18, 2022; and

WHEREAS, the application was subject to referral to the Columbia County Planning Board pursuant to N.Y. General Municipal Law § 239-m; and

WHEREAS, the application was not referred to the Columbia County Planning Board as required; and

WHEREAS, the modifications made to the site plan application during the application review process culminated in a final site plan submission in July 2022; and

WHEREAS, on July 20, 2022, the Town of New Lebanon Planning Board, by a vote of 4 to 3, denied approval of the site plan application as depicted on the July 2022 site plan submission; and

WHEREAS, the resolution denying the site plan application was filed on July 26, 2022; and

WHEREAS, thereafter Camp DD commenced litigation against the Town of New Lebanon and the Town of New Lebanon Planning Board on August 25, 2022 seeking: reversal and annulment of the denial of the site plan application, a declaration that the denial and its findings are violative of the Town of New Lebanon Zoning Code and were arbitrary and capricious and lacking in foundation in law or fact, directing the Planning Board to grant approval of the site plan application as depicted in the July 2022 Site Plan and that the Building Inspector forthwith process Petitioner’s building permit application upon its submittal; and awarding attorneys’ fees, costs, and disbursements of the proceeding, along such other and further relief as the Court deemed just and proper; and

WHEREAS, following commencement of the litigation, the Town Board has consulted with the Attorney for Town concerning the litigation; and

WHEREAS, following consultation with the Attorney for the Town and consideration of the claims, defenses, costs, and benefits of continuing to litigate, the Town Board finds it to be prudent to resolve the litigation, rather than to continue to litigate the dispute, on the terms and condition set forth in the proposed Stipulation of Settlement annexed hereto as Exhibit A;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The Town Board, on behalf of the Town of New Lebanon, hereby approves the proposed Stipulation of Settlement in the form and content as set forth in “Exhibit A” attached to this Resolution, and further hereby authorizes the Attorney for the Town to execute such Stipulation of Settlement on behalf of the Town of New Lebanon.

2. The Town Board hereby authorizes and directs the Attorney for the Town, the Town Supervisor, and/or their respective designee(s), to take such further action and execute such other and further documents as may be reasonably necessary to effectuate the purposes of this Resolution.

Upon the question of the foregoing Resolution, the following Town Board Members voted “Aye” or “Nay” for said Resolution:

Roll Call Vote:

Councilmember John Trainor	___
Councilmember Deborah Gordon	___
Supervisor Tistrya Houghtling	___
Councilmember Britt Buckenroth	___
Councilmember Marianna Anthonisen	___

The Resolution, having been *approved/not approved* by a majority vote of the Town Board, was declared *duly adopted/not duly adopted* by the Supervisor of the Town of New Lebanon.

Dated: December 30, 2022

Marcie Robertson
Town Clerk
Town of New Lebanon

EXHIBIT A

NEW YORK STATE
SUPREME COURT COLUMBIA COUNTY

CAMP DD, LLC,

Petitioner,

-against-

SO-ORDERED
STIPULATION OF
SETTLEMENT

The TOWN OF NEW LEBANON, and the
PLANNING BOARD of the TOWN OF NEW
LEBANON,

Index No.: E012022018748

Respondents.

WHEREAS, Petitioner Camp DD, LLC commenced this Article 78 proceeding on August 25, 2022; and

WHEREAS, in this Proceeding, Petitioner alleges that it is the owner of certain real property located at 14398 NYS Route 22, Town of New Lebanon, County of Columbia, State of New York and designated as Tax Map Parcel No. 19.4-1-22 (the **“Property”**); and

WHEREAS, in this Proceeding, Petitioner alleges that, in or about May 2021, Petitioner sought site plan approval for a Recreational Vehicle self-storage facility (hereinafter, the **“RV Self-Storage Application”**); and

WHEREAS, in this Proceeding, Petitioner alleges that Respondent Planning Board issued a positive declaration under the State Environmental Quality Review

Act for the RV Self-Storage Application, necessitating the completion of an Environmental Impact Statement under SEQRA and its implementing regulations; and

WHEREAS, in this Proceeding, Petitioner alleges that it thereafter tabled the RV Self Storage Application; and

WHEREAS, in this Proceeding, Petitioner alleges that in or about January, 2022, after tabling its RV Self Storage Application, it filed an application for site plan approval for construction of a self-storage facility consisting of self-storage units at the Property, which site plan application underwent various modifications during the review process by Respondent Planning Board, and as a result of the Planning Board's requested changes, this culminated in the site plan submission made in July 2022 and attached as Exhibit Q to the Verified Petition in this matter (hereinafter, referred to as the "**July 2022 Site Plan**");

WHEREAS, in this Proceeding, Petitioner alleges that on July 20, 2022, Respondent Planning Board voted 4 to 3 to deny approval of the July 2022 Site Plan, as reflected in the minutes of Respondent Planning Board's July 20, 2022 meeting (annexed to the Verified Petition as Exhibit T), which was memorialized in a Resolution attached as Exhibit S to the Verified Petition (hereinafter, the "**Denial**"); and

WHEREAS, in this Proceeding, Petitioner seeks reversal and annulment of the Denial; a declaration that the Denial and its findings are violative of the Town of New Lebanon Zoning Code and otherwise arbitrary and capricious, and without foundation in law or in fact; a direction that the Planning Board grant approval of the site plan application as depicted in the July 2022 Site Plan and that the Building Inspector forthwith process Petitioner's building permit application upon its submittal; and an award of attorneys' fees, costs and disbursements of this proceeding and such other and further relief as the Court deems just and proper; and

WHEREAS, the subject site plan application as depicted in the July 2022 Site Plan is subject to the referral requirements of N.Y. General Municipal Law § 239-m; and

WHEREAS, the Town of New Lebanon Planning Board did not refer the subject site plan application as depicted in the July 2022 Site Plan to the Columbia County Planning Board in accordance with the requirements of N.Y. General Municipal Law § 239-m; and

WHEREAS, rather than continuing to litigate this dispute, with its uncertainty of result and ongoing expense, the parties desire to resolve this matter on the terms and conditions set forth herein;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED

by and between the parties, and **ORDERED BY THE COURT**, as follows:

1. In full and final resolution of this proceeding, Petitioner Camp DD, LLC, Respondent Town of New Lebanon, and Respondent Planning Board of the Town of New Lebanon agree that:

a. The Denial is hereby reversed and annulled.

b. The application for site plan approval as depicted in the July 2022 Site Plan is hereby remitted to the Town of New Lebanon Planning Board for further proceedings, including for the Town to refer the site plan application to the Columbia County Planning Board in compliance with N.Y. General Municipal Law § 239-m. Upon remittal, and to the extent permitted within this Stipulation, the Town of New Lebanon Planning Board shall promptly and diligently proceed through the site plan application review process and, following compliance with N.Y. General Municipal Law § 239-m, shall render a determination on the subject site plan application at the next regularly scheduled Planning Board meeting. The parties agree that the public hearing allowed for under Town of New Lebanon Town Code § 205-14 (H) (1) has already been completed and closed with respect to application for site plan approval as depicted in the July 2022 Site Plan.

c. Upon execution of this Stipulation by Petitioner Camp DD, LLC and upon authorization of the Town of New Lebanon Planning Board to enter into this Stipulation, the Town of New Lebanon Planning Board shall be authorized to immediately commence the necessary referral of the subject site plan application to the Columbia County Planning Board, even if the Town of New Lebanon Town Board has not yet authorized the execution of this Stipulation or if the Court has not yet so-ordered this Stipulation. This provision is intended to permit prompt referral of the subject site plan application to the Columbia County Planning Board. However, any further proceedings by the Town of New Lebanon Planning Board in the review of the subject site plan application shall be stayed until the Town of New Lebanon Town Board authorizes execution of this Stipulation and the Court so-orders the Stipulation.

d. In the event the Town of New Lebanon Planning Board approves the application for site plan approval as depicted in the July 2022 Site Plan, with or without modifications agreed to by the parties, the RV Self Storage Application shall be deemed withdrawn.

e. The application for site plan approval as depicted in the July 2022 Site Plan, and the project to be undertaken pursuant thereto, shall not be subject to any moratorium on land use applications or zoning

amendment restrictions for self-storage units that are in effect on the date on which this Stipulation of Settlement is authorized by any party or is So-Ordered by the Court (i.e., Introductory Local Law No. 5 of 2022, enacted and filed in the N.Y. Department of State as Local Law No. 4 of 2022). Nothing herein shall be deemed to exempt from any moratorium any proposed development that is not depicted on the July 2022 Site Plan.

f. In the event the application for site plan approval as depicted in the July 2022 Site Plan is approved, with or without agreed upon modifications, site development/building permits may be issued (upon satisfaction of any conditions of site plan approval, if any) during the one-year period set forth in Town of New Lebanon Town Code § 205-14 (I) (3) notwithstanding any moratorium on self-storage units that may then be in effect or any zoning amendments that may be adopted and/or in effect during such period that affect self-storage unit facilities.

Nothing herein shall be deemed to exempt from any moratorium or any zoning amendments any proposed development that is not depicted on the July 2022 Site Plan. Any exemption set forth herein from a moratorium or from zoning amendments shall terminate upon the expiration of the one-year period set forth in Town of New Lebanon

Town Code § 205-14 (H), provided however that if construction has commenced and is continuing to be pursued but is not yet completed during that period the project shall be permitted to be completed.

2. The parties agree that the execution of this So-Ordered Stipulation of Settlement is done solely for the purposes of compromise, and to eliminate the burden and expense of further litigation, and does not constitute, and shall not be construed as, an admission of liability, wrongdoing, fault, or concession, or as evidence with respect thereto, by any party hereto, on account of any claims or matters arising between them, any such liability being specifically denied. The parties further agree that this So-Ordered Stipulation of Settlement shall not be offered or received against any of the parties as evidence of a presumption, concession, or admission with respect to any liability, wrongdoing or fault, or in any way referred to for that purpose as against any of the parties, in any other civil, criminal or administrative action or proceeding, other than proceedings as may be necessary to effectuate and enforce the provisions of this So-Ordered Stipulation of Settlement.

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Dated: December ____, 2022

COUCH WHITE, LLP,
Attorneys for Petitioner

By: _____
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Alita J. Giuda, Esq.
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SO ORDERED:

Laura M. Jordan, J.S.C.

Dated: December ____, 2022

GILCHRIST TINGLEY, P.C.,
Attorneys for Respondents

By: _____
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